

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF THE RULES IN OHIO ADM.
CODE CHAPTER 4901:1-38.

CASE NO. 22-867-EL-ORD

ENTRY

Entered in the Journal on October 19, 2022

I. SUMMARY

{¶ 1} The Commission directs that all interested persons or entities wishing to file comments with the Commission regarding the rules in Ohio Adm.Code Chapter 4901:1-38 do so not later than November 2, 2022.

II. DISCUSSION

{¶ 2} R.C. 121.951(A)(1) requires state agencies to reduce their total number of regulatory restrictions, and this docket was opened to review the transportation rules in accordance with the requirements of this statute. Additionally, R.C. 106.03(A) requires the Commission to determine whether the rules should be continued without amendment, be amended, or rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted. As part of this analysis, the Commission must ascertain if the rule is still pertinent and not duplicative of existing state and federal law. Additionally, the Commission must assess if the rule is still reasonably effective for enforcement purposes. As part of this review, the Commission must consider whether the rule has an adverse impact on businesses, as determined under R.C. 107.52, or on any other person or entity.

{¶ 3} Also, under R.C. 121.82, in the course of developing draft rules, the Commission must evaluate whether those rules will have an adverse effect on businesses and when deemed necessary, prepare a business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the Commission is tasked to incorporate features into the draft rules to eliminate or adequately reduce the adverse

business impact. R.C. 121.82 also requires the Commission to provide a copy of the draft rules to the Common Sense Initiative office for comment.

{¶ 4} Staff has evaluated the rules under review in this proceeding as in order to reduce the number of regulatory restrictions. As a result of its review, Staff proposes substantive changes to reduce the total number of regulatory restrictions, pursuant to R.C. 121.951(A)(1). Additionally, Staff proposes minor, non-substantive changes throughout these chapters that are intended to improve clarity, better align language with that used in the related statutory provisions, or to correct typographical errors.

{¶ 5} Attached to this Entry are the proposed revisions to Ohio Adm.Code Chapter 4901:1-38 and BIA, which are also posted on the Commission's Docketing Information System website at <http://dis.puc.state.oh.us>. To minimize the expense of this proceeding, the Commission will serve a paper copy of this Entry only. All interested persons are directed to input case number 22-867 into the Case Lookup box to view this Entry, as well as the proposed changes, or to contact the Commission's docketing division to request a paper copy.

{¶ 6} The Commission requests comments from interested persons to assist in the rule review. Comments should be filed, via electronic filing or in hard copy, by November 2, 2022. If any stakeholders identify additional regulatory restrictions that can be removed from the rules subject to review, they are invited to do so. If any stakeholders recommend keeping a restriction that is proposed to be removed, the stakeholder should recommend two other restrictions that should be removed in its place.

III. ORDER

{¶ 7} It is, therefore,

{¶ 8} ORDERED, That all interested persons or entities wishing to file comments or reply comments with the Commission regarding the proposed rules do so no later than November 2, 2022. It is, further,

{¶ 9} ORDERED, That a copy of this Entry, with the rules, be submitted to CSI, in accordance with R.C. 121.82. It is, further,

{¶ 10} ORDERED, That a copy of this Entry be served upon all investor-owned electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, and the Electric-Energy industry list-serve.

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JML/IMM/hac

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AMENDED

4901:1-38-01 Definitions.

- (A) "Affidavit" means a written declaration made under oath before a notary public or other authorized officer.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Delta revenue" means the deviation resulting from the difference in rate levels between the otherwise applicable rate schedule and the result of any reasonable arrangement approved by the commission.
- (D) "Electric utility" ~~shall have~~has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (E) "Energy efficiency production facilities" means any customer that manufactures or assembles products that promote the more efficient use of energy (i.e., increase the ratio of energy end use services (i.e., heat, light, and drive power) derived from a device or process to energy inputs necessary to derive such end use services as compared with other devices or processes that are commonly installed to derive the same energy use services); or, any customer that manufactures, assembles or distributes products that are used in the production of clean, renewable energy.
- (F) "Mercantile customer" ~~shall have~~has the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.
- (G) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 or 4928.141 of the Revised Code, or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by the electric utility.
- (H) "Staff" means the staff of the commission or its authorized representative.

NO CHANGE

4901:1-38-02 Purpose and scope.

- (A) The purpose of this chapter is to facilitate the state's effectiveness in the global economy, to promote job growth and retention in the state, to ensure the availability of reasonably priced electric service, to promote energy efficiency and to provide a means of giving appropriate incentives to technologies that can adapt successfully to environmental mandates in furtherance of the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

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RESCINDED

~~4901:1-38-03—Economic development arrangements.~~

- ~~(A) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for commission approval for an economic development arrangement between the electric utility and a new or expanding customer or group of customers. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.~~
- ~~(1) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.~~
- ~~(2) The commission will consider the following verifiable information, submitted by each customer to the electric utility and the commission, when analyzing an application under this paragraph:~~
- ~~(a) The customer's business is acutely energy intensive or has a distinct energy profile.~~
 - ~~(b) The customer has made a commitment to investing in Ohio either in a new investment or support of a new industry.~~
 - ~~(c) Eligible projects will be for non-retail purposes.~~
 - ~~(d) The economic impact of the customer's project on the region is expected to be significant and create or retain jobs. The average hourly base wage rate of the new, full-time or full-time equivalent jobs will be at least one hundred fifty per cent of the federal minimum wage.~~
 - ~~(e) The customer has explored or taken advantage of other opportunities for both non-energy related operational savings such as basic cost management and energy related operational savings such as shopping for or self-generating electricity, energy efficiency, and participation in utility or regional transmission organizations' conservation or reliability programs.~~
 - ~~(f) The charges paid to the utility cover all incremental costs of service and contribute to the payment of fixed costs.~~
 - ~~(g) The benefits to the community accruing from the project outweigh the costs imposed on the other retail customers because of the reasonable arrangement.~~
 - ~~(h) The arrangement is for a set term.~~
 - ~~(i) The customer demonstrates financial viability.~~

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~~(j) The customer identifies local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.~~

~~(k) The customer identifies potential secondary and tertiary benefits resulting from its project including, but not limited to, local/state tax dollars and related employment or business opportunities resulting from the location of the facility.~~

~~(l) The customer agrees to maintain operations at the project site for the term of the incentives.~~

~~(3) An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an economic development arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement and an affidavit from a company official as to the veracity of the information provided in the application.~~

~~(B) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for an economic development arrangement between the electric utility and its customer or group of customers for the retention of an existing customer(s) likely to cease or reduce its operations, or relocate them out of state. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.~~

~~(1) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.~~

~~(2) The commission will consider the following verifiable information, submitted by each customer to the electric utility and the commission, when analyzing an application under this paragraph:~~

~~(a) The customer's business is acutely energy intensive or has a distinct energy profile.~~

~~(b) The customer has made a commitment to investing in Ohio either in a new investment or support of a new industry.~~

~~(c) Eligible projects will be for non-retail purposes.~~

~~(d) The economic impact of the customer's project on the region is expected to be significant and will create or retain jobs. The average hourly base wage rate of the new, full-time or full-time equivalent jobs will be at least one hundred fifty per cent of the federal minimum wage.~~

~~(e) The customer has explored or taken advantage of other opportunities for both non-energy related operational savings such as basic cost management and energy related operational savings~~

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~~such as shopping for or self-generating electricity, energy efficiency, and participation in utility or regional transmission organizations' conservation or reliability programs.~~

~~(f) The charges paid to the utility cover all incremental costs of service and contribute to the payment of fixed costs.~~

~~(g) The benefits to the community accruing from the project outweigh the costs imposed on the other retail customers because of the reasonable arrangement.~~

~~(h) The arrangement is for a set term.~~

~~(i) The average billing load (in kilowatts to be retained) will be at least two hundred fifty kilowatts.~~

~~(j) The customer demonstrates that the cost of electricity is a major factor in its decision to cease, reduce, or relocate its operations to an out-of-state site. In-state relocations are not eligible. If the customer has the potential to relocate to an out-of-state site, the site(s) will be identified, along with the expected costs of electricity at the site(s) and the expected costs of other significant expenses including, but not limited to, labor and taxes.~~

~~(k) The customer identifies any other local, state, or federal assistance sought and/or received in order to maintain its current operations.~~

~~(l) The customer agrees to maintain its current operations for the term of the incentives.~~

~~(3) An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an economic development arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement and an affidavit from a company official as to the veracity of the information provided in the application.~~

~~(C) Upon the filing of an economic development application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.~~

~~(1) The economic development arrangement shall be subject to change, alteration, or modification by the commission.~~

~~(2) The staff shall have access to all customer and electric utility information related to service provided pursuant to the economic development arrangements.~~

~~(D) Customer information provided to demonstrate eligibility under paragraphs (A) and (B) of this rule shall be treated by the electric utility as confidential. The electric utility shall request confidential treatment of customer-specific information that is filed with the commission, with the exception of customer names and addresses.~~

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~~(E) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.~~

RESCINDED

~~4901:1-38-04—Energy efficiency arrangements.~~

~~(A) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for commission approval for an energy efficiency arrangement between the electric utility and its customer or group of customers that have new or expanded energy efficiency production facilities. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.~~

~~(1) Each customer requesting to take service pursuant to an energy efficiency arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.~~

~~(2) The commission will consider the following verifiable information submitted by each customer to the electric utility and the commission, when analyzing an application under this paragraph:~~

~~(a) The definition of an energy efficiency production facility, as specified in this chapter applies otto the customer.~~

~~(b) The average hourly base wage rate of the new, full-time, or full-time equivalent jobs will be at least one hundred fifty per cent of federal minimum wage.~~

~~(c) The customer demonstrates financial viability.~~

~~(d) The customer identifies local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.~~

~~(e) The customer agrees to maintain operations at the project site for the term of the incentives.~~

~~(f) The benefits to the community accruing from the project outweigh the costs imposed on the other retail customers because of the reasonable arrangement.~~

~~(g) The arrangement is for a set term.~~

~~(3) An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an energy efficiency arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing~~

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~~the rationale for the arrangement and an affidavit from a company official as to the veracity of the information provided in the application.~~

~~(B) Upon the filing of an energy efficiency application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.~~

~~(1) The energy efficiency arrangement shall be subject to change, alteration, or modification by the commission.~~

~~(2) The staff shall have access to all customer and electric utility information related to service provided pursuant to the energy efficiency arrangements.~~

~~(C) Customer information provided to the utility to demonstrate eligibility under paragraph (A) of this rule shall be treated by the electric utility as confidential. The electric utility shall request confidential treatment of customer specific information that is filed with the commission, with the exception of customer names and addresses.~~

~~(D) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.~~

AMENDED

4901:1-38-05 Unique arrangements.

(A) Notwithstanding rules 4901:1-38-03 and 4901:1-38-04 of the Administrative Code, an electric utility may file an application pursuant to section 4905.31 of the Revised Code for commission approval of a unique arrangement with one or more of its non-mercantile customers, consumers, or employees.

(1) An electric utility filing an application for commission approval of a unique arrangement with one or more of its customers, consumers, or employees bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement and an affidavit from a company official as to the veracity of the information provided.

(2) Upon the filing of an application for a unique arrangement, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.

~~(3) The unique arrangement shall be subject to change, alteration, or modification by the commission.~~

(B) If a mercantile customer, or a group of mercantile customers, of an electric utility is not eligible for an arrangement under rule 4901:1-38-03 or 4901:1-38-04 of the Administrative Code, the customer may file an application for commission approval of a unique arrangement with the electric utility.

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(1) Each customer requesting to take service pursuant to a unique arrangement with the electric utility has the burden of proof that, at a minimum:

- (a) The customer and/or electric utility is not eligible for an economic development arrangement under rule 4901:1-38-03 of the Administrative Code.
- (b) The customer and/or electric utility is not eligible for an energy efficiency arrangement under rule 4901:1-38-04 of the Administrative Code.
- (c) The arrangement is in the public interest.

~~Further, the customer will submit to the electric utility and the commission verifiable information detailing how the criteria are met, and provide an affidavit from a company official as to the veracity of the information provided.~~

(2) A mercantile customer filing an application for commission approval of a unique arrangement has the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, ~~and shall submit to the commission and the electric utility verifiable information detailing the rationale for the arrangement.~~

(3) Upon the filing of an application for a unique arrangement, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.

~~(4) The unique arrangement shall be subject to change, alteration, or modification by the commission.~~

~~(C) Each applicant applying for approval of a unique arrangement shall describe how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.~~

~~(CD)~~ Unique arrangements shall reflect terms and conditions for circumstances for which the electric utility's tariffs have not already provided.

~~(DE)~~ Customer information provided to the electric utility to obtain a unique arrangement shall be treated by the electric utility as confidential. ~~The electric utility shall request confidential treatment of customer-specific information that is filed with the commission,~~ with the exception of customer names and addresses, which may be disclosed in filings with the commission.

~~(EF)~~ Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

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- (A) Each electric utility shall require each of its customers served under any reasonable arrangement established pursuant to this chapter to submit an annual report to the electric utility and staff and file an annual report with the commission no later than April thirtieth of each year. The format of that report, ~~to be shall be~~ determined by staff, ~~should ensure -such that-~~ a determination of the compliance with the eligibility criteria can be ~~determined made~~, the value of any incentives received by the customer(s) ~~are is~~ identified, and the potential impact on other customers can be calculated.
- (B) The burden of proof to demonstrate ongoing compliance with the reasonable arrangement lies with the customer(s). The electric utility shall summarize the reports provided by customers under paragraph (A) of this rule and submit such summary to staff for review and audit no later than June fifteenth of each year.

AMENDED

4901:1-38-07 Level of incentives.

- (A) The level of the incentives associated with any reasonable arrangement established pursuant to this chapter ~~will shall~~ be determined as part of the commission's review and approval of the applications filed pursuant to this chapter. Incentives ~~will shall~~ only be applicable to the service(s) taken from the electric utility by the customer receiving the incentives.
- (B) Incentives may be based on, but not limited to:
- (1) Demand discounts.
 - (2) Percentages of total bills, or portions of bills.
 - (3) Direct contributions.
 - (4) Reflections of cost savings to the electric utility.
 - (5) Shared savings.
 - (6) Some combination of the required criteria.
- (C) Where the calculation of delta revenue under any economic development arrangement under rule 4901:1-38-03, energy efficiency arrangement under rule 4901:1-38-04, or unique arrangement under rule 4901:1-38-05 of the Administrative Code requires consideration of a customer's generation charges, the customer ~~will shall~~ be billed using utility-consolidated billing.
- ~~(D) Upon commission approval of an application, the reasonable arrangement, as approved, shall be:~~
- ~~(1) Posted on the commission's docketing information system.~~
 - ~~(2) Accessible through the commission's web site.~~

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~~(3) Under the supervision and regulation of the commission, and subject to change, alteration, or modification by the commission.~~

AMENDED

4901:1-38-08 Revenue recovery.

(A) Each electric utility that is serving customers pursuant to approved reasonable arrangements, may apply for a rider for the recovery of certain costs associated with its delta revenue for serving those customers pursuant to reasonable arrangements in accordance with the following:

~~(1) The approval of the request for revenue recovery, including the level of such recovery, shall be at the commission's discretion.~~

~~(12)~~ The electric utility may request recovery of direct incremental administrative costs related to the programs as part of the rider. Such cost recovery ~~shall may, as ordered by the commission,~~ be subject to audit, review, and approval by the commission.

~~(23)~~ For reasonable arrangements in which incentives are given based upon cost savings to the electric utility (including, but not limited to, nonfirm arrangements, on/off peak pricing, seasonal rates, time-of-day rates, real-time-pricing rates), the cost savings ~~shall will~~ be an offset to the recovery of the delta revenues.

~~(34)~~ The amount of the revenue recovery rider ~~shall will~~ be spread to all customers in proportion ~~to-based on~~ the current revenue distribution between and among classes, ~~subject to change, alteration, or modification by the commission.~~ The electric utility shall file the projected impact of the proposed rider on all customers, by customer class.

~~(45)~~ The rider shall be updated and reconciled, by application to the commission, semiannually. All data submitted in support of the rider update is subject to commission review and audit.

(B) If it appears to the commission that the proposals in the application may be unjust and unreasonable, the commission ~~shall will~~ set the matter for hearing. At such hearing, the electric utility will bear the burden of proof to show that the revenue recovery rider proposal in the application is just and reasonable.

~~(1) At such hearing, the burden of proof to show that the revenue recovery rider proposal in the application is just and reasonable shall be upon the electric utility.~~

~~(2) The revenue recovery rider shall be subject to change, alteration, or modification by the commission.~~

~~(3) The staff shall have access to all customer and electric utility information related to service provided pursuant to the reasonable arrangements that created the delta revenue triggering the electric utility's application to recover the costs associated with said delta revenue.~~

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- (C) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

NO CHANGE

4901:1-38-09 Failure to comply.

- (A) If the customer being provided with service pursuant to a reasonable arrangement established pursuant to this chapter fails to substantially comply with any of the criteria for eligibility or fails to substantially comply with reporting requirements, the electric utility, after reasonable notice to the customer, shall terminate the arrangement unless otherwise ordered by the commission.
- (B) The commission may also direct the electric utility to charge the customer for all or part of the incentives previously provided by the electric utility.
- (C) If the customer is required to pay for all or part of the incentives previously provided, the recovered amounts shall be reflected in the calculation of the revenue recovery rider established pursuant to rule 4901:1-38-08 of the Administrative Code.



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

Agency, Board, or Commission Name: Public Utilities Commission of Ohio

Rule Contact Name and Contact Information:

Angela Hawkins, Legal Director Ph: 614-466-0122; angela.hawkins@puco.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

Ohio Adm.Code Chapter 4901:1-38 Arrangements for Electric Utility Customers

Rule Number(s): 4901:1-38-01, 4901:1-38-02, 4901:1-38-03, 4901:1-38-04, 4901:1-38-05, 4901:1-38-06, 4901:1-36-07, 4901:1-38-08 4901:1-38-09

Date of Submission for CSI Review: October 19, 2022

Public Comment Period End Date: November 2, 2022

Rule Type/Number of Rules:

New/___ rules

No Change/___2___ rules (FYR? ___)

Amended/___5___ rules (FYR? ___)

Rescinded/___2___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies

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should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

- 2. Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code Chapter 4901:1-38 establishes rules for the approval of arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. These rules include applications for Commission approval of an economic development arrangement, energy efficiency arrangement, or unique arrangement. In addition, the rules establish reporting standards that require customers who are served via such an arrangement to submit annual reports to the electric utility and the Commission's Staff so that compliance with arrangement criteria can be verified.

Any and all amendments to these proposed rules are made pursuant to Ohio Revised Code (R.C.) 121.951(A)(1) that requires state agencies to reduce their total number of regulatory restrictions, including redundancies and typographical errors when applicable.

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- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

The authorizing statutes are R.C. 4905.31, 4928.02, and 4928.06.

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

If yes, please briefly explain the source and substance of the federal requirement.

This chapter does not implement a federal requirement, nor is it being amended to enable Ohio to obtain or maintain approval to administer or enforce a federal law.

- 5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

Ohio Adm.Code Chapter 4901:1-38 establishes rules for the approval of economic development, energy efficiency, or unique arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. Non-mercantile customers can only participate in unique arrangements. Ohio Adm.Code 4901:1-38-02 states that the purpose of this chapter is to facilitate the state's effectiveness in the global economy, to promote job growth and retention in the state, to ensure the availability of reasonably priced electric service, to promote energy efficiency, and to provide a means of giving appropriate incentives to technologies that can adapt successfully to environmental mandates contained in R.C. 4928.02.

- 7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

This chapter establishes rules for the approval of economic development, energy efficiency, and unique arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers, or for unique arrangements, nonmercantile customers. These rules will be deemed successful if customers seeking unique arrangements or energy efficiency arrangements can file appropriate applications for Commission approval as well as the annual compliance reports. No alternatives or changes were proposed by any Ohio electric utility or mercantile customer subject to these regulations.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On October 19, 2022, in Case No. 22-867-EL-ORD, the Commission issued an Entry to all investor-owned electric utilities and certified competitive retail electric service providers in Ohio, and served upon the Electric-Energy industry list-serve to solicit comments for proposed amended rules under this Chapter.

- 10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The Commission will consider any and all comments made by stakeholders during the established comment period.

- 11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

Not applicable.

- 12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

This chapter establishes rules for the approval of arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers, or in certain circumstances, non-mercantile customers. No alternatives or changes have been considered.

- 13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

This chapter establishes rules for the approval of arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. No performance-based alternatives or changes have been considered.

14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

There are no other Ohio agencies responsible for the supervision and regulation of public utilities, under R.C. Chapter 4928, or the approval of arrangements, pursuant to R.C. 4905.31.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Interested stakeholders will have the opportunity to provide written comment to the proposed rules during the comment period before the final rules are promulgated pursuant to the review under R.C. 121.951(A)(1).

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community; and

Ohio Adm.Code 4901:1-38-03, 4901:1-38-04, and 4901:1-38-05(B) apply to electric utilities and mercantile customers seeking Commission approval of economic development, energy efficiency, and unique arrangements, pursuant to R.C. 4905.31. Mercantile customers, as defined in R.C. 4928.01(A)(19), include a commercial or industrial customer, if the electricity consumed is for nonresidential use and the customer consumes more than 700,000 kWh annually, or is part of a national account involving multiple facilities in one or more states.

Ohio Adm.Code 4901:1-38-05(A) applies only when an electric utility seeks Commission approval of a unique arrangement with non-mercantile customers, consumers, or employees.

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and

The Commission does not charge any fees for the filing of applications to approve arrangements, pursuant to R.C. 4905.31, although electric utilities and mercantile customers presumably incur administrative costs in the filing of these applications.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a

“representative business.” Please include the source for your information/estimated impact.

Any adverse impacts of these only apply to an Ohio electric utility, mercantile customer, or group of mercantile customers filing an application for approval of an economic development arrangement between an electric utility and a new or expanding customer or group of customers, or between the electric utility and its existing customers for the retention of those customers. An affected party will more likely incur administrative costs in the filing process for these rules.

Furthermore, upon a showing of good cause, the Commission may waive any requirement of this chapter.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Commission has not identified an adverse impact on business as a result of the proposed revisions. In fact, the business impacts resulting from the proposed revisions are expected to be positive impacts for the business community because the purpose of the rule change is to remove regulatory restrictions.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

With one exception, these rules only apply to electric utilities and mercantile customers, which are defined by R.C. 4928.01(A)(19) as commercial or industrial customers that consume more than 700,000 kWh annually, or are part of a national account involving multiple facilities in one or more states. Only Ohio Adm.Code 4901:1-38-05(A) applies to non-mercantile customers. R.C. 119.14(G)(1) provides that small business has the same meaning as defined by the Code of Federal Regulations, Title 13, Chapter 1, Part 121. It appears unlikely that an entity would be able to fit both statutory definitions

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

This chapter establishes rules for the approval of economic development, energy efficiency, or unique arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers or for unique arrangements only, non-mercantile customers. As noted above, it appears unlikely that an entity would qualify as both a mercantile customer and small business. In addition, these rules do not impose fines or penalties for paperwork violations.

Ohio Adm.Code 4901:1-38-02(B) indicates that the Commission may, upon an application or a motion filed by a party, waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown.

20. What resources are available to assist small businesses with compliance of the regulation?

It appears unlikely that a small business would qualify as a mercantile customer eligible for an arrangement under R.C. 4905.31. However, the Commission's Staff is available to answer questions regarding the application and approval process set forth in this chapter.

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Case No(s). 22-0867-EL-ORD

Summary: Entry directing that all interested persons or entities wishing to file comments with the Commission regarding the rules in Ohio Adm.Code Chapter 4901:1-38 do so not later than November 2, 2022 electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio