

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF THE RULES IN OHIO ADM.
CODE CHAPTER 4901:1-36.

CASE NO. 22-865-EL-ORD

FINDING AND ORDER

Entered in the Journal on November 16, 2022

I. SUMMARY

{¶ 1} The Commission adopts the proposed amendments to Ohio Adm.Code Chapter 4901:1-36, as determined in and attached to this Finding and Order.

II. DISCUSSION

A. *Applicable Law*

{¶ 2} R.C. 121.951(A)(1), effective June 8, 2022, requires the Commission to amend or rescind rules identified in its base inventory – using the criteria listed in R.C. 106.03(A) – as necessary to reduce the total number of regulatory restrictions by thirty percent over the course of three years. The Commission opened this docket to review the transmission cost recovery rider rules in Ohio Adm.Code Chapter 4901:1-36.

{¶ 3} In performing the above review, R.C. 106.03(A) requires the Commission to determine, among other things, whether the rule should be amended or rescinded (including for the purpose of accomplishing the requirements of R.C. 121.951) because it exceeds or conflicts with the purpose, scope, or intent of the statute(s) under which the rule was adopted; creates a compliance or oversight burden that is greater than the burden that would be created if the agency accomplished the intended purpose of the restriction by other means; is no longer useful or beneficial; or duplicates, overlaps with, or conflicts with a federal or state law or rule.

{¶ 4} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis

(BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.

{¶ 5} Pursuant to R.C. 121.95(F), a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions. In accordance with R.C. 121.95, and prior to January 1, 2020, the Commission identified rules having one or more regulatory restrictions that require or prohibit an action, prepared a base inventory of these restrictions in the existing rules, and submitted this base inventory to Joint Committee on Agency Rule Review (JCARR), as well as posted this inventory on the Commission's website at <https://puco.ohio.gov/wps/portal/gov/puco/documents-and-rules/resources/restrictions>. With regard to the amendments discussed in this Finding and Order with respect to Ohio Adm.Code Chapter 4901:1-36, the Commission has both considered and satisfied the requirements in R.C. 121.95(F).

B. Procedural History

{¶ 6} The Commission and Staff evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-36. No significant substantive changes are proposed. Rather, the changes Staff recommends address amending rules throughout all chapters to conform with the purpose of R.C. 121.951(A)(1), by eliminating regulatory restrictions.

{¶ 7} By Entry issued on October 19, 2022, the Commission requested comments and reply comments on Staff's proposed revisions to Ohio Adm.Code Chapter 4901:1-36 and ordered that comments should be filed by November 2, 2022.

{¶ 8} Industrial Energy Users-Ohio (IEU-Ohio), Interstate Gas Supply (IGS), and the Ohio Manufacturers' Association Energy Group (OMAEG) made timely comments on November 2, 2022.

III. CONCLUSION

{¶ 9} In making its rules, an agency is required by R.C. 106.03(A) to consider the continued need for the rules, the nature of any complaints or comments received concerning the rules, and any relevant factors that have changed in the subject matter area affected by the rules. Further, R.C. 121.951(A)(1) requires state agencies to reduce their total number of regulatory restrictions. The Commission has evaluated Ohio Adm.Code Chapter 4901:1-36 and recommends amending the rules as demonstrated in the attachment to this Finding and Order.

{¶ 10} IEU-Ohio commented that it does not agree with eliminating Ohio Adm.Code 4901:1-36-04(B) in its entirety. IEU-Ohio stated that Ohio Adm.Code 4901:1-36-04(B) provides a regulatory mechanism by which customers can avoid the Transmission Cost Recovery by obtaining generation and transmission service from competitive suppliers. IEU-Ohio believes that the current proposed rules are contrary to several provisions of R.C. 4928.02 by eliminating a shopping customer's right to avoid transmission cost recovery, while discouraging competition. (IEU-Ohio Comments at 2-4.) IGS raised similar concerns about eliminating Ohio Adm.Code 4901:1-36-04(B). IGS also raised that the provisions in the rules have been longstanding, and its elimination would remove customers' options to better control their costs (IGS Comments at 1). Both entities propose keeping the original language under Ohio Adm.Code 4901:1-36-04(B).

{¶ 11} OMAEG opposed the proposed rescinding of Ohio Adm.Code 4901:1-36-04(B) and stated that the elimination would have adverse business impacts. OMAEG explained that the proposed language of changing the recovery mechanism from that billed by the competitive retail electric service provider to that billed by the electric distribution utility is significant (OMAEG Comments at 4). OMAEG said that the proposed rule would eliminate a tool for Ohio customers to control their transmission spending and would directly increase the expense of manufacturers and businesses who could no longer manage their load to avoid peak pricing (OMAEG Comments at 7). OMAEG proposes an

amendment that would allow all manufacturers and businesses to opt out of the EDU's transmission cost recovery mechanism and instead receive transmission service through their CRES provider (OMAEG Comments at 8).

{¶ 12} The Commission appreciates the comments submitted regarding the proposed elimination of Ohio Adm.Code 4901:1-36-04(B) and emphasizes there was no intention to deprive customers of a mechanism for controlling their transmission spending nor unduly burden manufacturers and businesses in the proposed rules. On balance, the Commission recognizes the importance of encouraging competition and the opportunity for customers to control their costs. As such, the Commission will not amend the existing rule language, as reflected in the attached Finding and Order."

{¶ 13} IGS proposes that Ohio Adm.Code 4901:1-36-03(A) be reworded to indicate that no application will be approved for recovery "unless" guidelines are followed. IGS also recommends rewording Ohio Adm.Code 4901:1-36-06(B) to emphasize that associated filings are required only in the case that utilities choose to make the filing. (IGS Comments at 3.) These proposed changes would eliminate regulatory restrictions under R.C. 121.951(A)(1). After consideration, the Commission will maintain the original language under Ohio Adm.Code 4901:1-36-03(A) and 4901:1-36-06(B).

{¶ 14} IEU-Ohio also commented that the proposed language under Ohio Adm.Code 4901:1-36-05 is unclear and ambiguous without a modal verb describing when Commission Staff approves applications or sets the hearing date (IEU-Ohio Comments at 5). The Commission will address concerns pertaining to Ohio Adm.Code 4901:1-36-05 by amending the proposed language to read: "Unless otherwise ordered by the commission, the legal director, the deputy legal director, or the attorney examiner, the commission **will** approve the application or set the matter for hearing" (emphasis added).

{¶ 15} An agency must also demonstrate that it has evaluated the impact of the rule on businesses, pursuant to R.C. 106.03(A)(6) and 121.82(A). Moreover, pursuant to R.C.

121.95(F), the agency must remove two or more existing regulatory restrictions for every new regulatory restriction added. The Commission has included stakeholders in the development of these rules, has considered the impact of the rules on businesses, and has adhered to the requirement regarding the removal of regulatory restrictions.

{¶ 16} Accordingly, at this time, the Commission finds that the amendments throughout Ohio Adm.Code Chapter 4901:1-36, as described in the attachment to this Finding and Order, should be adopted and filed with JCARR, the Secretary of State, and the Legislative Service Commission (LSC). The Commission also finds that no changes should be made to the designated “No Change” Ohio Adm.Code 4901:1-36-02 and 4901:1-36-06, as described in the attachment to this Finding and Order.

{¶ 17} The rules are posted on the Commission’s Docketing Information System website at <http://dis.puc.state.oh.us>. To minimize the expense of this proceeding, interested persons who have not agreed to electronic service will be served a paper copy of this Entry only. All interested persons are directed to input case number 22-865 into the Case Lookup box to view this Finding and Order, as well as the rules, or to contact the Commission’s Docketing Division to request a paper copy.

IV. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That amended rules Ohio Adm.Code 4901:1-36-01; -03; 04; and 05 be adopted. It is, further,

{¶ 20} ORDERED, That designated “No Change” Ohio Adm.Code 4901:1-36-02 and -06 be adopted with no changes. It is, further,

{¶ 21} ORDERED, That the adopted rules be filed with JCARR, the Secretary of State, and LSC, in accordance with divisions (D) and (E) of R.C. 111.15. It is, further,

{¶ 22} ORDERED, That a copy of this Finding and Order, with the rules and BIA, be served upon the Common Sense Initiative at CSIPublicComments@governor.ohio.gov. It is, further,

{¶ 23} 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
Lawrence K. Friedeman
Dennis P. Deters

JML/IMM/hac

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AMENDED

4901:1-36-01 Definitions.

- (A) "Application" means an application for a transmission cost recovery rider pursuant to this chapter.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Electric utility" ~~shall have~~has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (D) "Staff" means the staff of the commission or its authorized representative.

NO CHANGE

4901:1-36-02 Purpose and scope.

- (A) This chapter authorizes an electric utility to recover, through a reconcilable rider on the electric utility's distribution rates, all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility, net of financial transmission rights and other transmission-related revenues credited to the electric utility, by the federal energy regulatory commission or a regional transmission organization, independent system operator, or similar organization approved by the federal energy regulatory commission.
- (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.

AMENDED

4901:1-36-03 Application.

- (A) Each electric utility which seeks recovery of transmission and transmission-related costs shall file and accordingly, annually update an application with the commission for a transmission cost recovery rider in compliance with the appendix to this rule. ~~The initial application shall include all information set forth in the appendix to this rule.~~

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- ~~(B) Each electric utility with an approved transmission cost recovery rider shall update the rider on an annual basis pursuant to a schedule set forth by commission order. Each application to update the transmission cost recovery rider shall include all information set forth in the appendix to this rule.~~
- ~~(C)~~ (B) The commission may order that consultants be hired, with the costs billed to the electric utility and recoverable through the rider, to conduct prudence and/or financial reviews of the costs incurred and recovered through the transmission cost recovery rider.
- ~~(D)~~ (C) Each annual application to update the transmission cost recovery rider should be made not less than seventy-five days prior to the proposed effective date of the updated rider.
- ~~(E)~~ (D) If at anytime during the period between annual update filings, the electric utility or staff determines that costs are or will be substantially different than the amounts authorized as the result of the electric utility's previous application, the electric utility should file, on its own initiative or by order of the commission, an interim application to adjust the transmission cost recovery rider in order to avoid excessive carrying costs and to minimize rate impacts for the following update filing.
- ~~(F)~~ (E) Affected parties may file a motion to intervene and detailed comments on any issues concerning any application filed under this rule within forty days of the date of the filing of the application.

AMENDED

4901:1-36-04 Limitations.

- (A) The transmission cost recovery rider costs are reconcilable on an annual basis, with carrying charges to be applied to both over- and under-recovery of costs.
- (B) The transmission cost recovery rider shall be avoidable by all customers who choose alternative generation suppliers and the electric utility no longer bears the responsibility of providing generation and transmission service to the customers.
- (C) The transmission cost recovery rider shall include transmission and transmission-related costs and off-setting revenues, including ancillary and congestion-related costs and revenues, charged or credited to the utility by the ~~federal energy regulatory commission or a regional transmission organization, independent system operator, or similar organization approved by~~

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~~the federal energy regulatory commission~~entity with control of transmission facilities under section 4928.12 of the Revised Code to the extent such costs and revenues are not included in any other schedule or rider in the electric utility's tariff on file with the commission.

AMENDED

4901:1-36-05 Hearings.

Unless otherwise ordered by the commission, the legal director, the deputy legal director, or the attorney examiner, the commission will ~~shall~~ approve the application or sets the matter for hearing within seventy-five days after the filing of a complete application under this chapter. Proposed rates will become effective on the seventh-fifth day subject to reconciliation adjustments following any hearing, if necessary, or in its subsequent filing.

NO CHANGE

4901:1-36-06 Additional information.

- (A) On a biennial basis, the electric utility shall provide additional information detailing the electric utility's policies and procedures for minimizing any costs in the transmission cost recovery rider where the electric utility has control over such costs.
- (B) On a quarterly basis, each electric utility that seeks recovery of transmission and transmission-related costs shall submit to staff a report listing the cost components and amounts, customer revenue, and the monthly over and under-recovery in a format similar to that used in the application schedules for the reconciliation adjustment.

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Case No(s). 22-0865-EL-ORD

Summary: Finding & Order adopting the proposed amendments to Ohio Adm.Code Chapter 4901:1-36, as determined in and attached to this Finding and Order.
electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio