

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF THE RULES IN OHIO ADM.
CODE CHAPTER 4901:1-35.

CASE NO. 22-862-EL-ORD

FINDING AND ORDER

Entered in the Journal on November 30, 2022

I. SUMMARY

{¶ 1} The Commission adopts the proposed amendments to Ohio Adm.Code Chapter 4901:1-35, 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 Electric Distribution Utilities rules in Ohio Adm.Code Chapter 4901:1-35.

{¶ 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review, R.C. 106.03(A) requires the Commission to determine, among other things, whether the rule should be amended or rescinded (including for the purpose of accomplishing the requirements of R.C. 121.951) because it exceeds or conflicts with the purpose, scope, or intent of the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 4901:1-35, 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 4901:1-35. No significant substantive changes were proposed. Rather, the changes Staff recommended 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 on Staff's proposed revisions to Ohio Adm.Code Chapter 4901:1-35 and ordered that comments should be filed by November 9, 2022.

{¶ 8} Industrial Energy Users-Ohio (IEU-Ohio) and Interstate Gas Supply, Inc. (IGS) timely filed comments on November 9, 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 4901:1-35 and recommends amending the rules as demonstrated in the attachment to this Finding and Order.

{¶ 10} In its comments, IGS claims that Staff's elimination of Ohio Adm.Code 4901:1-35-03(F) and (G) produce an incomplete record of workpapers and tariff sheets. IGS states that the abovementioned provisions have been longstanding, and their removal would create an obstacle for parties "to obtain essential information in the workpapers and tariffs to develop a proper record." (IGS Comments at 2.) In response to IGS's comments, the Commission has amended Ohio Adm.Code 4901:35-03(F) and (G) by the following

- a. 4901:1-35-03(F) will read, "A complete set of work papers **will** be filed with the application. Work papers ~~must~~ include, but are not limited to, all pertinent documents prepared by the electric utility for the application and a narrative or other support of assumptions made in the work papers. Work papers **should** be marked, organized, and indexed according to schedules to which they relate. Data contained in the work papers should be footnoted so as to identify the source document used." (Emphasis added.)
- b. 4901:1-35-03(G) will read, "All schedules, tariff sheets, and work papers prepared by, or at the direction of, the electric utility for the application and included in the application **should** be available in spreadsheet, word processing, or an electronic non-image-based format, with formulas intact, compatible with personal computers. The electronic form does not have to be

filed with the application but **should** be made available within two business days to staff and any intervening party that requests it. (Emphasis added.)

{¶ 11} Additionally, IGS recommended that Ohio Adm.Code 4901:1-35-02's original language be kept and that the "shall" mandate should be reworded as "may." IGS asserts that this change would remove the ambiguity related to the Commission's proposal to eliminate "over half" of provision Ohio Adm.Code 4901:1-35-02(A). (IGS Comments at 2-3.) To address IGS's concerns, the Commission will amend Ohio Adm.Code 4901:1-35-02(A) to incorporate IGS's proposed changes.

{¶ 12} Lastly, IGS claimed that the proposed elimination of Ohio Adm.Code 4901:1-35-03(A) creates logistical issues and would delay adjudication of future electric security plan or MRO cases. IGS presented the following amendment to ensure parties are provided appropriate information upon an ESP or MRO application to expedite the procedural process: "An application for an ESP or an MRO is incomplete without a complete set of direct testimony of the electric utility personnel or other expert witnesses written in question and answer format supporting all schedules and significant issues identified by the electric utility." (IGS Comments at 5.) In response to IGS's concerns, the Commission will incorporate IGS's proposed changes.

{¶ 13} IEU-Ohio raised similar arguments as IGS, mentioned above, concerning Ohio Adm.Code 4901:1-35-03. In addition, IEU-Ohio opposed the proposed revisions to 4901:1-35-10, regarding the Commission's authority to set the procedure and timeline for the annual review and the requirement that utilities' filings include information contained under Ohio Adm.Code 4901:1-35-03(C), as it relates to excessive earnings. IEU-Ohio claimed that these provisions provide "necessary insight" into the review process and sets requirements for utilities' filings, which is "critical to the Commission's determination of the ESP under R.C. 4928.143." On balance, the Commission's objective for eliminating such provisions was pursuant to R.C. 121.951(A), in which the Commission is motivated to eliminate rules provisions that merely iterate Commission discretionary functions. Under

Ohio Adm.Code 4901:1-35-10, the Commission, its legal director, or attorney examiner will set the process and timeline for proceedings, and such a function is intuitive provided the purpose and scope of these rules. However, the Commission determines that Ohio Adm.Code 4901:1-35-10 will be amended to include the following: “The process and timeframes for that proceeding **will** be set by order of the commission, the legal director, or attorney examiner. The electric utility's filing **should** include the information set forth in paragraph (C) of rule 4901:1-35-03 of the Administrative Code as it relates to excessive earnings” (emphasis added).

{¶ 14} IEU-Ohio opposed the elimination of the hearing procedures set forth in Ohio Adm.Code 4901:1-35-06. IEU-Ohio explains that R.C. 4928.141(B) states that the Commission “shall set the time for hearing of a filing under [R.C.] 4928.142 or 4928.143” and “adopt rules regarding filings under those sections.” IEU-Ohio claims that Ohio Adm.Code 4901:1-35-06 expands on that statute by providing “clarity and guidance” for hearings on applications for standard service offers. IEU-Ohio states that the hearing procedures under Ohio Adm.Code 4901:1-35-06 “ensure all standard service offer applicants carry their burden of proof at a public hearing after interested parties have a chance to intervene, conduct discovery, and be heard.” (IEU-Ohio Comments at 5-6.) On balance, the Commission has determined that the elimination of Ohio Adm.Code 4901:1-35-06 is proper. Under the directive of R.C. 121.951(A)(1), the Commission has endeavored to eliminate regulatory restrictions that are determined to be duplicative in nature. Provided that R.C. 4928.141(B) already authorizes the Commission to exercise discretion regarding timelines and procedure for hearings, and the Commission may otherwise rely on our general procedural rules set forth in Ohio Adm.Code Chapter 4901-1 to set appropriate procedural schedules, the Commission has determined that Ohio Adm.Code 4901:1-35-06 may be rescinded. Furthermore, the concerns noted by IEU-Ohio are misplaced, as the burden of proof will remain with the electric distribution utility, consistent with the statutory language. R.C. 4928.142; R.C. 4928.143.

{¶ 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 4901:1-35, 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 4901:1-35-07, 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, the Commission will serve a paper copy of this Finding and Order only. All interested persons are directed to input case number 22-862 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 Ohio Adm.Code 4901:1-35-01; -02; -03; -04; -05; -08; -09; and -10 be adopted. It is, further,

{¶ 20} ORDERED, That designated “No Change” Ohio Adm.Code 4901:1-35-07 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 the Finding and Order and, with the rules, 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
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JML/IMM/hac

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AMENDED

4901:1-35-01 Definitions.

- (A) "Alternative retail rate option" means time-differentiated pricing, dynamic retail pricing, and other alternative retail rate options.
- (B) "Application" means an application for standard service offer pursuant to this chapter.
- (C) "Commission" means the public utilities commission of Ohio.
- (D) "Dynamic retail pricing" means a retail rate design which includes prices that can change based on changes in wholesale electricity prices, power system conditions, or the marginal cost of providing electric service.
- (E) "Electric utility" ~~shall have~~has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (F) "Electric security plan" means an electric utility plan for the supply and pricing of electric generation service including other related matters pursuant to section 4928.143 of the Revised Code.
- (G) "Market-rate offer" means an electric utility plan for the supply and pricing of electric generation service pursuant to section 4928.142 of the Revised Code.
- (H) "Person" ~~shall have~~has the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.
- (I) "Standard service offer" means an electric utility offer to provide consumers, on a comparable and nondiscriminatory basis within its certified territory, all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service, pursuant to section 4928.141 of the Revised Code.
- (J) "Staff" means the staff of the commission or its authorized representatives.
- (K) "Time differentiated pricing" means a retail rate design which includes differing prices based upon the time that electricity is used in order to reflect differences in expected costs or wholesale electricity prices in different time periods.

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AMENDED

4901:1-35-02 Purpose and scope.

- (A) Pursuant to division (A) of section 4928.141 of the Revised Code, beginning January 1, 2009, each electric utility in this state ~~shall~~may provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. Pursuant to this chapter, an electric utility ~~shall~~may file an application for commission approval of ~~an~~ a standard service offer (SSO). ~~Such application shall be~~ in the form of an electric security plan or market rate offer pursuant to sections 4928.142 and 4928.143 of the Revised Code. ~~The purpose of this chapter is to establish rules for the form and process under which an electric utility shall file an application for an SSO and the commission's review of that application.~~
- (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

4901:1-35-03 Filing and contents of applications.

Each electric utility in this state filing an application for a standard service offer (SSO) in the form of an electric security plan (ESP), a market-rate offer (MRO), or both, ~~shall~~complycomplies with the requirements set forth in this rule.

- (A) ~~SSO applications shall be case captioned as (XX-XXX-EL-SSO). Ten copies plus an original of the application shall be filed. The electric utility shall provide staff with additional hard copies of the application upon request. The application must include a complete set of direct testimony of the electric utility personnel or other expert witnesses. This testimony shall be in question and answer format and shall be in support of the electric utility's proposed application. This testimony shall fully support all schedules and significant issues identified by the electric utility.~~ An application for an ESP or MRO is incomplete without a complete set of direct testimony of the electric utility personnel or other expert witnesses written in question

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and answer format supporting all schedules and significant issues identified by the electric utility.

(B) An SSO application that contains a proposal for an MRO, or an SSO application containing a proposal for a competitive bidding process (CBP), ~~shall~~will comply with the applicable requirements set forth in this paragraph.

(1) The following electric utility ~~requirements~~components are to be demonstrated in a separate section of the SSO application proposing an MRO:

- (a) The electric utility shall establish one of the following: that it, or its transmission affiliate, belongs to at least one regional transmission organization (RTO) that has been approved by the federal energy regulatory commission in compliance with section 4928.12 of the Revised Code; ~~or, if the electric utility or its transmission affiliate does not belong to an RTO, then the electric utility shall demonstrate that alternative conditions exist with regard to the transmission system, which include non-pancaked rates, open access by generation suppliers, and full interconnection with the distribution grid.~~
- (b) The electric utility shall establish one of the following: its RTO retains an independent market-monitor function and has the ability to identify any potential for a market participant or the electric utility to exercise market power in any energy, capacity, and/or ancillary service markets by virtue of access to the RTO and the market participant's data and personnel and has the ability to effectively mitigate the conduct of the market participants so as to prevent or preclude the exercise of such market power by any market participant or the electric utility; or the electric utility shall demonstrate that an equivalent function exists which can monitor, identify, and mitigate conduct associated with the exercise of such market power.
- ~~(c) The electric utility shall demonstrate that an independent and reliable source of electricity pricing information for any energy product or service necessary for a winning bidder to fulfill the contractual obligations resulting from the CBP is publicly available. The information may be offered through a pay subscription service, but the pay subscription service shall be available under standard pricing, terms, and conditions to any person requesting a subscription. The published information shall be~~

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~~representative of prices and changes in prices in the electric utility's certified territory, and shall identify pricing of on-peak and off-peak energy products that represent contracts for delivery, encompassing a time frame beginning at least two years from the date of the publication. The published information shall be updated on at least a monthly basis.~~

- (2) Prior to establishing an MRO under division (A) of section 4928.142 of the Revised Code, an electric utility shall file a plan for a CBP with the commission. An electric utility that files an MRO or an application containing a CBP plan ~~shall~~provides justification of its proposed CBP plan, considering alternative possible methods of procurement. Each CBP plan ~~shall~~will include the following components:
- (a) A complete description of the CBP plan and testimony explaining and supporting each aspect of the CBP plan. The description ~~shall~~includes a discussion of any relationship between the wholesale procurement process and the retail rate design that may be proposed in the CBP plan. The description ~~shall~~includes a discussion of alternative methods of procurement that were considered and the rationale for selection of the CBP plan being presented. The description ~~shall~~also includes an explanation of every proposed non-avoidable charge, if any, and why the charge is proposed to be non-avoidable.
 - (b) Projected generation, transmission, and distribution rate impacts by customer class and rate schedules for the duration of the CBP plan. The electric utility shall clearly indicate how projected bid clearing prices used for this purpose were derived.
 - (c) Detailed descriptions of how the CBP plan ensures an open, fair, and transparent competitive solicitation that is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code.
 - (d) Detailed descriptions of the customer load(s) to be served by the winning bidder(s), and any known factors that may affect such customer loads. The descriptions ~~shall~~include, but not be limited to, load subdivisions defined for bidding purposes, load and rate class descriptions, customer load profiles that include historical hourly load data for each load and rate class for at least the two most recent years, applicable tariffs, historical shopping data, and plans for meeting targets pertaining to load reductions,

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energy efficiency, renewable energy, advanced energy, and advanced energy technologies. ~~If customers will be served pursuant to time-differentiated or dynamic pricing, the descriptions shall include a summary of available data regarding the price-elasticity of the load.~~ Any fixed load proposed to be served by winning bidder(s) ~~shall~~will be described.

- (e) Detailed descriptions of the generation and related services that are to be provided by the winning bidder(s). The descriptions ~~shall~~ include, at a minimum, capacity, energy, transmission, ancillary and resource adequacy services, and the term during which generation and related services are to be provided. The descriptions ~~shall~~ clearly indicate which services are to be provided by the winning bidder(s) and which services are to be provided by the electric utility.
- (f) Draft copies of all forms, contracts, or agreements that must be executed during or upon completion of the CBP.
- (g) A clear description of the proposed methodology by which all bids would be evaluated, in sufficient detail so that bidders and other observers can ascertain the evaluated result of any bids or potential bids.
- (h) The CBP plan ~~shall~~ includes a discussion of alternative retail rate options that were considered in the development of the CBP plan. A clear description of the rate structure ultimately chosen by the electric utility, the electric utility's rationale for selection of the chosen rate structure, and the methodology by which the electric utility proposes to convert the winning bid(s) to retail rates of the electric utility ~~shall~~will be included in the CBP plan.
- (i) The CBP plan ~~shall~~ provides for funding of a consultant that may be selected by the commission to assess and report to the commission on the design of the solicitation, the oversight of the bidding process, the clarity of the product definition, the fairness, openness, and transparency of the solicitation and bidding process, the market factors that could affect the solicitation, and other relevant criteria as directed by the commission. Recovery of the cost of such consultant(s) may be included by the electric utility in its CBP plan.

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- (j) The CBP plan ~~shall~~ includes a discussion of generation service procurement options that were considered in development of the CBP plan, including but not limited to, portfolio approaches, staggered procurement, forward procurement, electric utility participation in day-ahead and/or real-time balancing markets, and spot market purchases and sales. The CBP plan ~~shall~~ also includes the rationale for selection of any or all of the procurement options.
- (k) The electric utility shall show, as a part of its CBP plan, any relationship between the CBP plan and the electric utility's plans to comply with alternative energy portfolio requirements of section 4928.64 of the Revised Code, and energy efficiency requirements and peak demand reduction requirements of section 4928.66 of the Revised Code. The initial filing of a CBP plan ~~shall~~ includes a detailed account of how the plan is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. Following the initial filing, subsequent filings ~~shall~~ include a discussion of how the state policy continues to be advanced by the plan.
- (l) An explanation of known and anticipated obstacles that may create difficulties or barriers for the adoption of the proposed bidding process.
- (3) The electric utility shall provide a description of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including but not limited to, the current status of the corporate separation plan, a detailed list of all waivers previously issued by the commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the commission pursuant to Chapter 4901:1-37 of the Administrative Code.
- (4) A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code.
- (C) An SSO application that contains a proposal for an ESP ~~shall comply with the requirements~~ will include the criterion set forth in this paragraph.

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- (1) A complete description of the ESP and testimony explaining and supporting each aspect of the ESP.
- (2) Pro forma financial projections of the effect of the ESP's implementation upon the electric utility for the duration of the ESP, together with testimony and work papers sufficient to provide an understanding of the assumptions made and methodologies used in deriving the pro forma projections.
- (3) Projected rate impacts by customer class/rate schedules for the duration of the ESP, including post-ESP impacts of deferrals, if any.
- (4) The electric utility ~~shall~~ provides a description of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including, but not limited to, the current status of the corporate separation plan, a detailed list of all waivers previously issued by the commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the commission pursuant to Chapter 4901:1-37 of the Administrative Code.
- (5) Each electric utility ~~shall~~ provides a statement as to whether its operational support plan has been implemented and whether there are any outstanding problems with the implementation.
- (6) A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code.
- (7) A description of the effect on large-scale governmental aggregation of any unavoidable charge proposed to be established in the ESP.
- (8) The ESP application ~~shall~~ includes a detailed account of how the ESP is consistent with and advances the policy of this state as delineated in section 4928.02 of the Revised Code.
- (9) Specific information

Division (B)(2) of section 4928.143 of the Revised Code authorizes the provision or inclusion in an ESP of a number of features or mechanisms. To the extent that an electric

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utility includes any of these features in its ESP, it ~~shall~~ file the corresponding information in its application.

- (a) Division (B)(2)(a) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the automatic recovery of fuel, purchased power, and certain other specified costs. An application including such provisions ~~shall~~ includes, at a minimum, the information described as follows:
- (i) The type of cost the electric utility is seeking recovery for under division (B)(2) of section 4928.143 of the Revised Code including a summary and detailed description of such cost. The description ~~shall~~ includes the plant(s) that the cost pertains to as well as a narrative pertaining to the electric utility's procurement policies and procedures regarding such cost.
 - (ii) The electric utility ~~shall~~ includes in the application any benefits available to the electric utility as a result of or in connection with such costs including but not limited to profits from emission allowance sales and profits from resold coal contracts.
 - (iii) The specific means by which these costs will be recovered by the electric utility. In this specification, the electric utility must clearly distinguish whether these costs are to be recovered from all distribution customers or only from the customers taking service under the ESP.
 - (iv) A complete set of work papers supporting the cost must be filed with the application. Work papers ~~must~~ include, but are not limited to, all pertinent documents prepared by the electric utility for the application and a narrative and other support of assumptions made in completing the work papers.
- (b) Divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, authorize an electric utility to include unavoidable surcharges for construction, generation, or environmental expenditures for electric generation facilities owned or operated by the electric utility. Any plan which seeks to impose surcharge under these provisions shall include the following paragraphs, as appropriate:

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- (i) ~~The application must include a~~A description of the projected costs of the proposed facility and confirmation that~~The~~the need for the proposed facility ~~was~~must have already been reviewed and determined by the commission through an integrated resource planning process filed pursuant to rule 4901:5-5-05 of the Administrative Code.
- (ii) ~~The application must also include a~~A proposed process, subject to modification and approval by the commission, for the competitive bidding of the construction of the facility unless the commission has previously approved a process for competitive bidding, which would be applicable to that specific facility.
- (iii) An application which provides for the recovery of a reasonable allowance for construction work in progress, ~~shall~~should include a detailed description of the actual costs as of a date certain for which the applicant seeks recovery, a detailed description of the impact upon rates of the proposed surcharge, and a demonstration that such a construction work in progress allowance is consistent with the applicable limitations of division (A) of section 4909.15 of the Revised Code.
- ~~(iv) An application which provides recovery of a surcharge for an electric generation facility shall include a detailed description of the actual costs, as of a date certain, for which the applicant seeks recovery and a detailed description of the impact upon rates of the proposed surcharge.~~
- ~~(v)~~(iv) An application which provides for recovery of a surcharge for an electric generation facility should include: a detailed description of the actual costs as of a date certain, for which the applicant seeks recovery, detailed description of the impact upon rates of the proposed surcharge, ~~shall include~~ the proposed terms for the capacity, energy, and associated rates for the life of the facility.
- (c) Division (B)(2)(d) of section 4928.143 of the Revised Code authorizes an electric utility to include terms, conditions, or charges related to retail shopping by customers. Any application which includes such terms, conditions or charges, shall include, at a minimum, the following information:

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- (i) A listing of all components of the ESP which would have the effect of preventing, limiting, inhibiting, or promoting customer shopping for retail electric generation service. Such components would include, but are not limited to, terms and conditions relating to shopping or to returning to the standard service offer and any unavoidable charges. For each such component, an explanation of the component and a descriptive rationale and, to the extent possible, a quantitative justification shall be provided.
 - (ii) A description and quantification or estimation of any charges, other than those associated with generation expansion or environmental investment under divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, which will be deferred for future recovery, together with the carrying costs, amortization periods, and avoidability of such charges.
 - (iii) A listing, description, and quantitative justification of any unavoidable charges for standby, back-up, or supplemental power.
- (d) Division (B)(2)(e) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for automatic increases or decreases in any component of the standard service offer price. Pursuant to this authority, if the ESP proposes automatic increases or decreases to be implemented during the life of the plan for any component of the standard service offer, other than those covered by division (B)(2)(a) of section 4928.143 of the Revised Code, the electric utility must provide in its application a description of the component, whether the component is bypassable or nonbypassable, the proposed means for changing the component, and the proposed means for verifying the reasonableness of the change.
- (e) Division (B)(2)(f) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the securitization of authorized phase-in recovery of the standard service offer price. If a phase-in deferred asset is proposed to be securitized, the electric utility shall provide, at the time of an application for securitization, a description of the securitization instrument and an accounting of that securitization, including the deferred cash flow due to the phase-in, carrying charges, and the incremental cost of the securitization. The electric utility will also describe any efforts to minimize the incremental cost of the securitization. The electric utility ~~shall~~ provides s all documentation associated with securitization, including but not limited to,

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a summary sheet of terms and conditions. ~~The electric utility shall also provide~~ and a comparison of costs associated with securitization ~~with the costs associated with other forms of financing~~ to demonstrate that securitization is the least cost strategy.

- (f) Division (B)(2)(g) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions relating to transmission and other specified related services. Moreover, division (A)(2) of section 4928.05 of the Revised Code states that, notwithstanding Chapters 4905. and 4909. of the Revised Code, commission authority under this chapter ~~shall~~ includes the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs (net of transmission related revenues), including ancillary and net congestion costs, imposed on or charged to the 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.

Any utility which seeks to create or modify its transmission cost recovery rider in its ESP shall file the rider in accordance with the requirements delineated in Chapter 4901:1-36 of the Administrative Code.

- (g) Division (B)(2)(h) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for alternative regulation mechanisms or programs, including infrastructure and modernization incentives, relating to distribution service as part of an ESP. While a number of mechanisms may be combined within a plan, for each specific mechanism or program, the electric utility ~~shall~~ provides a detailed description, with supporting data and information, to allow appropriate evaluation of each proposal, including a cost-benefit analysis, how the proposal addresses any cost savings to the electric utility and customers, avoids duplicative cost recovery, and aligns electric utility and consumer interests. In general, and to the extent applicable, the electric utility ~~shall~~ also includes, for each separate mechanism or program, quantification of the estimated impact on rates over the term of any proposed modernization plan. Any application for an infrastructure modernization plan shall include the following specific ~~requirements~~ components:

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- (i) A description of the infrastructure modernization plan, including but not limited to, the electric utility's existing infrastructure, its existing asset management system and related capabilities, the type of technology and reason chosen, the portion of service territory affected, the percentage of customers directly impacted (non-rate impact), and the implementation schedule by geographic location and/or type of activity. A description of any communication infrastructure included in the infrastructure modernization plan and any metering, distribution automation, or other applications that may be supported by this communication infrastructure also shall be included.
- (ii) A description of the benefits of the infrastructure modernization plan (in total and by activity or type), including but not limited to the following as they may apply to the plan: quantitative and qualitative impacts of all reliability improvements, the number of circuits impacted, the number of customers impacted, the timing of impacts, whether the impact is on the frequency or duration of outages, whether the infrastructure modernization plan addresses primary outage causes, what problems are addressed by the infrastructure modernization plan, the resulting dollar savings and additional costs, the activities affected and related accounts, the timing of savings, other customer benefits, and societal benefits. Through metrics and milestones, the infrastructure modernization plan ~~shall~~will include a description of how the performance and outcomes of the plan will be measured.
- (iii) A detailed description of the costs of the infrastructure modernization plan, including a breakdown of capital costs and operating and maintenance expenses net of any related savings, the revenue requirement, including recovery of stranded investment related to replacement of un-depreciated plant with new technology, the impact on customer bills, service disruptions associated with plan implementation, and description of (and dollar value of) equipment being made obsolescent by the plan and reason for early plant retirement. The infrastructure modernization plan ~~shall~~will also include a description of efforts made to mitigate such stranded investment.
- (iv) A detailed description of any proposed cost recovery mechanism, including the components of any regulatory asset created by the infrastructure modernization

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plan, the reporting structure and schedule, and the proposed process for approval of cost recovery and increase in rates.

- (v) A detailed explanation of how the infrastructure modernization plan aligns customer and electric utility reliability and power quality expectations by customer class.
 - (h) Division (B)(2)(i) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for economic development, job retention, and energy efficiency programs. Pursuant to this paragraph, the electric utility ~~shall~~ provides a complete description of the proposal, together with cost-benefit analysis or other quantitative justification, and quantification of the program's projected impact on rates.
- (10) Additional required information
- Divisions (E) and (F) of section 4928.143 of the Revised Code provide for tests of the ESP with respect to significantly excessive earnings. Division (E) of section 4928.143 of the Revised Code is applicable only if an ESP has a term exceeding three years, and would require an earnings determination to be made in the fourth year. Division (F) of section 4928.143 of the Revised Code applies to any ESP and examines earnings after each year. In each case, the burden of proof for demonstrating that the return on equity is not significantly excessive is borne by the electric utility.
- (a) For the annual review pursuant to division (F) of section 4928.143 of the Revised Code, the electric utility ~~shall~~ provides testimony and analysis demonstrating the return on equity that was earned during the year and the returns on equity earned during the same period by publicly traded companies that face comparable business and financial risks as the electric utility. In addition, the electric utility ~~shall~~ provides capital budget requirements for future committed investments in Ohio for each annual period remaining in the ESP. ~~the following information:~~
 - ~~(i) The federal energy regulatory commission form 1 (FERC form 1) in its entirety (via hard copy or an internet link) for the annual period under review. The electric utility may seek protection of any confidential or proprietary data if necessary. If the FERC form 1 is not available, the electric utility shall provide balance sheet and income statement information of at least the level of detail as required by~~

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~~FERC form 1.~~

~~(ii) The latest securities and exchange commission form 10-K (via hard copy or an internet link) in its entirety. The electric utility may seek protection of any confidential or proprietary data if necessary.~~

~~(iii) Capital budget requirements for future committed investments in Ohio for each annual period remaining in the ESP.~~

(b) For demonstration under division (E) of section 4928.143 of the Revised Code, the electric utility ~~shall also~~ provides, in addition to the requirements under division (F) of section 4928.143 of the Revised Code, calculations of its projected return on equity for each remaining year of the ESP. The electric utility ~~shall~~ supports these calculations by providing projected balance sheet and income statement information for the remainder of the ESP, together with testimony and work papers detailing the methodologies, adjustments, and assumptions used in making these projections.

(D) Applications for an SSO may include an ESP and/or MRO; however, an ESP may not be proposed once the electric utility has implemented an MRO approved by the commission.

(E) The SSO application shall include a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the Administrative Code, and consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. ~~If~~ When any waivers of the corporate separation plan have been granted and are to be continued, the applicant ~~shall justify~~ justifies the continued need for those waivers.

(F) A complete set of work papers ~~must~~ will be filed with the application. Work papers ~~must~~ include, but are not limited to, all pertinent documents prepared by the electric utility for the application and a narrative or other support of assumptions made in the work papers. Work papers ~~shall~~ should be marked, organized, and indexed according to schedules to which they relate. Data contained in the work papers should be footnoted so as to identify the source document used.

(G) All schedules, tariff sheets, and work papers prepared by, or at the direction of, the electric

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utility for the application and included in the application ~~must~~should be available in spreadsheet, word processing, or an electronic non-image-based format, with formulas intact, compatible with personal computers. The electronic form does not have to be filed with the application but ~~must~~should be made available within two business days to staff and any intervening party that requests it.

AMENDED

4901:1-35-04 Service of application.

- (A) Concurrent with the filing of a standard service offer (SSO) application and the filing of any waiver requests, the electric utility shall provide notice of filings to each party in its most recent SSO proceeding. ~~At a minimum, that notice shall state that a copy of the application and all waiver requests are available through the electric utility's and commission's web sites, available at the commission's offices, and any other sites at which the electric utility will maintain a copy of the application and all waiver requests.~~
- ~~(B) The electric utility shall also submit with its SSO application a proposed notice for newspaper publication that fully discloses the substance of the application, including projected rate impacts, and that prominently states that any person may request to become a party to the proceeding.~~
- ~~(C)~~ (B) The electric utility shall provide electronic copies of the application upon request, without cost, and transmit the application within five business days. Upon request, electronic copies ~~shall be~~are provided in spreadsheet, word processing, or an electronic non-image-based format, with formulas intact, compatible with personal computers.

AMENDED

4901:1-35-05 Technical conference.

Upon filing of a standard service offer application, the commission, legal director, deputy legal director, or attorney examiner ~~shall~~will schedule a technical conference. The purpose of the technical conference is to allow interested persons an opportunity to better understand the

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electric utility's application. The electric utility will have the necessary personnel in attendance at this conference so as to explain, among other things, the structure of the filing, the work papers, the data sources, and the manner in which methodologies were devised. The conference will be held at the commission offices, unless the commission, legal director, deputy legal director, or attorney examiner determines otherwise.

RESCINDED

~~4901:1-35-06 — Hearings.~~

- ~~(A) After the filing of a standard service offer application that conforms to the commission's rules, the commission shall set the matter for hearing and shall cause notice of the hearing to be published one time in a newspaper of general circulation in each county in the electric utility's certified territory. At such hearing, the burden of proof to show that the proposals in the application are just and reasonable and are consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code shall be upon the electric utility.~~
- ~~(B) Interested persons wishing to participate in the hearing shall file a motion to intervene no later than forty-five days after the issuance of the entry scheduling the hearing, unless ordered otherwise by the commission, legal director, deputy legal director, or attorney examiner. This rule does not prohibit the filing of a motion to intervene and conducting discovery prior to the issuance of an entry scheduling a hearing.~~

NO CHANGE

4901:1-35-07 Discoverable agreements.

Upon submission of an appropriate discovery request during a proceeding establishing a standard service offer, an electric utility shall make available to the requesting party every contract or agreement that is between the electric utility or any of its affiliates and a party to the proceeding, consumer, electric service company, or political subdivision and that is relevant to the proceeding, subject to such protection for proprietary or confidential information as is determined appropriate by the commission.

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AMENDED

4901:1-35-08 Competitive bidding process requirements and use of independent third party.

- (A) An electric utility proposing a market-rate offer in its standard service offer application, pursuant to section 4928.142 of the Revised Code or an ESP pursuant to section 4928.143 of the Revised Code, shall propose a plan for a competitive bidding process (CBP). An electric utility proposing an electric security plan (ESP), pursuant to section 4928.143 of the Revised Code, may propose a plan for a CBP. ~~The CBP plan shall comply with the requirements set forth in paragraph (B) of rule 4901:1-35-03 of the Administrative Code.~~ The electric utility shall use an independent third party to design an open, fair, and transparent competitive solicitation; to administer the bidding process; and to oversee the entire procedure to assure that the CBP complies with the CBP plan. The independent third party shall be accountable to the commission for all design, process, and oversight decisions. ~~The independent third party shall incorporate into the solicitation such measures as the commission may prescribe, and shall incorporate into the bidding process any direction the commission may provide. Any modifications or additions to the approved CBP plan requested by the independent third party shall be submitted to the commission and staff for review prior to implementation.~~
- (B) Within twenty-four hours after the completion of the bidding process, the independent third party shall submit a report to the commission summarizing the results of the CBP. The report ~~shall~~ includes, but is not ~~be~~ limited to, the following items:
- (1) A description of the conduct of the bidding process, including a discussion of any aspects of the process that the independent third party believes may have adversely affected the outcome.
 - (2) The level(s) of oversubscription for each product.
 - (3) The number of bidders for each product.
 - (4) The percentage of each product that was bid upon by persons other than the electric utility.
 - (5) The independent third party's evaluation of the submitted bids, including the bidders'

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generation source and financial capabilities to perform.

(6) The independent third party's final recommendation of the least cost winning bidder(s).

(7) A listing of the retail rates that would result from the least cost winning bids, along with any descriptions, formulas, and/or tables necessary to demonstrate how the conversion from winning bid(s) to retail rates was accomplished under the conversion process approved by the commission in the electric utility's CBP plan.

~~(C) The electric utility and its independent third party auction manager shall provide access to staff and any consultant hired by the commission to assist in review of the CBP of any and all data, information, and communications pertaining to the bidding process, on a real time basis, regardless of the confidential nature of such data and information.~~

~~(D)~~ (C) The commission ~~shall~~ will make the final selection of the least-cost winning bidder(s) of the CBP. The commission may rely upon the information provided in the independent third party's report in making its selection of the least-cost winning bidder(s) of the CBP.

AMENDED

4901:1-35-09 Electric security plan fuel and purchased power adjustments.

(A) Each electric utility for which the commission has approved an electric security plan (ESP) which includes automatic adjustments under division (B)(2)(a) of section 4928.143 of the Revised Code shall file for such adjustments in accordance with the provisions of this rule.

(B) The electric utility shall calculate a proposed quarterly adjustment based on projected costs and reconciliation requirements by filing an application four times per year. The staff ~~shall~~ will review the quarterly filing for completeness and computational accuracy. If staff raises no issues prior to the date the quarterly adjustment is to become effective, the rates ~~shall~~ become effective on that date. Although rates are to be adjusted and provided on a quarterly basis, the cost information ~~shall~~ is to be summarized monthly.

(C) On an annual basis, the prudence of the costs incurred and recovered through quarterly adjustments ~~shall~~ will be reviewed in a separate proceeding outside of the automatic recovery provision of the electric utility's ESP. The electric utility shall demonstrate that the costs were

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prudently incurred as required under division (B)(2)(a) of section 4928.143 of the Revised Code and, if a significant change in costs has occurred, include an analysis comparing the electric utility's resource and/or environmental compliance strategy with supply and demand-side alternatives. The process and timeframes for that separate proceeding shall be set by order of the commission, the legal director, deputy legal director, or attorney examiner.

- (D) The commission may order that consultants be hired, with the costs billed to the electric utility, to conduct prudence and/or financial reviews of the costs incurred and recovered through the quarterly adjustments.

AMENDED

4901:1-35-10 Annual review of electric security plan.

By May fifteenth of each year, the electric utility shall make a separate filing with the commission demonstrating whether or not any rate adjustments authorized by the commission as part of the electric utility's electric security plan resulted in significantly excessive earnings during the review period as measured by division (F) of section 4928.143 of the Revised Code. The process and timeframes for that proceeding ~~shall~~will be set by order of the commission, the legal director, or attorney examiner. The electric utility's filing ~~shall~~should include the information set forth in paragraph (C) of rule 4901:1-35-03 of the Administrative Code as it relates to excessive earnings.

RESCINDED

~~**4901:1-35-11 Competitive bidding process ongoing review and reporting requirements.**~~

- ~~(A) Once a competitive bidding process (CBP) plan subject to a price blending period is approved by the commission, the electric utility shall file its proposed adjustments to the standard service offer (SSO) portion of the blended rates of its CBP in a filing to the commission on a quarterly basis (quarterly filing) for the duration of the price blending period of the CBP plan, on specific dates to be determined by the commission.~~
- ~~(1) The quarterly filing shall include a separate listing of each cost or cost component including costs for fuel, purchased power, alternative portfolio requirements, and environmental~~

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~~compliance, in comparison with the costs or cost components included in the most recent SSO and the previously existing level of each cost. Any offsetting benefits, as defined in division (D) of section 4928.142 of the Revised Code, obtained directly or as a result of expenditures in the specified cost areas shall be listed separately and be used to reduce the cost levels requested for recovery. Rates are to be adjusted on a quarterly basis. Such adjustments may include, or be made pursuant to, the application of incentive factors or formulas that the commission determined to be reasonable in its approval of the CBP plan. The cost information shall consist of monthly data submitted on a quarterly basis.~~

~~(2) The quarterly filing shall include any descriptions, formulas, and/or tables necessary to show how the adjusted cost levels are translated into blended CBP rates.~~

~~(3) The electric utility shall provide projections, in its quarterly filing, of any impacts that the proposed adjustments will have on its return on common equity.~~

~~(4) The staff shall review the quarterly filing for completeness, computational accuracy, and consistency with prior commission determinations regarding the adjustments. If the staff raises no issues prior to the date the quarterly adjustment is to become effective, the rates shall become effective on that date.~~

~~(5) On an annual basis, or other basis as determined by the commission, the prudence of the costs incurred and recovered through quarterly adjustments to the electric utility's SSO portion of the blended rates shall be reviewed. The commission shall determine the frequency of the review and shall establish a schedule for the review process. The commission may order that consultants be hired, with the cost to be billed to the company, to conduct prudence and/or financial reviews of the costs incurred and recovered through the quarterly adjustments. The cost to the electric utility of the commission's use of such consultants may be included by the electric utility in its quarterly rate adjustment filing.~~

~~(B) If the CBP plan is approved by the commission subject to a price blending period, approximately one year after filing the CBP plan, and annually thereafter for the duration of the price blending period of the CBP plan, on dates to be determined by the commission, the electric utility shall file an annual report on its CBP.~~

~~(1) The annual report shall provide a general statement about the operation of the CBP to date. The annual status report shall also provide a summary of generation service obtained via the CBP during the period under review, and impacts of the cost of the CBP service and the resulting blended rates on the electric utility's customers.~~

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- ~~(2) The annual report shall describe any defaults and/or other difficulties encountered in obtaining generation service from winning bidder(s) of the CBP, and describe in detail actions taken by the electric utility to remedy such situations.~~
- ~~(3) The annual report shall describe the condition and significant developments of the wholesale electric generation and transmission market during the year covered by the report, and any developments in those markets anticipated and/or known for the following year.~~
- ~~(4) The annual report shall describe the financial condition of the electric utility, its current and projected return on common equity, and the return on common equity of publicly traded companies that face comparable business and financial risk. The electric utility shall show that its earnings under the price blending period will not be significantly excessive as compared with similarly situated companies. Information submitted by the electric utility to demonstrate its projected earnings shall include, but not be limited to, balance sheet information, income statement information, and capital budget requirements for future investments in Ohio. This information should be provided separately for generation, transmission, and distribution for the electric utility and its affiliates. Additionally, the electric utility shall provide testimony and analysis demonstrating the return on equity earned by publicly traded companies that face comparable business and financial risks as the electric utility.~~
- ~~(5) If in an emergency situation the electric utility claims that its financial integrity is threatened by the operation of the CBP price blending period, it shall demonstrate its claim through information and data filed in its annual report. The electric utility has the burden of proof in any such claim of threatened financial integrity.~~
- ~~(6) The electric utility shall discuss, in its annual report, upcoming solicitations to be conducted pursuant to its approved CBP plan. Any deviations or modifications of the approved CBP plan being requested by the electric utility shall be described in detail, with specific rationale provided for every such deviation or modification requested.~~
- ~~(7) The annual report shall describe the blended phase-in rates projected to be charged to its customers under the continuation of the CBP plan, as modified pursuant to paragraph (C)(6) of this rule. The rate projections shall show the existing and projected generation service price(s) blended with the CBP determined rates and projected CBP determined rates, and any descriptions, formulas, and/or tables necessary to show how the blending is accomplished. The projected blended phase-in rates shall be compared in the annual report~~

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~~to the existing blended phase-in rates.~~

- ~~(8) The annual report shall describe the operation to date of alternative retail rate options implemented under the CBP, the approaches used to communicate price and usage information to consumers, and observed price elasticity.~~
- ~~(9) The annual report shall include a status report of the market conditions relevant to the continued operation of the electric utility's market rate offer, including but not limited to information about the existence of published source(s) of electric market pricing information, whether the electric utility or its affiliate still belongs to a regional transmission organization (RTO), and whether the RTO's market monitoring function has mitigation authority over the transactions resulting from the CBP.~~
- ~~(10) The commission, legal director, deputy legal director, or attorney examiner shall determine the level of review required for any information, plans, or requests set forth in the annual report, and set any necessary schedules through an entry.~~
- ~~(C) If the CBP plan is approved by the commission without the requirement of a price blending period, or after the expiration of any such required price blending period, on an annual basis, on dates to be determined by the commission, the electric utility shall file an annual report with the commission.~~
 - ~~(1) The annual report shall provide a general statement about the operation of the CBP to date. The annual report shall also provide a summary of generation service obtained via the CBP during the period under review, and impacts of the cost of the CBP on the electric utility's customers' rates.~~
 - ~~(2) The annual report shall describe any defaults or other difficulties encountered in obtaining generation service from winning bidder(s) of the CBP, and describe in detail actions taken by the electric utility to remedy such situations.~~
 - ~~(3) The annual report shall describe the condition and significant developments of the wholesale electric generation and transmission market during the year covered by the report, and any developments in those markets anticipated or known for the following year.~~
 - ~~(4) The electric utility shall discuss, in its annual report, upcoming solicitations to be conducted pursuant to its approved CBP plan. Any deviations or modifications of the approved CBP plan being requested by the electric utility shall be described in detail, with specific~~

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~~rationale provided for every such deviation or modification requested.~~

- ~~(5) The annual report shall describe the operation to date of alternative retail rate options implemented under the CBP, the approaches used to communicate price and usage information to consumers, and observed price elasticity.~~
- ~~(6) The commission, legal director, deputy legal director, or attorney examiner shall determine the level of review required for any information, plans, or requests set forth in the annual report, and set any necessary schedules through an entry.~~

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Case No(s). 22-0862-EL-ORD

Summary: Finding & Order adopting the proposed amendments to Ohio Adm.Code Chapter 4901:1-35, as determined in and attached to this Finding and Order electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio