

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its )  
Rules for Market Monitoring, Chapter 4901:1- ) Case No. 02-1411-EL-ORD  
25, of the Ohio Administrative Code. )

FINDING AND ORDER

The Commission finds:

- (1) Section 119.032(B), Revised Code, requires this Commission, among other agencies, to assign a review date to each of its rules that is currently in effect and to notify the Joint Committee on Agency Rule Review of the review date for each such rule. In accordance with this statute, the Commission is to assign review dates so that approximately one-fifth of the Commission's rules are reviewed each year and all of the Commission rules are reviewed over a five-year period.
- (2) By Finding and Order in Case No. 99-1612-EL-ORD dated March 30, 2000, the Commission determined that the review date for the Commission rules in Chapter 4901:1-25, Ohio Administrative Code (O.A.C.), was to be September 30, 2002. Chapter 4901:1-25, O.A.C., contains rules relating to the Commission's market monitoring responsibilities set forth in Section 4928.06(B)-(F), Revised Code.
- (3) Section 119.032(C), Revised Code, requires that the Commission determine all of the following:
  - (a) Whether the rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted;
  - (b) Whether the rule needs amendment or rescission to give more flexibility at the local level;
  - (c) Whether the rule needs amendment or rescission to eliminate unnecessary paperwork;
  - (d) Whether the rule duplicates, overlaps with, or conflicts with other rules.
- (4) By Entry dated June 20, 2002, the Commission requested comments and reply comments regarding the following proposed amendments to Rule 4901:1-25-02, O.A.C., to assist it in the review required by Section 119.032, Revised Code:

- (A) In Rule 4901:1-25-02(A)(2)(b), O.A.C., insert "THE REPORTING ENTITY SHALL REPORT THIS DATA BY RATE SCHEDULE CLASS (RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR STREET LIGHTING/OTHER) AND BY SUBCLASS, IF APPLICABLE." after "peak hour of the month."
  - (B) In Rule 4901:1-25-02(A)(3), O.A.C., insert "THE REPORTING ENTITY SHALL SUBMIT THIS INFORMATION SEPARATELY FOR EACH ELECTRIC DISTRIBUTION UTILITY'S SERVICE TERRITORY IN WHICH IT DOES BUSINESS." after "electric generation services." and before "The information in this report shall include,".
  - (C) In Rule 4901:1-25-02(A)(3)(c), O.A.C., insert "THE REPORTING ENTITY SHALL REPORT THIS DATA BY RATE SCHEDULE CLASS (RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR STREET LIGHTING/OTHER) AND BY SUBCLASS, IF APPLICABLE." after "total billed revenues."
- (5) The Cincinnati Gas & Electric Company (CG&E), FirstEnergy Corporation (FirstEnergy) and The Ohio Consumers' Counsel (OCC) filed comments in this case. CG&E, OCC and Columbus Southern Power Company and Ohio Power Company (collectively AEP) filed reply comments.
  - (6) OCC's comments were supportive of the three amendments set forth in Finding 4, above.
  - (7) CG&E and FirstEnergy restricted their comments to the proposed amendment of Rule 4901:1-25-02(A)(2)(b), O.A.C. Both companies oppose the proposed amendment. CG&E argues that the peak load reporting requirements are ambiguous and cannot be implemented without clarification. In addition, CG&E argues that the data the Commission requests is both difficult and costly to obtain since to be able to report monthly data would require the Company to replace 600,000 residential and commercial meters with meters capable of recording monthly peaks. CG&E concedes that it is capable of estimating monthly peaks, but that even using the techniques it would use to make its estimates would prove to be expensive. FirstEnergy notes that Commission Staff wishes this information so that it might track more easily the 20 percent load switching by revenue class provided for in various electric transition plan stipulations. FirstEnergy notes that in the case of FirstEnergy the 20 percent switching level is determined by kWh not monthly MW information. Hence, the

data that would be received as a result of amending this rule would not be helpful in attaining the announced purpose of amending the rule in the case of FirstEnergy.

- (8) AEP, in its reply comments, agrees with CG&E in its argument that Rule 4901:1-25-02(A)(2)(b), O.A.C., is ambiguous. AEP states that clarifying the proposal, however, will not cure the underlying problem, i.e., the data sought is not readily available to the AEP companies. According to AEP, gearing up to obtain the information would be exceedingly costly. AEP states that the cost of meters and meter installation which would be required to determine residential load at the system peak (or the peak for residential load alone) cannot be justified by whatever interest there may be in the information. Further, AEP argues that OCC's contention that the "degree to which competitive prices reflect cost of service is an indication as to how well the market is functioning" is without merit.
- (9) OCC supports the proposed amendment of Rule 4901:1-25-02(A)(2)(b), O.A.C., on the basis that the information obtained will identify the degree to which the different classes impose costs upon the system. In answer to FirstEnergy's comments, OCC argues that Rule 4901:1-25-02(A)(2)(b), O.A.C., is not restricted to determining that the 20 percent switching has taken place. OCC points out that the market monitoring rules also assist in determining that effective competition has been achieved. OCC argues that peak information by revenue class will provide important data regarding the degree to which prices reflect the cost of service. The closer prices reflect the cost of service, OCC argues, the more effective the competition. OCC disagrees that the proposed requirement is ambiguous. OCC argues that it is clear that the rule requires the data to be provided for the system peak not the class peak. Finally OCC takes issue with CG&E's complaint that the proposal would be too costly to implement. OCC argues that, if necessary, the companies could use estimated rather than actual data. OCC argues that, if even estimated data is too expensive and time consuming to obtain, the companies should use the same methods that they use to estimate hourly load data to determine load responsibility among suppliers.
- (10) Our review of Staff's proposed amendments to Rule 4901:1-25-02, O.A.C., the comments, and reply comments indicates that the proposals set forth under Finding 4, above as paragraphs (B) and (C) are reasonable and should be adopted. As proposed, the amendment to Rule 4901:1-25-02(A)(3), O.A.C., would correct a deficiency in the current rules. Operationally it will change nothing since reporting entities are currently

submitting data as they would pursuant to the rule as amended. Amending Rule 4901:1-25-02(A)(3)(c), O.A.C., as proposed will allow the Commission to eliminate this data from the annual report and place the data in the market monitoring section of the Ohio Administrative Code where it belongs. We will get the data we require on a more current basis and streamline the annual report at the same time. We are not adopting the proposed amendment to Rule 4901:1-25-02(A)(2)(b), O.A.C. In making its proposal to amend this rule, Staff thought that amendment would allow the Commission to track more easily the 20 percent load switching by revenue class provided for in various electric transition plan stipulations. As we learned from the FirstEnergy comments, as well as from a review of the stipulation in Case No. 99-1212-EL-ETP, the 20 percent switching level for FirstEnergy is determined by kWh not monthly MW information. While adopting the proposal as argued by OCC may have some value, we believe that value is more than overcome by the costs. It appears that we can obtain the data we need to make the 20 percent switching determination more efficiently by requesting the data we need on an *ad hoc* basis, tailoring our request to the company involved rather than the general approach of a rule.

- (11) In its comments, OCC proposed amending Rules 4901:1-25-02(A)(3) and 4901:1-25-02(A)(4), O.A.C., to add the following:

However, this information must be provided to OCC subject to OCC entering into an appropriate confidentiality agreement with the CRES provider.

OCC argues that the information filed pursuant to Rules 4901:1-25-02(A)(3) and 4901:1-25-02(A)(4), O.A.C., is important to them as consumer advocates in representing the interests of residential consumers.

- (12) The reports that CRES providers submit to Commission Staff pursuant to Rules 4901:1-25-02(A)(3) and 4901:1-25-02(A)(4), O.A.C., contain data that the Commission as well as the industry considers to be competitively sensitive. For this reason, Rules 4901:1-25-02(A)(3) and 4901:1-25-02(A)(4), O.A.C., state that the information contained in the reports submitted to Commission Staff pursuant to these rules is confidential information. The Commission and the Staff of the Commission are the only ones with access to these reports. It is the Commission whose job it is to protect the confidential information contained in these reports. We are unwilling to allow access to this information to those over whom we have no direct control. We are not, therefore, adopting OCC's

proposed amendment. OCC is free to enter into confidentiality agreements directly with any of the CRES providers that provide service to residential customers.

- (13) Chapter 4901:1-25, O.A.C., as amended, should be filed with the Joint Committee on Agency Rule Review as required by Section 119.032, Revised Code.
- (14) Rule 4901:1-25-02, O.A.C., as amended, should be adopted and filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State's Office as required by Section 111.15, Revised Code, to become effective on the earliest date possible after filing pursuant to that statute.

It is, therefore,

ORDERED, That Chapter 4901:1-25, O.A.C., as amended, be filed with the Joint Committee on Agency Rule Review as required by Section 119.032, Revised Code. It is, further,

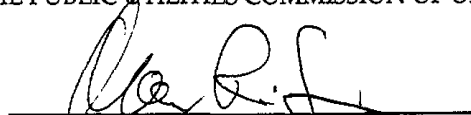
ORDERED, That Rule 4901:1-25-02, O.A.C., as amended, be adopted and filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State's Office as required by Section 111.15, Revised Code, to become effective on the earliest date possible after filing pursuant to that statute. It is, further,

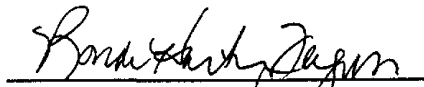
ORDERED, That the five-year review date for the rules in Chapter 4901:1-25, O.A.C., be September 30, 2007. It is, further,

ORDERED, That a copy of this Entry be served upon each electric utility, each electric services company, each governmental aggregator, the Ohio Consumers' Counsel,

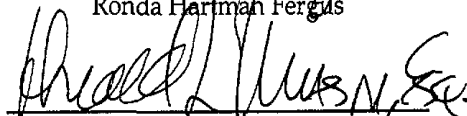
any person or entity served the March 30, 2000 Entry in Case No. 99-1612-EL-ORD, and upon any other person or entity who expresses an interest in these proceedings.

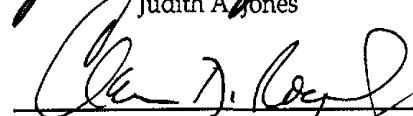
## THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman

  
Ronda Hartman Fergus

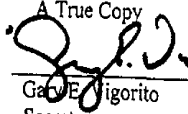
  
Judith A. Jones

  
Donald L. Mason

  
Clarence D. Rogers, Jr.

SJD/vrm

Entered in the Journal

AUG 15 2002  
A True Copy  
  
Gary E. Vigorito  
Secretary

**4901:1-25-01 Definitions.**

As used in this chapter:

- (A) "Affiliate" has the meaning set forth in rule 4901:1-20-16 of the Administrative Code.
- (B) "Aggregation Service" means the act of combining the electric load of multiple customers for the purposes of supplying or arranging for the supply of competitive retail electric generation service to those customers.
- (C) "Aggregator" means a person who provides aggregation service.
- (D) "Certified competitive electric cooperative" means a not-for-profit electric light company that both is or has been financed in whole or in part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 7 U.S.C. 901, and owns or operates facilities in this state to generate, transmit, or distribute electricity, or a not-for-profit successor of such company, which has been certified by the commission to be a competitive retail electric service provider in accordance with the provisions of section 4928.08 of the Revised Code.
- (E) "Commercial customer" means a nonresidential, nonindustrial customer.
- (F) "Commission" means the public utilities commission of Ohio (PUCO).
- (G) "Competitive retail electric service" (CRES) has the meaning set forth in division (A)(4) of section 4928.01 of the Revised Code.
- (H) "Customer" for the purpose of this chapter has the same meaning as it has in the distribution tariff of the electric distribution utility serving the customer.
- (I) "Electric distribution utility" (EDU) has the meaning set forth in division (A)(6) of section 4928.01 of the Revised Code.
- (J) "Electric utility" has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (K) "Electric services company" has the meaning set forth in division (A)(9) of section 4928.01 of the Revised Code.
- (L) "Governmental aggregator" has the meaning set forth in division (A)(13) of section 4928.01 of the Revised Code. In accordance with Division (F) of section 4928.20 of the Revised Code, a governmental aggregator is not a public utility engaging in the wholesale purchase and resale of electricity, and provision of the aggregation service is not a wholesale utility transaction.
- (M) "Independent power producer" means, for the purposes of this chapter, an owner of generation who sells at least a portion of the electric energy from that generation at retail.

- (N) "Industrial customers" means establishments categorized under standard industrial classification (SIC) codes 01 through 39, or the associated 1997 North American Industry Classification System (NAICS) codes 11, 21, 23, 31, 32, and 33.
- (O) "Ohio Certificate Number" means the authorized identification number of an approved certification to provide a competitive retail electric service as granted to the provider by this commission in accordance with the provisions of section 4928.08 of the Revised Code.
- (P) "Power Marketer" means a person, certified by the commission, who provides power marketing services.
- (Q) "Power marketing" means assuming the contractual and legal responsibility for the sale and provision of competitive retail electric generation service to a retail customer in this state and having title to electric power at some point during the transaction.
- (R) "Reporting entity" means, for the purposes of this chapter, the electric distribution utility or the certified competitive retail electric service provider filing market monitoring information on a regularly scheduled basis as required by the commission.
- (S) "Residential customers" means customers who consume electricity at private residences, whether owned or rented, including single family homes, multifamily housing units that are individually metered, and mobile homes only for personal use. Institutional housing, such as school dormitories, hospitals, and military barracks are included in the commercial sector.
- (T) "Special contract customer" means a customer taking bundled service under a contract approved by the commission pursuant to section 4905.31 of the Revised Code prior to January 1, 2001.
- (U) "Street lighting and other customer" means a customer purchasing electric generation service for purposes of street and highway lighting.
- (V) "Standard offer" during an electric utility's market development period, means a standard service offer filed with the commission by an EDU under section 4909.18 of the Revised Code, of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service priced in accordance with the schedule containing the utility's unbundled generation service component.

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Case No.:

Effective: 9/18/00

119.032 Review date: 9/30/02

Rule amplifies: 4928.06(B) – 4928.06(F)



**4901:1-25-02 Market Monitoring—Reporting Requirements.**

(A) Pursuant to sections 4905.04, 4905.05, and 4905.06 of the Revised Code, each electric distribution utility and pursuant to division (F) of section 4928.06 of the Revised Code, each electric utility, electric services company, electric cooperative, and governmental aggregator subject to certification under section 4928.08 of the Revised Code shall submit market monitoring data to the commission, on forms to be issued by the commission, as follows:

- (1) Each electric distribution utility, electric utility, competitive retail electric service provider (electric services company, marketer, broker, nongovernmental aggregator, and independent power producer), certified competitive electric cooperative and certified governmental aggregator shall file a quarterly report which contains information that includes, but is not limited to, the following:
  - (a) Entity name.
  - (b) Business address.
  - (c) Name and title of the person responsible for submitting the market monitoring data required by this rule.
  - (d) Authorized signature.
  - (e) The address, telephone number, fax number, and e-mail address of the person responsible for customer enrollment.
  - (f) Those reporting entities that file Quarterly Transaction Reports with the Federal Energy Regulatory Commission (FERC), should submit a copy of its current FERC Quarterly Transaction Report to this commission in the same form that it filed the report with the FERC.
  - (g) Appended to a reporting entity's first quarterly report for each calendar year, a copy of the reporting entity's most recent Securities and Exchange Commission form 10-K or the 10-K of the controlling owner of the reporting entity.

The information contained in the report filed with the commission pursuant to paragraph (A)(1) of this rule is public information.

- (2) Each electric distribution utility shall file on a quarterly basis monthly data related to noncompetitive electric generation services. The information contained in this report shall include, but not be limited to, the following:
  - (a) For those customers for whom the entity provides generation service: the number of customers, the amount of sales in MWH, and the amount of billed revenues. The reporting entity shall report this data by rate schedule and by class (residential, commercial, industrial, or

street lighting/other) and by subclass, if applicable separately for standard offer customers and for special contract customers.

- (b) Monthly system peak data identifying the number of MW, the peak day of the month, the peak day of the week, and the peak hour of the month.

The information contained in the report filed with the commission pursuant to paragraph (A)(2) of this rule is public information.

- (3) Each certified competitive retail electric service provider, a certified competitive electric cooperative, and certified governmental aggregator shall submit to commission staff on a quarterly basis monthly data related to competitive electric generation services. THE REPORTING ENTITY SHALL SUBMIT THIS INFORMATION SEPARATELY FOR EACH ELECTRIC DISTRIBUTION UTILITY'S SERVICE TERRITORY IN WHICH IT DOES BUSINESS. The information contained in this report shall include, but not be limited to, the following:
  - (a) Identity of the reporting entity. If the reporting entity is a CRES provider or is reporting on behalf of a CRES provider, the reporting entity should include the CRES certificate number.
  - (b) For those customers for whom the entity provides generation service: the number of customers, the amount of sales in MWH. The reporting entity shall report this data by rate schedule class (residential, commercial, industrial, or street lighting/other) and by subclass, if applicable.
  - (c) For those customers for whom the entity provides generation service, total billed revenues. THE REPORTING ENTITY SHALL REPORT THIS DATA BY RATE SCHEDULE CLASS (RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR STREET LIGHTING/OTHER) AND BY SUBCLASS, IF APPLICABLE.

The information contained in the report submitted to commission staff pursuant to paragraph (A)(3) of this rule is confidential information.

- (4) Each aggregator and certified governmental aggregator shall submit to commission staff on a quarterly basis monthly data related to aggregation activity. The reporting entity shall submit this information separately for each electric distribution utility's service territory in which it does business. The information contained in this report shall include, but not be limited to, the following:
  - (a) The identity of the aggregator including its CRES certificate number.
  - (b) The electric distribution utility's service territory for which the report is being made.

- (c) The name of each aggregated group.
- (d) The number of customers by class in each aggregated group.
- (e) The total number of customers in each aggregated group.
- (f) The total number of all customers by class.
- (g) The total number of customers.

The information contained in the report submitted to commission staff pursuant to paragraph (A)(4) of this rule is confidential information.

- (B) Pursuant to Chapter 4935. and division (E) of Section 4928.02 of the Revised Code, any entity that owns or has an affiliate that owns electric transmission or distribution facilities shall provide or cause to be provided to the commission and to commission staff cost-effective and efficient access to information regarding the operation of the transmission or distribution systems of electric utilities to assist in determining the existence and extent of a transmission constrained area, and to information that may assist the commission or commission staff in determining the impact of transmission constraints on the price of a competitive retail electric service. Each entity that owns or that has an affiliate that owns electric transmission or distribution facilities shall provide or cause to be provided to the commission and commission staff a report of any denials of service for either transmission or distribution service due to constraints in the transmission or distribution system, the amounts of energy curtailed or denied, the duration of these curtailments or denials, and the reasons why the service was denied. These reports shall be provided to the commission and to commission staff with the quarterly report filed pursuant to paragraph (A)(1) of this rule.
- (C) Nothing in this rule shall limit the ability of the commission, or commission staff, to collect additional data from any electric distribution utility or any electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code in carrying out the commission's responsibilities under chapter 4928. of the Revised Code.