

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
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Regulation/Package Title: Fuel Emergency

Rule Number(s):

4901:5-19-02 (Amended) 4901:5-19-05 (Amended)
4901:5-19-04 (No Change)

Date: 7/10/2012

Rule Type:

- | | |
|---|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |
| | <input checked="" type="checkbox"/> No Change |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.

Chapter 4901:5-19, Ohio Administrative Code (O.A.C.), governs fuel shortages with respect to fuel used for the generation of electricity. In this Business Impact Analysis (BIA), the Commission will focus upon those rules that:

- (a) Require a license for a company to operate,
- (b) Impose a civil penalty for failure to comply with terms set forth in Chapter 4901:5-19, O.A.C., or
- (c) Require specific expenditures or the report of information as a condition of compliance.

Commission Staff's initial proposal of amendments to certain rules in this chapter was issued for public comment in an entry issued by the Commission on August 17, 2011. The Commission examined remarks filed by stakeholders and approved the package of amended rules in a finding and order issued on March 14, 2012. Under Section 4903.10, Revised Code, stakeholders who disagree with the Commission's decision had 30 days to file for rehearing, but no such request was filed. On March 21, 2012, the governor filed a letter with the Commission, approving the changes to the rules pursuant to Section 4935.03, Revised Code. A summary of the rules encompassed by (a), (b), or (c) above follows.

4901:5-19-02 General provisions.

Minor nonsubstantive changes were made to this rule, which outlines the general provisions intended to provide the governor and Commission with the means of managing, on a statewide basis, a continuing fuel shortage of fuel used for electric generation. Among other provisions, the rule requires all electric power producers having a generating capacity of fifty megawatts or more to submit to Commission Staff a weekly report of electric supply adequacy under certain circumstances. It also requires each electric provider and electric power producer to answer Commission Staff's questions, as well as to update its contact information with the Commission under certain circumstances. The rule provides that the Commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce Commission orders and to secure immediate compliance with the chapter.

4901:5-19-04 Actions in anticipation of an imminent energy emergency.

No change was made to this rule, which outlines the actions that the Commission may take, or may order each regulated electric provider to take, in anticipation of an imminent energy emergency. Among other provisions, the rule requires that each regulated electric provider report certain information related to the fuel shortage to consumers and the Commission.

4901:5-19-05 Actions taken upon declaration of an energy emergency.

Minor nonsubstantive changes were made to this rule, which outlines the actions that the governor or Commission may take, or that each regulated electric provider or each electric power producer must take, upon declaration of an energy emergency. Among other provisions, the rule requires that each regulated electric provider or each electric power producer report certain information related to the fuel shortage to consumers and the Commission.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule	Statutory Authority – Ohio Revised Code
4901:5-19-02	4935.03
4901:5-19-04	4935.03
4901:5-19-05	4935.03

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

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

No rule in this chapter implements a federal requirement or is being adopted or amended to enable Ohio to obtain or maintain approval to administer or enforce a federal law.

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

Not applicable.

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

The rules in this chapter establish standards to be met during or in anticipation of an imminent fuel shortage by companies that provide electric service to Ohio residential, commercial, and industrial consumers.

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

The Commission can monitor complaints about electric service that are made to its hotline by consumers, as well as the information that is reported by regulated electric providers and electric power producers during an actual or imminent fuel shortage.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

On August 17, 2011, the Commission sent by U.S. mail a copy of its entry seeking comments and reply comments regarding Commission Staff's proposed changes to Chapter 4901:5-19, O.A.C., to all regulated electric and natural gas companies; Reliability First Corporation; Midwest Independent Transmission System Operator, Inc.; PJM Interconnection, L.L.C.; Ohio Consumers' Counsel; Ohio Coal Association; Ohio Gas Association; Ohio Rural Electric Cooperatives, Inc.; Ohio Energy Resources Division, Ohio Department of Development; Ohio Electric Utility Institute; Ohio Propane Gas Association; Ohio Petroleum Marketers & Convenience Store Association; Ohio Oil and Gas Association; Ohio Petroleum Council; Ohio Emergency Management Agency; Ohio Homeland Security; Ohio Trucking Association; Ohio Railroad Association; Ohio Telecom Association; Ohio Cable Telecommunications Association; Ohio Manufacturers' Association; Ohio Municipal League; Ohio Environmental Council; Ohio State Bar Association; and the Legal Aid Societies of Cleveland, Columbus, Cincinnati, Dayton, and Toledo. On that same date, the rules were posted on the Commission's website. Two stakeholders filed comments and one stakeholder filed reply comments. Finally, any stakeholder that objected to the rules approved in the Commission's finding and order issued on March 14, 2012, had thirty days to express its objections in an application for rehearing. No such applications for rehearing were filed.

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

Of the three rules addressed in this BIA, one stakeholder offered comments with respect to Rule 4901:5-19-02, O.A.C. AEP-Ohio noted that Rule 4901:5-19-02(E), O.A.C., enables the Commission, in anticipation of an imminent energy emergency or during a declared energy emergency, to order certain electric power producers to submit to Staff a weekly report of electric supply adequacy. AEP-Ohio further noted that Rule 4901:5-19-02(G), O.A.C., requires electric power producers, in anticipation of an imminent energy emergency or during a declared energy emergency, to answer Commission Staff's questions. AEP-Ohio argued that it should only be required to comply with these rules during a declared energy emergency, given that AEP-Ohio could be obliged to disclose confidential and proprietary information. AEP-Ohio also recommended that Rule 4901:5-19-02(E), O.A.C., be amended to provide that the information contained in the weekly report to Staff will be treated as confidential. Likewise, AEP-Ohio suggested that Rule 4901:5-19-02(F), O.A.C., which requires electric power producers to submit to Staff, upon request, the calculations and a detailed description of all assumptions made in the weekly report, be amended to provide that the information will be treated as confidential. AEP-Ohio asserted that electric power producers should not have to negotiate or litigate, in the midst of an energy emergency, matters concerning the confidential and proprietary nature of their business data, which largely relates to unregulated activities. AEP-Ohio believed that its recommended approach would help to ensure quick responses to Staff and strike a reasonable balance in providing that the information will be treated as confidential. AEP-Ohio added that the confidential treatment of the data should be subject to later determination by order. The Commission found that any information that is provided by electric power producers in accordance with these rules, which they deem confidential, should be clearly marked as such when it is provided to the Commission or Staff. Given that the information is not being formally filed with the Commission, the Commission determined that it is not necessary for a motion for protective order to be submitted along with the information. If any information that has been marked as confidential is requested through a public records request, the Commission will establish an appropriate process that will allow the electric power producers a reasonable amount of time, taking into consideration any emergency that may be pending, to request a protective order. The Commission, however, did not find it necessary to codify

this process. In addition, the Commission believes that it is appropriate to require electric power producers to provide the information required by the rules in circumstances where an imminent energy emergency is anticipated, as well as during a declared energy emergency. The Commission strongly believes that the availability of information is essential in order to forestall harm to the citizens of the state of Ohio. It is important to have the information, prior to the onset of an emergency situation, in an effort to mitigate and potentially avoid the necessity for declaring an energy emergency. Accordingly, the Commission concluded that AEP-Ohio's request should be denied.

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

In adopting any changes to Chapter 4901:5-19, O.A.C., the Commission takes into account feedback from stakeholders to rules in effect prior to the proposed changes. Stakeholder feedback can be made directly to Commission Staff from residential, commercial, and industrial consumers, the Ohio Consumers' Counsel, regulated electric providers or electric power producers, and many other interested stakeholders.

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

No alternatives were considered other than as discussed above with respect to AEP-Ohio. The Ohio Revised Code grants the Commission the power and jurisdiction to supervise and regulate public utilities, including that such utilities furnish products and services in a manner that promotes protection, welfare, and safety of the public. Additionally, the Ohio Revised Code directs the Commission to adopt rules, with the approval of the governor, defining various foreseen types and levels of energy emergency conditions for critical shortages or interruptions in the supply of electric power, natural gas, coal, or individual petroleum fuels and specifying appropriate measures to be taken at each level or for each type of energy emergency as necessary to protect the public health or safety or prevent unnecessary or avoidable damage to property. Accordingly, the Commission adopted rules that it considers best suited to meet these goals.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The rules are performance-based only in the sense that, for example, they require that certain information related to the fuel shortage be reported to consumers and the Commission. Primarily, the rules in Chapter 4901:5-19, O.A.C., are regulatory in nature as required by the Revised Code.

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

Although it is unlikely that Chapter 4901:5-19, O.A.C., duplicates the rules of other state entities, certain state entities, including the Ohio Consumers' Counsel, Ohio Department of Development, Ohio Emergency Management Agency, and Ohio Homeland Security, were included on the list of stakeholders that were notified by U.S. mail of the proposed rule changes. None of these entities has indicated that any provision of Chapter 4901:5-19, O.A.C., duplicates the rules of those entities.

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

On August 17, 2011, stakeholders were informed through a Commission entry issued via U.S. mail and posted on the Commission website that the Commission was conducting its five-year review of Chapter 4901:5-19, O.A.C. The entry included Commission Staff's proposed amendments to certain rules in Chapter 4901:5-19, O.A.C. On March 14, 2012, through a finding and order issued by the Commission, stakeholders were subsequently informed, again via U.S. mail, e-mail, and the Commission website, that the Commission had adopted Commission Staff's recommended amendments to certain rules in Chapter 4901:5-19, O.A.C. Finally, any stakeholder that objected to the rules approved in the Commission's finding and order had thirty days to express its objections in an application for rehearing. No such applications for rehearing were filed. On March 21, 2012, the governor filed a letter with the Commission, approving the changes to the rules pursuant to Section 4935.03, Revised Code. The opportunity for continued feedback and input from the regulated community always exists and

better ensures that implementation of rules in this chapter will occur smoothly in the event of an imminent or declared fuel emergency.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

Certain rules in Chapter 4901:5-19, O.A.C., apply to regulated electric providers and, in some cases, to electric power producers.

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

Regarding Rule 4901:5-19-02, O.A.C., the rule provides that the Commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce Commission orders and to secure immediate compliance with the chapter, which may have an adverse impact in terms of time and money. Rules 4901:5-19-02, -04, and -05, O.A.C., also require that regulated electric providers and electric power producers report certain information to the Commission and consumers, which may have an adverse impact in terms of time.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The impact in terms of time or money will, in most instances, be small, if there is any impact at all. For example, certain information related to the fuel shortage must be reported to the Commission and consumers, which would require time to compile the necessary information. It must be noted that the rules apply only in the event of an actual or imminent fuel emergency.

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

The Commission is vested with power and jurisdiction to supervise and regulate public utilities, including that such utilities furnish products and services in a manner that promotes protection, welfare, and safety of the public. Additionally, the Ohio Revised Code directs the Commission to adopt rules, with the approval of the governor, defining various foreseen types and levels of energy emergency conditions for critical shortages or interruptions in the supply of electric power, natural gas, coal, or individual petroleum fuels and specifying appropriate measures to be taken at each level or for each type of energy emergency as necessary to protect the public health or safety or prevent unnecessary or avoidable damage to property. The Commission has worked with stakeholders to develop a chapter that best serves these goals. It is notable that the regulated community has not indicated that the rules in the chapter are particularly onerous. In fact, of the rules addressed within this BIA, the Commission received only the proposed changes from AEP-Ohio discussed above.

Regulatory Flexibility

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

No. The rules address the requirements for managing a shortage of fuel for electric generation, which is clearly an essential matter. Thus, any alternative means of compliance would not be appropriate.

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

Not applicable.

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

Commission Staff works with small regulated companies to assist such companies with compliance.