# CSI - Ohio
The Common Sense Initiative

## Business Impact Analysis

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**Regulation/Package Title:** Emergency Reporting by Electric Utilities

**Rule Number(s):**

4901:5-37-02 (Amended)

4901:5-37-03 (Amended)

**Date:** 7/10/2012

**Rule Type:**

- ☐ New
- ☒ Amended
- ☒ 5-Year Review
- ☐ Rescinded
- ☐ 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 4901:5-37, Ohio Administrative Code (O.A.C.), governs emergency reporting by electric utilities. 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 4901:5-37, 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.

*4901:5-37-02 General provisions.*

Minor nonsubstantive changes were made to this rule, which outlines the general provisions intended to govern emergency reporting by electric entities. Among other provisions, the rule requires each electric distribution utility to submit to the Commission its curtailment plan and amendments on energy shortages or delivery constraints. 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.

*4901:5-37-03 Reporting to the Commission during a critical situation.*

Minor nonsubstantive changes were made to this rule, which governs reporting by electric entities to the Commission during a critical situation. Among other provisions, the rule identifies the specific information that each electric entity must promptly report to the Commission and how such information must be reported.

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

| Rule | Statutory Authority – Ohio Revised Code |
|---|---|
| 4901:5-37-02 | 4935.03 |
| 4901:5-37-03 | 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 govern emergency reporting to the Commission by electric entities during a critical situation.

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

The Commission can monitor complaints that are made to its hotline by consumers, as well as the information that is reported by electric entities during a critical situation.

## 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 4901:5-37, 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 two rules addressed in this BIA, one stakeholder offered comments with respect to Rule 4901:5-37-02, O.A.C. AEP-Ohio noted that Rule 4901:5-37-02(B), O.A.C., requires electric entities to comply with the rules of the chapter during a critical situation that has adversely affected, or may adversely affect, the operation or reliability of electric service. AEP-Ohio suggested that the rule should be modified to reflect that electric entities are required to comply with the relevant rules, unless otherwise ordered by the Federal Energy Regulatory Commission (FERC), in light of FERC's jurisdiction over wholesale electric markets and transmission services. The Commission noted that the rule is intended to emphasize that electric entities must comply with the Commission's rules and orders. To the extent that federal mandates may supersede the rule or a

Commission order, those situations will be reviewed on a case-by-case basis; however, that is not the purpose of the particular rule in question. The Commission found it unnecessary to amend the rule in order to refer to federal powers that may or may not be applicable when the focus is intended to be on the Commission's authority. Therefore, the Commission denied AEP-Ohio's request.

**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 4901:5-37, 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, electric entities, 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 critical situation be reported to the

Commission. Primarily, the rules in Chapter 4901:5-37, 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 4901:5-37, 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 4901:5-37, 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 4901:5-37, O.A.C. The entry included Commission Staff's proposed amendments to certain rules in Chapter 4901:5-37, 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 4901:5-37, 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 a critical situation.

## 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 4901:5-37, O.A.C., apply to electric entities.

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

Regarding Rule 4901:5-37-02, 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 4901:5-37-02 and -03, O.A.C., also require that electric entities report certain information to the Commission, 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 critical situation must be reported to the Commission, which would require time to compile the necessary information. It must be noted that the rules apply only in the event of critical situation.

**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 emergency reporting to the Commission by electric entities during a critical situation, 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.