

CSI - Ohio

The Common Sense Initiative

MEMORANDUM

TO: Elizabeth Stevens, Public Utilities Commission of Ohio

FROM: Mark Hamlin, Director of Regulatory Policy

DATE: August 14, 2012

RE: CSI Review – Fuel Emergency (OAC Chapter 4901:5-19)

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of three draft rules – two that are being amended and one that is being submitted with no changes – and regulates shortages with respect to fuel used for the generation of electricity. The rules establish standards in the event a declaration of an energy emergency is made, or in the event such a declaration is imminent.

During the stakeholder outreach conducted by the Public Utilities Commission of Ohio (PUCO), it received comments from American Electric Power (AEP Ohio) related to two issues. First, AEP Ohio suggested that the provisions of the rule should only be activated in the case of an actual energy emergency, and not in the case of an imminent emergency. Relatedly, because some of the information required to be submitted under the rules is confidential and proprietary, the company requested that language be added indicating that the PUCO would treat the information as such, subject to later determination by Commission order. PUCO staff indicated that although it does not feel additional rule language is necessary, its process would be to treat as confidential any material marked as such. If that material is subject to a public records request, the company would be given a reasonable amount of time to request a protective order, recognizing that an ongoing emergency would impact the timing of a response. Moreover, the

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PUCO argued that an energy shortage would harm the citizens of Ohio, so applying the rule to imminent emergencies is necessary to attempt to mitigate or avoid an actual emergency.

The BIA was accurate and complete and represented the impactful portions of the rule package. The PUCO states in the BIA that the requirements placed on businesses by this package serve to protect the public health and safety and to prevent unnecessary or avoidable damage to property during the course of an energy emergency. Additionally, the CSI Office feels that the PUCO considered all comments appropriately before making final determinations about its rule language. For these reasons, the CSI Office agrees that the adverse impact to business created by this rule package is sufficiently justified.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the PUCO should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.