

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Angela Hawkins, Legal Director
Phone: 614-466-0122 Fax: 614-728-8373
Angela.hawkins@puc.state.oh.us
Attention: Greg Price, Electric Section Chief
Phone: 614-752-9410 Fax: 614-728-8373
Greg.price@puc.state.oh.us

Regulation/Package Title: Electric Companies

Rule Number(s): Chapter 4901:1-10, O.A.C.

Date: 7/10/13

Rule Type:

☒ New

☒ 5-Year Review

☒ Amended

☐ Rescinded

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.

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.

The proposed revisions to the rules in Chapter 4901:1-10, Ohio Administrative Code (O.A.C.), are in accordance with the State of Ohio's 5-year rule review procedures. Section 119.032, Revised Code, requires all state agencies to conduct a review, every five

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years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The rules in Chapter 4901:1-10, O.A.C., set forth electric service and safety standards.

The proposed revisions to Chapter 4901:1-10, O.A.C., would create consumer safeguards for the protection of customer energy usage data, allow customers the option to opt out of advanced meter service, direct more accurate disclosure of environmental data and the approximate generation resource mix, create more clarity and consistency for net metering customer-generators, and create a rule to comply with the federal Public Utility Regulatory Policies Act of 1978 (PURPA).

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

The amendments to the rules in Chapter 4901:1-10, Administrative Code, are in response Section 119.032, Revised Code, which requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue the rules without change, with amendments, or with rescissions. The Public Utilities Commission of Ohio (PUCO) has determined that certain amendments to the rules are necessary.

All of the proposed rules in Chapter 4901:1-10, Administrative Code, will be adopted in accordance with the authority granted to the PUCO in Sections 4905.04, 4905.22, 4905.28, 4928.06, 4928.08, 4928.10, 4928.11, 4928.16, 4928.20, 4928.53, and 4928.67, Revised Code.

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.

Rule 4901:1-10-34 is being proposed to comply with the federal requirements set forth in the Public Utility Regulatory Policies Act of 1978 (PURPA), as amended by the Energy Policies Act of 2005. This federal requirement is to provide a market-based rate to small power producing and cogeneration qualifying facilities. The rule would require electric utilities to pay the standard market-based rate to qualifying facilities unless contracted otherwise.

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

The rules in 4901:1-10 do not implement a federal requirement, with the exception of 4901:1-10-34. Rule 4901:1-10-34 is written to comply with PURPA, it is not written to exceed the federal PURPA requirement. In fact, the Federal Power Act (FPA) defines a

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small power production facility as a facility that uses certain types of technology and has a capacity up to 80 megawatts. See 16 U.S.C. 796(17)(A)(i)-(ii) (2000). The proposed rule to Chapter 4901:1-10 would limit the PURPA compliance requirements to facilities what generate up 20 megawatts.

- 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 contained in Chapter 4901:1-10, O.A.C., are intended to promote safe and reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices. The proposed revisions to the rules in this chapter comply with the public purpose for the regulation and provide greater consumer protections and safeguards.

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

The rules contained in this chapter govern electric companies. The success of the regulation in terms of outputs and outcomes will be measured based upon customer and electric utility feedback.

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.**

The Commission conducted a workshop on August 17, 2012, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Chapter 4901:1-10, O.A.C., is 12-2050-EL-ORD. The entry providing notice of the workshop was served upon all investor-owned electric utilities in the state of Ohio, all competitive retail electric service providers in the state of Ohio, and the Electric-Energy industry list-serve. Over 21 stakeholders signed the provided sign-in sheet for the workshop. The workshop was held in conjunction with other electric industry rules workshops, including the rules in chapters 4901:1-9, 4901:1-22, 4901:1-23, and 4901:1-25.

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

Staff has adopted the recommendations provided by stakeholders at the workshop. While there was not significant stakeholder input on the rules in Chapter 4901:1-10 at the

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workshop, a number of changes have been made to the rules as a result of stakeholder feedback over the past five years. The proposed revisions include:

- (a) New definitions for customer energy usage data and de-identified customer energy usage data. These definitions are being added to prohibit an electric utility from disclosing customer energy usage data without the customer's written or electronic authorization, or without a court or commission order, except in certain circumstances.
- (b) Clarifications to environmental disclosure to supplement the regional generation resource mix data provided by the regional transmission organization for unknown purchased resources. This should provide consumers with a greater understanding of the generation resource mix for the generation they purchase.
- (c) A clarified definition of customer-generators that recognizes that a customer who hosts or leases generation equipment on its premises is considered a customer-generator.
- (d) A clarification to the phrase "intend primarily to offset part or all of a customer-generator's requirements for electricity", as found in 4928.01(31)(a), Revised Code. The clarification to the definition would include a presumption that a customer-generator that generates less than one-hundred and twenty percent of the customer-generator's requirements for electricity intends "primarily to offset" part or all of the customer-generator's requirements for electricity. This presumption is proposed because the Commission and staff recognize that a customer-generator could generate in excess of the customer-generator's consumption while actually intending only to offset all of the customer-generator's requirements for electricity. The Commission and Staff further recognize the need to allow customer-generators to engage in energy efficiency measures without becoming excessive-generators.
- (e) A clarification to the definition of a customer-generator's requirements for electricity, which would recognize that a customer-generator's requirements for electricity is the customer-generator's average annual electricity consumption over the previous three years, using the annual period of June 1 to May 31.
- (f) A rule for the calculation of the credit for monthly excess generation and net excess generation. Under the proposed revisions, excess generation would be credited to the next month's bill. If the credit is not used in the next month, it's credit to a net excess generation account. That net excess generation account would then credit any months in which the generation from the prior month was insufficient. Net excess generation would accumulate for the twelve month

period beginning on June 1 of each year and ending on the following May 31. If there exists net excess generation at the end of the twelve month period, the electric utility must issue a refund to the customer-generator for the net excess generation, calculated at the rate the customer-generator pays for generation and regardless of whether the customer-generator purchases generation from the electric utility or a competitive retail electric service provider.

- (g) A proposed revision to clarify the definition of the customer-generator's premises. The clarified definition would recognize that a customer-generator's premises includes lots or areas contiguous to the lots or areas owned, operated, leased, or otherwise controlled by the customer-generator.

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?

No scientific data was provided or considered. In adopting any changes to Chapter 4901:1-10, O.A.C., the Commission takes into account feedback from stakeholders and the general public.

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?

Alternative regulations considered by the Commission and which the Commission seeks comments from stakeholders but did not add to the proposed revisions, include whether rule 4901:1-10-28 should contain definitions of the acceptable technologies for net metering (such as microturbine), whether 4901:1-10-28 can include virtual net metering and aggregate net metering without violating Sections 4928.01 or 4928.67 of the Revised Code, and whether PURPA should be limited to less than 20 megawatts.

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.*

No performance-based regulations were considered. The proposed revisions contain electric service and safety standards. The standards are not performance-based or outcome-based.

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

The Agency has reviewed other Ohio regulations and found no duplicate. Furthermore, no duplicate has been identified by stakeholders.

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.

Upon completion of the rulemaking process, the changes made to Chapter 4901:1-10, O.A.C., will be attached to the Commission's finding and order and served upon all investor-owned electric utilities in the state of Ohio, all competitive retail electric service providers in the state of Ohio, and the Electric-Energy industry list-serve.

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;

The scope of the business community impacted by the proposed revisions to Chapter 4901:1-10, O.A.C., includes all electric utilities in the state of Ohio and all customer-generators.

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

The proposed revisions were drafted in an effort to minimize any adverse impact on business, while promoting the policies of the state of Ohio in Section 4928.02, Revised Code. Specifically, there are two policies of the state of Ohio that the proposed revisions promote particularly well.

Section 4928.02(F) states that it is the policy of this state to ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces.

Section 4928.02(K) states that it is the policy of this state to encourage implementation of distributed generation access across customer classes through regular review and updating of administrative rules governing critical issues such

as, but not limited to, interconnection standards, standby charges, and net metering.

However, the chapter may impact the utility company business community in that there is a time cost involved in compliance with the rules if the utility companies need to program their billing systems and file additional tariffs to reflect the proposed rule revisions, particularly the proposed amendment to Rule 4901:1-10-05, O.A.C., requiring an advanced meter opt-out service.

- 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 Commission anticipates that, primarily, the revisions to this chapter, including the proposed revisions to Rule 4901:1-10-05, O.A.C., will have a positive impact on electric utilities’ businesses. Because the proposed changes to Rule 4901:1-10-05, O.A.C., impact distribution, which remains regulated as a monopoly service, electric utilities will have the opportunity to earn a fair rate of return on assets needed to provide the proposed out-out service. Notably, by codifying the opt-out service in tariffs and requiring Commission approval, the proposed changes will ensure that costs to manually read meters and dispatch employees to terminate and initiate service manually are minimized and properly allocated to parties that cause those costs to be incurred. Thus, the electric utilities will be able to recover the incremental operational costs resulting from the opt-out revisions to Rule 4901:1-10-05, O.A.C. Further, the Commission notes that time cost due to filing of additional tariffs related to the revisions to Rule 4901:1-10-05, O.A.C., is expected to be minimal because electric utilities are already equipped to participate in the regulatory process as an ongoing business practice. It is not expected that new employees would need to be hired or resources would need to be diverted from other functions in order to file the tariffs required by the revisions to Rule 4901:1-10-05, O.A.C.

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

The Commission stresses that, primarily, business impacts resulting from the proposed revisions to this chapter, including the revisions to Rule 4901:1-10-05, O.A.C., are expected to be positive impacts. However, as discussed above, there may be a time cost due to filing of additional tariffs related to the revisions to Rule 4901:1-10-1, O.A.C. However, the Commission believes that providing customers with the option to opt out of

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advanced meter service is a benefit that outweighs the minimal adverse impact to businesses. Additionally, the revisions provide due process for consumers in tariff proceedings that would otherwise be available only through a formal complaint process. The Commission believes that the revisions afford consumers transparency and the ability to challenge the cost structure of opt-out service.

Regulatory Flexibility

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

No. Electric utilities are under the jurisdiction of the Public Utilities Commission of Ohio and may not be exempted from the requirements provided in Chapter 4901:1-10, O.A.C.

- 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 businesses to ensure compliance with the rules. In Commission Case No. 12-2050-EL-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry.