

CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

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

Rule Number(s): Chapters 4901: 5-1; 4901: 5-3; 4901: 5-5; 4901:5-7

Date: June 3, 2015

Rule Type:

☒ New

☒ 5-Year Review

☒ No Change

☒ 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☒ Rescinded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 Ohio Adm.Code Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 are in accordance with the state of Ohio's 5-year rule review procedures. R.C. 111.15 requires all state agencies to conduct a review, every five years, of their rules, and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The rules in Chapters 4901:5-1,

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4901:5-3, 4901:5-5, and 4901:5-7 concern forecasting reports for electric utilities and transmission owners, as well as natural gas distribution companies.

The proposed revisions to these chapters were made in accordance to the changes made to R.C. 4935.01 and 4935.04. Notably, R.C. 4935.04 previously required a public hearing when a “substantial change” occurred in a long-term forecasting report. The current version no longer has this standard, and the proposed changes delete or revise provisions regarding the definition, calculation, and notification of a “substantial change.” R.C. 4935.04 also changed when gas or natural gas companies must furnish reports. While previously they needed to be furnished annually, it is now every three years, and the proposed revisions reflect that.

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

| Rule | Statutory Authority - Ohio Revised Code |
|-------------|----------------------------------------------------|
| 4901:5-1 | 4935.01 and 4935.04 |
| 4901:5-3 | 4935.01 and 4935.04 |
| 4901:5-5 | 4935.01 and 4935.04 |
| 4901:5-7 | 4935.01 and 4935.04 |

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.

Yes, Ohio Adm.Code 4901:5-5-04(A) is being amended in order for the Commission to adhere to the Critical Infrastructure Information Act of 2002 (“CIIA”), found at 6 U.S.C. §§131 - 134, which regulates the use and disclosure of information submitted to the Department of Homeland Security (DHS) about vulnerabilities and threats to critical infrastructure.

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

The proposed revisions to Ohio Adm.Code 4901:5-5-04(A) are written to comply with the CIIA, and do not exceed the federal requirement.

- 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)?**

Pursuant to R.C. 4935.01 and 4935.04 the Commission must determine statewide and regional needs for energy for the forthcoming five and ten-year periods. In doing so, the Commission is required to balance requirements of state and regional development, the protection of public health and safety, the preservation of environmental quality, the maintenance of a sound economy, as well as the conservation of energy and material resources. Additionally, the Commission is required to review and comment on the forecasting reports filed under these chapters and adopt rules to: (1) establish criteria for evaluating the long-term forecast reports; (2) conduct hearings; (3) and establish reasonable fees to defray costs of the hearings and forecast report review process.

- 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 utilities and transmission owners, as well as natural gas distribution companies. The success of the regulation in terms of outputs and outcomes will be measured both by the Commission Staff in its review of the long-term forecast reports, as well as the feedback received from the electric utilities and transmission owners, and natural gas distribution companies, and other stakeholders.

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 March 5, 2015, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the Commission's review for Ohio Adm.Code Chapters 4901: 5-1, 4901: 5-3, 4901: 5-5, and 4901:5-7 is 15-53-GE-ORD. The entry providing notice of the workshop was served upon all investor-owned electric and gas utilities

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in the state of Ohio, all competitive retail electric and gas providers in the state of Ohio, as well as the Ohio Consumers' Counsel, the Ohio Gas Association, the Ohio Petroleum Council, the Ohio Oil and Gas Association, and the gas-pipeline and electric industry list serves. Approximately 20 stakeholders signed the provided sign-in sheet, which included various representatives from electric and gas utilities, as well as the Ohio Consumers' Counsel.

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

While there was limited stakeholder input provided during the workshop, Staff considered all recommendations made at the workshop when drafting the proposed revisions. Among the recommendations made during the workshop were to link the filing of a full long-term forecast report to a showing of "good cause" and the default being a "forms only" filing, as well as a more streamlined process for the "forms only" filings. Staff has taken these recommendations into account and the proposed revisions reflect said recommendations.

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 these rules, the Commission takes into account all 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?

No alternative regulations were recommended. As discussed above, however, the Commission will consider any alternative proposals put forth in comments or reply comments filed by stakeholders and the general public.

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 dictate a report filings process which is neither performance-based nor outcome-based.

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

The Commission has reviewed other Ohio regulations and found no duplicate, nor has a duplicate been identified by any stakeholder.

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, any changes made to Ohio Adm.Code Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 will be attached to the Commission's decision in this case and served upon all electric and gas distribution utilities, all competitive retail suppliers in the state of Ohio, and the Ohio Consumers' Counsel, the Ohio Gas Association, the Ohio Petroleum Council, the Ohio Oil and Gas Association, and the gas-pipeline and electric industry list serves. The regulations set forth in these rules will be applied consistently to all utilities that are required to file forecasting reports, in accordance with the statute.

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 Ohio Adm.Code Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 include the electric utilities and transmission owners, as well as the natural gas distribution companies that serve Ohio.

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 R.C. 4935.01 and 4935.04. Specifically, the proposed revisions reflect improvements in the forecast reporting process, which contains a more efficient, streamlined process for the reporting entities.

- 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 does not anticipate any adverse impact due to the proposed revisions to Ohio Adm.Code Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7. The proposed revisions do not contain any additional regulations; the proposed revisions merely reflect an updated version of the effective rules in accordance with R.C. 4935.01 and 4935.04. Additionally, the proposed revisions contain a more streamlined process concerning the “forms only” mandate.

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

The Commission stresses that business impacts resulting from the proposed revisions are expected to be positive impacts. The Commission believes that the revisions afford a more streamlined and efficient process.

Regulatory Flexibility

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

No. Electric and natural gas utilities that serve Ohio are under the exclusive jurisdiction of the Public Utilities Commission of Ohio and may not be exempted from the requirements provided in Ohio Adm.Code Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7. However, the rules provide an opportunity for utilities to file for a waiver of any requirement in the rules, other than a requirement mandated by statute, for good cause shown.

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?

Electric and natural gas utilities that serve Ohio are the entities that are impacted by Ohio Adm.Code Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7. There are some natural gas utilities that serve a smaller customer base and the Commission Staff regularly works with these small businesses, as well as the larger utilities, to ensure compliance with the rules in all respects. In this rulemaking proceeding, all electric and natural gas utilities, including the small natural gas utilities, as well as other stakeholders and the general public were invited to participate in the workshop to order to provide the Commission Staff with potential revisions to the rules to minimize or eliminate any adverse effects on businesses. Small businesses may contact the Commission at any time and may submit written comments on the proposed revisions during the public comment period once the proposed revisions are filed in the case docket.