

**MEMORANDUM**

TO: Angela Hawkins, Legal Director – PUCO

FROM: Todd Colquitt, Business Advocate
Common Sense Initiative Office

DATE: December 29, 2016

RE: **CSI Review – PUCO Gas and Electric Energy Forecasting Rules (PUCO Case No. 15-53-GE-ORD)**

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 or Revised Code) 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 O.R.C. 107.54.

Analysis

This rule package proposed by the Public Utilities Commission of Ohio (PUCO) consists of nineteen rules comprising Ohio Administrative Code (OAC) chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7. Ten of the rules are proposed with amendments, eight with no changes, and one is proposed for rescission. These rules address the requirements for filing energy forecasting reports by electric utilities, electric transmission owners, and natural gas distributors. These rules are being reviewed by the Commission under the statutory five-year rule review requirement. Many of the proposed changes are being proposed to update the existing rules to reflect legislative changes made to the underlying statute. More specifically, ORC 4935.04 had previously required a public hearing when a “substantial change” occurred in a long-term forecasting report. The revised statute eliminated the “substantial change” trigger, and the proposed changes in this rule package delete or revise provisions regarding the definition, calculation, and notification requirements that attended a “substantial change.” Additionally, the amendments made to ORC 4935.04 changed the frequency with which gas companies are

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required to file reports from annually to once every three years. The proposed amended rules reflect that statutory change.

The PUCO initiated a rulemaking on the above-referenced case through an Entry dated January 28, 2015. As part of the rulemaking, the PUCO convened a workshop on March 5, 2015 inviting interested stakeholders to provide suggestions for the PUCO staff to consider as it began the process of creating the new rules. The PUCO also sought public comment on the rule package and Business Impact Analysis (“BIA”) by issuing an Entry dated November 18, 2015 seeking comments and reply comments to be filed by December 18, 2015 and January 8, 2016, respectively. (In response to a request from interested parties, a subsequent PUCO Entry extended the deadlines for comments and replies to February 1, 2016 and February 22, 2016, respectively.) A Finding and Order was issued by the PUCO on May 11, 2016, and the PUCO submitted the rule to the CSI Office for review on November 23, 2016.

Approximately twenty stakeholders attended the March 5, 2015 workshop. Suggestions were offered by representatives of two electric companies. Among the suggestions made were those to: eliminate the long-term forecast report filing requirement in its entirety; link the filing of a long-term forecast report to a showing of “good cause” filing; have the default filing requirement be an abbreviated “forms only” filing rather than the substantially lengthier and more burdensome long-term forecast report; and, streamline the process for a “forms only” filing. For the formal public comment period, two comments were made during the initial period and two during the reply period (one party commented in both the initial and reply periods). In the initial comment period, one stakeholder made a case for the elimination of most of the filing requirements in their entirety, while another stakeholder recommended additional reporting requirements. Both commenters were rebutted by commenting stakeholders in the reply period. None of the comments addressed the accompanying BIA.

In its Entry dated November 18, 2015 setting out the proposed rules for formal public comment, the PUCO adopted a number of changes suggested by stakeholders at the workshop. Examples include linking the filing of the lengthy long-term forecast report to a finding of “good cause” as part of an evidentiary hearing and having the default filing requirement be the abbreviated “forms only” filing. The Commission declined to adopt any additional changes suggested by stakeholders in the formal public comment cycle that advocated further reductions or additions to the reporting requirements.

The purpose of a CSI recommendation memo is not to catalogue in detail each rule in all its subparts, but rather to weigh the rule package on the whole in whether stakeholders were included and their input considered, whether the appropriate balance has been struck, and whether the agency has adequately articulated the necessity for the adverse business impact.

After reviewing the various documents contained in the docket for PUCO Case No. 15-53-GE-ORD, including the January 28, 2015 Entry, the transcript of the early stakeholder outreach meeting on March 5, 2015, the proposed rules and BIA accompanying the Entry dated November 18, 2015, and the stakeholder comments filed in the formal comment period, the CSI Office has determined that the rule package as a whole satisfactorily meets the standards espoused by the CSI Office and the purpose of the rule package justifies the adverse impacts identified in the BIA.

Recommendations

For the reasons described above, the CSI Office has no recommendations regarding this rule package.

Conclusion

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

cc: Nick Walstra, Attorney Examiner, PUCO
Sarah Parrot, Attorney Examiner, PUCO