

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: _____ Public Utilities Commission of Ohio (PUCO)

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Regulation/Package Title: Governor's Emergency Powers, Fuel Emergency, Coal Allotment, Coal Emergency, Gas Emergency, Heating Oil and Propane Emergency, Transportation Fuel Emergency, Application for Assignment Under State Set-Aside System, Emergency Reporting by Electric Utilities

Rule Number(s): Chapters 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, 4901:5-37

Date: November 3, 2016

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☐ Rescinded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.

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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.

The proposed revisions to the rules in Ohio Adm.Code Chapters 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37 are in accordance with the state of Ohio's five-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 Ohio Adm.Code Chapters 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37 concern various types of energy emergency conditions for critical shortages or interruptions in the supply of electric power, natural gas, coal, or individual petroleum fuels.

Under the proposed changes, Ohio Adm.Code 4901:5-19-04(A) and Ohio Adm.Code 4901:5-19-05(A)(4)(c), (A)(5), (A)(7), (A)(8), (B), (C), (D), and (E), as well as Ohio Adm.Code 4901:5-37-02(D), would be amended to specify that the governor or the Commission may consult with an independent consultant or other outside entities, as well as the appropriate independent system operator or regional transmission organization, in anticipation of an imminent energy emergency or upon declaration of an energy emergency. Further, Ohio Adm.Code 4901:5-19-04(A)(1) and 4901:5-25-04(A)(1) would be amended to authorize electric providers and gas suppliers, respectively, to notify consumers of an imminent shortage by electronic notice, among other existing means of notification. Similarly, Ohio Adm.Code 4901:5-37-03(A) would be amended to authorize an electric entity to report to the Commission during a critical situation by electronic notification, among other existing means of notification.

Additionally, Ohio Adm.Code 4901:5-29-04(A)(2) and 4901:5-33-04(A)(2) would be amended to specify that the governor may request, upon declaration of an energy emergency, that federal priority be given to all highway traffic of essential fuel supplies into this state or a region of this state affected by the energy emergency, as well as air, rail, barge, and pipeline traffic under the current rules. Amendments to Ohio Adm.Code 4901:5-29-04(A)(3) and (A)(5), as well as Ohio Adm.Code 4901:5-33-04(A)(3) and (A)(5), would be made, in order to specify that the Commission may grant a motor carrier, engaged in the intrastate transportation of heating oil, propane, or transportation fuel, an exemption from some or all provisions of Ohio Adm.Code Chapter 4901:2-5 for the duration of an energy emergency. The rules would also be amended to remove, as unnecessary, language providing that the governor may suspend intrastate drivers' hours of service limitations or request that the United

States Department of Transportation suspend federal limits on highway drivers' hours of service, given that intrastate and interstate drivers' hours of service limitations may be suspended, during an emergency, under Ohio Adm.Code 4901:2-5-05 and 49 C.F.R. 390.23, respectively.

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

Rule	Statutory Authority - Ohio Revised Code
Chapter 4901:5-17	4935.03
Chapter 4901:5-19	4935.03
Chapter 4901:5-21	4935.03
Chapter 4901:5-23	4935.03
Chapter 4901:5-25	4935.03
Chapter 4901:5-29	4935.03
Chapter 4901:5-33	4935.03
Chapter 4901:5-35	4935.03
Chapter 4901:5-37	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 these chapters 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)?

Pursuant to R.C. 4935.03, the Commission must 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. In accordance with the statute, Chapter 4901:5-17 specifies the governor's emergency powers for any type or level of declared energy emergency. The rules in the chapters under review also establish standards to be met by electric providers (Chapter 4901:5-19), coal suppliers (Chapters 4901:5-21 and 4901:5-23), gas suppliers (Chapter 4901:5-25), heating oil and propane suppliers (Chapter 4901:5-29), and transportation fuel suppliers (Chapter 4901:5-33) during or in anticipation of an imminent fuel shortage. Additionally, Chapter 4901:5-35 establishes a state set-aside program for heating oil, propane, and transportation fuel for the purpose of providing relief to Ohio consumers experiencing an energy emergency, while Chapter 4901:5-37 governs 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 providers, coal suppliers, gas suppliers, heating oil and propane suppliers, and transportation fuel suppliers during an actual or imminent fuel shortage and 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.*

The Commission conducted a workshop on April 5, 2016, 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 Ohio Adm.Code Chapters 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37 is 16-567-AU-ORD. The Entry providing notice of the workshop was served upon all regulated electric and natural gas companies; ReliabilityFirst Corporation; PJM Interconnection, LLC; Ohio Consumers' Counsel; Ohio Coal Association; Ohio Gas Association; Ohio Rural Electric Cooperatives, Inc.; Office of Energy and Redevelopment, Ohio Development Services Agency; 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; Legal Aid Societies of Cleveland,

Columbus, Cincinnati, Dayton, and Toledo; and the Commission's electric-energy, gas-pipeline, and transportation list-serves. Representatives of seven stakeholders, including several electric and gas utilities, attended the workshop.

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

A representative of Columbia Gas of Ohio, Inc. offered general comments regarding gas infrastructure investment in the state. However, Columbia did not specifically address any of the rules under review. No other comments were provided by the stakeholders in attendance at the workshop.

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 directly provided or considered. In adopting any changes to the rules, the Commission takes into account all feedback from stakeholders and the general public. Stakeholder feedback can be made directly to Commission Staff from residential, commercial, and industrial consumers; the Ohio Consumers' Counsel; electric providers, coal suppliers, gas suppliers, heating oil and propane suppliers, and transportation fuel suppliers; 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 alternative regulations were recommended. The 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 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. The Commission will, however, 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.*

The rules are performance-based only in the sense that, for example, they require that certain information related to the fuel shortage, state set-aside program, or critical situation be reported to consumers and the Commission. Primarily, the rules in Ohio Adm.Code Chapters 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37 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?

Certain state entities, including the Ohio Consumers' Counsel, Ohio Development Services Agency, Ohio Emergency Management Agency, and Ohio Homeland Security, were included on the list of stakeholders that were notified regarding the workshop held at the Commission on April 5, 2016. None of these entities has indicated that any provision of Ohio Adm.Code Chapters 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37 duplicates any rule of those entities or any other existing Ohio regulation.

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 rule review process, any changes made to Ohio Adm.Code Chapters 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37 will be attached to the Commission's decision in Case No. 16-567-AU-ORD and served upon all regulated electric and natural gas companies; ReliabilityFirst Corporation; PJM Interconnection, LLC; Ohio Consumers' Counsel; Ohio Coal Association; Ohio Gas Association; Ohio Rural Electric Cooperatives, Inc.; Office of Energy and Redevelopment, Ohio Development Services Agency; 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; Legal Aid Societies of Cleveland, Columbus, Cincinnati, Dayton, and Toledo; and the Commission's electric-energy, gas-pipeline, and transportation list-serves. The

opportunity for continued feedback and input from the regulated community always exists and better ensures that the implementation of the rules in these chapters will occur smoothly in the event of an imminent or declared emergency.

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 rules under review includes electric providers and electric power producers (Chapter 4901:5-19), coal suppliers (Chapters 4901:5-21 and 4901:5-23), gas suppliers (Chapter 4901:5-25), heating oil and propane suppliers (Chapter 4901:5-29), transportation fuel suppliers (Chapter 4901:5-33), primary and secondary suppliers (Chapter 4901:5-35), and electric entities (Chapter 4901:5-37).

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. 4935.03. Specifically, the proposed revisions reflect improvements in the energy emergency notification process, by including electronic notification as an option for the regulated entities.

In their current form, Ohio Adm.Code 4901:5-19-02, 4901:5-21-02, 4901:5-23-02, 4901:5-25-02, 4901:5-29-02, 4901:5-33-02, 4901:5-35-02, and 4901:5-37-02 provide 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. Additionally, certain information must be reported to the Commission or consumers by electric providers and electric power producers (Ohio Adm.Code 4901:5-19-02, -04, and -05), coal suppliers (Ohio Adm.Code 4901:5-21-02 and -04 and 4901:5-23-02 and -04), gas suppliers (Ohio Adm.Code 4901:5-25-02, -04, -05, and -06), heating oil and propane suppliers (Ohio Adm.Code 4901:5-29-02 and -04), transportation fuel suppliers (Ohio Adm.Code 4901:5-33-02 and -04), primary and secondary suppliers (Ohio Adm.Code 4901:5-35-02 and -03), and electric entities (Ohio Adm.Code 4901:5-37-02 and -03).

- 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 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37. In fact, the proposed revisions reflect improvements in the energy emergency notification process, by including electronic notification as an option for the regulated entities.

Under the current rules, the impact in terms of time or expense will, in most instances, be small, if there is any impact at all. For example, certain information related to a fuel shortage or critical situation must be reported to the Commission and consumers. It must be noted, however, that the rules apply only in the event of an actual or imminent fuel emergency or critical situation.

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

The Commission believes that any business impacts resulting from the proposed revisions are expected to be positive impacts.

The Commission is vested with 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 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 rules that best serve these goals. As mentioned above, the Commission received no comments at the workshop held on April 5, 2016.

Regulatory Flexibility

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

No. Ohio Adm.Code Chapters 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37 address the requirements for managing a shortage of fuel or for emergency reporting during an actual or imminent fuel emergency or a critical situation, which are clearly essential matters. Thus, any alternative means of compliance would not be appropriate. However, Ohio Adm.Code 4901:5-19-02, 4901:5-21-02, 4901:5-23-02, 4901:5-25-02, 4901:5-29-02, 4901:5-33-02, 4901:5-35-02, and 4901:5-37-02 provide that the Commission may, upon an application or a motion filed by a party, waive any requirement of the chapter, 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?

The Commission Staff works with small regulated companies to ensure compliance with the rules in all respects. In this rulemaking proceeding, all stakeholders and the general public were invited to participate in the workshop held on April 5, 2016, in order to provide the Commission Staff with potential revisions to the rules to minimize or eliminate any adverse effects on business. 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.