CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: **Public Utilities Commission of Ohio (PUCO)**
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Regulation/Package Title: **Net Metering**

Rule Number(s): **4901:1-10-28**

Date: **November 18, 2015**

Rule Type:

X New **X 5-Year Review**

X Amended ☐ **Rescinded**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 Ohio Adm.Code 4901:1-10-28 regarding net metering are in accordance with the State of Ohio's 5-year rule review procedures. R.C. 106.03 requires state agencies to conduct a review of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The Commission issues proposed revisions to Ohio Adm.Code 4901:1-10-28 to implement R.C. 4928.67 by setting standards for net metering in the state of Ohio. Pursuant to R.C. 4928.67(C), the commission must adopt rules relating to additional control and testing requirements for customer-generators that the Commission determines are necessary to protect public and worker safety and system reliability. Additionally, the proposed rule promotes the policies of the state of Ohio in R.C. 4928.02. Specifically, R.C. 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. Further, R.C. 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.

   The Commission notes that Ohio Adm.Code 4901:1-10-28 is just one rule in Ohio Adm.Code Chapter 4901:1-10. The other rules in Ohio Adm.Code Chapter 4901:1-10 have already been filed with JCARR and become effective. The CSI office issued its business impact analysis (BIA) regarding the rules in Ohio Adm.Code Chapter 4901:1-10 and did not have any recommendations for the rule package. However, after filing the rule package with JCARR, the Commission determined that further consideration and stakeholder input was necessary to understand and properly implement net metering in the state of Ohio. Accordingly, the Commission withdrew Ohio Adm.Code 4901:1-10-28 from JCARR. Thereafter, on May 5, 2015, the Commission conducted an additional stakeholder workshop to receiver further stakeholder input on net metering in the state of Ohio. At this time, the Commission is reissuing a proposed net metering rule for comment and reply comment from stakeholders.

The proposed rule begins by adopting definitions for the terms “advanced meter,” “customer-generator,” “electric utility,” “microturbine,” “net metering,” “net metering system,” and “third party.” These definitions will provide clarity to electric utilities, electric services companies, and customers on how to implement the rule when it becomes effective.

Next, the rule requires each electric utility to develop a tariff for net metering and make that tariff available to all customers taking electric service from the electric utility’s standard service offer. If a customer is taking electric service from an electric services company instead of their electric utility, then the electric services company may offer net metering to its customers, but is not required to offer it. However, in the state of Ohio, customers are permitted to shop for competitive retail electric service. So if an electric services company does not offer a net metering contract to a customer with a net metering system, then that customer may shop for a new competitive retail electric service provider.

Consistent with R.C. 4928.01 and 4928.67, a net metering system must use solar, wind, biomass, landfill gas, hydropower, a microturbine, or a fuel cell. Further, net metering systems must be sized such that the customer’s primary intent is only to offset part or all of their requirements for electricity. Since a customer’s requirements for electricity fluctuate, the rule provides that customer’s must not size their facilities larger than 120 percent of their requirements for electricity if they are on the electric utility’s standard service offer.

Further, if a net metering customer generates more than it needs, the excess generation will be converted to a monetary credit at the electric utility’s standard service offer generation rate, and then applied to the customer’s next monthly bill. If there is a remaining credit after offsetting the customer’s next monthly bill, that remaining credit will carry over for a period of 36 months to be used in the customer’s future monthly bills.

Additionally, Ohio Adm.Code implements R.C. 4928.67 by establishing net metering requirements for hospitals. Hospitals may engage in net metering using either two meters or a single meter with two registers, which permits hospitals to be credited for electricity at the market rate at the time the hospital generated the electricity. Pursuant to the rule, after being converted to the market rate, the credit would be credited to the hospital for the next month’s bill, and then for 36 months thereafter.

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

The revisions to Ohio Adm.Code 4901:1-10-28 are in response to R.C. 106.03, 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 Commission has determined that certain revisions to the rule are necessary.

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.

   Ohio Adm.Code 4901:1-10-28 does not implement a federal requirement and is not being adopted or amended to obtain or maintain approval to administer a federal law or program. Net metering is a state program, provided for by R.C. 4928.67.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**
   Ohio Adm.Code 4901:1-10-28 does not implement a 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)?**

   The Commission is proposing Ohio Adm.Code 4901:1-10-28 pursuant to R.C. 4928.67. R.C. 4928.67(C) requires the Commission to adopt rules to ensure safe and reliable electric service. The proposed revisions to the rule will provide greater detail on how electric utilities and electric services companies should provide net metering service to customers in a safe way that ensures the reliability of the utilities' electric distribution systems.

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

   This rule implements net metering in the state of Ohio. The success of the regulation in terms of outputs and outcomes will be measured based upon customer and electric utility feedback. Additionally, the rule contains a requirement for electric utilities to annually file a report to the Commission detailing the number of net metering customers, the capacity of all the net metering systems, and the technology and customer class of net metering customers. This reporting requirement will enable the Commission to measure the effectiveness of the rule and determine whether net metering is working in the state of Ohio. Additionally, the rule provides greater opportunities for electric services companies to offer net metering contracts to customers in the state of Ohio, so the Commission will be closely watching the market to determine if additional electric services companies begin offering unique and diverse net metering contract arrangements to customers.

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 has received a significant amount of stakeholder feedback on Ohio Adm.Code 4901:1-10-28 and net metering generally. Initially, 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 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.

Thereafter, the Commission considered the stakeholder input and issued a final rule. However, numerous applications for rehearing were filed by stakeholders and the Commission considered each of the arguments raised in the applications for rehearing. After holding the workshop, receiving numerous comments from stakeholders, issuing a final rule, and considering the arguments raised by stakeholders on rehearing, the Commission filed with rule with JCARR.

However, after filing the rule with JCARR, the Commission determined that further consideration and stakeholder input was necessary to understand and properly implement net metering in the state of Ohio. Accordingly, the Commission withdrew Ohio Adm.Code 4901:1-10-28 from JCARR. Thereafter, on May 5, 2015, the Commission conducted an additional stakeholder workshop to receiver further stakeholder input on net metering in the state of Ohio. At this time, the Commission is reissuing a proposed net metering rule for comment and reply comment from stakeholders. Significant stakeholder input has been received by the Commission and the Commission expects further stakeholder input as it proceeds with the rulemaking process. Stakeholder input has been provided to the Commission from electric utilities, electric services companies, environmental organization, industry associations, and individual customers.

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

The Commission first considered stakeholder input at its initial workshop on August 17, 2012. Over three years later, the Commission is still receiving stakeholder input on the rule. The Commission used the stakeholder input to develop a better understanding of net metering and its impacts on the electric grid. Additionally, the Commission used stakeholder input to provide opportunities for electric services companies to become more engaged in net metering in the state of Ohio. The Commission has taken over three years of stakeholder input to draft a proposed rule that will provide safer, more reliable net metering service to customers, while supporting development of the retail market in Ohio.

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 proposing revisions to Ohio Adm.Code 4901:1-10-28, the Commission has take into account feedback from numerous stakeholders and the general public. While no scientific data was used to develop the rule, stakeholders provided data on the types of net metering systems being built in Ohio and the current barriers to net metering. The Commission used the data to develop a proposed rule that will provide greater opportunities for electric service companies to offer unique net metering contracts to customers.

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?

The proposed rule itself is an alternative proposal from what was original proposed and filed with JCARR. The Commission determined that further stakeholder input was necessary to develop an alternative proposal. The alternative proposal being issued by the Commission for comment decreases the burden on ratepayers while providing increased opportunities for customers to engage in net metering with electric services companies. To accomplish this, the Commission considered the advantages and disadvantages of smart meters for net metering customers. By using smart meters with interval data capabilities, net metering customers can engage in unique and diverse net metering arrangements with electric services companies.

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 regulation was considered. 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 Commission 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 Commission will ensure implementation of the rule by requiring each electric utility to file revised tariffs consistent with the new rule. Thereafter, the Commission will exercise its general supervisory authority to ensure that the rule is being implemented properly and consistently across the state of Ohio. Finally, the Commission will use the utilities' annual net metering report to analyze the market and determine if the rule has been effective at ensuring safe and reliable electric service for net metering customers.

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 4901:1-10-28 includes all electric utilities in the state of Ohio, all electric services companies, all net metering customers, hospitals net metering customers, and all customers generally. All customers will be provided opportunities to engage in net metering, whether by taking service under the electric utilities' standard service offer and being on the utilities' net metering tariff, or through shopping for generation service with an electric services company and signing a net metering contract with the electric services company. Further, Ohio Adm.Code 4901:1-10-28(B) applies to hospital net metering customers, so this rule provides guidance on how hospitals may engage in net metering.

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

The proposed rule was drafted in an effort to minimize any adverse impact on business, while promoting the policies of the state of Ohio in R.C. 4928.02. However, there are some adverse impacts.

First, in proposed Ohio Adm.Code 4901:1-10-28(B)(1), the electric utilities are required to develop a net metering tariff and offer it to their customers. Additionally, the electric utility is required to disclose on its website, and to any customer upon request, its net metering department or contact person and all necessary information regarding net metering.

Next, in proposed Ohio Adm.Code 4901:1-10-28(B)(8), if a customer's meter is not capable of net metering, the electric utility must provide the customer with detailed cost estimates of what it would cost to install a meter capable of net metering and what it would cost to install a smart meter capable of taking interval data. With the signed consent of the customer, the electric utility shall install a meter capable of net metering or a smart meter so that the customer may engage in net metering. Additionally, with the signed consent of a net metering customer, an electric services company can request that the utility install a smart meter capable of taking interval data, which would be paid for by the electric services company.

Additionally, in proposed Ohio Adm.Code 4901:1-10-28(B)(9)(d-f), the electric utilities must provide interval meter data and individual network peak load data to electric services companies. Further, the electric utilities must ensure that final settlement data sent to the regional transmission operator incorporates negative load to account for electricity provided from net metering customers.

In proposed Ohio Adm.Code 4901:1-10-28(B)(13), the electric utilities must file an annual report with the Commission so that the Commission can monitor the effectiveness of the rule and the state of the market.

Finally, in proposed Ohio Adm.Code 4901:1-10-28(C), the electric utilities are required to develop a net metering tariff to be offered to hospitals that desire to engage in net metering.

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.

First, in proposed Ohio Adm.Code 4901:1-10-28(B)(1), the electric utilities are required to develop a net metering tariff and offer it to their customers. The expected adverse impact from this section is minimal because the electric utilities each already have a net metering tariff on file with the Commission. Therefore, the electric utilities will only be required to revise their existing tariff and to file the revisions with the Commission. This adverse impact could be quantified in hours to comply, and would be expected to be approximately three to five hours.

Next, in proposed Ohio Adm.Code 4901:1-10-28(B)(8), if a customer's meter is not capable of net metering, the electric utility must provide the customer with detailed cost estimates and to potentially install a new meter. The expected adverse impact of providing cost estimates is minimal because the electric utilities should already know how much their meters cost and approximately what it costs to install. Additionally, the installation of a new meter is paid by the net metering customer or the electric services company, which is consistent with the principle of cost causation. Further, the rule does not require a new meter, so since a new meter is optional, the cost to install a new meter does not need to be incurred at all. It is difficult to quantify this impact in terms of dollars because it will be different for each utility and each situation, but the Commission has ensured that customers are provided cost estimates before deciding whether they want to incur the cost.

Additionally, in proposed Ohio Adm.Code 4901:1-10-28(B)(9)(d-f), the electric utilities must provide interval meter data, individual network peak load data, and final settlement data. This data should be readily available by the electric utilities, so the adverse impact to business would be in hours to comply to report or provide the data.

The Commission expects that this adverse impact could be quantified as approximately eight hours, or one full workday.

In proposed Ohio Adm.Code 4901:1-10-28(B)(13), the electric utilities must file an annual report with the Commission so that the Commission can monitor the effectiveness of the rule and the state of the market. Again, this adverse impact would best be quantified in hours to comply, and the Commission expects that this would take approximately four hours or one half of a full workday.

Finally, in proposed Ohio Adm.Code 4901:1-10-28(C), the electric utilities are required to develop a net metering tariff to be offered to hospitals that desire to engage in net metering. The expected adverse impact from this section is minimal because the electric utilities each already have a net metering tariff on file with the Commission. Therefore, the electric utilities will only be required to revise their existing tariff and to file the revisions with the Commission. Similar to the net metering tariff requirement above, this adverse impact could be quantified in hours to comply, and would be expected to be approximately three to five hours.

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

The adverse impacts on business identified by the Commission are minimal, yet they are necessary to ensure that the rule is properly implemented. These adverse impacts are necessary to protect customers by giving them detailed cost estimates before deciding whether to incur a cost, to support the market by ensuring that the Commission has the data that it needs, and to ensure safe and reliable electric service by establishing the efficient sharing of data between electric utilities and electric services companies. Each of these adverse impacts is justified by the need to ensure safe and reliable retail electric service.

Regulatory Flexibility

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

Electric utilities are under the jurisdiction of the Commission and may not be exempted from the requirements provided in Ohio Adm.Code 4901:1-10-28. Electric services companies are unregulated, though the Commission does have general supervisory authority to protect the public interest and to monitor the market. While there are not alternative means of compliance for the electric utilities, the proposed rule provides greater opportunities for electric services companies to offer net metering services to customers. This will decrease the regulatory burden on the electric utilities to comply with the rule and will benefit electric customers.

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?

This section is not applicable. There are no penalties or fines in proposed Ohio Adm.Code 4901:1-10-28. Further, costs to be incurred by customers are optional, and will only be assessed after they have been provided detailed cost estimates.

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 the rulemaking process 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. The Commission has engaged numerous stakeholders in this rulemaking process, for a period of over three years, and the Commission has sought to assist business with understanding the rule and how it applies if they choose to engage in net metering.