

CSI – Ohio

The Common Sense Initiative

Business Impact Analysis

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

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Regulation/Package Title: _____ Electric Companies

Rule Number(s): _____ Chapter 4901:1-10, Ohio Adm.Code

Date: _____ May 24, 2021

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☐ Amended ☐ Rescinded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 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 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, among other things, create consumer safeguards regarding the installation of advanced meters, create a safety reporting requirement for any accidents involving a utility electric line or facility, create a rule to provide consumers the opportunity to block transfer of their electric service provider, and allow the electric utility to provide disconnection notice, for fraud, by hand delivery or written notice.

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, 4828.16, 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 a no change rule that complies 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 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 non-change rule to Chapter 4901:1-10 would limit the PURPA compliance requirements to facilities that generate up to 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 October 3, 2018, 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 17-1842-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. The workshop was held in conjunction with other electric industry rules workshops, including the rules in Chapters 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34.

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

Staff considered 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 workshop, a number of changes have been made to the rules as a result of stakeholder feedback. The proposed revisions include:

- (a) Additional Options for Notice: 4901:1-10-20(C)(1) provides the option for either hand delivery or mailing before disconnection for fraud.
- (b) Opt out of Competitive Retail Electric Service: 4901:1-10-24(H) creates an additional requirement to allow customers to opt out of CRES offers and to require additional verification prior to a customer being enrolled with a CRES.

- 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?

This rule is necessary to promote safe and reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices. Being that this rule accomplishes this objective, as it pertains to electric service providers, in the most efficient and least restrictive manner, we believe that this is the best alternative.

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 Ohio Adm.Code Chapter 4901:1-10 includes all electric utilities in the state of Ohio, all customer-generators, and all transmission owners.

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

Generally, Ohio Adm.Code Chapter 4901:1-10 requires several actions on the part of electric utilities, transmission owners, and customer generators to maintain certain records and information regarding their equipment and facilities, comply with minimum standards for the provision of electric service, and develop procedures in the event the provision of electric service does not comply with those Commission-imposed standards. While we do not specifically identify every impact to the business community outlined in the Commission's Finding and Order and Second Entry on Rehearing, we have included an overview of a select number of rules below that identify the nature of the adverse impact when evaluating the existing rules, as well as the changes adopted by the Commission.

Ohio Adm.Code 4901:1-10-03: Electric utilities are required to retain and preserve certain records to demonstrate compliance with this rule chapter, which may be requested by Staff at any point in time to ensure adequate monitoring. This is a no change rule.

Ohio Adm.Code Chapter 4901:1-10-04: Electric utilities and transmission owners must adopt nominal service voltages to be supplied to customers, and make reasonable efforts, by the use of proper equipment and operation, to maintain those service voltages within reasonable limits defined by the rules. The electric utilities are required to file tariffs with the nominal service voltages available to customers and must develop procedures to ensure delivered voltages are within acceptable ranges or correct them if they are outside of those parameters. The Commission updated the reference standards that the electric utilities should use when determining the nominal service voltages.

Ohio Adm.Code 4901:1-10-05: This rule dictates minimum standards for meter operations, including reporting accuracy, the retention of certain records, and the customer's ability to opt out of using an advanced meter. In addition to other minor changes in the rule, the Commission adopted Staff's recommendation to increase the number of actual meter reads being taken (actual readings of all in-service customer meters at least quarterly each calendar year or monthly for those with advanced meters). The electric utilities indicated the additional meter reads increase their costs and provide little to no benefit to customers. Upon rehearing, the Commission amended the language further to indicate electric utilities will be required to take the quarterly readings unless prevented from doing so by the customer or property owner.

Ohio Adm.Code 4901:1-10-06: prescribes that electric utilities and transmission owners should comply with ANSI's National Electric Safety Code. The Commission updated the reference to reflect the most current version.

Ohio Adm.Code 4901:1-10-07: This rule requires companies to notify the Commission of certain service outages. The Commission adopted Staff's recommendation to expand the number of interruptions of service that qualify as an "outage." The electric utilities indicated that such a change would substantially increase the number of reportable events to the Commission, resulting in an increased burden to utilities and significant resources and staff changes without any commensurate benefit. On rehearing, the Commission revised the amended definition of "outage," eliminating the portion of the amendment that the electric utilities indicated would result in the largest increase in reportable events. The Commission adopted the remainder of the expanded "outage" definition and noted that the revised outage parameters identify significant outages for which the Commission should be advised. The Commission also adopted language to require notification of "accidents", defined as any event involving contact with energized utility electric lines or facilities that results in death or injury requiring hospitalization.

Ohio Adm.Code 4901:1-10-10: This rule prescribes the measurement of each electric utility's service reliability, the development of minimum performance standards for such reliability, and the reporting of performance against the established standards. The Commission adopted a change to the rule to clarify that the authorized performance

standards approved for the electric utility will remain in place until superseded by revised standards approved by the Commission.

Ohio Adm.Code 4901:1-10-22: This rule prescribes the information to be included on a customer's bill, as well as how customer payments should be applied to their account(s). The Commission also adopted a change to require each electric utility to publish and maintain an online active bill calculator that shows each and every rate or charge and permits customers to enter their billing determinants to determine the accuracy of their bill. This change was adopted after rejecting a more costly proposal to have utilities separately itemize rider charges on customers' bills. On rehearing, the Commission noted the inclusion of this online bill calculator was an effort to more fully implement R.C. 4928.10(C)(2), which states that customer bills should include, to the maximum extent practicable, a separate listing of each service component to enable a customer to recalculate its bill for accuracy. This desire to facilitate billing transparency to customers, in the Commission's view, outweighed the costs to be incurred by the utilities.

Ohio Adm.Code 4901:1-10-33: This rule applies to electric utilities that issue customers a consolidated electric bill that includes both electric utility and competitive retail electric service (CRES) provider charges for electric services. The rule requires certain information to be contained on the consolidated bill, dictates how customer information is to be exchanged between electric utilities and CRES providers, and prescribes a partial payment priority. The Commission adopted a change noting that an electric utility cannot discriminate or unduly restrict a customer's CRES provider from including non-jurisdictional charges on a consolidated electric bill. Upon rehearing, the Commission acknowledged this change may result in additional costs to the utilities, but also noted that electric utilities would be able to file appropriate applications with the Commission to defer or recover costs associated with this amendment's implementation (as a rules proceeding was not the appropriate forum to determine the issue of cost recovery).

- 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.*

Numerous electric utilities and CRES providers alike submitted comments in response to Staff's recommended changes; however, while indicating certain recommended changes

would result in increased costs of compliance, no estimated or actual quantification of those costs was presented. The Commission evaluated the submitted comments based on the nature of the costs at issue and balanced those concerns with those of the utilities' customers. In fact, based on the comments submitted, the Commission ultimately decided to reject various recommendations made by Staff due to the burden those rule modifications would impose on electric utilities.

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

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. 4928.02. Specifically, there are two policies of the state of Ohio that the proposed revisions promote particularly well.

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.

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.

Furthermore, Ohio Adm.Code 4901:1-10-02 provides that the purpose for these rules is to promote safe and reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices. For instance, the decision to modify the definition of “outage” will put the Commission in a better position to help customers during the types of events that would not have qualified as an outage before the change. The Commission’s Finding and Order also provides clarifying guidance for electric utilities to ensure they are not unnecessarily reporting incidents or events or conducting inspections which are not subject to the rules.

In striking the appropriate balance between imposing these minimum standards and the costs associated with doing so, the Commission also rejected several additional recommendations from interested stakeholders which would have otherwise resulted in increased costs or hours to comply, but the Commission found to be unnecessarily prescriptive or duplicative or unduly burdensome (such as changes requested regarding the electric utility emergency plans, tracking momentary outages or interruptions, requiring companies to provide written forms of customer rights and obligations after an initial application of service rather than providing a readily available version online, shifting the burden onto the companies to notify customers of alternatives without an initial inquiry, requiring the inclusion of annual costs on bills, requiring a CRES provider switching block, etc.). Many of the Commission’s adopted changes also modify existing systems and/or processes that the electric utilities already had in place; rather than necessitating the implementation of an entirely new system or process, as well as implement modifications proposed by the electric utilities in their comments. Accordingly, the Commission found that the benefits and goals outlined throughout the

Finding and Order and the Second Entry on Rehearing, including providing transparency of costs to customers, far outweighed any increased burden on the utilities.

Regulatory Flexibility

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

No, electric utilities and transmission owners are under the jurisdiction of the Commission and may not be exempted from the requirements provided in Ohio Adm.Code Chapter 4901:1-10. However, Ohio Adm.Code 4901:1-10-02 provides that the Commission may, upon an application or motion filed by a party, waive any requirement of this 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?

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 17-1842-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.