



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

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

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**Regulation/Package Title:** Long-Term Forecast Report Rules

**Rule Number(s):** 4901:5-3-01, 4901:5-3-02

**Date of Submission for CSI Review:** December 1, 2022

**Public Comment Period End Date:** December 12, 2022

**Rule Type/Number of Rules:**

☐ **X** **New/1 rule (FYR? Yes)**

☐ **X** **Amended/1 rule (FYR? Yes)**

☐ **No Change/   rules (FYR?    )**

☐ **X** **Rescinded/1 rule (FYR? Yes)**

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☒ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

2. Please briefly describe the draft regulation in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

Generally, Ohio Adm.Code Chapters 4901:5-1, 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. Ohio Adm.Code Chapter 4901:5-3 consists of a rule that provides the due dates for the long-term forecast reports, and a rule that prescribes the fees associated with filing the reports.

An amendment to Ohio Adm.Code 4901:5-3-01 removes a requirement that dictates how many hard copies must be filed with the Commission at the time of filing. An amendment to Ohio Adm.Code 4901:5-3-02 requires that all fee payments be made in a manner as prescribed by the Commission, altering the requirement that the fee be only made by check to the Commission.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

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	Statutory Authority – O.R.C.	Amplifies – O.R.C.
Rule 4901:5-3-01	4935.04, 4901.13	4935.04
Rule 4901:5-3-02	4935.04, 4901.13	4935.04

4. **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.

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

Not applicable.

6. **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.

7. **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 feedback received from the electric utilities and transmission owners, natural gas distribution companies, and other stakeholders.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

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No.

### **Development of the Regulation**

**9. 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 August 24, 2021, 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 Chapter 4901:5-3 is 21-779-GE-ORD. The entry providing notice of the workshop was served upon all investor-owned electric utilities and gas and natural gas companies in the state of Ohio, all certified retail electric service providers and certified retail natural gas service suppliers in the state of Ohio, the Ohio Consumers' Counsel, and the Electric-Energy and Gas-Pipeline industry service lists.

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

At the workshop held on August 24, 2021, no substantive comments were offered by various stakeholders. The Commission will also consider any comments or reply comments addressing this rule chapter that are filed by stakeholders and the general public in Case No. 21-779-GE-ORD.

**11. 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.

**12. 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.

**13. 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 are neither performance-based nor outcome-based.

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**14. 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.

**15. 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 Chapter 4901:5-3 will be attached to the Commission's decision in this case and served upon all investor-owned electric utilities and gas and natural gas companies in the state of Ohio, all certified retail electric service providers and certified retail natural gas service suppliers in the state of Ohio, the Ohio Consumers' Counsel, and the Electric-Energy and Gas-Pipeline industry service lists. The regulations set forth in this rule will be applied consistently to all utilities that are required to file forecasting reports, in accordance with the statute.

**Adverse Impact to Business**

**16. 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; and**

The scope of the business community impacted by the proposed revisions to Ohio Adm.Code Chapter 4901:5-3 includes the electric utilities and transmission owners, as well as the natural gas distribution companies that serve Ohio.

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

The adverse impacts of Ohio Adm.Code Chapter 4901:5-3 primarily include the fee required by this chapter and the time/expense required to calculate the fee owed. The proposed revisions, however, 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 remove the requirement that filing entities must file multiple hard copies of the report with the Commission.

**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*

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***“representative business.” Please include the source for your information/estimated impact.***

The Commission does not anticipate any adverse impact to the proposed revisions to Ohio Adm.Code Chapter 4901:5-3. The revisions should reduce the expense associated with compiling and filing the long-term forecast report since hard copies of the report are no longer required. The exact fee required of each filing entity is different for each utility, and the calculation for arriving at the fee is articulated in Ohio Adm.Code 4901:5-3-02.

**17. 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 filing process. Further, assessing a fee to defray the direct cost of any hearings associated with the reports and for the review of the report review process, is required under R.C. 4935.04(G).

**Regulatory Flexibility**

**18. 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 in Ohio Adm.Code Chapter 4901:5-3.

**19. 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.

**20. 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 Chapter 4901:5-3. 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 in order to provide the Commission Staff with potential revisions to the rules to minimize or eliminate any adverse effects on businesses. Small business may contact the Commission at any time

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and may submit written comments on the proposed revisions during the public comment period once the proposed revisions are filed in the case docket.

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