CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio

Regulation/Package Title: Natural Gas Alternative Rate Plan and Exemption Rules

Rule Number(s): 4901:1-19-01, 4901:1-19-02, 4901:1-19-03, 4901:1-19-04, 4901:1-19-05, 4901:1-19-06, 4901:1-19-07, 4901:1-19-08, 4901:1-19-09, 4901:1-19-10, 4901:1-19-11, 4901:1-19-12, 4901:1-19-13, 4901:1-19-14, and 4901:1-19-15

Date: July 2, 2012

Rule Type:

☒ **New** ☒ **5-Year Review**

☒ **Amended** ☒ **Rescinded**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.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.** Chapter 4901:1-19, Ohio Administrative Code, governs the filing, consideration, and implementation of applications made pursuant to Section 4929.04 of the Revised Code, to exempt any commodity sales

service or ancillary service of a natural gas company from provisions of Chapters 4905, 4909, and 4935, Revised Code; the filing and consideration of an application by a natural gas company to exit the merchant function; and, the filing and consideration of an application made pursuant to Section 4929.05, Revised Code, by a natural gas company to request approval of an alternative rate plan. The proposed changes to this chapter include non-substantive amendments and rescissions of rules, with the intent of separating the rules pertaining to exemption applications and alternative rate plan applications, in order to clarify the rules applicable to each type of application, streamline the rules, and remove unnecessary or outdated requirements. Further, the proposed changes include the addition of new rules to address definitions, filing requirements, consumer protection requirements, and procedures related to applications to exit the merchant function. Finally, the proposed changes include amendments to make the rules consistent with Amended Substitute House Bill 95, which became effective September 9, 2011.

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

   Section 4929.10, 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?** No.

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

   Not applicable. This chapter of rules implements a state requirement and is not required by the federal government.

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 purpose of this regulation is to provide a clear and consistent process for the filing of applications and review of applications made pursuant to Section 4929.04 of the Revised Code, applications to exempt any commodity sales service or ancillary service of natural gas companies from provisions of Chapters 4905, 4909, and 4935, Revised Code; applications by natural gas companies to exit the merchant function; and, applications made pursuant to Section 4929.05, Revised Code, by natural gas companies to request approval of an alternative rate plan.

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

   The PUCO will measure the success of this regulation by the Commission's ability to review and approve or disapprove an application for an exemption, to exit the merchant function, or for an alternative rate plan in a timely and thorough manner.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

   A draft of the proposed rules, as well as the Commission entry calling for comments were served on all regulated gas and natural gas companies, Ohio Consumers' Counsel, Ohio Gas Association, and Ohio Oil and Gas Association. Vectren Energy Delivery of Ohio, The East Ohio Gas Company d/b/a Dominion East Ohio, Duke Energy Ohio, Inc., Ohio Gas Marketers Group, Ohio Consumers' Counsel, Columbia Gas of Ohio, Inc., Ohio Partners for Affordable Energy, and Retail Energy Supply Association all contributed to the development of the draft regulation by submitting comments and/or reply comments regarding the proposed rules.

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

   The specific stakeholders listed above suggested revisions to Sections 4901:1-19-01, 4901:1-19-02, 4901:1-19-03, 4901:1-19-04, 4901:1-19-05, 4901:1-19-06, 4901:1-19-07, 4901:1-19-08, 4901:1-19-09, 4901:1-19-10, 4901:1-19-11, 4901:1-19-13, and 4901:1-19-15, O.A.C. The PUCO staff has recommended that the Commission adopt several of the suggested revisions to Sections 4901:1-19-01, 4901:1-19-03, 4901:1-19-05, 4901:1-19-06, 4901:1-19-07, 4901:1-19-08, 4901:1-19-09, 4901:1-19-10, and 4901:1-19-13, O.A.C. The PUCO staff recommended that the Commission not adopt the stakeholders' suggested revisions as to Sections 4901:1-19-02, 4901:1-19-04, 4901:1-19-11, 4901:1-19-12, and 4901:1-19-15, O.A.C.

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?**

   Numerous PUCO staff reports have demonstrated the benefits of moving from a fully-regulated natural gas commodity pricing structure to a more market-based approach. The PUCO staff analyzed historic market prices, historic regulated gas prices, and the results of market-based auctions. Such comparisons consistently show that market-based auctions provide a lower price to customers. The proposed rules provide a mechanism to propose and evaluate further iterations in the move to a totally market-based pricing structure for the natural gas commodity.

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 changes to this chapter clarify and streamline the rules and implement the changes set forth in Amended Substitute House Bill 95, which continue to provide natural gas companies with alternatives to traditional regulation. As the proposed rules provide a clear and consistent process for the filing of applications and review of applications, with options for alternatives to traditional regulation, the PUCO staff believes that further regulatory alternatives were unnecessary.

11. **Did the Agency specifically consider a performance-based regulation? Please explain.**
    No. The proposal is based upon the statutory requirements, under Section 4929.04 and 4929.05, Revised Code, and performance-based regulation is not provided for in the statute.

12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

    This chapter is unique in that the rules provide a procedure to allow natural gas utilities to pursue alternatives to traditional regulation. The rules, as they currently exist, allow natural gas utilities to propose alternatives that would result in a more market-based pricing structure. The proposed modifications to those rules are an additional step to deregulating natural gas commodity pricing by allowing natural gas marketers to propose alternative approaches that would allow for even more of a market-driven pricing structure for natural gas. We are thus assured that there is no duplication with any existing 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.**

    The PUCO staff conducts a review of each application filed pursuant to this rule to ensure that the application complies with the filing requirements in the rule. Further, the PUCO attorney examiner assigned to each application ensures that the process set forth in the rules for the Commission's review of the application is followed.

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 business community impacted by this chapter of rules includes natural gas companies, as defined in Section 4929.01(G), Revised Code.

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

The existing rules impact the business community by requiring employer time for compliance with filing requirements in certain situations. The proposed rules maintain a portion of that impact, requiring employer time for compliance with filing requirements; however, the proposed rules are a further step toward alternative regulation by providing further procedures through which natural gas companies can pursue options to traditional regulation.

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 po*pulation or for a "representative business." Please* include the source for your information/estimated impact.

The proposed rules place no additional compliance requirements beyond the existing rules, but, instead, provide more alternatives to traditional regulation. Therefore, according to the PUCO staff, the proposed rules have the potential to reduce the cost of supplying natural gas on both natural gas utilities and natural gas marketers.

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

The PUCO staff believes that the need for clear and consistent filing requirements and procedures for thorough review of applications filed pursuant to Sections 4929.04 and 4929.05, Revised Code, justifies the continued compliance requirements contained in the existing rules; but emphasizes that the proposed rules will not have an additional adverse impact on the identified business community.

Regulatory Flexibility

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

Yes, proposed Rule 4901:1-19-04, O.A.C., governing procedures for exemption applications filed pursuant to Section 4929.04, Revised Code, requires that the Commission conduct a hearing upon an application by a natural gas company with fifteen thousand or more customers. However, holding a hearing upon an application by a natural gas company with fewer than fifteen thousand customers is not required, but is within the Commission's discretion.

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?

There are no fines and penalties imposed under this chapter; therefore, Section 119.14, Revised Code, is inapplicable to this chapter.

18. What resources are available to assist small businesses with compliance of the regulation?

The rules, application forms, and other applicable regulations are accessible on the natural gas industry page on the PUCO website. Additionally, all applicants, large and small, are permitted to electronically file applications with the PUCO via the website. The PUCO also produces an apples-to-apples chart that enables small businesses that wish to shop for a marketer to compare the prices offered by various marketers making offers in that service area. This ensures that small business owners have access to full information.