

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of )  
Chapters 4901-1, Rules of Practice and )  
Procedure; 4901-3, Commission Meetings; ) Case No. 11-776-AU-ORD  
4901-9, Complaint Proceedings; and 4901:1-1, )  
Utility Tariffs and Underground Protection, of )  
the Ohio Administrative Code. )

ENTRY

The Commission finds:

- (1) Section 119.032, Revised Code, requires all state agencies, every five years, to conduct a review of each of its rules and to determine whether to continue its rules without change, amend its rules, or rescind its rules.
- (2) Section 119.032(C), Revised Code, requires that the Commission determine each of the following:
  - (a) Whether the rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted.
  - (b) Whether the rule needs amendment or rescission to give more flexibility at the local level.
  - (c) Whether the rule needs amendment to eliminate unnecessary paperwork.
  - (d) Whether the rule duplicates, overlaps with, or conflicts with other rules.
- (3) In addition, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly

burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

- (4) Following its review, Commission staff is recommending amendments to several of the rules in Chapter 4901-1, Ohio Administrative Code (O.A.C.). The following are included in the proposed amendments:
  - (a) Rule 4901-1-02 - In addition to paper filing of documents in cases, parties will have the option to fax or electronically file almost all documents in all cases. A party seeking to consolidate cases will have to file a motion to consolidate.
  - (b) Rules 4901-1-05 - Procedures are proposed for serving documents by fax or email.
  - (c) Rule 4901-1-07 - Procedures that allow additional time to act or respond depending upon the type of service are eliminated, but more strict requirements are proposed for providing notice of when an interlocutory appeal is filed (Rule 4901-1-17).
  - (d) Rule 4901-1-08 - Out-of-state attorneys will be required to comply with new Ohio Supreme Court registration requirements.
  - (e) Rule 4901-1-24 - Protective orders will be issued for 24 months in all cases instead of 18 months in some and 24 months in others.
  - (f) Rule 4901-1-25 - Alternative methods for obtaining and serving a subpoena are proposed.
  - (g) Rule 4901-1-27 - Rule is modified to allow only sworn testimony to be taken on the record at a local public hearing.
  - (h) Clarifying changes are made to several other rules to address issues that arose with regard to the rules since the last review.
- (5) Staff is recommending minor changes to the rules in Chapters 4901-3, 4901-9, and 4901:1-1, O.A.C.

- (6) In making the determinations required by Section 119.032(C), Revised Code, staff considered those matters set forth in the executive order and in Section 119.032(C), Revised Code, as well as the continued need for the rules, the nature of any complaints or comments received concerning these rules, and any relevant factors that have changed in the subject matter area affected by the rules.
- (7) Staff's proposed changes to rules in Chapters 4901-1, 4901-3, 4901-9, and 4901:1-1 O.A.C., are posted on the following website:

[www.puco.ohio.gov/puco/rules](http://www.puco.ohio.gov/puco/rules)

To minimize the expense of this proceeding, the Commission will only serve a paper copy of this entry. All interested persons are directed to download the proposed rules from the above website, or to contact the Commission's Docketing Division at (614) 466-4095, Monday through Friday between the hours of 7:30 a.m. and 5:30 p.m., if a paper copy of the proposed rules is required.

- (8) Those persons or entities interested in making comments should file their comments with the Commission's docketing division by April 1, 2011. Any person or entity interested in making reply comments should file such reply comments with the Commission's docketing division by April 30, 2011. Small business owners are encouraged to comment on any adverse impacts that the existing rules have or the proposed amendments will have on their businesses and to suggest alternatives for the Commission's consideration.
- (9) Comments and replies may be filed electronically provided that filers comply with new proposed Rule 4901-1-02. When filed, all comments filed may be viewed at:

<http://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=11-776>

Any person filing comments may request paper copies of the other comments by filing a notice of such request in this docket. All other commenters shall then serve a copy of the comments upon the requesting party via email or hard copy to the address provided.

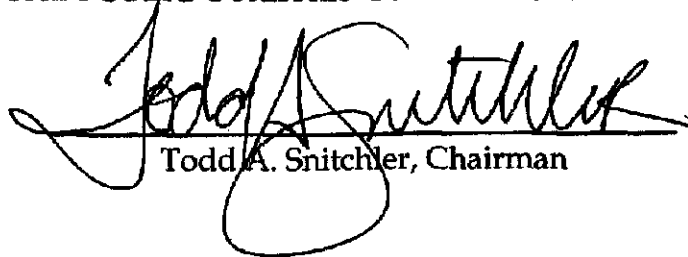
It is therefore,

ORDERED, That any interested person or entity wishing to file comments with the Commission regarding the proposed rule amendments do so no later than April 1, 2011. Reply comments may be filed by April 30, 2011. It is, further,

ORDERED, That notice of the issuance of this entry be served upon all public utilities subject to the jurisdiction of this Commission via the industry electronic mail listserves. It is, further,

ORDERED, That a copy of this entry be served upon Ohio Consumers' Counsel; Ohio Telecom Association; Ohio Trucking Association; Ohio Railroad Association; Ohio Gas Association; Ohio Electric Institute; Ohio Cable Television Association; Ohio Manufacturers Association; Ohio Municipal League; the cities of Cleveland, Columbus, Cincinnati, Dayton, and Toledo; the chair of the Ohio State Bar Association Public Utilities Committee; Ohio Environmental Council; Legal Aid Societies of Cleveland, Columbus, Cincinnati, Dayton, and Toledo; Ohio Chamber of Commerce; Industrial Energy Users-Ohio; Ohio Partners for Affordable Energy; and Ohio Gas Marketers Group.

THE PUBLIC UTILITIES COMMISSION OF OHIO




Todd A. Snitchler, Chairman

\_\_\_\_\_  
Paul A. Centolella

\_\_\_\_\_  
Valerie A. Lemmie



\_\_\_\_\_  
Steven D. Lesser

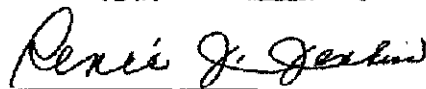


\_\_\_\_\_  
Cheryl L. Roberto

PJD/vrm

Entered in the Journal

MAR 02 2011



Renee J. Jenkins  
Secretary

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-01      **Definitions.**

As used in this chapter:

- (A) "Business day" means any day ~~that~~ ~~which~~ is not a Saturday, Sunday, or legal holiday.
- (B) "Commission" means the public utilities commission.
- (C) "Docketing information system" means the commission's system for electronically storing documents filed in a case. The internet address of the docketing information system is <http://dis.puc.state.oh.us>.
- ~~(C)~~(D) "Electric utility" means an electric light company as defined in section 4905.03 of the Revised Code and an electric services company as defined in section 4928.01 of the Revised Code.
- (E) "Electronic filing" (e-filing) means the submission of digitized electronic files to the commission's docketing information system.
- (F) "Electronic mail" (e-mail) means the exchange of digital messages across the internet or other computer network.
- ~~(D)~~(G) "Emergency rate proceeding" means any case involving an application for an emergency rate adjustment filed under section 4909.16 of the Revised Code.
- ~~(E)~~(H) "Facsimile transmission" (fax) means the transmission of a source document by a facsimile machine or other electronic device that encodes a document into signals and transmits and reconstructs the signals to print a duplicate of the source document at the commission's docketing division or a party's location.
- ~~(F)~~(I) "Gas utility" means a gas or natural gas company as defined in section 4905.03 of the Revised Code.
- ~~(G)~~(J) "General rate proceeding" means any case involving an application for an increase in rates filed under section 4909.18 of the Revised Code, a complaint or petition filed under section 4909.34 or 4909.35 of the Revised Code, or an investigation into the reasonableness of a public utility's rates initiated by the commission under section 4905.26 of the Revised Code.
- ~~(H)~~(K) "Long-term forecast report" has the meaning set forth in section 4935.04 of the Revised Code.
- ~~(I)~~(L) "Motor carrier proceeding" means any proceeding involving the regulation of one or more motor transportation companies or private motor carriers.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

~~(D)~~(M) "Motor transportation company" has the meaning set forth in section 4921.02 of the Revised Code.

~~(K)~~(N) "Person" means a person, firm, corporation, unincorporated association, government agency, the United States, the state of Ohio or one of its political subdivisions, or any other legally cognizable entity including any entity defined as a "person" in division (A) of section 4906.01 of the Revised Code.

~~(L)~~(O) "Presiding hearing officer" means the commissioner or attorney examiner presiding at a public hearing or prehearing conference.

~~(M)~~(P) "Private motor carrier" has the meaning set forth in section 4923.02 of the Revised Code.

~~(A)~~(Q) "Public utility" has the meaning set forth in section 4905.02 of the Revised Code.

~~(O)~~(R) "Purchased gas adjustment proceeding" means any proceeding heard under section 4905.302 of the Revised Code and rule 4901:1-14-08 of the Administrative Code.

~~(P)~~(S) "Railroad" has the meaning set forth in section 4907.02 of the Revised Code.

~~(Q)~~(T) "Reporting person" means any person required to file a long-term forecast report under section 4935.04 of the Revised Code.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-02

**Filing of pleadings and other documents.**

**(A) General provisions**

- (1) The official address of the commission's docketing division is: "Public Utilities Commission of Ohio, Docketing Division, 180 East Broad Street, Columbus, Ohio 43215-3793."
- (2) The internet address of the commission's docketing division (DIS) is <http://dis.puc.state.oh.us>.
- (3) The docketing division is open from seven-thirty a.m. to five-thirty p.m., Monday through Friday, except on state holidays.
- (4) Except as discussed in paragraph (D) of this rule, no document shall be considered filed with the commission until it is received and date-stamped by the docketing division. An application for an increase in rates filed under section 4909.18 of the Revised Code, a complaint concerning an ordinance rate filed by a public utility under section 4909.34 of the Revised Code, and a petition filed by a public utility under section 4909.35 of the Revised Code shall not be considered filed until the commission determines that the application, complaint, or petition complies with the requirements of rule 4901-7-01 of the Administrative Code.
- (5) The commission reserves the right to redact any material from a filed document prior to posting the document on the docketing information system if the commission finds the material to be confidential personal information, a trade secret, or inappropriate for posting to its website.
- (6) A party seeking to consolidate a new case with one or more previously filed cases, or with cases being concurrently filed, shall file a motion to consolidate the cases.

**(B) Paper filing**

- (1) All applications, complaints, reports, pleadings, or other documents to be paper filed with the commission shall be mailed or delivered to the commission's docketing division at the address shown in paragraph (A) of this rule. In addition to the original, any person paper filing a document for inclusion in a case file must submit the required number of copies of the document. Information regarding the number of copies required by the commission is available under procedural filing requirements on the docketing information system website, by calling the docketing division at 614-466-4095, or by visiting the docketing division at the offices of the commission. As an alternative, a filer may submit twenty copies of the filing. Failure to submit the

# \*\*\* DRAFT – NOT FOR FILING \*\*\*

required copies may result in the document being stricken from the case file. An attorney examiner may require a party to provide additional paper copies of any filed document.

- (2) Unless a request for a protective order is made in accordance with rule 4901-1-24 of the Administrative Code, concurrent with or prior to receipt of the document by the docketing division, any document filed with the docketing division will be made publicly available on the docketing information system.

## (C) Facsimile transmission (fax) filing

A person may file documents with the commission via fax under the following conditions:

- (1) The following documents may not be delivered via fax:

- (a) The application, complaint, or other initial pleading that is responsible for the opening of a case.
- (b) Any document for which protective or confidential treatment is requested under rule 4901-1-24 of the Administrative Code.
- (c) A notice of appeal of a commission order to the Ohio supreme court filed pursuant to section 4903.13 of the Revised Code or service of that notice upon the chairman or a commissioner.

- (2) All documents sent via fax must include a transmission sheet that states the case number, case title, date of transmission, number of pages, brief description of the document, and the name and telephone number of the sender.

- (3) The originator of a fax document must contact the commission's docketing division at (614) 466-4095 prior to sending a fax. A person must notify the docketing division of its intent to send a document by fax by five p.m. on the date the document is to be sent. The person must be prepared to commence transmission at the time the docketing division is notified.

- (4) All documents must be sent to the facsimile machine in the commission's docketing division at (614) 466-0313. If that machine is inoperable, directions for alternative arrangements will be given when the originator calls to commence a fax. Unrequested documents sent to any of the commission's other facsimile machines will not be relayed to the docketing division by commission employees.

- (5) Excluding the transmission sheet, all documents transmitted by fax must be thirty pages or less.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (6) All documents must be legible when received. Illegible documents received via fax will not be filed. If the document is illegible, docketing division will attempt to contact the sender to resolve the problem. The person making a fax filing shall bear all risk of transmission, including all risk of equipment, electric, or telephonic failure or equipment overload or backup. Any document sent by fax that is received in whole or in part after five-thirty p.m. will be considered filed the next business day.
- (7) No document received via fax will be given confidential treatment by the commission.
- (8) If a document is delivered via fax, the party must make arrangements for the original signed document and the required number of copies of the pleading to be delivered to the commission no later than the next business day. Failure to comply with this requirement may result in the document being stricken from the case file.
- (9) Because a document sent to the commission by fax will be date-stamped, and thus filed, the day it is received by the docketing division, the originator of the document shall serve copies of the document upon other parties to the case no later than the date of filing.

(D) Electronic filing (e-file)

A person may e-file documents with the commission under the following conditions:

- (1) All filings must comply with the electronic filing manual and technical requirements located under electronic filing information and links at the docketing information system website.
- (2) The following documents shall not be delivered via e-filing:

  - (a) Any document for which protective or confidential treatment is requested under rule 4901-1-24 of this chapter.
  - (b) A notice of appeal of a commission order to the Ohio supreme court filed pursuant to section 4903.13 of the Revised Code or service of that notice upon the chairman or a commissioner
- (3) A public utility may electronically file an application to increase rates pursuant to section 4909.18 of the Revised Code except that a public utility filing an application pursuant to chapter II of the standard filing requirements in rule 4901-7-01 of the Administrative Code shall submit one complete paper copy of the application to the commission's docketing division on the same day that an e-filing of the application is made and shall contact the rate case manager of the commission's utilities department prior to the e-filing of the application to

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

determine the number of paper copies of the application that will be required by the commission's staff.

- (4) Provided that a document is not subsequently rejected by the docketing division, an e-filed document will be considered filed as of the date and time recorded on the confirmation page that is electronically inserted as the last page of the filing upon receipt by the commission, except that any e-filed document received after five-thirty p.m. shall be considered filed at seven-thirty a.m. the next business day. The docketing division may reject any filing that does not comply with the electronic filing manual and technical requirements, is unreadable, includes anything deemed inappropriate for inclusion on the commission's web site, or is submitted for filing in a closed or archived case. If an e-filing is rejected by the docketing division, an e-mail message will be sent to inform the filer of the rejection and the reason for the rejection.
- (5) If an e-filing is accepted, notice of the filing will be sent via electronic mail (e-mail) to all persons who have electronically subscribed to the case, including the filer. This e-mail notice will constitute service of the e-filed document upon those persons electronically subscribed to the case. Upon receiving the e-mail notice that the e-filed document has been accepted by the commission's docketing division, the filer shall serve copies of the document in accordance with rule 4901-1-05 of this chapter upon parties to the case who are not electronically subscribed to the case.
- (6) The commission's docketing division closes at five-thirty p.m. To allow time for same-day review and acceptance of e-filings, persons making e-filings are encouraged to make their filings by no later than four p.m.
- (7) The person making an e-filing shall bear all risk of transmitting a document including, but not limited to, all risk of equipment, electric, or internet failure. Unless otherwise prohibited by law (e.g., objections to a staff report filed pursuant to section 4909.19 of the Revised Code, application for rehearing filed pursuant to section 4903.10 of the Revised Code, or notice of appeal filed pursuant to section 4903.11 of the Revised Code), a person may file a motion requesting that a document be considered timely filed should an equipment failure or electrical outage or other similar event occur.
- (8) E-filed documents must be complete documents. Appendices or attachments to an e-filed document may not be filed by other methods without prior approval.
- (9) Except as otherwise provided by this rule or directed by an attorney examiner, a person filing a document electronically need not submit any paper copy of an e-filed document to the commission's docketing division.

## \*\*\* DRAFT – NOT FOR FILING \*\*\*

(E) The commission's DIS designates the status of each case under the case number and case name on the docket card. As discussed below, attempts to make filings in certain designated cases will be denied.

- (1) An open case is an active case in which filings may be made.
- (2) A closed case is one in which no further filings may be made without the consent of the commission's legal department. When a case is closed, any person seeking to make a filing in a case must first contact the attorney examiner assigned to the case or the commission's legal director. If the attorney examiner or legal director agrees to permit the filing, the docketing division will be notified to reopen the case. If an additional filing is permitted, the case status will be changed to open and service of the filing must be made by the filer upon the parties to the case in accordance with rule 4901-1-05 of this chapter.
- (3) An archived case is a closed case that will not be reopened and in which no further filings will be permitted. If additional activity is thereafter required on any matter addressed in an archived case, the commission will open a new case and designate the new case as a related case. DIS displays for each case a related cases tab to provide a link to related cases.
- (4) A reserved case is one set aside for future use. No filings should be made in the case until the party for who it was reserved makes an initial filing.
- (5) A void case is one that was opened in error and no documents may be filed in it.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-03      **Form of pleadings and other papers.**

- (A) All pleadings or other papers to be filed with the commission shall contain a caption or cover sheet setting forth the name of the commission, the title of the proceeding, and the nature of the pleading or paper. All pleadings or papers filed subsequently to the original filing or commission entry initiating the proceeding shall contain the case name and docket number of the proceeding. Such pleadings or other papers shall also contain the name, address, and telephone number of the person filing the paper, or the name, address, ~~and telephone number, and attorney registration number~~ of his or her attorney, if such person is represented by counsel. The party making a filing should include a ~~facsimile transmission~~ fax number and/or an ~~electronic message (e-mail) address~~ if the party is willing to accept service of pleadings by fax - facsimile transmission or e-mail. An attorney or party who is willing to accept service of filed documents by fax shall include the following phrase next to or below its fax number: (willing to accept service by fax). An attorney or party who is willing to accept service of filed documents by e-mail shall include the following phrase next to or below its e-mail address: (willing to accept service by e-mail).
- (B) All pleadings or other papers to be filed with the commission shall be printed, typewritten, or legibly handwritten on eight and one-half by eleven-inch paper. This requirement does not apply to:
- (1) Original documents to be offered as exhibits.
  - (2) Copies of original documents to be offered as exhibits, where compliance with this requirement would be impracticable.
  - (3) Forms approved or supplied by the commission.
- (C) Nothing in paragraph (B) of this rule prohibits the filing of photocopies of documents that ~~which~~ otherwise meet the requirements of that paragraph.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-04      **Signing of pleadings.**

Except for e-filed documents, all All-applications, complaints, or other pleadings filed by any person shall be signed by that person or by his or her attorney, but need not be verified unless specifically required by law or by the commission. Persons who e-file documents shall use "/s/" followed by their name to indicate a signature where applicable.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-05      **Service of pleadings and other papers.**

(A) Unless otherwise ordered by the commission, the legal director, the deputy legal director, or an attorney examiner, all pleadings or papers filed with the commission subsequent to the original filing or commission entry initiating the proceeding shall be served upon all parties, no later than the date of filing. Such pleadings or other papers shall contain a certificate of service. The certificate of service shall state the date and manner of service, identify the names of the persons served, and be signed by the attorney or the party who files the document. The certificate of service for a document served by mail or personal service shall also include the address of the person served. The certificate of service for a document served by ~~facsimile-transmission~~ fax shall also include the fax facsimile-number of the person to whom the document was transmitted. The certificate of service for a document served by ~~electronic message~~ e-mail shall also include the e-mail address of the person to whom the document was sent.

(B) If an e-filing is accepted by the docketing division, an e-mail notice of the filing will be sent by the commission's e-filing system to all persons who have electronically subscribed to the case. The e-mail notice will constitute service of the document upon the recipient. Upon receiving notice that an e-filing has been accepted by the docketing division, the filer shall serve copies of the document in accordance with this rule upon all other parties to the case who are not served via the e-mail notice. A person making an e-filing shall list in the certificate of service included with the e-filing the parties who will be served by e-mail notice by the commission's e-filing system and the parties who will be served by traditional methods by the person making the filing. The certificate of service for an e-filed document shall include the following notice: The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties: (list the names of the parties referenced on the service list of the docket card who have electronically subscribed to the case).

~~(B)~~(C) If a party has entered an appearance through an attorney, service of pleadings or other papers shall be made upon the attorney instead of the party. If the party is represented by more than one attorney, service need be made only upon the "counsel of record" designated under rule 4901-1-08 of the Administrative Code. ~~If a spokesperson has been designated under rule 4901-1-08 of the Administrative Code, service upon the spokesperson constitutes service upon all of the complainants or petitioners.~~

~~(C)~~(D) Service upon an attorney or party may be personal or, by mail, by ~~facsimile-transmission~~ fax, or by ~~electronic message~~ (e-mail) under the following conditions:

(1) Personal service is complete by delivery of the copy to the attorney or to a responsible person at the office of the attorney. Personal service to a party not

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

represented by an attorney is complete by delivery to the party or to a responsible person at the address provided by the party in its pleadings.

- (2) Service by mail to an attorney or party is complete by mailing a copy to his or her last known address. If the attorney or party to be served has previously filed and served one or more pleadings or ~~other papers~~ documents in the proceeding, the term "last known address" means the address set forth in the most recent such pleading or ~~other paper~~ document.
- (3) Service of a document to an attorney or party by ~~facsimile transmission~~ fax may be made only if the person to be served has consented to receive service of the document by ~~facsimile transmission~~ fax. Service by ~~facsimile transmission~~ fax is complete upon the sender receiving a confirmation generated by the sender's ~~facsimile~~ fax equipment that the ~~facsimile transmission~~ fax has been sent. The sender shall retain the confirmation as proof of service until the final disposition of the case ~~and through any appeal period~~.
- (4) Service of a document by ~~e-mail~~ electronic message to an attorney or party may be made only if the person to be served has consented to receive service of the document by ~~e-mail~~ electronic message. Service by ~~e-mail~~ electronic message is complete upon the sender receiving a confirmation generated by the sender's computer that the ~~e-mail~~ electronic message has been sent. The sender shall retain the confirmation as proof of service until the final disposition of the case ~~and through any appeal period~~.
- (D)(E) For purposes of this rule, the term "party" includes all persons who have filed motions to intervene ~~that which~~ are pending at the time a pleading or ~~document~~ paper is to be served, provided that the person serving the pleading or ~~other paper~~ document has been served with a copy of the motion to intervene.
- (F) The commission or the legal director, deputy legal director, or attorney examiner may order in certain cases that pleadings or documents be served in a specific manner to expedite the exchange of information.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-06      **Amendments.**

Unless otherwise provided by law, the commission, the legal director, the deputy legal director, or an attorney examiner may, upon their own motion or upon motion of any party for good cause shown, authorize the amendment of any application, complaint, long-term forecast report, or other pleading filed with the commission.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-07      Computation of time.

Unless otherwise provided by law or by the commission:

- (A) In computing any period of time prescribed or allowed by the commission, the date of the event from which the period of time begins to run shall not be included. Going forward, the ~~The~~ last day of the period so computed shall be included, unless it falls on a Saturday, Sunday, or legal holiday, in which case the period of time shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. Going backwards (e.g., expert testimony shall be filed five days before the start of the hearing), the last day of the period so computed shall be included, unless it falls on a Saturday, Sunday, or holiday, in which case the period of time shall move forward (e.g., toward the start of the hearing) to a day that is not a Saturday, Sunday, or legal holiday. Unless otherwise noted, time is measured in calendar, not business, days.
- ~~(B) Whenever a party is permitted or required to take some action within a prescribed period of time after a pleading or other paper is served upon him or her and service is made by mail, three days shall be added to the prescribed period of time.~~
- ~~(C) Whenever a party is permitted or required to take some action within a prescribed period of time after a pleading or other paper is served upon him or her and service is made by personal, facsimile transmission, or electronic message (e-mail) service and is completed after five thirty p.m., one day shall be added to the prescribed period of time. The applicable time zone is the time zone where the recipient is located, but it may not be earlier than the actual close of the commission offices.~~
- ~~(D)~~(B) If the commission office is closed to the public for the entire day that constitutes the last day for doing an act or closes before its usual closing time on that day, the act may be performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-08      **Practice before the commission, representation of corporations, and designation of counsel of record.**

- (A) Except as otherwise provided in section 4901.14 of the Revised Code and paragraphs (B), (C), (D), and ~~(DE)~~ of this rule, each party not appearing in propria persona shall be represented by an attorney-at-law authorized to practice before the courts of this state. Corporations must be represented by an attorney-at-law.
- (B) ~~Persons authorized to practice law in other jurisdictions may be permitted to appear before the commission in a particular proceeding, upon motion of an attorney of this state. An out-of-state attorney may seek permission to appear pro hac vice before the commission in any activity of a case upon the filing of a motion. The motion shall include all the information and documents required by paragraph (A)(6) of section 2 of rule XII of the Rules for the Government of the Bar of Ohio.~~
- (C) Certified legal interns may appear before the commission under the direction of a supervising attorney, in accordance with rule II of the "Supreme Court Rules for the Government of the Bar" of Ohio. No legal intern shall participate in a commission hearing in the absence of the supervising attorney without the written consent of the supervising attorney and the approval of the commission or the presiding hearing officer.
- (D) If a prehearing conference is scheduled to discuss settlement of the issues in a complaint case, any person, except an out-of-state attorney not in compliance with paragraph (B) of this rule, with the requisite authority to settle the issues in the case may represent a party at the conference.
- ~~(E) In cases involving complaints filed under section 4905.26 of the Revised Code, where there are numerous complainants who are not represented by counsel and whose interests are substantially similar, the commission, the legal director, the deputy legal director, or the attorney examiner assigned to the case may permit or require the designation of a spokesperson who shall examine witnesses, enter objections, and file all pleadings or papers on behalf of the complainants or petitioners.~~
- (F)~~(E)~~ Where a party is represented by more than one attorney, one of the attorneys shall be designated as the "counsel of record," who shall have principal responsibility for the party's participation in the proceeding. The designation "counsel of record" shall appear following the name of that attorney on all pleadings or papers submitted on behalf of the party.
- ~~(G)~~~~(F)~~ No attorney shall withdraw from a commission proceeding without prior written notice to the commission and serving a copy of the notice upon the parties to the proceeding.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-09      **Ex parte discussion of cases.**

After a case has been assigned a formal docket number, no commissioner or attorney examiner assigned to the case shall discuss the merits of the case with any party to the proceeding or a representative of a party, unless all parties have been notified and given the opportunity to be present or to participate by telephone, or a full disclosure of the communication insofar as it pertains to the subject matter of the case is made. When an ex parte discussion occurs, a representative of the party or parties participating in the discussion shall prepare a document identifying all the participants and the location of the discussion, and fully disclosing the communications made. Within two business days of the occurrence of the ex parte discussion, the document shall be provided to the commission's legal director or his designee or to an attorney examiner present at the discussion for review. Upon completion of the review, the final document shall be filed with the commission's docketing division within two business days and the filer shall serve a copy upon the parties to the case and to each participant in the discussion. The document filed and served shall include the following language: Any participant in the discussion who believes that any representation made in this document is inaccurate or that the communications made during the discussion have not been fully disclosed shall prepare a letter explaining the participant's disagreement with the document and shall file the letter with the commission and serve the letter upon all parties and participants in the discussion within two business days of receipt of this document.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-1-10      Parties.**

(A) The parties to a commission proceeding shall include:

- (1) Any person who files an application, petition, long-term forecast report, or complaint.
- (2) Any public utility, railroad, or private motor carrier against whom a complaint is filed.
- (3) Any public utility, railroad, or private motor carrier whose rates, charges, practices, policies, or actions are designated as the subject of a commission investigation.
- (4) Any person granted leave to intervene under rule 4901-1-11 of the Administrative Code.
- (5) Any municipal corporation which has enacted an ordinance which is subsequently challenged in a complaint filed under section 4909.34 of the Revised Code.
- (6) Any person cited for failure to maintain liability insurance as required by section 4921.11 or 4923.08 of the Revised Code.
- (7) Any carrier, shipper, or driver who files a request for an administrative hearing in a transportation civil forfeiture case.

~~(7)~~(8) Any other person expressly made a party by order of the commission.

(B) If any public utility, railroad, or private motor carrier referred to in paragraph (A)(2) or (A)(3) of this rule is operated by a receiver or trustee, the receiver or trustee shall also be made a party.

(C) Except for purposes of rules 4901-1-02, 4901-1-03, 4901-1-04, 4901-1-05, 4901-1-06, 4901-1-07, 4901-1-12, 4901-1-13, 4901-1-15, 4901-1-18, 4901-1-26, 4901-1-30, 4901-1-31, 4901-1-32, 4901-1-33, and 4901-1-34 of the Administrative Code, the commission staff shall not be considered a party to any proceeding.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-1-11 Intervention.**

- (A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:
- (1) A statute of this state or the United States confers a right to intervene.
  - (2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.
- (B) In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner shall consider:
- (1) *The nature and extent of the prospective intervenor's interest.*
  - (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.
  - (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
  - (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
  - (5) The extent to which the person's interest is represented by existing parties.
- (C) Any person desiring to intervene in a proceeding shall file a motion to intervene with the commission, and shall serve it upon all parties in accordance with rule 4901-1-05 of the Administrative Code. The motion shall be accompanied by a memorandum in support, setting forth the person's interest in the proceeding. The same procedure shall be followed where a statute of this state or the United States confers a right to intervene.
- (D) Unless otherwise provided by law, the commission, the legal director, the deputy legal director, or the attorney examiner may:
- (1) Grant limited intervention, which permits a person to participate with respect to one or more specific issues, if the person has no real and substantial interest with respect to the remaining issues or the person's interest with respect to the remaining issues is adequately represented by existing parties.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (2) Require parties with substantially similar interests to consolidate their examination of witnesses or presentation of testimony.
- (E) A motion to intervene will not be considered timely if it is filed later than five days prior to the scheduled date of hearing or any specific deadline established by order of the commission for purposes of a particular proceeding.
- (F) A motion to intervene which is not timely will be granted only under extraordinary circumstances.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-12      **Motions.**

- (A) All motions, unless made at a public hearing or transcribed prehearing conference, or unless otherwise ordered for good cause shown, shall be in writing and shall be accompanied by a memorandum in support. The memorandum in support shall contain a brief statement of the grounds for the motion and citations of any authorities relied upon.
- (B) Except as otherwise provided in paragraphs (C) and (F) of this rule:
  - (1) Any party may file a memorandum contra within fifteen days after the service of a motion, or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires.
  - (2) Any party may file a reply memorandum within seven days after the service of a memorandum contra, or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires.
- (C) Any motion may include a specific request for an expedited ruling. The grounds for such a request shall be set forth in the memorandum in support. If the motion requests an extension of time to file pleadings or other papers of five days or less, an immediate ruling may be issued without the filing of memoranda. In all other situations, the party requesting an expedited ruling may first contact all other parties to determine whether any party objects to the issuance of such a ruling without the filing of memoranda. If the moving party certifies that no party objects to the issuance of such a ruling, an immediate ruling may be issued. If any party objects to the issuance of such a ruling, or if the moving party fails to certify that no party has any objection, any party may file a memorandum contra within seven days after the service of the motion, or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires. No reply memoranda shall be filed in such cases unless specifically requested by the commission, the legal director, the deputy legal director, or the attorney examiner.
- (D) All written motions and memoranda shall be filed with the commission and served upon all parties in accordance with rule 4901-1-05 of the Administrative Code.
- (E) For purposes of this rule, the term "party" includes all persons who have filed motions to intervene which are pending at the time a motion or memorandum is to be filed or served.
- (F) Notwithstanding paragraphs (B) and (C) of this rule, the commission, the legal director, the deputy legal director, or the attorney examiner may, upon their own motion, issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (G) The presiding hearing officer may direct that any motion made at a public hearing or transcribed prehearing conference be reduced to writing and filed and served in accordance with this rule.
- (H) A motion for a hearing on a long-term forecast report under division (D)(3) of section 4935.04 of the Revised Code shall be filed within forty-five days of the filing of the report.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-13      **Continuances and extensions of time.**

- (A) Except as otherwise provided by law, and notwithstanding any other provision in this chapter, continuances of public hearings and extensions of time to file pleadings or other papers may be granted upon motion of any party for good cause shown, or upon motion of the commission, the legal director, the deputy legal director, or an attorney examiner.
- (B) A motion for an extension of time to file a document must be timely filed so as to permit the commission, legal director, deputy legal director, or attorney examiner sufficient time to consider the request and to make a ruling prior to the established filing date. If two or more parties have similar documents due the same day and a party intends to seek an extension of the filing date, the moving party must file its motion for an extension sufficiently in advance of the existing filing date so that other parties who might be disadvantaged by submitting their filing prior to the movant submitting its filing will not be disadvantaged. If two or more parties have similar documents due the same day and the motion for an extension is filed fewer than five business days before the document is scheduled to be filed, then the moving party, in addition to regular service of the motion for an extension, must provide a brief summary of the request to all other parties orally, by facsimile transmission, or by electronic message by no later than five-thirty p.m. on the day the motion is filed.
- (C) A copy of any written ruling granting or denying a request for a continuance or extension of time shall be served upon all parties to the proceeding.
- (D) Nothing in this rule restricts or limits the authority of the presiding hearing officer to issue oral rulings during public hearings or transcribed prehearing conferences.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-1-14      Procedural rulings.**

The legal director, the deputy legal director, or an attorney examiner may rule, in writing, upon any procedural motion or other procedural matter. A copy of any such ruling shall be served upon all parties to the proceeding.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-1-15 Interlocutory appeals.**

- (A) Any party who is adversely affected thereby may take an immediate interlocutory appeal to the commission from any ruling issued under rule 4901-1-14 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference that does any of the following:
- (1) Grants a motion to compel discovery or denies a motion for a protective order.
  - (2) Denies a motion to intervene, terminates a party's right to participate in a proceeding, or requires intervenors to consolidate their examination of witnesses or presentation of testimony.
  - (3) Refuses to quash a subpoena.
  - (4) Requires the production of documents or testimony over an objection based on privilege.
- (B) Except as provided in paragraph (A) of this rule, no party may take an interlocutory appeal from any ruling issued under rule 4901-1-14 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference unless the appeal is certified to the commission by the legal director, deputy legal director, attorney examiner, or presiding hearing officer. The legal director, deputy legal director, attorney examiner, or presiding hearing officer shall not certify such an appeal unless he or she finds that the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure from past precedent and an immediate determination by the commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the commission ultimately reverse the ruling in question.
- (C) Any party wishing to take an interlocutory appeal from any ruling must file an application for review with the commission within five days after the ruling is issued. An extension of time for the filing of an interlocutory appeal may be granted only under extraordinary circumstances. The application for review shall set forth the basis of the appeal and citations of any authorities relied upon. A copy of the ruling or the portion of the record that ~~which~~ contains the ruling shall be attached to the application for review. If the record is unavailable, the application for review must set forth the date the ruling was issued and must describe the ruling with reasonable particularity.
- (D) Any party intending to file an interlocutory appeal on the day before a day on which commission offices are closed shall notify all other parties of the intent to file an interlocutory appeal by three p.m. on the day of filing. Notice may be personal or by phone or email. The party filing the interlocutory appeal shall serve, upon request, a copy of the appeal by e-mail or fax. Unless otherwise ordered by the commission,

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

any party may file a memorandum contra within five days after the filing of an -  
interlocutory appeal~~application for review~~.

(E) Upon consideration of an interlocutory appeal, the commission may, in its discretion either:

(1) Affirm, reverse, or modify the ruling.

(2) Dismiss the appeal, if the commission is of the opinion that the issues presented are moot, the party taking the appeal lacks the requisite standing to raise the issues presented or has failed to show prejudice as a result of the ruling in question, or the issues presented should be deferred and raised at some later point in the proceeding.

(F) Any party that is adversely affected by a ruling issued under rule 4901-1-14 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference and that (1) elects not to take an interlocutory appeal from the ruling or (2) files an interlocutory appeal that is not certified by the attorney examiner may still raise the propriety of that ruling as an issue for the commission's consideration by discussing the matter as a distinct issue in its initial brief or in any other appropriate filing prior to the issuance of the commission's opinion and order or finding and order in the case.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-1-16      General provisions and scope of discovery.**

- (A) The purpose of rules 4901-1-16 to 4901-1-24 of the Administrative Code is to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings. These rules are also intended to minimize commission intervention in the discovery process.
- (B) Except as otherwise provided in paragraphs (G) and (I) of this rule, any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained through interrogatories, requests for the production of documents and things or permission to enter upon land or other property, depositions, and requests for admission. The frequency of using these discovery methods is not limited unless the commission orders otherwise under rule 4901-1-24 of the Administrative Code.
- (C) Any party may, through interrogatories, require any other party to identify each expert witness expected to testify at the hearing and to state the subject matter on which the expert is expected to testify. Thereafter, any party may discover from the expert or other party facts or data known or opinions held by the expert which are relevant to the stated subject matter. A party who has retained or specially employed an expert may, with the approval of the commission, require the party conducting discovery to pay the expert a reasonable fee for the time spent responding to discovery requests.
- (D) Discovery responses which are complete when made need not be supplemented with subsequently acquired information except in the following situations:
  - (1) The response identified each expert witness expected to testify at the hearing or stated the subject matter upon which each expert was expected to testify.
  - (2) The responding party later learned that the response was incorrect or otherwise materially deficient.
  - (3) The response indicated that the information sought was unknown or nonexistent and such information subsequently became known or existent.
  - (4) An order of the commission or agreement of the parties provides for the supplementation of responses.
  - (5) Requests for the supplementation of responses are submitted prior to the commencement of the hearing.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (6) *The response addressed the identity and location of persons having knowledge of discoverable matters.*
- (E) The supplementation of responses required under paragraphs (D)(1) to (D)(3) and (D)(6) of this rule shall be provided within five business days of discovery of the new information.
- (F) Nothing in rules 4901-1-16 to 4901-1-24 of the Administrative Code precludes parties from conducting informal discovery by mutually agreeable methods or by stipulation.
- (G) A discovery request under rules 4901-1-19 to 4901-1-22 of the Administrative Code may not seek information from any party which is available in prefiled testimony, prehearing data submissions, or other documents which that party has filed with the commission in the pending proceeding. Before serving any discovery request, a party must first make a reasonable effort to determine whether the information sought is available from such sources.
- (H) For purposes of rules 4901-1-16 to 4901-1-24 of the Administrative Code, the term "party" includes any person who has filed a motion to intervene which is pending at the time a discovery request or motion is to be served or filed.
- (I) Rules 4901-1-16 to 4901-1-24 of the Administrative Code do not apply to the commission staff.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-1-17      Time periods for discovery.**

- (A) Except as provided in paragraph (E) of this rule, discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible. Unless otherwise ordered for good cause shown, discovery must be completed prior to the commencement of the hearing.
- (B) In general rate proceedings, no party may serve a discovery request later than fourteen days after the filing and mailing of the staff report of investigation required by section 4909.19 of the Revised Code.
- (C) In emergency rate proceedings, no party may serve a discovery request later than twenty days prior to the commencement of the hearing.
- (D) In purchased gas adjustment proceedings, no party may serve a discovery request later than thirty days after the filing of the audit report required by rule 4901:1-14-07 of the Administrative Code.
- (E) In long-term forecast report proceedings, no party may serve a discovery request later than twenty-five days prior to the commencement of the evidentiary hearing. Discovery may begin in long-term forecast report proceedings:
  - (1) Immediately after the filing with the commission of a long-term forecast report which contains a substantial change from the preceding report as defined by section 4935.04 of the Revised Code.
  - (2) Immediately after the filing with the commission of a long-term forecast report when the most recent hearing on a forecast report by the reporting person has been more than four years prior.
  - (3) Immediately after good cause to conduct a hearing on a long-term forecast report has been determined by order of the commission.
  - (4) Immediately after a reporting person files its first long-term forecast report under section 4935.04 of the Revised Code.
- (F) The restrictions set forth in paragraphs (B), (C), (D), and (E) of this rule do not apply to requests for the supplementation of prior responses served under paragraph (D)(5) of rule 4901-1-16 of the Administrative Code.
- (G) Notwithstanding the provisions of paragraphs (B), (C), (D), and (E) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner may shorten or enlarge the time periods for discovery, upon their own motion or upon motion of any party for good cause shown.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-1-18      Filing and service of discovery requests and responses.**

Except as otherwise provided in rules 4901-1-23 and 4901-1-24 of the Administrative Code, and unless otherwise ordered for good cause shown, discovery requests and responses shall be served upon all parties but shall not be filed with the commission. Discovery requests and responses shall be served upon staff counsel if staff is participating in the proceeding. For purposes of this rule, the term "response" includes written responses or objections to interrogatories served under rule 4901-1-19 of the Administrative Code, written responses or objections to requests for the production of documents or tangible things or requests for permission to enter upon land or other property served under rule 4901-1-20 of the Administrative Code, and written responses or objections to requests for admission served under rule 4901-1-22 of the Administrative Code. It does not include any documents or tangible things produced for inspection or copying under rule 4901-1-20 of the Administrative Code.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-1-19 Interrogatories and response time.**

- (A) Any party may serve upon any other party written interrogatories, to be answered by the party served. If the party served is a corporation, partnership, association, government agency, or municipal corporation, it shall designate one or more of its officers, agents, or employees to answer the interrogatories, who shall furnish such information as is available to the party. Each interrogatory shall be answered separately and fully, in writing and under oath, unless it is objected to, in which case the reason for the objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and the objections shall be signed by the attorney or other person making them. The party upon whom the interrogatories have been served shall serve a copy of the answers or objections upon the party submitting the interrogatories and all other parties within twenty days after the service thereof, or within such shorter or longer time as the commission, the legal director, the deputy legal director, or an attorney examiner may allow. The party submitting the interrogatories may move for an order under rule 4901-1-23 of the Administrative Code with respect to any objection or other failure to answer an interrogatory.
- (B) Subject to the scope of discovery set forth in rule 4901-1-16 of the Administrative Code, interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the interrogatories are served. An interrogatory which is otherwise proper is not objectionable merely because it calls for an opinion, contention, or legal conclusion, but the commission, the legal director, the deputy legal director, or the attorney examiner may direct that such interrogatory need not be answered until certain designated discovery has been completed, or until some other designated time. The answers to interrogatories may be used to the extent permitted by the rules of evidence, but such answers are not conclusive and may be rebutted or explained by other evidence.
- (C) Where the answer to an interrogatory may be derived or ascertained from public documents on file in this state, or from documents which the party served with the interrogatory has furnished to the party submitting the interrogatory within the preceding twelve months, it is a sufficient answer to such interrogatory to specify the title of the document, the location of the document or the circumstances under which it was furnished to the party submitting the interrogatory, and the page or pages from which the answer may be derived or ascertained.
- (D) Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, and the burden of deriving the answer is substantially the same for the party submitting the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party submitting the interrogatory a reasonable opportunity to examine, audit, or inspect such records.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-1-20      Production of documents and things; entry upon land or other property.**

- (A) Subject to the scope of discovery set forth in rule 4901-1-16 of the Administrative Code, any party may serve upon any other party a written request to:
- (1) Produce and permit the party making the request, or someone acting on his or her behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, or data compilations, which are in the possession, custody, or control of the party upon whom the request is served.
  - (2) Produce for inspection, copying, sampling, or testing any tangible things which are in the possession, control, or custody of the party upon whom the request is served.
  - (3) Permit entry upon designated land or other property for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.
- (B) The request shall set forth the items to be inspected either by individual item or by category, and shall describe each category with reasonable particularity. The request shall also specify a reasonable time, place, and manner for conducting the inspection and performing the related acts.
- (C) The party upon whom the request is served shall serve a written response within twenty days after the service of the request, or within such shorter or longer time as the commission, the legal director, the deputy legal director, or an attorney examiner may allow. The response shall state, with respect to each item or category, that the inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reason for the objection shall be stated. If an objection is made to part of an item or category, that part shall be specified. The party submitting the request may move for an order under rule 4901-1-23 of the Administrative Code with respect to any objection or other failure to respond to a request or any part thereof, or any failure to permit inspection as requested.
- (D) Where a request calls for the production of a public document on file in this state, or a document which the party upon whom the request is served has furnished to the party submitting the request within the preceding twelve months, it is a sufficient response to such request to specify the location of the document or the circumstances under which the document was furnished to the party submitting the request.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-21      **Depositions.**

- (A) Any party to a pending commission proceeding may take the testimony of any other party or person, other than a member of the commission staff, by deposition upon oral examination with respect to any matter within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code. The attendance of witnesses and production of documents may be compelled by subpoena as provided in rule 4901-1-25 of the Administrative Code.
- (B) Any party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to the deponent, to all parties, and to the commission. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient for identification. If a subpoena duces tecum is to be served upon the person to be examined, a designation of the materials to be produced thereunder shall be attached to or included in the notice. Notice to the commission is made by filing a copy of the notice of deposition provided to the person to be deposed or a copy of the subpoena in the case file. Absent unusual circumstances, depositions should be completed prior to the commencement of the hearing.
- (C) If any party shows that he or she was unable with the exercise of diligence to obtain counsel to represent him or her at the taking of a deposition, the deposition may not be used against such party.
- (D) The commission, the legal director, the deputy legal director, or an attorney examiner ~~may, upon~~ in response to the filing of a motion, may order that a deposition be recorded by other than stenographic means, in which case the order shall designate the manner of recording the deposition, and may include provisions to assure that the recorded testimony will be accurate and trustworthy. If such an order is made, any party may arrange to have a stenographic transcription made at his or her own expense.
- (E) The notice to a party deponent may be accompanied by a request, made in compliance with rule 4901-1-20 of the Administrative Code, for the production of documents or tangible things at the taking of the deposition.
- (F) A party may in the notice and in a subpoena name a corporation, partnership, association, government agency, or municipal corporation and designate with reasonable particularity the matters on which examination is requested. The organization so named shall choose one or more of its officers, agents, employees, or other persons duly authorized to testify on its behalf, and shall set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (G) Depositions may be taken before any person authorized to administer oaths under the laws of the jurisdiction in which the deposition is taken, or before any person appointed by the commission. Unless all of the parties expressly agree otherwise, no deposition shall be taken before any person who is a relative, employee, or attorney of any party, or a relative or employee of such attorney.
- (H) The person before whom the deposition is to be taken shall put the witness on oath or affirmation, and shall personally or by someone acting under his direction and in his presence record the testimony of the witness. Examination and cross-examination may proceed as permitted in commission hearings. The testimony shall be recorded stenographically or by any other means ordered under paragraph (D) of this rule. If requested by any of the parties, the testimony shall be transcribed at the expense of the party making the request.
- (I) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope upon the party taking the deposition, who shall transmit them to the officer, who in turn shall propound them to the witness and record the answers verbatim.
- (J) At any time during the taking of a deposition, the commission, the legal director, the deputy legal director, or the attorney examiner ~~may, upon~~ in response to a motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass, or oppress the deponent or party, may order the person conducting the examination to cease taking the deposition, or may limit the scope and manner of taking the deposition as provided in rule 4901-1-24 of the Administrative Code. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for such an order.
- (K) If and when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him or her, unless such examination and reading are expressly waived by the witness and the parties. Any changes in form or substance that ~~which~~ the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making the changes. The deposition shall then be signed by the witness unless the signing is expressly waived by the parties or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within ten days after its submission to him or her, the officer shall sign it and state on the record the fact of the waiver or the illness or absence of the witness, or the fact of the refusal to sign together with the reasons, if any, given for such refusal. The deposition may then be used as fully as though signed, unless the commission, the legal director, the

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

deputy legal director, or the attorney examiner, upon motion to suppress, holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

- (L) The officer shall certify on the deposition that the witness was duly sworn by him or her and that the deposition is a true record of the testimony given by the witness. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.
- (M) Documents and things produced for inspection during the examination of the witness shall, upon request of any party, be marked for identification and annexed to the deposition, except that:
  - (1) The person producing the materials may substitute copies to be marked for identification, if all parties are afforded a fair opportunity to verify the copies by comparison with the originals,
  - (2) If the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to the deposition.
- (N) Depositions may be used in commission hearings to the same extent permitted in civil actions in courts of record. Unless otherwise ordered for good cause shown, any depositions to be used as evidence must be filed with the commission at least three days prior to the commencement of the hearing. A deposition need not be prefiled if used to impeach the testimony of a witness at hearing.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-1-22      Requests for admission.**

- (A) Any party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any specific matter within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code, including the genuineness of any documents described in the request. Copies of any such documents shall be served with the request unless they are or have been otherwise furnished for inspection or copying.
- (B) Each matter of which an admission is requested shall be separately set forth. The party to whom a request for admission has been directed shall quote each request for admission immediately preceding the corresponding answer or objection. The matter is admitted unless, within twenty days after the service of the request, or within such shorter or longer time as the commission, the legal director, the deputy legal director, or an attorney examiner may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection, signed by the party or by his or her attorney. If an objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully make an admission or denial. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer or deny only part of the matter of which an admission is requested, the party shall specify that portion which is true and qualify or deny the remainder. An answering party may not give lack of information as a reason for failure to admit or deny a matter unless the party states that he or she has made reasonable inquiry and that information known or readily obtainable is insufficient to enable him or her to make an admission or denial. A party who considers the truth of a matter of which an admission has been requested to be a genuine issue for the hearing may not, on that basis alone, object to the request, but may deny the matter or set forth the reasons why an admission or denial cannot be made.
- (C) Any party who has requested an admission may move for an order under rule 4901-1-23 of the Administrative Code with respect to any answer or objection. Unless it appears that an objection is justified, the commission, the legal director, the deputy legal director, or the attorney examiner shall order that answer be served. If an answer fails to comply with the requirements of this rule, the commission, the legal director, the deputy legal director, or the attorney examiner may:
  - (1) Order that the matter be admitted for purposes of the pending proceeding.
  - (2) Order that an amended answer be served.
  - (3) Determine that final disposition of the matter should be deferred until a prehearing conference or some other designated time prior to the commencement of the hearing.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (D) Unless otherwise ordered by the commission, the legal director, the deputy legal director, or the attorney examiner, any matter admitted under this rule is conclusively established against the party making the admission, but such admission may be rebutted by evidence offered by any other party. An admission under this rule is an admission for purposes of the pending proceeding only and may not be used for any other purpose.
- (E) If any party refuses to admit the truth of a matter which is subsequently proved at the hearing, and the commission determines that the party's refusal to admit the truth of the matter was not justified, the commission may impose a portion of the costs of the proceeding upon such party, in accordance with the second division of section 4903.24 of the Revised Code.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-1-23      Motions to compel discovery.**

(A) Any party, upon reasonable notice to all other parties and any persons affected thereby, may move for an order compelling discovery, with respect to:

- (1) Any failure of a party to answer an interrogatory served under rule 4901-1-19 of the Administrative Code.
- (2) Any failure of a party to produce a document or tangible thing or permit entry upon land or other property as requested under rule 4901-1-20 of the Administrative Code.
- (3) Any failure of a deponent to appear or to answer a question propounded under rule 4901-1-21 of the Administrative Code.
- (4) Any other failure to answer or respond to a discovery request made under rules 4901-1-19 to 4901-1-22 of the Administrative Code.

(B) For purposes of this rule, an evasive or incomplete answer shall be treated as a failure to answer.

(C) No motion to compel discovery shall be filed under this rule until the party seeking discovery has exhausted all other reasonable means of resolving any differences with the party or person from whom discovery is sought. A motion to compel discovery shall be accompanied by:

- (1) A memorandum in support, setting forth:
  - (a) The specific basis of the motion, and citations of any authorities relied upon.
  - (b) A brief explanation of how the information sought is relevant to the pending proceeding.
  - (c) Responses to any objections raised by the party or person from whom discovery is sought.
- (2) Copies of any specific discovery requests which are the subject of the motion to compel, and copies of any responses or objections thereto.
- (3) An affidavit of counsel, or of the party seeking to compel discovery if such party is not represented by counsel, setting forth the efforts which have been made to resolve any differences with the party or person from whom discovery is sought.

(D) The commission, the legal director, the deputy legal director, or an attorney examiner may grant or deny the motion in whole or in part. If the motion is denied in whole or

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

in part, the commission, the legal director, the deputy legal director, or the attorney examiner may issue such protective order as would be appropriate under rule 4901-1-24 of the Administrative Code.

- (E) Any order of the legal director, the deputy legal director, or an attorney examiner granting a motion to compel discovery in whole or in part may be appealed to the commission in accordance with rule 4901-1-15 of the Administrative Code. If no application for review is filed within the time limit set forth in that rule, the order of the legal director, the deputy legal director, or the attorney examiner becomes the order of the commission.
- (F) If any party or person disobeys an order of the commission compelling discovery, the commission may:
  - (1) Seek appropriate judicial relief against the disobedient person or party under section 4903.04 or 4905.60 of the Revised Code.
  - (2) Prohibit the disobedient party from further participating in the pending proceeding.
  - (3) Prohibit the disobedient party from supporting or opposing designated claims or defenses, or from introducing evidence or conducting cross-examination on designated matters.
  - (4) Dismiss the pending proceeding, if such proceeding was initiated by an application, petition, or complaint filed by the disobedient party, unless such a dismissal would unjustly prejudice any other party.
  - (5) Take such other action as the commission considers appropriate.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-24      **Motions for protective orders.**

(A) Upon motion of any party or person from whom discovery is sought, the commission, the legal director, the deputy legal director, or an attorney examiner may issue any order that ~~which~~ is necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such a protective order may provide that:

- (1) Discovery not be had.
- (2) Discovery may be had only on specified terms and conditions.
- (3) Discovery may be had only by a method of discovery other than that selected by the party seeking discovery.
- (4) Certain matters not be inquired into.
- (5) The scope of discovery be limited to certain matters.
- (6) Discovery be conducted with no one present except persons designated by the commission, the legal director, the deputy legal director, or the attorney examiner.
- (7) A trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.
- (8) Information acquired through discovery be used only for purposes of the pending proceeding, or that such information be disclosed only to designated persons or classes of persons.

(B) No motion for a protective order shall be filed under paragraph (A) of this rule until the person or party seeking the order has exhausted all other reasonable means of resolving any differences with the party seeking discovery. A motion for a protective order filed pursuant to paragraph (A) of this rule shall be accompanied by:

- (1) A memorandum in support, setting forth the specific basis of the motion and citations of any authorities relied upon.
- (2) Copies of any specific discovery requests that ~~which~~ are the subject of the request for a protective order.
- (3) An affidavit of counsel, or of the person seeking a protective order if such person is not represented by counsel, setting forth the efforts that ~~which~~ have been made to resolve any differences with the party seeking discovery.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (C) If a motion for a protective order filed pursuant to paragraph (A) of this rule is denied in whole or in part, the commission, the legal director, the deputy legal director, or the attorney examiner may require that the party or person seeking the order provide or permit discovery, on such terms and conditions as are just.
- (D) Upon motion of any party or person with regard to the filing of a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or an attorney examiner may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, the deputy legal director, or the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure. The following requirements apply to a motion filed under this paragraph:
- (1) All documents submitted pursuant to paragraph (D) of this rule should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information. Such redacted documents should be filed with the otherwise required number of copies for inclusion in the public case file.
  - (2) ~~Two~~ Three unredacted copies of the allegedly confidential information shall be filed under seal, along with a motion for protection of the information, with the secretary of the commission, the chief of the docketing division, or the chief's designee. Each page of the allegedly confidential material filed under seal must be marked as "confidential," "proprietary," or "trade secret."
  - (3) The motion for protection of allegedly confidential information shall be accompanied by a memorandum in support setting forth the specific basis of the motion, including a detailed discussion of the need for protection from disclosure, and citations of any authorities relied upon. The motion and memorandum in support shall be made part of the public record of the proceeding.
  - (4) ~~If a motion for a protective order is filed in a case involving a request for approval of a contract between a telecommunications carrier and a customer, and the contract has an automatic approval process, unless the commission suspends the automatic approval process or otherwise rules on the motion for a protective order, the motion for a protective order will be automatically approved for an eighteen-month period beginning on the date that the contract is automatically approved. Nothing prohibits the commission from rescinding the protective order during the eighteen-month period. If a motion for a protective order for information included in a gas marketer's renewal certification application case filed pursuant to Section 2928.09, Revised Code, or a~~

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

~~competitive retail electric service provider's renewal certification application case filed pursuant to Section 4928.09, Revised Code, is granted, the motion will be automatically approved for a twenty-four month period beginning with the date of the renewed certificate. Nothing prohibits the commission from rescinding the protective order during the twenty-four month period. Automatic approval of confidentiality under this provision shall not preclude the commission from examining the confidentiality issue de novo if there is an application for rehearing on confidentiality or a public records request for the redacted information.~~

- (E) Pending a ruling on a motion filed in accordance with paragraph (D) of this rule, the information filed under seal will not be included in the public record of the proceeding or disclosed to the public until otherwise ordered. The commission and its employees will undertake reasonable efforts to maintain the confidentiality of the information pending a ruling on the motion. A document or portion of a document filed with the docketing division that is marked "confidential," "proprietary," or "trade secret," or with any other such marking will not be afforded confidential treatment and protected from disclosure unless it is filed in accordance with paragraph (D) of this rule.
- (F) Unless otherwise ordered, any order prohibiting public disclosure pursuant to paragraph (D) of this rule shall automatically expire twenty-four ~~eighteen~~ months after the date of its issuance, and such information may then be included in the public record of the proceeding. A party wishing to extend a protective order beyond twenty-four ~~eighteen~~ months shall file an appropriate motion at least forty-five days in advance of the expiration date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure. Nothing precludes the commission from reexamining the need for protection issue de novo during the twenty-four month period.
- (G) The requirements of this rule do not apply to information submitted to the commission staff. However, information submitted directly to the legal director, the deputy legal director, or the attorney examiner that is not filed in accordance with the requirements of paragraph (D) of this rule may be filed with the docketing division as part of the public record. No document received via fax or e-filing facsimile-transmission will be given confidential treatment by the commission.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-25      Subpoenas.

(A) The commission, any commissioner, the legal director, the deputy legal director, or an attorney examiner may issue subpoenas, upon their own motion or upon motion of any party. A subpoena shall command the person to whom it is directed to attend and give testimony at the time and place specified therein. A subpoena may also command such person to produce the books, papers, documents, or other tangible things described therein. A party may request a subpoena by either of the following methods: A copy of the motion for a subpoena and the subpoena itself should first be submitted to the attorney examiner assigned to the case, or to the legal director or deputy legal director, for signature of the subpoena. After the subpoena is signed, a copy of the motion for a subpoena and a copy of the signed subpoena shall then be docketed and served upon the parties to the case. The person seeking the subpoena shall retain the original signed subpoena and make arrangements for its service.

(1) A party may file a motion for a subpoena with the docketing division. A completed subpoena form, ready for signature, shall accompany the motion. The attorney examiner assigned to the case, or the legal director or deputy legal director or their designee, will review the filing and, if appropriate, sign the subpoena. The attorney examiner, legal director, deputy legal director, or designee will return via United States mail the signed subpoena, with a cover letter, to the party that filed the motion. A copy of the cover letter will be docketed in the case file.

(2) To receive expedited treatment, a motion for a subpoena and the subpoena itself should first be submitted in person to the attorney examiner assigned to the case, or to the legal director or a designee, for signature of the subpoena. After the subpoena is signed, a copy of the motion for a subpoena and a copy of the signed subpoena shall then be filed with the docketing division by the requesting party and served upon the parties to the case. The person seeking the subpoena shall retain the original signed subpoena and make arrangements for its service.

(B) Arranging for service of a signed subpoena is the responsibility of the person requesting the subpoena. A subpoena may be served by a ~~sheriff, deputy sheriff, or any other person~~ who is not a party and who is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering it a copy to such person, or by reading it to him or her in person, or by leaving it a copy at his or her place of residence, leaving it at his or her business address if the person is a party or employee of a party to the case, or mailing the subpoena via United States mail as certified or express mail, return receipt requested, with instructions to the delivering postal authority to show to whom delivered, date of delivery, and address where delivered. A subpoena may be served at any place within this state. The person serving the subpoena shall file a return thereof with the docketing division. When the subpoena is served by mail, the person filing the return shall include the signed receipt with the return.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (C) The commission, the legal director, the deputy legal director, or an attorney examiner may, upon their own motion or upon motion of any party, may quash a subpoena if it is unreasonable or oppressive, or condition the denial of such a motion upon the advancement by the party on whose behalf the subpoena was issued of the reasonable costs of producing the books, papers, documents, or other tangible things described therein.
- (D) A subpoena may require a person, other than a member of the commission staff, to attend and give testimony at a deposition, and to produce designated books, papers, documents, or other tangible things within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code. Such a subpoena is subject to the provisions of rule 4901-1-24 of the Administrative Code as well as paragraph (C) of this rule.
- (E) Unless otherwise ordered for good cause shown, all motions for subpoenas requiring the attendance of witnesses at a hearing must be filed with the commission no later than ten five-days prior to the commencement of the hearing or, if expedited treatment is requested, no later than five days prior to the commencement of the hearing.
- (F) Any persons subpoenaed to appear at a commission hearing, other than a party or an officer, agent, or employee of a party, shall receive the same witness fees and mileage expenses provided in civil actions in courts of record. For purposes of this paragraph, the term "employee" includes consultants and other persons retained or specially employed by a party for purposes of the proceeding. If the witness is subpoenaed at the request of one or more parties, the witness fees and mileage expenses shall be paid by such party or parties. If the witness is subpoenaed upon motion of the commission, a commissioner, the legal director, the deputy legal director, or an attorney examiner, the witness fees and mileage expenses shall be paid by the state, in accordance with section 4903.05 of the Revised Code. Unless otherwise ordered, a motion for a subpoena requiring the attendance of a witness at a hearing shall be accompanied by a deposit in the form of a check made payable to the person subpoenaed sufficient to cover the required witness fees and mileage expenses for one day's attendance. A separate deposit shall be required for each witness. The deposit shall be tendered to the fiscal officer of the commission, who shall retain it until the hearing is completed, at which time the officer shall tender the check to the witness. The fiscal officer shall attempt to resolve any payment controversies between the parties. The fiscal officer shall bring any unresolved controversies to the attention of the commission, the legal director, the deputy legal director, or the attorney examiner for resolution.
- (G) If any person fails to obey a subpoena issued by the commission, a commissioner, the legal director, the deputy legal director, or an attorney examiner, the commission may seek appropriate judicial relief against such person under section 4903.02 or 4903.04 of the Revised Code.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

(H) A sample subpoena is provided in the appendix to this rule.

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO  
SUBPOENA**

TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Upon application of \_\_\_\_\_ you are hereby required to  
appear before the Public Utilities Commission of Ohio as a witness for \_\_\_\_\_  
in the following proceeding:

Case No. \_\_\_\_\_

Case Title \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are to appear at the offices of the Commission, 180 East Broad Street, Columbus, Ohio, on the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ .m. in hearing room \_\_\_\_\_.

You shall bring with you the following: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated at Columbus, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Attorney Examiner

Notice: If you are not a party or an officer, agent, or employee of a party to this proceeding, then  
witness fees for attending under this subpoena are to be paid by the party at whose request the  
witness is summoned. Every copy of this subpoena for the witness must contain this notice.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-26      **Prehearing conferences.**

(A) In any proceeding, the commission, the legal director, the deputy legal director, or an attorney examiner may, upon motion of any party or upon their own motion, hold one or more prehearing conferences for the purpose of:

(1) Resolving outstanding discovery matters, including:

(a) Ruling on pending motions to compel discovery or motions for protective orders.

(b) Establishing a schedule for the completion of discovery.

(2) Ruling on any other pending procedural motions.

(3) Identifying the witnesses to be presented in the proceeding and the subject matter of their testimony.

(4) Identifying and marking exhibits to be offered in the proceeding.

(5) Discussing possible admissions or stipulations regarding issues of fact or the authenticity of documents.

(6) Clarifying and/or settling the issues involved in the proceeding.

(7) Discussing or ruling on any other procedural matter which the commission or the presiding hearing officer considers appropriate.

(B) Reasonable notice of any prehearing conference shall be provided to all parties. Unless otherwise ordered for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at such conference.

(C) Prior to a prehearing conference, the commission, the legal director, the deputy legal director, or the attorney examiner assigned to the case may, upon motion of any party or upon their own motion, require that all parties to the proceeding file with the commission and serve upon all other parties a list of the issues the party intends to raise at the hearing. Issues must be specifically identified and described and the presiding hearing officer may, upon motion of any party or upon his or her own motion, strike issues which do not meet this requirement. In any proceeding in which lists of issues are required, no party shall be permitted to raise an issue at hearing that was not set forth in its list, except for good cause shown.

(D) Following the conclusion of a prehearing conference, the commission, the legal director, the deputy legal director, or the attorney examiner may issue an appropriate

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

prehearing order, reciting or summarizing any agreements reached or rulings made at such conference. Unless otherwise ordered for good cause shown, such order shall be binding upon all persons who are or subsequently become parties, and shall control the subsequent course of the proceeding.

- (E) Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a disputed matter in a commission proceeding is not admissible to prove liability for or invalidity of the dispute. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another valid purpose.
- (F) If a conference is scheduled to discuss settlement of the issues in a complaint case, the representatives of the public utility shall investigate prior to the settlement conference the issues raised in the complaint and all parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-27      **Hearings.**

(A) The commission, the legal director, the deputy legal director, or an attorney examiner shall assign the time and place for each hearing. Unless otherwise ordered, all hearings shall be held at the offices of the commission in Columbus, Ohio. Reasonable notice of each hearing shall be provided to all parties.

(B) The presiding hearing officer shall regulate the course of the hearing and the conduct of the participants. Unless otherwise provided by law, the presiding hearing officer may, without limitation:

- (1) Administer oaths and affirmations
- (2) Determine the order in which the parties shall present testimony and the order in which witnesses shall be examined
- (3) Issue subpoenas
- (4) Rule on objections, procedural motions, and other procedural matters
- (5) Examine witnesses
- (6) Grant continuances
- (7) Take such actions as are necessary to:
  - (a) Avoid unnecessary delay
  - (b) Prevent the presentation of irrelevant or cumulative evidence
  - (c) Prevent argumentative, repetitious, cumulative, or irrelevant cross-examination
  - (d) Assure that the hearing proceeds in an orderly and expeditious manner
  - (e) Prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The presiding hearing officer may, upon motion of any party, direct that a portion of the hearing be conducted in camera and that the corresponding portion of the record be sealed to prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The party requesting such protection shall have the burden of establishing that such protection is required. The commission or the presiding hearing officer

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

shall issue a ruling prior to the closing of the case regarding the amount of time that any sealed portion of the hearing record shall remain sealed.

- (C) The presiding hearing officer shall permit members of the public to offer sworn ~~or~~ ~~unsworn~~ testimony at the portion or session of the hearing designated for the taking of public testimony.
- (D) Formal exceptions to rulings or orders of the presiding hearing officer are unnecessary if, at the time the ruling or order is made, the party makes known the action which he or she desires the presiding hearing officer to take, or his or her objection to action *which has been taken* and the basis for that objection.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-1-28      Reports of investigation and objections thereto.**

- (A) In all rate proceedings in which the commission is required by section 4909.19 of the Revised Code to conduct an investigation, a written report of such investigation shall be filed with the commission and shall be served upon all parties. The report shall be deemed to be admitted into evidence as of the time it is filed with the commission, but all or part of such report may subsequently be stricken, upon motion of the commission, the legal director, the deputy legal director, or the attorney examiner assigned to the case, or upon motion of any party for good cause shown. Any person making or contributing to the report may be subpoenaed to testify at the hearing in accordance with rule 4901-1-25 of the Administrative Code, but the unavailability of such persons shall not affect the admissibility of the report.
- (B) Any party may file objections to a report of investigation described in paragraph (A) of this rule, within thirty days after such report is filed with the commission. Such objections may relate to the findings, conclusions, or recommendations contained in the report, or to the failure of the report to address one or more specific items. All objections must be specific. Any objections that ~~which~~ fail to meet this requirement may be stricken upon motion of any party or the commission staff or upon motion of the commission, the legal director, the deputy legal director, or the attorney examiner.
- (C) The objections to the report described in paragraph (A) of this rule, shall frame the issues in the proceeding, although the commission, the legal director, the deputy legal director, or the attorney examiner may designate additional issues or areas of inquiry. Unless otherwise ordered by the commission, the legal director, the deputy legal director, or the attorney examiner, all material findings and conclusions set forth in the report to which no objection has been filed shall be deemed admitted for purposes of the proceeding. At the hearing, any party who has filed objections may present evidence in support of those objections. The commission or the presiding hearing officer may, in their discretion, permit the parties to present evidence or conduct cross-examination concerning additional issues. Any party may present rebuttal testimony in response to direct testimony or other evidence presented by any other party or by the commission staff.
- (D) In a rate case proceeding, an objection to a staff report will be deemed withdrawn if a party fails to address the objection ~~it~~ in its initial brief.
- (E) Unless otherwise ordered by the commission, in all other cases in which the commission orders an investigation to be performed by staff and the filing of a report, the report shall be deemed admitted into evidence at the time it is filed with the commission, but all or part of such report may subsequently be stricken upon motion of the commission, the legal director, the deputy legal director, or an attorney examiner, or upon motion of any party for good cause shown. If a staff report described in this paragraph is admitted into evidence, interested persons shall have

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

some opportunity, to be determined by the commission, to submit testimony, file comments, or file objections to the report. If a hearing is scheduled in the case in which the report is filed, any person making or contributing to the report may be subpoenaed to testify at the hearing in accordance with paragraph (A) of rule 4901-1-25 of the Administrative Code, but the unavailability of such persons shall not affect the admissibility of the report. Objections or comments to a report described in this paragraph shall not be filed unless directed by the commission, the legal director, the deputy legal director, or the attorney examiner.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-29      **Expert testimony.**

(A) Except as otherwise provided in this rule, all expert testimony to be offered in commission proceedings, except testimony to be offered by the commission staff, shall be reduced to writing, filed with the commission, and served upon all parties prior to the time such testimony is to be offered. The commission, the legal director, the deputy legal director, or an attorney examiner may establish a schedule in any proceeding for the filing of testimony to be presented by staff.

(1) Unless otherwise ordered by the commission, the legal director, the deputy legal director, or an attorney examiner:

- (a) All direct expert testimony to be offered by the applicant, complainant, or petitioner in a general rate proceeding shall be filed and served no later than ten days prior to the commencement of the hearing or the deadline for filing objections to the staff report of investigation, whichever occurs earlier.
- (b) All direct expert testimony to be offered by any other party in a general rate proceeding shall be filed and served no later than the deadline for filing objections to the staff report of investigation.
- (c) All direct expert testimony to be offered by the applicant in an emergency rate proceeding shall be filed and served no later than sixteen days prior to the commencement of the hearing.
- (d) All direct expert testimony to be offered by any other party in an emergency rate proceeding shall be filed and served no later than seven days prior to the commencement of the hearing.
- (e) All direct expert testimony to be offered by the gas utility in a purchased gas adjustment proceeding shall be filed and served no later than sixteen days prior to the commencement of the hearing.
- (f) All direct expert testimony to be offered by any other party in a purchased gas adjustment proceeding shall be filed and served no later than seven days prior to the commencement of the hearing.
- (g) All direct expert testimony to be offered by any party in a long-term forecast report proceeding shall be filed and served no later than sixteen days prior to the commencement of the hearing.
- (h) All direct expert testimony to be offered in any other commission proceeding shall be filed and served no later than seven days prior to the commencement of the hearing.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (i) The above filing requirements do not apply to a witness who is subpoenaed to testify on behalf of a party.
- (2) All expert testimony to be offered in rebuttal shall be filed and served within the time limits established by the commission or the presiding hearing officer, unless the commission or the presiding hearing officer determines that such testimony need not be reduced to writing.
- (B) For purposes of this rule, "commencement of the hearing" means the scheduled date for beginning the hearing at which expert testimony is to be offered.
- (C) Notwithstanding paragraph (A) of this rule, the presiding hearing officer may, in his or her discretion, permit an expert witness to present additional oral testimony at the hearing, provided that such testimony could not, with reasonable diligence, have been filed and served within the time limits established by the commission or the presiding hearing officer or the presentation of such testimony will not unduly delay the proceeding or unjustly prejudice any other party.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-30      **Stipulations.**

- (A) Any two or more parties may enter into a written or oral stipulation concerning issues of fact ~~or the~~ authenticity of documents, or the resolution of some or all of the issues in a proceeding.
- (B) A written stipulation must be signed by all of the parties joining therein, and must be filed with the commission and served upon all parties to the proceeding.
- (C) An oral stipulation may be made only during a public hearing or record prehearing conference, and all parties joining in such a stipulation must acknowledge their agreement thereto on the record. The commission or the presiding hearing officer may require that an oral stipulation be reduced to writing and filed and served in accordance with paragraph (B) of this rule.
- (D) Unless otherwise ordered, parties who file a full or partial written stipulation or make an oral stipulation must file or provide testimony that supports the stipulation. Parties that do not join the stipulation may offer evidence and/or argument in opposition. No stipulation shall be considered binding upon the commission.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-31      **Briefs and memoranda.**

- (A) In addition to those instances in which this chapter specifically allows the filing of memoranda, the commission, the legal director, the deputy legal director, or an attorney examiner may, upon motion of any party or upon their own motion, permit or require the filing of briefs or memoranda at any time during a proceeding. Such briefs or memoranda may, in the discretion of the commission, the legal director, the deputy legal director, or the attorney examiner, be limited to one or more specific issues.
- (B) All briefs and memoranda which are greater than ten pages and which address more than one proposition or issue shall contain a table of contents which shall include the propositions or issues discussed within the brief or memorandum. If requested by the commission, the legal director, the deputy legal director, or an attorney examiner, all parties shall include within their initial brief a section entitled "statement of issues." This section shall list all issues that the party requests that the commission address in its opinion and order. The commission, the legal director, the deputy legal director, or the attorney examiner may impose other requirements or limitations concerning the length or form of briefs or memoranda.
- (C) If unreported decisions, other than decisions of the commission, are cited, copies of such decisions shall be attached to the brief or memorandum and shall be furnished to all parties. Failure to comply with this requirement may be grounds for striking the brief or memorandum.
- (D) In long-term forecast report proceedings, the record shall be considered closed for purposes of division (F) of section 4935.04 of the Revised Code upon the filing of the final round of briefs.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-32      **Oral arguments.**

The commission, the legal director, the deputy legal director, or an attorney examiner may, upon motion of any party or upon their own motion, hear oral arguments at any time during a proceeding. Such arguments may, in the discretion of the commission, the legal director, the deputy legal director, or the attorney examiner, be limited to one or more specific issues, and are subject to such time limitations and other conditions as the commission, the legal director, the deputy legal director, or the attorney examiner may prescribe.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-1-33      Attorney examiner's reports and exceptions thereto.**

- (A) If ordered by the commission, the attorney examiner shall prepare a written report of his or her findings, conclusions, and recommendations, following the conclusion of a hearing. Such report shall be filed with the commission and served upon all parties.**
- (B) Any party may file exceptions to an attorney examiner's report within twenty days after such report is filed with the commission. Exceptions shall be stated and numbered separately, and shall be accompanied by a memorandum in support, setting forth the basis of the exceptions and citations of any authorities relied upon. If an exception relates to one or more findings of fact, the memorandum in support should, where practicable, include specific citations to any portions of the record relied upon in support of the exception.**
- (C) Any party may file a reply to another party's exceptions within fifteen days after the service of those exceptions.**

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-34      **Reopening of proceedings.**

- (A) The commission, the legal director, the deputy legal director, or an attorney examiner may, upon their own motion or upon motion of any person for good cause shown, reopen a proceeding at any time prior to the issuance of a final order.
- (B) A motion to reopen a proceeding shall specifically set forth the purpose of the requested reopening. If the purpose is to permit the presentation of additional evidence, the motion shall specifically describe the nature and purpose of such evidence, and shall set forth facts showing why such evidence could not, with reasonable diligence, have been presented earlier in the proceeding.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-35      **Applications for rehearing.**

- (A) Any party or any affected person, firm, or corporation may file an application for rehearing, within thirty days after the issuance of a commission order, in the form and manner and under the circumstances set forth in section 4903.10 of the Revised Code. An application for rehearing must set forth, in numbered or lettered paragraphs, the specific ground or grounds upon which the applicant considers the commission order to be unreasonable or unlawful. An application for rehearing must be accompanied by a memorandum in support, which sets forth an explanation of the basis for each ground for rehearing identified in the application for rehearing and which shall be filed no later than the application for rehearing.
- (B) Any party may file a memorandum contra within ten days after the filing of an application for rehearing.
- (C) As provided in section 4903.10 of the Revised Code, all applications for rehearing must be submitted within thirty days after an order has been journalized by the secretary of the commission, or, in the case of an application that ~~which~~ is subject to automatic approval under the commission's procedures, an application for rehearing must be submitted within thirty days after the date on which the automatic timeframe has expired, unless the application has been suspended by the commission.
- (D) A party or any affected person, firm, or corporation may only file one application for rehearing to a commission order within thirty days following the entry of the order upon the journal of the commission.
- ~~(E) An application for rehearing filed under section 4903.10 of the Revised Code, or a memorandum contra an application for rehearing filed pursuant to rule 4901-1-35 of the Administrative Code may not be delivered via facsimile transmission.~~

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-36      **Supreme court appeals.**

Consistent with the requirements of section 4903.13 of the Revised Code, a notice of appeal of a commission order to the Ohio supreme court must be filed with the commission's docketing division within the time period prescribed by the court and served, unless waived, upon the chairman of the commission, or, in his absence, upon any public utilities commissioner, or by leaving a copy at the offices of the commission at Columbus. A notice of appeal of a commission order to the Ohio supreme court or service of that notice upon the chairman or a commissioner may not be delivered via fax or e-filing facsimile transmission.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-1-37      **Commission workshops.**

The commission may, from time to time, schedule informational workshops for the purpose of receiving information and exchanging ideas regarding relevant topics. Such workshops shall be listed on the commission's regular meeting agenda or on the weekly hearing calendar and shall be open to all interested persons. The workshops shall not be transcribed and participants need not be represented by counsel. Certain individuals may be designated by the commission as spokespersons or chairpersons for purposes of presenting information or conducting such workshops. Requests by persons interested in scheduling a workshop shall be made in writing to the director of the relevant staff department, with a copy of the request submitted to the chairman of the commission. The commission, in its discretion, reserves the right to postpone or reject requests for workshops.

\*\*\* DRAFT – NOT FOR FILING \*\*\*

4901-1-38      **General provisions.**

- (A) This chapter sets forth the procedural standards that ~~which~~ apply to all entities participating in cases before the commission.
- (B) The commission ~~may, upon its own~~ application or upon a motion filed by a party, ~~may or for good cause shown,~~ waive any requirement ~~of, standard, or rule set forth in~~ this chapter for good cause shown, other than a requirement mandated by statute from which no waiver is permitted or ~~prescribe different practices or procedures to be followed in a case.~~

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-3-01      **Commission meetings.**

**(A) Open meetings**

- (1) All meetings of the public utilities commission at which official action is taken and formal deliberation upon official business is conducted shall be opened to the public. All resolutions, rules, or formal action of any kind shall be adopted in an open meeting of the public utilities commission. A majority of the ~~members of the public utilities commission~~ shall constitute a quorum for the purpose of conducting business.
- (2) The public utilities commission may hold an executive session for the purpose of the consideration of a matter contained in division (G) of section 121.22 of the Revised Code. An executive session may be held only at a meeting for which notice has been given in accordance with paragraph (C) of this rule and only after a majority of a quorum of the public utilities commission determines, by a roll call vote, to hold such a session.

**(B) Types of meetings**

- (1) The public utilities commission regularly meets on Wednesday to discuss issues in individual cases and to vote on orders and entries to be issued in cases. The commission may, in its discretion, schedule meetings on other days to discuss and vote on entries and orders in pending cases. Unless otherwise noticed by the commission, meetings are held at the offices of the public utilities commission, 180 East Broad street, Columbus, Ohio. The time of the meetings will be shown on the agenda issued for the meetings.
- (2) An emergency meeting is one that ~~which is~~ noticed to the public less than twenty-four hours prior to the start of the meeting.

**(C) Notice of meetings**

- (1) Any person may determine the time, place, and matters on the agenda for a commission meeting scheduled to consider cases or a specific or general topic by calling the commission's legal department at 614-466-6843 during normal business hours or by visiting ~~consulting the information rack located within the commission's docketing division located on the thirteenth floor of the commission's offices.~~ The meeting agendas are also available on the commission's web site ([www.puco.ohio.gov](http://www.puco.ohio.gov)). ~~Upon request to the commission's legal department, the~~ The commission will distribute agendas, as they become available, via e-mail. Any person wishing to receive notices or agendas of commission meetings via e-mail may subscribe to the "agendas list" at [www.puco.ohio.gov/PUCO/Legal](http://www.puco.ohio.gov/PUCO/Legal), or by calling the commission's legal department at 614-466-6843, or by sending a request to legal department, public

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

utilities commission of Ohio, 180 East Broad street, Columbus, Ohio 43215. -  
The agendas for the a-regular weekly meetings meeting scheduled for the are  
generally following week will usually be available by close of business on the  
preceding Thursday. Notice of agenda updates are posted to the web site and  
distributed by e-mail as early as possible prior to the meeting.

- (2) Copies of the agenda for an emergency meeting, if time permits for the preparation of an agenda, will be available ~~in the information racks and on the~~ commission's web site and distributed by e-mail as early as possible prior to the start of the meeting.
- (3) The agenda for commission meetings in which specific cases are to be considered shall include the case number and a brief description of the case name. If a meeting is scheduled to consider a specific or general topic or subject matter, the agenda will only give the topic or subject matter to be discussed
- (3) ~~Requests to receive commission meeting agendas by e-mail should be directed to the legal department, public utilities commission of Ohio, 180 East Broad street, Columbus, Ohio 43215 3793, or by calling the legal department at 614 466-4843 or by subscribing at the commission's web site.~~

~~(D)~~ Agendas

- ~~(1) The agenda for commission meetings in which specific cases are to be considered shall include the case number and a brief description of the case name. If a meeting is scheduled to consider a specific or general topic or subject matter, the agenda will only give the topic or subject matter to be discussed.~~
- ~~(2) If a case, topic, or subject matter needs to be added to an agenda after the agenda has been issued, the additions shall be noticed in the same manner as if an emergency meeting were scheduled, i.e., if time permits, the additions will be available in the information racks and on the commission's web site and distributed by e-mail as early as possible prior to the start of the meeting.~~

~~(E)~~(D) Minutes

- (1) Minutes of the commission ~~commission's~~ meetings during a week shall be considered and adopted at the next regularly scheduled meeting at which the commission votes on orders and entries to be issued in cases.
- (2) Upon adoption, the secretary of the commission shall be responsible for maintaining the minutes.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901-3-02      Photographing, filming, and recording.**

Persons may videotape, photograph, film, or record commission meetings and public hearings in accordance with the following procedures, which are promulgated to assure decorum and fairness to all parties, consistent with the goal that the public be fully informed.

- (A) Any person may videotape, film, record, or photograph commission meetings and public hearings.
- (B) The person in charge of a meeting or hearing may, if deemed necessary, designate an ~~the~~-area for the location of ~~where~~-stationary cameras, lighting, or other auxiliary equipment-is-to-be-located.
- (C) A person operating a portable or hand-held camera shall remain seated while filming or stand in the back or along the sides of the room. The person shall not block the view of those seated in the room.
- (D) Unless preauthorized approval is obtained from the person in charge of the meeting or hearing, tape recorders and other audio equipment (e.g., microphones) shall be located at the operator's seat during the meeting or hearing. A mult box is available in the commission meeting room for use in recording events that occur in that room.
- (E) During a hearing or meeting, reporters or commentators orally describing the events shall not be located within the room where the meeting or hearing is being conducted.
- (F) The use of cellular phones or other voice-related devices in a room where a meeting or hearing is being conducted is prohibited. Cellular phones and paggers ~~beepers~~-shall not transmit an audio notification after the start of a meeting or hearing.
- (G) A commissioner, hearing examiner, or the commission employee responsible for conducting a meeting or hearing has the authority to enforce, waive, or modify any of the above procedures when deemed necessary to preserve the decorum or fairness of a commission proceeding and to exclude from the meeting or hearing any person who violates any of the procedures set forth in this rule or fails to follow a directive.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901-9-01      **Complaint proceedings.**

- (A) Except in unusual circumstances, any customer or consumer with a service or billing problem should first contact the public utility to attempt to resolve the problem. If that attempt is unsuccessful, the customer or consumer is encouraged to contact the commission's call center prior to the filing of a formal complaint. If a customer or consumer bypasses the commission's call center and files a formal complaint, the commission's legal department may refer the complaint to the commission's call center for an opportunity to resolve the issue before formally proceeding with the complaint.
- (B) All complaints filed under section 4905.26 and section 4927.21 of the Revised Code, except complaints filed by a public utility concerning a matter affecting its own product or service, shall be in writing and shall contain the name of the public utility complained against, a statement which clearly explains the facts which constitute the basis of the complaint, and a statement of the relief sought. Sample complaint forms may be obtained by contacting the commission's service monitoring and enforcement department. If discrimination is alleged, the facts that allegedly constitute discrimination must be stated with particularity. Upon receipt of such a complaint, the docketing division shall serve a copy of the complaint upon the public utility complained against, together with instructions to file an answer with the commission in accordance with the provisions of this rule. The public utility complained against shall file its answer with the commission within twenty days after the mailing of the complaint, or such period of time as directed by the commission, the legal director, the deputy legal director, or an attorney examiner, and shall serve a copy upon all parties in accordance with rule 4901-1-05 of the Administrative Code. An answer must be filed in accordance with this paragraph, whether or not the public utility files a motion to dismiss the complaint or any other motion in response to the complaint.
- (C) Each defense to a complaint shall be asserted in an answer. In addition, the following defenses or assertions may, at the option of the public utility complained against, also be raised by motion:
  - (1) Lack of jurisdiction over the subject matter.
  - (2) Lack of jurisdiction over the person.
  - (3) Failure to set forth reasonable grounds for complaint.
  - (4) Satisfaction of the complaint or settlement of the case.
- (D) The public utility shall state in its answer, in short and plain terms, its defenses to each claim asserted, and shall admit or deny the allegations upon which the complainant relies. If the public utility is without sufficient knowledge or information to form a belief as to the truth of an allegation, it shall so state and this

## **\*\*\* DRAFT – NOT FOR FILING \*\*\***

has the effect of a denial. If the public utility intends in good faith to deny all of the allegations in the complaint, it may do so by general denial. If it does not intend to deny all of the allegations in the complaint, it shall either make specific denials of designated allegations or paragraphs, or generally deny all allegations except those allegations or paragraphs that it expressly admits. Unless otherwise ordered by the commission, the legal director, the deputy legal director, or an attorney examiner, all material allegations in the complaint which are not denied in the answer shall be deemed admitted for purposes of the proceeding.

- (E) If a person filing a complaint against a public utility is facing termination of service by the public utility, the person may request, in writing, that the commission provide assistance to prevent the termination of service during the pendency of the complaint. The person must explain why he or she believes that service is about to be terminated and why the person believes that the service should not be terminated. A person making a request for assistance must agree to pay during the pendency of the complaint all amounts to the utility that are not in dispute. The commission, legal director, deputy legal director, or an attorney examiner will issue a ruling on the request.
- (F) If the public utility complained against files an answer or motion which asserts that the complaint has been satisfied or that the case has been settled, the complainant shall file a written response within twenty days after the service of the answer or motion, indicating whether the complainant agrees or disagrees with the utility's assertions, and whether he or she wishes to pursue the complaint. If no response is filed within the prescribed period of time, the commission may presume that satisfaction or settlement has occurred and dismiss the complaint. Any filing by a utility that asserts that a complaint has been satisfied or that the case has been settled shall include a statement or be accompanied by another document that states that, pursuant to a commission rule, the complainant has twenty days to file a written response agreeing or disagreeing with the utility's assertions and that, if no response is filed, the commission may presume that satisfaction or settlement has occurred and dismiss the complaint.
- (G) The legal director, deputy legal director, or an attorney examiner assigned to a complaint case shall schedule a settlement conference to attempt to resolve the issues in the case prior to hearing. The settlement conference will be conducted pursuant to the Uniform Mediation Act found in Chapter 2710. of the Revised Code. The settlement conference may be waived at the request or agreement of all the parties or if the attorney examiner is informed that prior formal attempts to resolve the dispute were made and were unsuccessful. Unless good cause is shown, settlement conferences shall be held at the offices of the commission.
- (H) If a conference is scheduled to discuss settlement of the issues in a complaint case, the representatives of the public utility shall investigate prior to the settlement conference the issues raised in the complaint and all parties attending the conference

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-1-01      **Consumer information.**

Upon a consumer's request, a public utility shall provide a copy of the company's applicable tariffed rules and regulations. In the event that the public utility does not maintain a copy of the tariffed rules and regulations within the county where the customer is served, the public utility must provide the information in the format requested by the consumer, i.e., via e-mail, internet website, fax or first class mail. Unless the consumer agrees to another date, the public utility shall provide the information within five business days. Paper copies of any items requested shall be provided at cost. This rule does not apply to any industry for which the commission has prescribed a more specific rule regarding the requirement to make available a company's tariff; ~~e.g., rule 4901:1-5-06 of the Administrative Code.~~

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

**4901:1-1-02      Underground utility protection service registration.**

Each underground utility protection service, as defined by division (A)(4) of section 153.64 of the Revised Code, shall register with the public utilities commission by supplying the information in the form set forth in "Appendix A" to this rule and filing such form with the docketing division of the public utilities commission. Public authorities, as defined by division (A)(2) of section 153.64 of the Revised Code, desiring information about a registered underground utility protection service, can obtain such information by contacting the docketing division of the public utilities commission.

4901:1-1-02

APPENDIX A

Underground Utility Protection Service Registration

Name of Service: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Membership List:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(Attach additional sheets if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:1-1-03      **Duty to disclose tariffs.**

(A) Definitions. For purposes of this rule, and this rule only, the following shall apply:

(1) "A utility" is:

- (a) An electric light company as defined by division (A)(~~34~~) of section 4905.03 of the Revised Code;
- (b) A gas company or a natural gas company as defined by divisions (A)(~~45~~) and (A)(~~56~~) of section 4905.03 of the Revised Code having more than five thousand customers; or
- (c) A water-works company or sewage disposal system as defined by divisions (A)(~~78~~) and (A)(~~134~~) of section 4905.03 of the Revised Code having more than five thousand customers.

(2) "An applicant" is a person, partnership, corporation, association, or organization which makes application or requests electric, gas, water, or sewage service from a utility. An applicant includes those persons or entities who are currently a customer and are seeking to receive service at another or a new location and those persons or entities who already receive one type of utility service (e.g., electric or water) and want to receive another type of utility service (e.g., gas or sewer) at the same or a different location.

(3) "An eligible customer" is a customer who, based on the information available to the utility, may meet or may become able to meet the criteria or terms and conditions of service of a particular tariff offering or rate schedule. For example, if an electrical residential load management schedule were open to electric residential customers with a monthly minimum demand of four kilowatt hours, an eligible customer would be any residential customer regardless of his or her historical monthly level of demand. Likewise, if a rate schedule were available to any residential electric customer with an electric water heater, all residential customers would be eligible customers. In these two examples, all residential customers are eligible customers (although many of these eligible customers may not actually qualify to receive service under these tariffs) because they may meet or may become able to meet the criteria or terms and conditions of service. However, if an industrial or commercial rate schedule were changed or modified, residential customers would not be considered as eligible customers.

(4) "Disclose" means to inform by use of a brief, one-to-four-sentence (more if necessary) message contained on a bill, on a bill insert, or in a special mailing. A utility may supplement the disclosure by a notice published in a newspaper or newspapers of general circulation in the service territory of the utility. The disclosure must state:

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

- (a) That a new rate is available or that the criteria or terms and conditions of an existing rate schedule have been modified;
  - (b) The nature of the new rate schedule or the modification of the existing rate schedule;
  - (c) That further information can be obtained by calling or writing a specific telephone number or address.
- (5) "Changes in the criteria or terms and conditions of service" includes all authorized modifications in a particular tariff schedule or offering except for increases and decreases in the base rate, emergency or excise tax surcharge, or the gas cost recovery ("GCR") rate.
- (6) "Explanation of the rates, charges, and provisions applicable to the service furnished or available" means a brief summary of the effective rates and the distinctive character of service which distinguish this rate schedule from an alternative one. The explanation may:
  - (a) Include a typical bill summary and a brief listing of the characteristics of the service or criteria which must be met in order to qualify to receive service under this schedule;
  - (b) Be oral or written, however, if the customer or applicant specifically requests a written explanation, the utility must provide a written explanation.
- (B) Duty to disclose.
  - (1) Within ninety days after a new rate schedule becomes effective, or within ninety days after modifications or changes in the criteria or terms and conditions of service of an existing tariff schedule or offering become effective, the utility shall disclose to the eligible customers the availability of the new tariff schedule or the fact that the criteria or terms and conditions of service of such an existing tariff have changed. A copy of such notice shall be filed with the public utilities commission prior to its distribution to customers.
  - (2) Upon the request of any customer or applicant, the utility shall provide an explanation of the rates, charges, and provisions applicable to the service furnished or available to such customers or applicant, and shall provide any information and assistance, such as the availability of alternative tariff schedules, necessary to enable the customer to obtain the most economical utility service conforming to his or her stated needs. Nothing in this rule shall be construed so as to delay the prompt initiation of service if requested by an applicant.