

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**COMMENTS OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

By Entry dated March 2, 2011, the Commission initiated this docket to conduct a review of Ohio Administrative Code Chapters 4901-1, Rules of Practice and Procedure; 4901-3, Commission Meetings; 4901-9, Complaint Proceedings; and 4901:1-1, Utility Tariffs and Underground Protection. The purpose of the review is to determine whether to continue the rules without change, amend the rules, or rescind the rules. The Entry solicited comments from interested persons regarding the Commission Staff's proposed amendments to several of the rules. Ohio Partners for Affordable Energy ("OPAE") hereby submits its comments regarding the rules and the proposed amendments.

Proposed Rule 4901-1-02(B)(1) Paper filings

The proposed rule states that any person paper-filing a document for inclusion in a case file must submit the required number of copies of the document, generally twenty copies. Failure to submit the required copies may result in the document being stricken from the case file. This proposed rule is onerous in circumstances where a paper filing is made but can be followed up

practically simultaneously with an electronic filing. Now that the Commission allows for e-filing in most instances (except for confidential documents and notices of appeal to the Supreme Court), the Commission should allow a paper filing of only one copy if the filer makes an e-filing of the same document on the same day. For example, if an attorney needs to file a letter that is also introduced in the record at a hearing, the attorney should be allowed to paper file only one copy of the letter on the day of the hearing if, that same day, the attorney also e-files the same letter. This allows the attorney to paper file the letter the day of the hearing but avoid the need to make twenty copies of the letter. In circumstances where the paper filing is made simply because the attorney is present at a hearing, it should be acceptable for the attorney to e-file the same document later in the day and avoid the requirement of multiple copies.

Proposed Rule 4901-1-02(D)(4), (6), and (7) Electronic filing (e-file)

This proposed rule discusses the rejection of an e-filed document by the docketing division of the Commission. The document may be rejected because it does not comply with the electronic filing manual and technical requirements, is unreadable, includes inappropriate material, or is submitted in a closed or archived case. The docketing division will send an e-mail message to inform the filer of the rejection of the document and the reason for the rejection. 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 4 p.m. The person making the e-filing bears all risk of transmitting the document.

This proposed rule may be too harsh on the e-filer. It is quite common for electronic actions to go awry, and it makes no sense for the Commission to absolve itself of any responsibility in advance if an e-filing goes wrong. Even if a filer manages to e-file before 4 p.m., things can still not work as intended. The Commission's rule should not seek to absolve the Commission of any responsibility or seek to blame, in advance, the e-filer. The language that the person making the e-filing bears all the risk of transmitting the document should be deleted from the proposed rule.

Proposed Rule 4901-1-02(E)

The Commission now proposes to designate cases in which filings will be denied. These cases are closed cases, archived cases, reserved cases, and void cases. The proposed rule provides definitions of these types of cases where filings will be denied. The most problematic situation is one where a party seeks to have a Commission order or a Commission-approved stipulation and recommendation enforced. In many cases, the case may be closed or even archived, but a filing in the case is necessary to request enforcement of the Commission's orders. In this case, under the proposed rule, the person seeking to make a filing must first contact the attorney examiner or legal director to request permission for the filing; then the docketing division will be notified to reopen the case. This is a somewhat cumbersome procedure that may cause delays in the filing of pleadings for enforcement. If the Commission adopts this rule, the Commission should not close or archive any case where the Commission has issued an order or approved a stipulation and recommendation

with provisions lasting years or indefinitely until all the years affected by the order have passed. If filings are to be rejected or made cumbersome by the procedural rules, the Commission should assure that cases are not closed or archived prematurely. In rate cases where the rates are still in effect, for example, a case may need to remain open for all the years that the rates are in effect.

Proposed Rule 4901-1-03(A) Form of pleadings and other papers

This proposed rule states that an attorney or party who is willing to accept service of filed documents by fax (or e-mail) shall include the following phrase “willing to accept service by fax” (or e-mail) next to or below the fax number or e-mail address. This rule should be re-written. In most cases, the attorney is more than willing. The attorney chooses this method of delivery, prefers it, and intends to receive service of filings in this manner. Therefore, to make the rule clear, the phrase should be, for example, “serve by e-mail” or “serve by fax” next to or below the e-mail address or fax number.

Proposed Rule 4901-1-05(B) Service of pleadings and other papers

This proposed rule states that 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. This e-mail notice will constitute service. The filer must still serve all other parties to the case who are not served by the e-mail notice. The person making the e-filing shall list in the certificate of service the parties who will be served by e-mail by the Commission’s e-filing system and the parties who will be served by other methods. The certificate of service shall state: the Commission’s e-filing system

will electronically serve notice of the filing of this document on the following parties and list the names of the parties referenced on the service list of the docket card who have electronically subscribed to the case. The certificate will also list the parties served by other means.

The proposed rule does not state how a party electronically subscribes to a case or how other parties are made aware of parties electronically subscribing to a case. One can assume that this information is, as referenced elsewhere in the proposed rules, in the electronic filing manual and technical requirements located under electronic filing information and links at the docketing information system website. However, it would be best for the rule to describe the methodology for parties to electronically subscribe to a case and to be aware of what other parties have electronically subscribed. At the least, the rule should state where this information on electronic subscriptions may be obtained.

Rule 4901-1-08(A) Practice before the Commission

Rule 4901-1-08 states that each party, including a corporation, not appearing in propria persona shall be represented by an attorney authorized to practice before the courts of this state. The Commission should consider amending this rule so that parties may be represented by persons other than attorneys and/or by out-of-state attorneys. In many cases before the Commission, it is not necessary that an attorney represent a party. A case may simply involve a policy or interest of an organization, including a corporation, and a knowledgeable member or employee of the organization, including corporate

attorneys, should be permitted to represent the organization. A case may also involve technical matters that do not require an attorney to pursue.

This Commission has long made it practice to encourage the participation of parties that “will significantly contribute to full development and equitable resolution of the factual issues.” Rule 4901-1-11. The requirement that an organization or corporation be represented by an attorney represents a barrier to participation in the process and is overly broad and unnecessary. Permitting parties to be represented by individuals authorized to negotiate and settle matters of interest to the organization is efficient and reduces the cost associated with participation in matters before the Commission. At a minimum, a representative of an organization or corporation that is not an attorney should be permitted to file pleadings and participate in prehearing conferences, settlement conferences, or other meetings related to the case. The Commission should amend this rule so that it states that each party the Commission approves to intervene in a case based on the criteria established by Rule 4901-1-11 may be represented by an attorney or non-attorney as the party sees fit.

Proposed Rule 4901-1-30(D) Stipulations

This proposed rule states that, 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. This proposed rule is excessive as written. Many parties do not submit testimony in hearings or do so sparingly because of a lack of resources. In the past, as long as one of the signatory parties to the stipulation provided testimony in support of the stipulation, this was

adequate to support the stipulation. There should be no requirement that all parties filing a stipulation provide testimony supporting the stipulation. The rule should be rewritten to state that at least one of the parties filing a stipulation must provide testimony in support of the stipulation.

Respectfully submitted,

/s/Colleen L Mooney

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served by electronically upon the persons identified below on this 1st day of April 2011.

/s/Colleen L. Mooney
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Summary: Comments electronically filed by Ms. Colleen L Mooney on behalf of Ohio Partners for Affordable Energy