

**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; 4901-9,
Complaint Proceedings; and 4901:1-1,
Utility Tariffs and Underground
Protection, of the Ohio Administrative
Code.**

Case No. 11-776-AU-ORD

**REPLY COMMENTS OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND
THE TOLEDO EDISON COMPANY**

Ohio Edison Company (“Ohio Edison”), The Cleveland Electric Illuminating Company (“CEI”), and The Toledo Edison Company (“Toledo Edison”) (collectively, the “Companies”) hereby file their reply comments to some of the comments proffered by the Ohio Partners for Affordable Energy (“OPAE”) and the joint comments proffered by the Office of the Ohio Consumers’ Counsel, Advocates for Basic Legal Equality, Inc., Citizen Power and the Ohio Poverty Law Center (collectively the “Customer Parties”). The Companies respectfully request the Commission consider their reply comments in addition to their initial comments and appropriately modify and/or add the proposed rules.¹

I. REPLY COMMENTS TO OPAE’S COMMENTS

In its filing, OPAE offers suggestions for amending Rule 4901-1-08(A), Practice before the Commission. Staff proposed a few changes to Rule 4901-1-08(B) and (D), but did not offer any changes to subpart (A). In their initial comments, the Companies

¹ The Companies’ decision not to include a reply to all comments filed in this proceeding may not be interpreted as the Companies’ agreement with or acquiescence to other parties’ comments.

requested that the Commission amend subpart (D) to disallow corporate entities from representing the corporation at a settlement conference.

In their comments, OPAE requests that the Commission amend Rule 4901-1-08(A) to allow corporations to be represented by individuals, not attorneys, during proceedings. OPAE goes further and requests that the Commission permit a representative of an organization or corporation to file pleadings and participate in conferences related to a case.

The Commission should reject OPAE's suggestion. In amending its rules, pursuant to O.R.C. 119.032, the Commission must consider whether the rule duplicates, overlaps with, or conflicts with other rules. Under Ohio law, a corporation can maintain litigation or appear in court only through an attorney and may not do so through an officer of the corporation or any other appointed agent. *Union Savings Ass'n v. Home Owners Aid* (1970), 23 Ohio St. 2d 60. Only the Ohio Supreme Court possesses the power to regulate, control, and define the practice of law in Ohio. Section 2(B)(1)(g), Article IV, *Ohio Constitution*. Moreover the practice of law "includes conducting cases in court, preparing and filing legal pleadings and other papers, appearing in court cases, and managing actions and proceedings on behalf of clients before judges, whether before courts or administrative agencies." *Cleveland Bar Ass'n v. Coats* (2003), 98 Ohio St. 3d 413, 2003-Ohio-1496 at ¶3. Indeed, engaging in such activity before an administrative agency generally constitutes the practice of law. *Columbus Bar Ass'n v. Smith* (2003), 100 Ohio St. 3d 278, 2003-Ohio-5751 at ¶4. The suggestion proffered by OPAE would constitute the unauthorized practice of law. Thus, the Commission should reject OPAE's amendment to Rule 4901-01-08(A) and amend Rule 4901-01-08(D) as the Companies requested in their initial comments.

II. REPLY COMMENTS TO THE CUSTOMER PARTIES' COMMENTS

A. Rule 4901-1-11: Intervention

Although the Staff did not recommend any changes to Rule 4901-1-11, the Customer Parties recommend that the Commission amend it to conform with R.C. 4903.221. Specifically, the Customer Parties request that the Commission remove the requirement that intervention is not appropriate if a person's interest is represented by existing parties because they allege that it conflicts with the underlying intervention statute R.C. 4903.221.

The Customer Parties made the same suggestion and supporting argument in Case No. 06-685-AU-ORD, which the Commission rejected. As AEP Ohio argued in Case No. 06-685, if this provision is eliminated, any residential customer could be permitted to intervene even if he or she is already represented by the Office of Consumers' Counsel ("OCC"). Moreover, the Commission correctly found that

when the Commission considers a motion to intervene, it is appropriate to consider the extent to which a person's interest is already represented by existing parties. In *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 11 Ohio St.3d 384 (2006), the court found that the Commission erred by not granting OCC's motion to intervene in a case. In its decision, the court referenced existing Rule 4901-1-11 and the following phrase in that rule: "unless the person's interest is adequately represented by existing parties." The court correctly noted that similar language exists in Rule 24 of the Ohio Rules of Civil Procedure. The Commission thus concludes that it is appropriate to consider this factor when ruling on motions to intervene.

(Case No. 06-685-AU-ORD December 6, 2006 Order at 18.). Thus, for reasons already heard by the Commission, the Commission should reject the Customer Parties' request to amend Rule 4901-1-11.

B. Rule 4901-1-15: Interlocutory Appeals

Staff proposed a notice period in Rule 4901-1-15, which would require a party filing an interlocutory appeal the day before a day on which the Commission officers are closed to notify all parties by 3 p.m. Inexplicably, the Customer Parties oppose this requirement contending that “parties to a proceeding should be aware of the date an interlocutory appeal is to be filed.” While it is true that the parties to a proceeding can calculate the *last* date that an interlocutory appeal is due, a party would either have to be clairvoyant in order to know whether a party has, *indeed*, filed an interlocutory appeal or monitor the docketing system the entire day, every day, to determine whether another party filed an interlocutory appeal. Balancing these interests, with the meager effort it would take for a party to send notice to parties via e-mail, it is clear that this notice period is necessary and appropriate. This is especially true given the short time period in which a party has to respond. Therefore, the Commission should reject the Customer Parties’ suggestion.

C. Rule 4901-1-16: Scope of Discovery

The Customer Parties suggest that the Commission replace the language “testify at the hearing” in Rule 4901-1-16(C) to “submit testimony.” The Customer Parties do not give any basis for this change. Therefore, the Commission should reject the Customer Parties’ suggestion because it is unnecessary.

D. Rule 4901-1-24 Motion for Protective Order

Staff proposed a few modifications to Rule 4901-1-24. Specifically, in Subpart (F), Staff extends the expiration date for a protective order from 18 months to 24 months. Without explanation, the Customer Parties oppose this change. On the other hand, for the reasons discussed in their initial comments, the Companies agree that while the

Commission should extend the expiration date for protective orders, protective orders should not have a designated expiration date.

The Companies also do not agree with the Customer Parties' changes to Rule 4901-1-24, which propose to move protective orders related to confidential information to Rule 4901-1-2. Because a motion for protective order is addressed in Rule 4901-1-24 and not 4901-1-2, it is not appropriate to move to that rule. Moreover, the Customer Parties have not proffered any argument that the way the rule is currently written is unworkable in any way. Therefore, the Commission should reject this change.

E. Rule 4901-1-27: Hearings

The Customer Parties recommend the addition of a section that provides that the Commission give thirty days notice of public hearings. This has never been a requirement and public hearings are generally well attended. Therefore, the Commission should reject this addition.

III. CONCLUSION

The Companies again appreciate the opportunity to comment on the proposed procedural rules. The Companies urge the Commission to adopt the recommendations of the Companies set forth in both their initial and reply comments.

Respectfully submitted,

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Summary: Reply Comments electronically filed by Ms. Carrie M Dunn on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company