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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Commission's Review of )  
Chapters 4901-1, Rules of Practice and )  
Procedure; 4901-3, Commission Meetings; )  
4901-9, Compliant Proceedings; and 4901:1-1, )  
Utility Tariffs and Underground Protection of )  
the Ohio Administrative Code. )

PUCO  
Case No. 11-776-AU-ORD

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REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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In the Matter of the Commission's Review of )	
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**REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO**

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**A. INTRODUCTION**

On March 3, 2011, the Public Utilities Commission of Ohio ("Commission") by Entry issued a request for Comments and Reply Comments regarding proposed rule amendments in the this case. Comments were filed by ten parties. As an interested party, Industrial Energy Users-Ohio ("IEU-Ohio") submits these Reply Comments addressing some of the issues presented with the Commission Staff's ("Staff") proposed rule changes and other issues raised by the Comments filed by other parties.

**B. REPLY COMMENTS**

**1. IEU-Ohio Supports Increased Use of Electronic Filing**

IEU-Ohio supports the proposed changes that encourage electronic filing. As noted by several parties, the proposed changes require some clarification of the process Staff is proposing.

One concern raised by proposed addition of Rule 4901-1-02(D)(6) is the effect of the encouragement to file before four p.m. It is not clear what purpose is served by the

proposed language. If it is without legal consequence, it should be deleted from the final rule.

Several other issues raised by the comments regarding electronic service deserve comment. IEU-Ohio agrees with several parties who point out the need to clarify in the rules the method for electronic subscription to a case. Further, as suggested by Columbus Southern Power Company and Ohio Power Company ("AEP-Ohio"), the parties should be encouraged to use email for compliance with discovery requests as appropriate.<sup>1</sup> Duke Energy Ohio's ("Duke") suggestion that the rule be updated to conform with current software also makes sense;<sup>2</sup> it would remain the responsibility of the serving party to demonstrate that it provided service of the document.

**2. The Proposed Rule Change to Require Sworn Public Testimony Should be Rejected**

IEU-Ohio joins several parties in recommending that the Commission reject the proposed change to Rule 4901-1-27(C) requiring that public statements at public hearings should be sworn. The problems outlined in the various comments indicate the difficulties this rule change would cause. See, e.g., Initial Comments of Columbia Gas of Ohio, Inc., the East Ohio Gas Co., and Vectren Energy Delivery of Ohio at 24.

**3. Limits on the Start of Discovery Should be Rejected**

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<sup>1</sup> Initial Comments of AEP-Ohio at 6.

<sup>2</sup> Initial Comments of Duke Energy Ohio at 5 (proposing amendment to Rule 4901-1-05(D)(4), OAC).

IEU-Ohio urges that the Commission reject the recommendation that parties be required to secure a Commission order before beginning discovery in a matter not set for hearing.<sup>3</sup>

Two fundamental problems are apparent with this suggestion. First, the proposal would result in unnecessary delays in cases that will obviously be set for hearing. Second, there are instances in which discovery in the early stages of a proceeding initially set for only comments could result in the need to develop a factual record. Under AEP-Ohio's proposal, once again the parties would have to petition the Commission to begin that process.

As a practical matter, it is likely that a motion to commence discovery would become a normal part of a motion to intervene or be filed shortly after a case is docketed. Instead of meeting the goal of reducing regulatory burden, the proposed change would likely increase filings and cause unnecessary delay.

#### **4. The Proposed Rule Requiring Testimony Supporting a Stipulation Requires Clarification**

In the Staff's proposed change to Rule 4901-1-30, the Rule would be amended to add division (D) requiring the parties filing a full or partial written stipulation or making an oral stipulation to file or provide testimony that supports the stipulation. Because the proposed rule could be interpreted to require each supporting party to testify on behalf of a stipulation, several parties correctly note that the amendment requires clarification.<sup>4</sup> The clarification should permit that the parties to nominate a witness to serve the supporting parties' duty to support the stipulation. Further, the application of the

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<sup>3</sup> Initial Comments of AEP-Ohio at 4-5 (proposing modification of Rule 4901-1-16, OAC).

<sup>4</sup> See, e.g., Initial Comments Duke Energy Ohio at 12.

proposed division (D) to stipulations regarding issues of fact is unclear. A stipulation of fact in which some but not all parties participate is meaningless as a practical matter; the issue is subject to litigation. Further, a stipulation of fact implies that the fact is uncontroverted. Thus, it is unclear why there would be a need for supporting testimony.

**5. The Recommendation Regarding Staying Discovery if Intervention Is Opposed Should Be Rejected**

The recommendation that a party's right to discovery be stayed if a party's motion to intervene is opposed<sup>5</sup> should be rejected. The proposed change would permit gamesmanship that would far outweigh the benefits of the proposed amendment.

**6. The Proposed Mandatory Prehearing Conference Rule Should be Rejected**

The recommendation that any party may force a prehearing conference by filing a motion for such a conference should be rejected.<sup>6</sup> Again, the possibility for abuse from such a one-sided rule is apparent. The current practice of filing a motion requesting a prehearing conference and providing a demonstration of need for it should continue to satisfy the concerns implicit in this proposal and provide the Commission the opportunity to police any apparent abuse of the process.

**C. CONCLUSION**

As noted above, IEU-Ohio supports many of the proposed changes and looks forward to working with the Commission in addressing these changes to improve the regulatory process.

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<sup>5</sup> Initial Comments of Columbia Gas of Ohio, Inc., the East Ohio Gas Co., and Vectren Energy Delivery of Ohio at 17.

<sup>6</sup> Id. at 23 (proposing an amendment to Rule 4901-1-26, OAC).

Respectfully submitted,



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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Reply Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 29<sup>th</sup> day of April 2011, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

  
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