

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review )  
of Ohio Adm.Code Chapter 4901:1-26, ) Case No. 12-2818-EL-ORD  
Alternative Dispute Resolution. )

FINDING AND ORDER

The Commission finds:

- (1) R.C. 119.032, requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The Commission established this docket to conduct an evaluation of Ohio Adm.Code Chapter 4901:1-26, concerning alternative dispute resolution (ADR Rules). Neither Staff nor stakeholders proposed any changes to the ADR Rules.
- (2) On December 4, 2013, the Commission issued a Finding and Order adopting Staff's recommendation that the ADR Rules remain unchanged.
- (3) Ohio Adm.Code 4901:1-26-03 and 4901:1-26-04, which became effective on September 18, 2000, contain references to R.C. 2317.023, concerning confidentiality of mediation communications. R.C. 2317.023 has since been repealed and replaced with R.C. Chapter 2710, the Uniform Mediation Act, which governs confidentiality of mediation communications.
- (4) Accordingly, the Commission's December 4, 2013 Finding and Order should be modified to amend Ohio Adm.Code 4901:1-26-03 and 4901:1-26-04, by replacing the references to R.C. 2317.023 with references to R.C. Chapter 2710, as set forth in the attachment to this order.

It is, therefore,

ORDERED, That the March 6, 2014, filing of Ohio Adm.Code 4901:1-26-03 and 4901:1-26-04 as "no change" rules at Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission be withdrawn. It is, therefore,

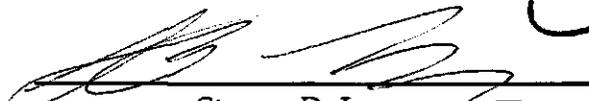
ORDERED, That amended Ohio Adm.Code 4901:1-26-03 and 4901:1-26-04 be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

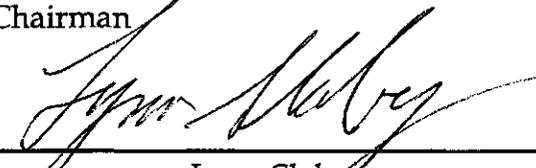
ORDERED, That the final rules be effective on the earliest date permitted by law. It is, further,

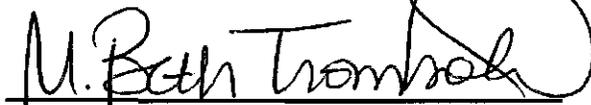
ORDERED, That a notice or copy of this Finding and Order be served upon all investor-owned electric utilities in the state of Ohio, the Electric-Energy list-serve, and all persons of record.

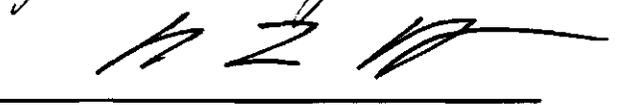
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

  
Lynn Slaby

  
M. Beth Trombold

  
Asim Z. Haque

JML/RMB/dah/sc

Entered in the Journal  
**MAR 19 2014**



Barcy F. McNeal  
Secretary

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**4901:1-26-03      Mediation.**

- (A) Any party to a pending formal complaint may ask the commission to mediate that matter.
- (B) To request mediation, a party to the pending formal complaint shall notify the chief of the electric section of the commission's legal department in writing. The party seeking mediation shall simultaneously serve a copy of the mediation request on the other party in the case. The request shall contain the following information:
  - (1) The name, address, telephone number, and fax number of the party in the case making the request.
  - (2) The name, address, telephone number, and fax number of the other party in the case.
  - (3) If different from paragraphs (B)(1) and (B)(2) of this rule, the name, address, telephone number, and fax number of the party representatives to whom inquiries should be made.
  - (4) The dispute resolution history, including meeting times and locations.
  - (5) A statement concerning the differences existing between the parties, including relevant documentation and arguments concerning matters to be mediated.
- (C) The other party to the pending formal complaint may provide a response within seven business days of service of the request for mediation. The response to a request for mediation shall be simultaneously served upon the party requesting the mediation.
- (D) The commission will appoint a mediator, who is independent of the parties, to conduct the mediation. The mediator may be commission personnel. The mediator will promptly contact the parties in the case and establish a time to commence mediation. The mediator will work with the parties to establish an appropriate schedule and procedure for the mediation. The mediator may receive technical assistance from commission staff.
- (E) The mediator's function is to impartially encourage voluntary settlement by the parties. the mediator may not compel a settlement. The mediator may schedule meetings of the parties, direct the parties to prepare for those meetings, hold private caucuses with each party, request that the parties share information,

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attempt to achieve a mediated resolution, and, if successful, assist the parties in preparing a written agreement.

- (F) To ensure a full and frank discussion of the issues, the parties shall agree to provide, on an expedited basis, information requested by the other party relevant to the mediated issues. Where appropriate, such information shall be provided pursuant to appropriate protective agreements.
- (G) Parties submitting to mediation under this rule agree to participate, in good faith, in the mediation process for a minimum of thirty calendar days after initiation of the mediation process by the mediator and for a maximum of forty-five calendar days, unless the mediator extends that time frame. Participants in the mediation sessions shall attend those sessions and shall have the actual authority to enter into a settlement of the matters at issue.
- (H) Mediations conducted under this rule shall be subject to Ohio confidentiality statutes (e.g., ~~section 2317.023~~ Chapter 2710 of the Revised Code).
- (I) Parties to the mediation shall reduce to writing the mediated resolution of all or any portion of the mediated issues and submit it to the mediator.
- (J) A member of the commission or a commission employee who serves as mediator shall, by virtue of having served in such capacity, be precluded from serving in a decision-making role or as a witness on matters subject to mediation in a formal commission case involving the same parties and the same issues.

**4901:1-26-04      Arbitration.**

- (A) All parties to a pending formal complaint must agree that the dispute (or a portion thereof) should be resolved through arbitration.
- (B) If all parties to the pending formal complaint agree that the dispute (or a portion thereof) should be resolved through arbitration, the parties shall jointly file a request with the commission to stay the proceeding pending the arbitration. The parties shall outline with sufficient specificity the issues for which arbitration is being sought. In the joint request, the parties may seek to have the commission assign its personnel to be the arbitrator or the parties may request that the issues to be arbitrated be assigned to a commission-approved, certified arbitration process approved pursuant to paragraph (J) of this rule.

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- (C) The commission will consider a request to stay the formal complaint proceeding pending an arbitration and grant it within fifteen calendar days, if the issues to be arbitrated do not involve a policy matter that the commission itself wishes to consider or if the commission does not have concerns with the commercial arbitration process proposed. If granted, the formal commission docket shall be suspended pending completion of the arbitration process.
- (D) If commission personnel is not the arbitrator, the parties shall notify the commission once they have engaged the arbitrator.
- (E) The arbitrator shall have the authority allowed by law. The arbitrator shall issue the arbitration award in writing and serve it upon the parties.
- (F) By electing arbitration under this rule, the parties shall not disclose communications made in the course of and relating to the subject matter of the arbitration, except as permitted in this chapter or under circumstances consistent with those applicable to mediation communications under ~~section 2317.023~~ Chapter 2710 of the Revised Code. By electing arbitration under this rule, the parties shall not appeal (to the commission or any court) any intermediary rulings made by the arbitrator.
- (G) Where the parties request to have commission personnel act as arbitrator and such request is granted by the commission, the parties shall, within one hundred and twenty calendar days from the date upon which the commission approves their case for arbitration, complete the arbitration and receive an arbitration award. The parties may jointly apply or the arbitrator may apply to the commission for an extension of this deadline for good cause shown.
- (H) If the parties accept the arbitration award, a copy of the arbitration award need not be filed with the commission but, at a minimum, an executive summary of the award (including the issues decided, the facts as determined, who prevailed, and the type of award granted) shall be filed (within thirty calendar days of the issuance of an arbitration award) in the commission's docket, along with the parties' joint motion to dismiss the complaint (or involved portion thereof) in light of their acceptance of the award.
- (I) When commission personnel acts as the arbitrator, the arbitration award shall be final and binding upon the parties, except as described in this provision. Within thirty calendar days of the issuance of an arbitration award, any party to the arbitration may seek commission review of the arbitration award, but such request for review shall not seek de novo review of the legal and factual conclusions made

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by the arbitrator. The commission will review the record of the arbitration proceeding to ascertain only the existence of any grounds identified in Chapter 2711. of the Revised Code, such as fraud, corruption, misconduct, impropriety, or mistake by the arbitrator. Requests for commission review shall include the arbitration record as needed and a brief or supporting memorandum. Any opposing brief/memorandum shall be filed within fifteen calendar days of filing of the request for review (or eighteen calendar days, if the other party's filing was served by mail). The commission will endeavor to issue its ruling on the review request within forty-five calendar days after any opposing brief/memorandum is filed. Upon consideration of the review request, the commission may confirm, vacate, modify or enforce the arbitration award. If the commission vacates the arbitration award (in whole or in part), the commission shall specify whether the matter should be remanded to the same arbitrator. Any commission decision to confirm, vacate, modify or enforce the arbitration award under this provision is subject to rehearing pursuant to section 4903.10 of the Revised Code, and any final commission decision is subject to appeal pursuant to section 4903.13 of the Revised Code.

- (J) Electric utilities, electric service companies, electric cooperatives, and governmental aggregators may file an application with the commission seeking certification to use a proposed commercial arbitration process for any class of formal complaints or for all potential formal complaints. Such an application shall contain the terms and conditions under which potential complaints may be referred to a particular commercial arbitration process pursuant to this rule. Such terms and conditions may include, but are not limited to, which parties shall bear the cost of the arbitration process, what class of potential complaints may be referred to commercial arbitration, and whether such arbitration shall be binding on either or both of the parties. The commission staff shall review such an application seeking certification to use a commercial arbitration process and recommend to the commission whether the application should be approved. The commission may approve such an application if the commission is satisfied that the commercial arbitration process is fair, cost-effective, and does not result in prejudice against any potential future parties. By approving an application pursuant to this provision, the commission retains the right to evaluate, in each individual formal complaint proceeding, whether to grant a request to stay the formal complaint proceeding pending arbitration.