

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Cynthia Wingo,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 16-2401-EL-CSS
	)	
Nationwide Energy Partners, LLC, et al.,	)	
	)	
Respondents.	)	

**APPLICATION FOR REHEARING OF JANUARY 17, 2018 ENTRY ON REHEARING**

Complainant Cynthia Wingo respectfully requests rehearing of the January 17, 2018 Entry on Rehearing (Entry) dismissing her application for rehearing of the November 21, 2017 Finding and Order (Order). The Order granted the motion to dismiss of Respondent Nationwide Energy Partners, LLC (NEP). The Entry is unreasonable and unlawful because:

1. The Commission violated R.C. 4903.10 by refusing to exercise jurisdiction to consider Ms. Wingo's application for rehearing on the merits.

This application for rehearing is authorized under R.C. 4903.10 and should be granted for the reasons explained in the incorporated memorandum in support.

**MEMORANDUM IN SUPPORT**

The official version of the filing the Commission refuses to consider bears this confirmation:

**This foregoing document was electronically filed with the Public Utilities Commission of Ohio Docketing Information System on 12/21/2017 5:47:36 PM in Case No(s). 16-2401-EL-CSS.**

An application for rehearing must be "filed" within thirty "days" of the underlying order.

R.C. 4903.10. As Ms. Wingo explained in her reply memorandum, a document is “filed” when it is “received” by the tribunal. *Bohacek v. Bureau of Employment Servs.*, 9 Ohio App. 3d 59, syllabus ¶ 2 (8th Dist. 1983). And “day” means a full calendar day. “Fractions of a day are not generally considered in the legal computation of time, and the day on which an act is done or an event occurs must be wholly included or excluded.” *Greulich v. Monnoin*, 142 Ohio St. 113, 117 (1943). The Commission’s official records show that it “received” the application for rehearing on the thirtieth “day” following the underlying Order. The Commission has jurisdiction to consider the application.

The Entry ignores both the plain language of R.C. 4903.10 and judicial interpretation of the terms “file” and “day.” The Entry instead focuses on R.C. 4901.10, which requires the Commission to be open for business weekdays from 8:30 a.m. to 5:30 p.m. The Commission also cites R.C. 4901.13, which gives it rulemaking authority, and Rule 4901-1-02(D)(4), which states that documents submitted electronically after 5:30 p.m. will be deemed filed as of the next business day. The Commission mashes these statutes and rules together to conclude that it has no “jurisdiction” to consider an application for rehearing electronically filed after 5:30 p.m. on the due date. Entry ¶¶ 13,15. Because Ms. Wingo’s application was filed at 5:47 p.m., the Commission claims it has no jurisdiction to consider it.

The Commission’s statutory interpretations are unreasonable and unlawful, and the result reached arbitrary. The issue is not whether the Commission has authority to enact Rule 4901-1-02(D)(4). It does. The issue is not whether Ms. Wingo’s application was filed before the 5:30 p.m. deadline imposed by this rule. It wasn’t. Nor is the issue whether the Commission should “invalidate our current electronic e-filing rule.” Entry ¶12. It shouldn’t. The issue is whether the filing was actually received by the Commission on December 21, 2017. There is no dispute that

it was, and an administrative rule deeming the filing to have occurred on December 22 does not change this fact.

R.C. 4901.10 states that the Commission “shall be open” from 8:30 a.m. to 5:30 p.m. The statute says nothing about how or when the Commission must accept filings. The Entry merely asserts that it is “reasonable” to limit filings to business hours. Entry ¶ 14. Whether such a policy is “reasonable” does not answer the question of whether there is a “statutory requirement[]” to restrict filings to the hours specified in R.C. 4901.10. *See id.* The statute certainly does not say this, and the Commission cannot say that it observes such a policy. The docketing division is open from 7:30 a.m. to 5:30 p.m., Monday through Friday. Rule 4901-1-02(A)(3), O.A.C. If R.C. 4901.10 *requires* the Commission to only accept filings between 8:30 and 5:30, then every filing ever accepted between 7:30 a.m. and 8:29 a.m. is unlawful and invalid. If the Commission has authority to accept filings before 8:30 a.m., then it also has authority to accept filings after 5:30 p.m. R.C. 4901.10 cannot be read to permit the former but forbid the latter.

R.C. 4903.10 is a remedial law. “[R]emedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice.” R.C. 1.11. Rather than broadly construe the *statutory* terms “file” and “day,” the Entry falls back to Rule 4901-1-02(D)(4). The rule says that documents submitted after 5:30 p.m. will be deemed filed the next day. The constructive date of filing is not the date that matters under R.C. 4903.10. The date the filing was actually received is the operative date, and the Commission’s records show that it received the filing on December 21, 2017.

Considering Ms. Wingo’s application for rehearing on the merits would not “invalidate our current electronic e-filing rule.” Entry ¶ 12. The Commission has broad discretion to implement procedural rules and deadlines. If the Commission wishes to treat electronic

submissions received after 5:30 p.m. “filed” as of the next day, it may do so. But rules and procedures for managing and administering the Commission’s docket should be observed for these housekeeping purposes, not for purposes of cutting off parties’ rights. When a document is “filed” on a “day” that is within a statutory deadline, the Commission cannot invoke House Rules to declare the filing in violation of that deadline. The Commission is free to consider the filing as being made on December 22 for purposes of its rules, but this does not change the fact that the Commission received the filing on December 21.

The deadline for filing an application for rehearing is unlike any other deadline parties must typically observe in Commission proceedings, and the consequences of missing this deadline are far more drastic. The deadlines for filing an answer to a complaint, a response to a motion, or the service of discovery responses are set by Commission rules. *See, e.g.*, Rule 4901-9-01(B) (20 days to file an answer); Rule 4901-1-12(B)(15 and 7 days, respectively, to file a memorandum contra and reply); Rule 4901-1-19(A) (20 days for service or interrogatories). Any of these deadlines may be waived. Rule 4901-1-38(B). The Commission routinely grants waivers for these deadlines in the event of a “system failure, building closure, or some other technological impediment.” Entry ¶ 12. But none of these events, or any event, is sufficient to waive the 30-day deadline for filing an application for rehearing. Again, this is a statutory, jurisdictional deadline. *Id.* at ¶ 13. Ms. Wingo did not explain why she was “prohibited from the timely filing of her application” because nothing she has to say matters. The statute offers no exceptions or excuses. More importantly, the application was “timely” filed under the statutory deadline, even though it was not timely under the deadline established by rule.

Accepting Ms. Wingo’s application would set a precedent for allowing parties to e-file applications for rehearing up to midnight of the due date. That would not necessarily be a bad

thing—although parties would have to live with the consequence of last-minute technical glitches, emergencies, and so forth. The Commission does not have to extend this policy to all filings—only those with a statutory deadline. This would bring the Commission closer toward state and federal civil practice, where *all* filings are permitted up until midnight of the due date.<sup>1</sup>

The Commission should accept Ms. Wingo’s December 21, 2017 application for rehearing and decide the issues raised on their merits.

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<sup>1</sup> Southern District of Ohio Policies and Procedures, Electronic Case Filing Procedures Guide (Jan. 2016) at 1 (“A document will be deemed timely filed if electronically filed prior to midnight on the due date, unless the assigned judge has ordered the document filed by an earlier time on that date.”); Franklin County Ohio Court of Common Pleas, Sixth Amended Admin. Order, at 9 (“Upon receipt of an electronic document submitted for filing, the e-Filing System shall issue to the e-Filer a confirmation that the submission has been received. The confirmation notice shall include the date and time of receipt and shall serve as proof of receipt of the submission. The confirmation notice shall also inform the e-Filer that, if the document is accepted for filing, the date and time reflected in the confirmation notice shall serve as the date and time of filing, unless the document was submitted for filing after 11:59 p.m. on a Friday or after 11:59 p.m. on a business day before a Court holiday. In that case, the document will be deemed filed on the following business day.”)

Dated: February 16, 2018

Respectfully submitted,

s/ Mark A. Whitt

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## CERTIFICATE OF SERVICE

This document was filed via the Commission's e-filing system on February 16, 2018. Parties who have subscribed to electronic service will receive notice of this filing from the Commission. Service is also being made this day to the following persons by email:

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Summary: Application for Rehearing electronically filed by Ms. Rebekah J. Glover on behalf of Ms. Cynthia Wingo