

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF CHAPTER 4901:1-26 OF THE
OHIO ADMINISTRATIVE CODE.

CASE NO. 18-1187-EL-ORD

FINDING AND ORDER

Entered in the Journal on February 6, 2019

I. SUMMARY

{¶ 1} The Commission adopts, with no changes, the current rules contained in Ohio Adm.Code Chapter 4901:1-26, regarding alternative dispute resolution.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require 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. Ohio Adm.Code Chapter 4901:1-26 concerns alternative dispute resolution.

{¶ 3} R.C. 106.03(A) requires the Commission to determine whether:

- (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;
- (b) The rules need amendment or rescission to give more flexibility at the local level;
- (c) The rules need amendment or rescission to eliminate unnecessary paperwork;
- (d) The rules incorporate a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74, and whether

the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;

- (e) The rules duplicate, overlap with, or conflict with other rules;
- (f) The rules have an adverse impact on businesses, as determined under R.C. 107.52;
- (g) The rules contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and
- (h) The rules require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 4} Additionally, on January 10, 2011, the governor of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, needlessly burdensome, have had negative unintended consequences, or unnecessarily impede business growth.

{¶ 5} Also, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must conduct a business impact analysis (BIA) regarding the rules. If there will be an adverse impact on business, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.

{¶ 6} By Entry issued on August 14, 2018, the Commission scheduled a workshop to be held at the Commission offices on August 27, 2018, to elicit feedback on the rules and to permit stakeholders to propose their own revisions to the rules for Staff's consideration. The workshop was held as scheduled, but no changes were proposed by stakeholders.

{¶ 7} By Entry issued on November 28, 2018, the Commission ordered all interested parties to file comments concerning Staff's proposal to make no changes to any rules in Ohio Adm.Code Chapter 4901:1-26.

B. Consideration of the Comments

{¶ 8} No comments were filed in response to Staff's proposal to make no changes to Ohio Adm.Code Chapter 4901:1-26.

C. Conclusion

{¶ 9} The Commission has considered the matters set forth in Executive Order 2011-01K and R.C. 121.82. With these factors in mind, and upon consideration of Staff's recommendations, the Commission finds that current Ohio Adm.Code Chapter 4901:1-26 should be adopted with no changes.

{¶ 10} The rules are posted on the Commission's Docketing Information System website at <http://dis.puc.state.oh.us>. To minimize the expense of this proceeding, the Commission will serve a paper copy of this Finding and Order only. All interested persons are directed to input case number 18-1187 into the Case Lookup box to view this Finding and Order, as well as the rules, or to contact the Commission's Docketing Division to request a paper copy.

III. ORDER

{¶ 11} It is, therefore,

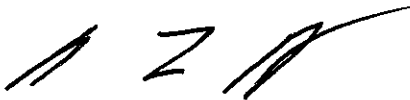
{¶ 12} ORDERED, That Ohio Adm.Code 4901:1-26-01, 4901:1-26-02, 4901:1-26-03, and 4901:1-26-04 be adopted with no changes. It is, further,

{¶ 13} ORDERED, That the adopted rules 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 R.C. 111.15. It is, further,

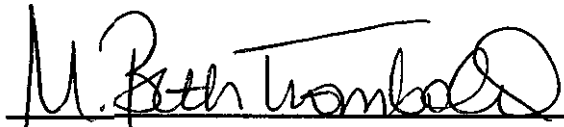
{¶ 14} ORDERED, That the final rules be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:1-26 shall be in compliance with R.C. 106.03. It is, further,

{¶ 15} ORDERED, That a copy of this Finding and Order be served upon all investor-owned electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, and the Electric-Energy list-serve.


THE PUBLIC UTILITIES COMMISSION OF OHIO



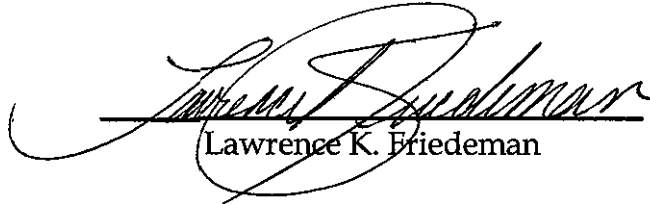
Asim Z. Haque, Chairman



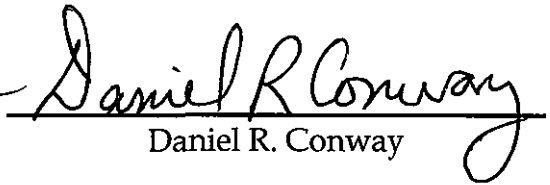
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

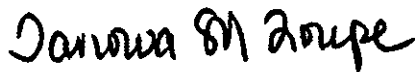


Daniel R. Conway

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Tanowa M. Troupe
Secretary

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NO CHANGE

4901:1-26-01 Purpose and scope.

The alternative dispute resolution procedures in this chapter are available for pending formal complaints between nonmercantile, nonresidential customers, on the one hand, and electric utilities, electric service companies, electric cooperatives, or governmental aggregators, on the other hand. The purpose of this chapter is to facilitate efficient resolution of pending formal complaints between nonmercantile, nonresidential customers, on the one hand, and electric utilities, electric service companies, electric cooperatives, or governmental aggregators, on the other hand. This chapter is not intended to alter or diminish the commission's (or its staff's) authority to conduct investigations and to take remedial action when deemed necessary. This chapter is not intended to alter or diminish the commission's (or its staff's) dispute resolution procedures for informal disputes.

NO CHANGE

4901:1-26-02 Definitions.

- (A) "Mediation" is a voluntary, alternative dispute resolution process available to resolve formal complaints pending at the commission that are between nonmercantile, nonresidential customers, on the one hand, and electric utilities, electric service companies, electric cooperatives, or governmental aggregators, on the other hand. Under this mediation process, a neutral third party, who is independent of the parties, assists the parties in reaching their own settlement. The mediator does not have the power to impose a resolution. The role of the mediator and the goal of the process are to help the parties achieve their own resolution.
- (B) "Arbitration" is a voluntary, alternative dispute resolution process available to resolve formal complaints pending at the commission that are between nonmercantile, nonresidential customers, on the one hand, and electric utilities, electric service companies, electric cooperatives, or governmental aggregators, on the other hand. Under this arbitration process, the parties present evidence and legal arguments to a neutral third party, called an arbitrator or an arbitration panel, who renders a decision. The parties are required to accept the arbitration decision when commission personnel acts as the arbitrator, except to the limited extent set forth in this chapter.

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- (C) "Commission" means the public utilities commission of Ohio.
- (D) "Certified arbitration process" means a commercial arbitration process, the use of which has been approved by the commission pursuant to paragraphs (B) and (J) of rule 4901:1-26-04 of the Administrative Code for resolving disputes arising under formal complaints filed with the commission.

NO CHANGE

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

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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, 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., 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.

NO CHANGE

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.

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- (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.
- (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 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.

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- (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 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.