

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Ohio Adm.)	
Code Chapter 4901-1 Rules Regarding)	Case No. 18-275-AU-ORD
Practice and Procedure Before the)	
Commission.)	
)	
In the Matter of the Review of Ohio Adm.)	
Code Chapter 4901-1-1 Rules Regarding)	Case No. 18-276-AU-ORD
Utility Tariffs and Underground Utility)	
Protection Service Registration.)	
)	
In the Matter of the Review of Ohio Adm.)	
Code Chapter 4901-3 Rules Regarding Open)	Case No. 18-277-AU-ORD
Commission Meetings.)	
)	
In the Matter of the Review of Ohio Adm.)	
Code Chapter 4901-9 Rules Regarding)	Case No. 18-278-AU-ORD
Commission Complaint Proceedings.)	

**REPLY COMMENTS OF THE OHIO MANUFACTURERS’
ASSOCIATION ENERGY GROUP**

I. INTRODUCTION

On December 4, 2019, the Public Utilities Commission of Ohio (Commission) issued proposed modifications to various rules in Ohio Adm. Code Chapters 4901-1, 4901:1-1, 4901-3, and 4901-9, and directed interested persons or entities to file comments with the Commission regarding the proposed rules by January 3, 2020 and January 17, 2020, respectively, which was later extended to January 13, 2020 and February 10, 2020, respectively. Multiple stakeholders filed comments on January 13, 2020. OMAEG hereby files the following reply comments.

II. REPLY COMMENTS

A. Rules 4901-1-16 through 4901-1-22–Discovery.

Several parties filed comments and proposed changes to the Commission’s discovery rules. Any changes that the Commission adopts to these rules should further the intent of the rules, which is to provide parties with ample rights to discovery as required by Ohio law, O.A.C. 4901-1-16, and Civ. R. 26. Specifically, R.C. 4903.082 requires that all parties and intervenors in Commission proceedings be granted ample rights of discovery.

To this end, the Commission should reject Columbia/Duke’s attempt to limit discovery and the production of documents at a deposition.¹ A corporate designee may be deposed and should be required to produce documents relating to the matters in which he has been designated by his company to testify, regardless as to whether he has personal knowledge. Additionally, discovery through depositions, including the production of documents at such depositions, is a separate discovery tool and should not be narrowed or otherwise limited by other discovery tools (e.g., written discovery). Given the timing issue that often arises with the deposition discovery tool and production of documents, OMAEG supports OCC/NOAC’s proposed modification to Rule 4901-1-21(E).²

Similarly, AEP’s rewrite of the discovery rules in an attempt to limit parties’ participation in cases should be rejected.³ AEP overtly states:

Discovery by intervenors should, absent a basis that an ALJ endorses, be limited to contested proceedings where a hearing process is involved; of course, an ALJ can always proactively establish discovery

¹ Initial Comments of Columbia Gas of Ohio, Inc. and Duke Energy Ohio, Inc., Case No. 18-275-AU-ORD, et al., Initial Comments at 2-3 (January 13, 2020) (Columbia/Duke Comments).

² Comments by the Office of the Ohio Consumers’ Counsel and the Northwest Ohio Aggregation Coalition, Case No. 18-275-AU-ORD, Comments at 14 (January 13, 2020) (OCC/NOAC Comments).

³ Initial Comments of Ohio Power Company, Case No. 18-275-AU-ORD, et al., Initial Comments at 2-4, 5-6 (January 13, 2020) (AEP Comments).

parameters in setting forth a procedural schedule in any type of proceeding as appropriate. But constant discovery in routine rider cases, tariff filings and similar proceedings is inefficient, unnecessary and counterproductive. Requiring the Company to respond to such requests serves no purpose other than to impose an unnecessary burden on the Company, as, despite the fact that the matter will never proceed to hearing, the Company is required to spend time and resources to respond the requests.⁴

AEP's statement minimizes the significance of many regulatory proceedings and ignores the importance of discovery in regulatory proceedings as a check and balance on the regulated public utility. AEP also ignores Ohio law that allows parties that may be adversely affected by a Commission proceeding to intervene in such proceeding to protect its interests and to ensure that the public utility's rates and services are just, reasonable, and not otherwise in violation of Ohio law.⁵

Further, AEP's proposed requirements 1) that a party be formally granted intervention in order to participate in discovery; 2) that a party cannot participate in discovery until a procedural schedule has been established; 3) that initial discovery cannot be combined with supplemental discovery; 4) that discovery and documents produced in a prior proceeding may not be used in a subsequent proceeding; and 5) that the number of discovery requests be limited in all types of proceedings are all contrary to the policy that "ample rights" be granted to parties.

Instead, OCC/NOAC's proposal to revise Rule 4901-1-17 to clarify that discovery begins after a proceeding is commenced with the opening of a docket or Commission proceeding and that an intervenor may seek discovery immediately upon intervention should be adopted.⁶ OMAEG supports the clarification requested by OCC/NOAC and requests that the Commission clarify that discovery begins immediately after a proceeding is commenced. The Commission

⁴ AEP Comments at 3.

⁵ R.C. 4903.221 and R.C. 4905.26. See also, generally, R.C. Title 49.

⁶ OCC/NOAC Comments at 11.

should also clarify that an intervenor may seek discovery immediately upon the filing of an intervention and that a party has a duty to answer that discovery unless the party seeks a motion for protective order. The Commission should further clarify that a party cannot claim that they are not obligated to answer discovery until intervention is granted or a procedural schedule is established.

Any attempt to limit the rights of intervenors should be rejected as parties and the discovery process are integral pieces of the Commission's regulatory process.

B. Chapter 4901:1-1—Utility tariffs.

OCC, Northeast Ohio Public Energy Council, NOAC, and Edgemont Neighborhood Coalition (collectively, Consumer Groups) filed joint comments in Case No. 18-276-AU-ORD, recommending that a new rule be created, Rule 4901:1-1-04, that would require all utility rider tariffs to include the following refund language:

This tariff is subject to reconciliation or adjustment, including but not limited to, increases, decreases or refunds. Such reconciliation or adjustment shall be calculated so that the rates or charges under the tariff fully compensate utility customers for charges determined to be unlawful, unreasonable, or imprudent by the Commission in the docket those rates were approved or the Supreme Court of Ohio.

OMAEG supports the new rule and inclusion of refund language in the utilities' tariffs. In light of recent decisions issued by the Supreme Court of Ohio, making charges subject to refund is imperative to effectuating rulings by the Court when the Court finds that a utility charge is unlawful. As explained by the Consumers Group,⁷ customers have been denied refunds for electric charges after the Court determines that the charges were unlawful because the charges were not made subject to refund in the utilities' tariffs. A mandatory refund

⁷ Comments for a Rule to Provide for Refunds to Consumers by the Office of the Ohio Consumers' Counsel, Northeast Ohio Public Energy Council Northwest Ohio Aggregation Coalition, and Edgemont Neighborhood Coalition, Case No. 18-276-AU-ORD, Joint Comments at 1-2 (January 13, 2020) (Consumer Groups Comments).

provision would ensure that utilities refund to customers any charges that are later found to be unlawful. Accordingly, the Commission should adopt the Consumers' Group's recommendation and adopt a new rule, Rule 4901:1-1-04, titled "Refund language in tariffs" and require the refund language to be added to all utility rider tariffs.

III. CONCLUSION

OMAEG appreciates the opportunity to comment on the Commission's proposed rules and modifications proposed by other parties. OMAEG respectfully requests that the Commission adopt or reject the proposed modifications as explained herein.

Respectfully Submitted,

/s/ Kimberly W. Bojko

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on February 7, 2020 upon the parties listed below.

/s/ Kimberly W. Bojko

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Summary: Comments REPLY COMMENTS OF THE OHIO MANUFACTURERS'
ASSOCIATION ENERGY GROUP
electronically filed by Mr. Shaun P Lyons on behalf of Ohio Manufacturers' Association
Energy Group