

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of Chapters)
4901-1, 4901-3, and 4901-9 of the Ohio) Case No. 06-685-AU-ORD
Administrative Code.)

ENTRY NUNC PRO TUNC

The Commission finds:

- (1) On December 6, 2006, the Commission issued its finding and order in this case. The Commission ordered that amended Rules 4901-1-01 through 4901-1-29, 4901-1-31, 4901-1-32, 4901-1-34 through 37, 4901-3-01, 4901-3-02, and 4901-9-01, the appendix to Rule 4901-1-25, and new Rule 4901-1-38 be adopted. The Commission also ordered that those rules, the appendix to Rule 4901-1-25, and existing Rules 4901-1-30 and 4901-1-33 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.
- (2) It has come to the Commission's attention that there were three inconsistencies between its discussion and decision in the finding and order and the rules attached to the finding and order.
- (3) The Commission staff proposed that a definition of a facsimile transmission be included in Rule 4901-1-01. The proposed definition referred to a "transmission of a source document by a facsimile machine." In finding (10) of its finding and order, the Commission determined that the definition of "facsimile machine" should be revised to reference a "facsimile machine or other electronic device" because other pieces of office equipment, such as computers and photocopiers, may also be used to send facsimile transmissions. The adopted Rule 4901-1-01 attached to the Commission's December 6, 2006, finding and order failed to include the phrase "or other electronic device." Rule 4901-1-01 attached to the Commission's December 6, 2006, finding and order should be amended, nunc pro tunc, to include the phrase "or other electronic device."

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- (4) In finding (28) of its finding and order, the Commission agreed with the staff proposal to include "whether a hearing will be held in the proceeding" among the criteria in Rule 4901-1-11 that the Commission will consider in ruling upon motions to intervene. The adopted Rule 4901-1-11 attached to the Commission's December 6, 2006, finding and order failed to include the phrase "whether a hearing will be held in the proceeding." Paragraph (B) of Rule 4901-1-11 attached to the Commission's December 6, 2006, finding and order should be amended, nunc pro tunc, to include the phrase "whether a hearing will be held in the proceeding."
- (5) Paragraph (B)(1)(b) of Rule 4901-1-02 provides that neither an application for rehearing nor a memorandum contra an application for rehearing filed pursuant to Rule 4901-1-35 may be filed via facsimile transmission. The final sentence in paragraph (B) of Rule 4901-1-35 provides that "(n)either an application for rehearing nor a memorandum contra may be filed by facsimile transmission." At least one commenter recommended that the prohibition found in paragraph (B)(1)(b) of Rule 4901-1-02 be repeated in Rule 4901-1-35. The Commission, fearing that the prohibition may not be easily identified in Rule 4901-1-35 because the language is not in a stand-alone paragraph, added a new paragraph (E) to Rule 4901-1-35 to state the prohibition. The Commission intended to delete the prohibitive language included in the last sentence of paragraph (B) of Rule 4901-1-35, but failed to do so. Paragraph (B) of Rule 4901-1-35 should be revised, nunc pro tunc, to reflect the deletion.

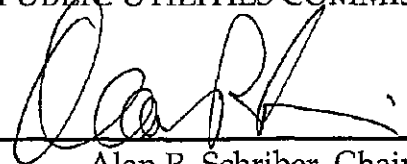
It is, therefore,

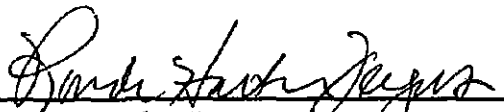
ORDERED, That the Commission's December 6, 2006, finding and order be amended, nunc pro tunc, in accord with findings (3), (4), and (5) and that attached amended Rules 4901-1-01, 4901-1-11, and 4901-1-35 are adopted and should be filed with the Joint Committee on Agency Rule Review, the Secretary of 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 day permitted by law. Unless otherwise ordered by the Commission, the review date for Rules 4901-1-01, 4901-1-11, and 4901-1-35 shall be September 30, 2010. It is, further,

ORDERED, That a copy of this entry and the attached rules be served upon all public utilities subject to the jurisdiction of this Commission; the Ohio Consumers' Counsel; the Ohio Telecommunications Industry Association; the Ohio Trucking Association; the Ohio Railroad Association; the Ohio Gas Association; the Ohio Electric Institute; the Ohio Cable Television Association; the Ohio Manufacturers Association; the Ohio Municipal League; the cities of Cleveland, Columbus, Cincinnati, Dayton, and Toledo; the chair of the Ohio State Bar Association Public Utilities Committee; the Ohio Environmental Council; the Legal Aid Societies of Cleveland, Columbus, Cincinnati, Dayton, and Toledo; Ohio Partners for Affordable Energy; and Ohio Gas Marketers Group.

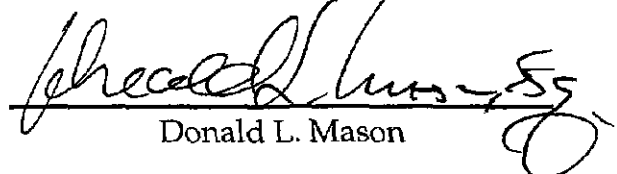
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

Valerie A. Lemmie

Donald L. Mason

PJD/vrm

Entered in the Journal

FEB 07 2007

Renee J. JenkinsRenee J. Jenkins
Secretary

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4901-1-01 **Definitions.**

As used in this chapter:

(A) "Business day" means any day which is not a Saturday, Sunday, or legal holiday.

(B) "Commission" means the public utilities commission.

(C) "Electric utility" means an electric light company as defined in section 4905.03 of the Revised Code and an electric services company as defined in section 4928.01 of the Revised Code.

(D) "Emergency rate proceeding" means any case involving an application for an emergency rate adjustment filed under section 4909.16 of the Revised Code.

(E) "Facsimile transmission" means the transmission of a source document by a facsimile machine or other electronic device that encodes a document into signals and transmits and reconstructs the signals to print a duplicate of the source document at the commission's docketing division or a party's location.

~~(E)~~(F) "Gas utility" means a gas or natural gas company as defined in section 4905.03 of the Revised Code.

~~(F)~~(G) "General rate proceeding" means any case involving: an application for an increase in rates filed under section 4909.18 of the Revised Code, a complaint or petition filed under section 4909.34 or 4909.35 of the Revised Code, or an investigation into the reasonableness of a public utility's rates initiated by the commission under section 4905.26 of the Revised Code.

~~(1) An application for an increase in rates filed under section 4909.18 of the Revised Code;~~

~~(2) A complaint or petition filed under section 4909.34 or 4909.35 of the Revised Code; or~~

~~(3) An investigation into the reasonableness of a public utility's rates initiated by the commission under section 4905.26 of the Revised Code.~~

~~(G)~~(H) "Long-term forecast report" has the meaning set forth in section 4935.04 of the Revised Code.

~~(H)~~(I) "Motor carrier proceeding" means any proceeding involving the regulation of one or more motor transportation companies or private motor carriers.

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~~(H)~~(J) "Motor transportation company" has the meaning set forth in section 4921.02 of the Revised Code.

~~(J)~~(K) "Person" means a person, firm, corporation, unincorporated association, government agency, the United States, the state of Ohio or one of its political subdivisions, or any other legally cognizable entity including any entity defined as a "person" in division (A) of section 4906.01 of the Revised Code.

~~(K)~~(L) "Presiding hearing officer" means the commissioner or attorney examiner presiding at a public hearing or prehearing conference.

~~(L)~~(M) "Private motor carrier" has the meaning set forth in section 4923.02 of the Revised Code.

~~(M)~~(N) "Public utility" has the meaning set forth in section 4905.02 of the Revised Code.

~~(N)~~(O) "Purchased gas adjustment proceeding" means any proceeding heard under section 4905.302 of the Revised Code and rule 4901:1-14-08 of the Administrative Code.

~~(O)~~(P) "Railroad" has the meaning set forth in section 4907.02 of the Revised Code.

~~(P)~~(Q) "Reporting person" means any person required to file a long-term forecast report under section 4935.04 of the Revised Code.

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4901-1-11 **Intervention.**

(A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

- (1) A statute of this state or the United States confers a right to intervene; ~~or~~
- (2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

(B) In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or ~~the~~ an attorney examiner assigned to the case may shall consider:

- (1) The nature and extent of the person's prospective intervenor's interest;
- (2) The extent to which the person's interest is represented by existing parties; legal position advanced by the prospective intervenor and its probable relation to the merits of the case..
- (3) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
- (4) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice any existing party; the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

(5) The extent to which the person's interest is represented by existing parties.

(6) Whether a hearing will be held in the proceeding.

(C) Any person desiring to intervene in a proceeding shall file a motion to intervene with the commission, and shall serve it upon all parties in accordance with rule 4901-1-05 of the Administrative Code. The motion shall be accompanied by a memorandum in support, setting forth the person's interest in the proceeding. The same procedure shall be followed where a statute of this state or the United States confers a right to intervene.

(D) Unless otherwise provided by law, the commission, the legal director, the deputy legal director, or the attorney examiner may:

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- (1) Grant limited intervention, which permits a person to participate with respect to one or more specific issues, if: the person has no real and substantial interest with respect to the remaining issues or the person's interest with respect to the remaining issues is adequately represented by existing parties.
 - ~~(a) The person has no real and substantial interest with respect to the remaining issues; or~~
 - ~~(b) The person's interest with respect to the remaining issues is adequately represented by existing parties; and~~
 - (2) Require ~~intervenor parties~~ with substantially similar interests to consolidate their examination of witnesses or presentation of testimony.
- (E) A motion to intervene will not be considered timely if it is filed later than: five days prior to the scheduled date of hearing or any specific deadline established by order of the commission for purposes of a particular proceeding.
- ~~(1) Five days prior to the scheduled date of hearing; or~~
 - ~~(2) Any specific deadline established by order of the commission for purposes of a particular proceeding.~~
- (F) A motion to intervene which is not timely will be granted only under extraordinary circumstances.

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4901-1-35 Applications for rehearing.

- (A) Any party or any affected person, firm, or corporation may file an application for rehearing, within thirty days after the issuance of a commission order, in the form and manner and under the circumstances set forth in section 4903.10 of the Revised Code. An application for rehearing must set forth the specific ground or grounds upon which the applicant considers the commission order to be unreasonable or unlawful. An application for rehearing may must be accompanied by a memorandum in support, which sets forth an explanation of the basis for each ground for rehearing identified in the application for rehearing and which shall be filed no later than the application for rehearing.
- (B) Any party may file a memorandum contra within ten days after the filing of an application for rehearing. ~~Neither an application for rehearing nor a memorandum contra may be filed by facsimile transmission.~~
- (C) ~~For purposes of this rule, the time limits set forth in rule 4901-1-07(B) of the Administrative Code are not applicable and, as~~ As provided in section 4903.10 of the Revised Code, all applications for rehearing must be submitted within thirty days after an order has been journalized by the secretary of the commission, or, in the case of an application which is subject to automatic approval under the commission's procedures, an application for rehearing must be submitted within thirty days after the date after on which the automatic timeframe has expired, unless the application has been suspended by the commission.
- (D) A party or any affected person, firm, or corporation may only file one application for rehearing to a commission order within thirty days following the entry of the order upon the journal of the commission.
- (E) An application for rehearing filed under section 4903.10 of the Revised Code, or a memorandum contra an application for rehearing filed pursuant to rule 4901-1-35 of the Administrative Code may not be delivered via facsimile transmission.