

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment of Rules)
4901-1-01 through 4901-1-05 of the Ohio)
Administrative Code to Permit the)
Electronic Filing of Documents.) Case No. 07-535-AU-ORD

**COMMENTS
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

On May 9, 2007, the Public Utilities Commission of Ohio (“PUCO” or “Commission”) issued an Entry allowing interested persons to file comments and reply comments regarding the PUCO Staff’s proposed amendments to rules 4901-1-01 through 4901-1-05 of the Ohio Administrative Code permitting the electronic filing (“e-filing”) of documents. The proposed amendments affect the rights of residential consumers in Ohio, as the e-filing of documents allows the public—and those that represent the public—to submit and/or receive various types of filings for the Commission’s review and consideration.

In these Comments the Office of the Ohio Consumers Counsel (“OCC”) will address *seriatim*, the recommendations made by the PUCO Staff and will propose additional rule changes resulting from OCC’s evaluation of the rules, the PUCO’s Docketing Information System (“DIS”) Electronic Filing Technical Requirements & Manual, and other jurisdiction’s rules on electronic filing. OCC’s proposed deletions to the e-filing rules as proposed by the PUCO Staff are indicated with double ~~striketrough~~

and additions are indicated in ALL CAPS underlined. OCC appreciates the effort of the PUCO Staff in developing the proposed rules and the capability for e-filing. Per the Commission's request, OCC's Comments will be e-filed.

II. COMMENTS

A. 4901-1-02 Filing of Pleading and Other Papers

The PUCO Staff recommends minor changes to the existing rule, to accommodate e-filing. OCC does not object to the proposed amendments to paragraphs (A), (B), and (C) of Ohio Adm. Code 4901-1-02, which outline the general requirements for filing a document with the PUCO. The PUCO Staff proposes two new paragraphs, (F) and (G), which are the substance of the proposed e-filing rules.

It is vital that the e-filing rules be clear as to when documents will be deemed filed when e-filing. OCC has inserted additional language in the proposed rules to address this concern.

The e-filing rules provide that an "e-filing shall be rejected if it is unreadable or in a digital format not acceptable to the Commission." Ohio Adm. Code 4901-1-02(F)(4). But the e-filing rules do not state what format is acceptable to the Commission. OCC recommends that Ohio Adm. Code 4901-1-02(F)(4) include a reference to the PUCO's DIS Electronic Filing Technical Requirements & Manual ("Manual") in regards to acceptable formats for e-filing. The reference to the Manual in the PUCO's procedural rules will direct e-filers to vital information regarding e-filing.

OCC also concurs, in general, with the Commission's requirements regarding file formats as outlined in its Manual. Specifically, OCC advocates that the Commission

continue to require that, whenever possible, PDFs should be created from electronic source files, as opposed to scanned images, because those created from the actual sources are considerably smaller and provide more accurate content indexing for search functions and also for users' creation of work product (including copy/paste). *See* Manual at p. 13. Furthermore, OCC maintains that if a filed PDF is from a scanned image, or in the event one or more source files are unavailable, the filer should submit a Microsoft Word document or other acceptable format (or provide a good cause explanation as to why the PDF is a scanned image or the source file(s) are not included.)

OCC opposes the PUCO Staff's proposal, in Ohio Adm. Code 4901-1-02(F)(4), to mandate that an e-filing can be rejected if it "includes anything deemed inappropriate for inclusion on the Commission's web site." This language is too broad and should not be adopted by the Commission. Furthermore, this standard is not found in any PUCO rule applicable to conventional (non-electronic) filings even though those documents are also displayed on the Commission's website. Accordingly, the Commission should not impose an additional standard for e-filed documents and should reject the above language as proposed by the PUCO Staff.

OCC objects to the language contained in Ohio Adm. Code 4901-1-02(F)(5) that mandates that an e-filer does not have to serve parties to a case, who are not electronically subscribed to the case, until the e-filer receives e-mail notice that the document was accepted by the Docketing Division. The duty to serve a party should not be contingent on the e-filer's receipt of notice. The PUCO cannot control when an e-filer receives notice and it should not be the event that triggers service. When service of an e-filed document is perfected by mail, personal service, or facsimile transmission, service

should be consistent with the service of a conventionally filed document. OCC recommends that Ohio Adm. Code 4901-1-02(F)(5) be modified consistent with OCC's comments above.

OCC recommends that the Commission reject the language proposed by the PUCO Staff in paragraph (6). The language encourages the e-filing of documents by 4:00 p.m. to allow time for same day review, even though the rule would mandate a 5:30 p.m. deadline. The inclusion of the 4:00 p.m. e-filing recommendation will cause confusion. Furthermore, because this language is a recommendation, not a requirement, the language should be included in the DIS Electronic Filing Technical Requirements & Manual, not the PUCO's procedural rules.

The PUCO Staff proposes that the e-filing deadline be 5:30 p.m. OCC could support a filing deadline of 11:59 p.m. which is consistent with the current filing deadline for e-mail or electronic comments filed with the Federal Communications Commission. *See* Electronic Comment Filing System User Manual at 1.2. OCC maintains that the limitations to conventional filings should not necessarily be imposed upon e-filings. OCC looks forward to reviewing the positions of other parties that appear before the Commission on this issue.

The proposed e-filing rules also mandate that the person making an e-filing bears all of the risk of equipment failure. This approach is unfair in some circumstances. In this regard, the Manual includes specific language that provides that the Commission will deem the e-filing system subject to a technical failure in certain circumstances. OCC proposes that the Commission incorporate this concept into its procedural rules as outlined below.

OCC concurs with the PUCO Staff's position that the Commission permit only complete documents to be e-filed. *See* Ohio Adm. Code 4901-1-02(F)(8). This rule will help eliminate any confusion as to the date of the filing or when service is perfected where the underlying document is e-filed and attachments, appendices, or exhibits are conventionally filed.

The Commission should post any outages of the e-filing system on its website, to the extent possible. Furthermore, the Commission should give notice of any planned outage or system maintenance by providing e-mail notification to all subscribers in addition to posting notice on its website. With adequate notice, arrangements can be made for persons to file conventionally. Accordingly, OCC requests that the Commission amend Ohio Adm. Code 4901-1-02(F) and (G) as follows:

- (F) A PERSON MAY FILE DOCUMENTS WITH THE COMMISSION VIA ELECTRONIC FILING (E-FILING) UNDER THE FOLLOWING CONDITIONS:**
- (4) PROVIDED THAT A DOCUMENT IS NOT SUBSEQUENTLY REJECTED BY THE DOCKETING DIVISION, AN E-FILED DOCUMENT WILL BE CONSIDERED FILED AS OF THE DATE AND TIME RECORDED ON THE CONFIRMATION PAGE THAT IS ELECTRONICALLY ATTACHED TO THE FILING UPON RECEIPT BY THE COMMISSION, EXCEPT THAT ANY DOCUMENT E-FILED ON A DAY THAT IS NOT A BUSINESS DAY OR ON A BUSINESS DAY AFTER FIVE-THIRTY P.M. SHALL BE CONSIDERED FILED AT SEVEN-THIRTY A.M. THE NEXT BUSINESS DAY. THE DATE AND TIME AT THE PUCO (EASTERN STANDARD OR EASTERN DAYLIGHT) GOVERNS WHEN A DOCUMENT IS FILED. THE DATE AND TIME OF AN E- FILING WILL BE CONSISTENT WITH THE NETWORK TIME PROTOCOL ("NTP"). AN E-FILING SHALL BE REJECTED IF IT IS UNREADABLE OR IN A DIGITAL FORMAT NOT ACCEPTABLE TO THE COMMISSION AS INDICATED IN THE DIS ELECTRONIC FILING TECHNICAL REQUIREMENTS & MANUAL, ~~INCLUDES ANYTHING~~**

~~DEEMED INAPPROPRIATE FOR INCLUSION ON THE COMMISSION'S WEB SITE, OR IS INCONSISTENT WITH PARAGRAPHS (F)(2) OR (3) OF THIS RULE. IF AN E-FILING IS REJECTED BY THE DOCKETING DIVISION, THEN AN ELECTRONIC MAIL (E-MAIL) MESSAGE WILL BE IMMEDIATELY SENT TO ~~INFORM~~ THE FILER TO INFORM THE FILER OF THE REJECTION AND THE REASON FOR THE REJECTION.~~

- (5) IF AN E-FILING IS ACCEPTED, THEN NOTICE OF THE FILING WILL BE IMMEDIATELY SENT VIA E-MAIL TO ALL PERSONS WHO HAVE ELECTRONICALLY SUBSCRIBED TO THE CASE, INCLUDING THE FILER. THIS E-MAIL NOTICE WILL CONSTITUTE SERVICE OF THE E-FILED DOCUMENT UPON THOSE PERSONS ELECTRONICALLY SUBSCRIBED TO THE CASE. ~~Upon receiving e-mail notice that the e-filed document has been accepted by the commission's docketing division,~~ THE FILER SHALL SERVE COPIES OF THE DOCUMENT IN ACCORDANCE WITH RULE 4901-1-05 OF THIS CHAPTER UPON OTHER PARTIES TO THE CASE WHO ARE NOT ELECTRONICALLY SUBSCRIBED TO THE CASE.

~~(6) THE COMMISSION'S DOCKETING DIVISION CLOSSES AT FIVE THIRTY P.M. TO ALLOW TIME FOR SAME DAY REVIEW OF E-FILINGS, PERSONS MAKING E-FILINGS ARE ENCOURAGED TO MAKE THEIR FILINGS BY NO LATER THAN FOUR P.M.~~

- (7) THE PERSON MAKING AN E-FILING SHALL BEAR ALL RISK OF TRANSMITTING A DOCUMENT, INCLUDING BUT NOT LIMITED TO ALL RISK OF EQUIPMENT FAILURE OR INCOMPATIBLE TECHNOLOGY AND REJECTION. THE COMMISSION WILL DEEM ITS E-FILING SYSTEM SUBJECT TO A TECHNICAL FAILURE ON ANY DAY WHERE THE E-FILING SYSTEM IS UNABLE TO ACCEPT FILINGS CONTINUOUSLY OR INTERMITTENTLY OVER THE COURSE OF PERIOD OF TIME GREATER THAN ONE HOUR AFTER 12:00 P.M.

WHERE A FILER CAN SHOW THAT A DOCUMENT TO BE E-FILED WAS NOT FILED ON A DAY DUE SOLELY TO SUCH A TECHNICAL FAILURE IN THE COMMISSION'S SYSTEM, THEN THE DOCUMENT SHALL BE DEEMED FILED THAT DAY IF

ACTUALLY FILED THE NEXT BUSINESS DAY THE SYSTEM IS ABLE TO ACCEPT FILINGS. SUCH DELAYED FILINGS SHALL BE ACCOMPANIED BY A DECLARATION OR AFFIDAVIT FROM THE E-FILER ATTESTING TO THE E-FILER'S FAILED ATTEMPTS TO FILE ELECTRONICALLY AT LEAST TWO TIMES AFTER 12:00 P.M. SEPERATED BY AT LEAST ONE HOUR OR ONE TIME AFTER 4:00 P.M. ON EACH DAY OF DELAY DUE TO SUCH TECHNICAL FAILURE.

- (~~8~~) E-FILED DOCUMENTS MUST BE COMPLETE DOCUMENTS. APPENDICES OR ATTACHMENTS TO AN E-FILED DOCUMENT MAY NOT BE FILED BY OTHER METHODS.**
- (~~9~~)** Except for paragraph (F)(3) of this rule or unless otherwise ordered by the commission, a person filing a document electronically need not file any original paper copy or copies of the original with the commission's docketing division but must maintain in his or her records, and have available for production on request of the commission's secretary, a copy of any document e-filed and a copy of the notice from docketing division that the document has been filed. The filer must maintain a copy of the e-filed document and a copy of the notice from the docketing division that the document has been filed until the final disposition of the case and through any appeal period.
- (9) SYSTEM OUTAGES WILL BE PROMPTLY POSTED ON THE HOME PAGE OF THE COMMISSION'S WEBSITE TO THE EXTENT POSSIBLE. NOTIFICATION OF ANY PLANNED SYSTEM OUTAGE OR MAINTENANCE SHALL BE PROVIDED BY E-MAIL AND POSTED ON THE HOME PAGE OF THE COMMISSION.**
- (G) THE COMMISSION'S DIS DESIGNATES THE STATUS OF EACH CASE UNDER THE CASE NUMBER AND CASE NAME ON THE DOCKET CARD. AS DISCUSSED BELOW, ATTEMPTS TO MAKE FILINGS IN CERTAIN DESIGNATED CASES WILL BE DENIED.**
- (1) AN "OPEN" CASE IS AN ACTIVE CASE IN WHICH FILINGS MAY BE MADE.**
- (2) A "CLOSED CASE" MEANS A CASE IN WHICH NO FURTHER FILINGS MAY BE MADE WITHOUT THE CONSENT OF THE**

COMMISSION'S LEGAL DEPARTMENT. GENERALLY, A CASE IS CLOSED APPROXIMATELY NINETY DAYS AFTER THE ISSUANCE OF AN ENTRY, FINDING AND ORDER, OR OPINION AND ORDER THAT RESOLVES THE ISSUES IN THE CASE AND AFTER ALLOWING TIME FOR APPLICATION FOR REHEARING, ENTRY ON REHEARING, COURT APPEAL, OR ANY DOCUMENTATION ORDERED TO BE FILED BY THE COMMISSION. WHEN A CASE IS CLOSED, ANY PERSON SEEKING TO MAKE A FILING IN THE CASE MUST FIRST CONTACT THE ATTORNEY EXAMINER ASSIGNED TO THE CASE OR THE COMMISSION'S LEGAL DIRECTOR TO CONSIDER THE REQUEST. IF THE ATTORNEY EXAMINER OR LEGAL DIRECTOR AGREES TO PERMIT THE FILING, ~~THE~~ THEN THE DOCKETING DIVISION WILL BE NOTIFIED TO REOPEN THE CASE. IF AN ADDITIONAL FILING IS PERMITTED, ~~THE~~ THEN THE CASE STATUS WILL BE CHANGED TO "OPEN" AND SERVICE OF THE FILING MUST BE MADE BY THE FILER UPON THE PARTIES TO THE CASE IN ACCORDANCE WITH RULE 4901-1-05 OF THIS CHAPTER.

- (3) AN "ARCHIVED CASE" MEANS A CLOSED CASE IN WHICH NO FURTHER FILINGS WILL BE PERMITTED AND THE CASE CANNOT BE REOPENED. A CASE WILL NOT BE ARCHIVED UNTIL ~~IS~~ IT HAS BEEN CLOSED FOR APPROXIMATELY ONE YEAR. A "RELATED" CASE WILL BE CREATED IF ADDITIONAL ACTIVITY IS THEREAFTER REQUIRED ON ANY MATTER ADDRESSED IN THE ORIGINAL CASE. THE DOCKETING INFORMATION SYSTEM DISPLAYS A "RELATED CASES" TAB TO PROVIDE A LINK TO RELATED CASES.
- (4) A "RESERVED" CASE IS ONE RESERVED FOR FUTURE USE. NO FILINGS SHOULD BE MADE IN THE CASE UNTIL THE PARTY WHO RESERVED THE CASE MAKES AN INITIAL FILING.
- (5) A "VOID" CASE IS ONE THAT WILL NOT BE USED AND NO DOCUMENTS MAY BE FILED IN IT.

B. 4901-1-03 Form of Pleadings and Other Papers

The PUCO Staff recommends amending Rule 4901-1-03 to clarify the process for consenting to be served by facsimile transmission or e-mail. The rule currently mandates that parties making a filing should include a facsimile transmission number and e-mail

address if the party is willing to accept service by such means. The listing of this information should not constitute consent to service by facsimile transmission or e-mail. Accordingly, OCC concurs in the PUCO Staff's recommendations to clarify that absent compliance with paragraph (C)(3) and (4) of Rule 4901-1-05, the inclusion of a facsimile transmission number and/or e-mail address is for informational purposes only.

C. 4901-1-05 Service of Pleadings and Other Papers

The timely service of pleadings is vital to protecting the interests of residential consumers. OCC recommends that the Commission adopt additional language to ensure that persons who e-file are aware that they still must certify how service was perfected.

Furthermore, OCC objects to the proposed revision to Ohio Adm. Code 4901-1-05(A) that mandates that an e-filer does not have to serve parties to a case, who are not electronically subscribed to the case, until the e-filer receives e-mail notice that the document was accepted by the Docketing Division. The duty to serve a party should not be contingent on the e-filer's receipt of notice. The PUCO cannot control when an e-filer receives notice and it should not be the event that triggers service. When service of an e-filed document is perfected by mail, personal service, or facsimile transmission, service should be consistent with the service of a conventionally filed document. Accordingly, OCC recommends that the Commission adopt the following revisions to Ohio Adm. Code 4901-1-05(A):

- (A) Unless otherwise ordered by the commission, the legal director, the deputy legal director, or an attorney examiner, all pleadings or papers filed with the commission subsequent to the original filing or commission entry initiating the proceeding shall be served upon all parties, no later than the date of filing. Such pleadings or other papers shall contain a certificate of service. A CERTIFICATE OF

SERVICE IS STILL REQUIRED WHEN A PERSON FILES A DOCUMENT ELECTRONICALLY. The certificate of service shall state the date and manner of service, identify the names of the persons served, and be signed by the attorney or the party who files the document. The certificate of service for a document served by mail or personal service shall also include the address of the person served. The certificate of service for a document served by facsimile transmission shall also include the facsimile number of the person to whom the document was transmitted. The certificate of service for a document served by electronic message (E-MAIL) shall also include the e-mail address of the person to whom the document was sent.

IF AN ELECTRONIC FILING (E-FILING) IS ACCEPTED, AN E-MAIL NOTICE OF THE FILING WILL BE SENT TO ALL PERSONS WHO HAVE ELECTRONICALLY SUBSCRIBED TO THE CASE. THE E-MAIL NOTICE WILL CONSTITUTE SERVICE OF THE DOCUMENT UPON THE RECIPIENT. ~~UPON RECEIVING NOTICE THAT AN E-FILING HAS BEEN ACCEPTED BY THE COMMISSION'S DOCKETING DIVISION,~~ THE FILER SHALL SERVE COPIES OF THE DOCUMENT IN ACCORDANCE WITH THIS RULE UPON ALL OTHER PARTIES TO THE CASE WHO ARE NOT SERVED VIA E-MAIL.

A PERSON MAKING AN E-FILING SHALL LIST IN THE CERTIFICATE OF SERVICE INCLUDED WITH AN E-FILING THE PARTIES WHO WILL BE SERVED VIA E-MAIL NOTICE BY THE COMMISSION'S DOCKETING INFORMATION SYSTEM AND WHICH PARTIES WILL BE SERVED VIA TRADITIONAL METHODS BY THE PERSON MAKING THE E-FILING. THE CERTIFICATE OF SERVICE FOR AN E-FILED DOCUMENT SHALL INCLUDE THE FOLLOWING: THE COMMISSION'S DOCKETING INFORMATION SYSTEM WILL ELECTRONICALLY SERVE NOTICE OF THE FILING OF THIS DOCUMENT ON THE FOLLOWING PARTIES: (LIST THE NAMES OF THE PARTIES REFERENCED ON THE SERVICE LIST OF THE CASE DOCKET CARD WHO HAVE ELECTRONICALLY SUBSCRIBED TO THE CASE).

The PUCO Staff recommends amending Rule 4901-1-05(C) to clarify the process for consenting to be served by facsimile transmission or e-mail. The PUCO Staff proposes that the rule be amended to specify that a person consents to be served by e-mail or facsimile transmission by stating on the cover page of any document filed that he or

she agrees to accept service either by facsimile transmission or e-mail. OCC concurs in the PUCO Staff's recommendations.

Furthermore, OCC proposes a change to subsection (C)(4) of this rule in order to clarify that a person may revoke their consent to be served by e-mail. This is necessary because the rule provides that once a person consents to service by e-mail by stating so on the cover page of any document filed in a case, that person will be served throughout the case by e-mail. Circumstances may arise which result in a person no longer being capable or willing to be served by e-mail. Accordingly, OCC's proposed modification is:

(C)(4) Service of a document by ~~electronic message~~ E-MAIL to an attorney or party may be made only if the person to be served has consented to receive service of the document by ~~electronic message~~ E-MAIL. **A PERSON SHALL PROVIDE CONSENT BY STATING ON THE COVER PAGE OF ANY DOCUMENT FILED IN A CASE THAT HE OR SHE AGREES TO ACCEPT SERVICE BY E-MAIL. A PERSON MAY REVOKE CONSENT TO BE SERVED BY E-MAIL AT ANY TIME BY FILING NOTICE WITH THE COMMISSION AND SERVING ALL COUNSEL OF RECORD OR EACH UNREPRESENTED PARTY WITH THE NOTICE.** Service by ~~electronic message~~ E-MAIL is complete upon the sender receiving a confirmation generated by the sender's computer that the ~~electronic message~~ E-MAIL has been sent. The sender shall retain the confirmation as proof of service until the final disposition of the case and through any appeal period.

D. Source Format Documents

In its Entry, the Commission encouraged parties to identify all useful source formats so DIS can be modified to accept them. In response to the Commission's request, OCC maintains that the following source file formats should be accepted by DIS: Microsoft Office, WordPerfect and OpenDocument Format ("ODF").

Considering that Microsoft Office is the ubiquitous office suite for organizations, its file formats should be included in the accepted list of source document formats. OCC also advocates that the WordPerfect file format be allowed as well considering that it may be used by various organizations.

OCC also believes, when looking towards the future, that the ODF should be considered as well. The ODF provides a vendor neutral document format that guarantees an organization's documents will always be accessible no matter what office suite is used. The ODF Alliance states this clearly:

Why Open Standards and OpenDocument Format?

Open standards ensure that the users' information is accessible as platforms and technologies change. Organizations and individuals that store their data in an open format avoid being locked into a single software vendor, leaving them free to switch software if their current vendor goes out of business, raises its prices, changes its software, or changes its licensing terms to something less favorable for the user.

ODF protects users from ever having to seek permission or pay a fee to any technology provider to access the user's own intellectual property. Adoption of open standards is particularly important for governmental applications because they can effectively ensure that a government document saved today will not be technologically locked tomorrow. A government should never have to ask permission of a vendor in order to have the choice and control it needs to access its own information.¹

¹ OpenDocument Format Alliance FAQ - <http://www.odfalliance.org/resources/FAQs.pdf>

Several states have realized that the ability to access documents without being locked in to a specific vendor is the future of document storage. These states include Massachusetts, California, Texas, and Oregon.² OCC is not recommending that ODF be a required format but that ODF be allowed in order to make certain that future access to documents will always be available.

III. CONCLUSION

OCC submits its Comments on the PUCO Staff's proposed amendments to the Commission's procedural rules to provide for e-filing in order to assist the Commission in its review. The proposed rules affect the rights of residential consumers in Ohio, as the e-filing of documents allows the public to submit and/or receive various types of filings for the Commission's review and consideration. OCC respectfully requests that the Commission adopt e-filing rules consistent with OCC's Comments above. OCC recommends also that there be opportunities for refinement of the rules as experience with e-filing is gained. OCC appreciates the Commission's willingness to provide for e-filing, the effort of the PUCO Staff in the rules process and system development and the opportunity to provide comments on the proposed e-filing rules.

² <http://www.consortiuminfo.org/standardsblog/trackback.php?id=20070328043534903>

Respectfully submitted,

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CERTIFICATE OF SERVICE

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I hereby certify that a copy of the foregoing Office of the Ohio Consumers' Counsel Comments was served by first class United States Mail, postage prepaid, to the person listed below, on this 31st day of May, 2007.

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Summary: Comments by Melissa Yost, Assistant Consumers' Counsel, electronically filed by Patti Mallarnee on behalf of Office of the Ohio Consumers' Counsel