

FILE

8

RECEIVED-DOCKETING DIV

2010 JUL -9 PM 4:14

PUCO

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment of Rules)
4901:2-5-01 and 4901:2-5-02 and)
Rescission of Rules 4901:2-5-03,) Case No. 07-1095-TR-ORD
4901:2-5-05 and 4901:2-5-06, Ohio)
Administrative Code.

**JOINT APPLICATION FOR REHEARING
OF OHIO GAS COMPANY
AND THE OHIO GAS ASSOCIATION**

Gretchen J. Hummel (Counsel of Record)
Lisa G. McAlister
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
ghummel@mwncmh.com
lmcalister@mwncmh.com

July 9, 2010

**Attorneys for Ohio Gas Company
and the Ohio Gas Association**

This is to certify that the images appearing are an accurate and complete reproduction of the case file documents delivered in the register of business.
Technician SM Date Processed JUL 12 2010

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment of Rules)
4901:2-5-01 and 4901:2-5-02 and)
Rescission of Rules 4901:2-5-03,) Case No. 07-1095-TR-ORD
4901:2-5-05 and 4901:2-5-06, Ohio)
Administrative Code.)

JOINT APPLICATION FOR REHEARING

Pursuant to Section 4903.10, Revised Code and Rule 4901-1-35, Ohio Administrative Code, Ohio Gas Company ("Ohio Gas") and the Ohio Gas Association ("OGA") hereby submit their Joint Application for Rehearing and Memorandum in Support of the Public Utilities Commission of Ohio's ("Commission") June 9, 2010 Entry ("Entry") in this proceeding. Ohio Gas' and OGA's failure to enter appearances in this proceeding prior to this date is due to just cause. No notice was provided to Ohio Gas (or any traditional utility company regulated by the Commission) or OGA that the Commission was contemplating the rule revisions ordered in the proceeding. Additionally, the interests of Ohio Gas and OGA were not adequately considered in this proceeding. By its own admission, the Commission received no comments from traditional utility companies regarding the imposition of the rule revisions considered in this proceeding on the vehicle fleets of the traditional utility companies.

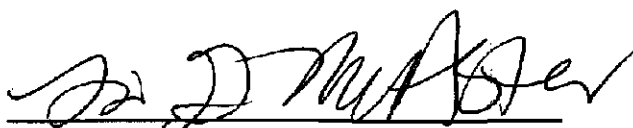
The Commission's Entry is in error as follows:

1. The Commission erred in its failure to provide adequate notice of the proposed rule revisions to all companies to be affected.

2. The Commission erred in its failure to solicit comments from the traditional utility companies prior to the effectiveness of the subject rule revisions imposed on the traditional utility companies.
3. The Commission erred in its failure to re-adopt the previously existing rule.
4. The Commission erred in its failure to withdraw the subject rule revisions erroneously sent to the Joint Commission on Agency Rule Review ("JCARR") (see Paragraph 5 of the Entry).
5. The Commission erred in its promulgation of rules applicable to traditional utility companies absent any information supporting any need for the imposition of the subject rules on traditional utility companies or any information concerning the impact (including a financial impact analysis) of the subject rules on the traditional utility companies in the record of this proceeding.
6. The Commission erred in its decision to eliminate the motor vehicle exemption previously contained in Rule 4901:2-5-01(B).

WHEREFORE, for just cause shown, and because its interests were not represented in this proceeding, Ohio Gas and OGA seek leave to file this application for rehearing in this proceeding on the basis of the errors and for the reasons more fully addressed in the attached Memorandum in Support.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa G. McAlister", written over a horizontal line.

Gretchen J. Hummel (Counsel of Record)

Lisa G. McAlister

MCNEES WALLACE & NURICK LLC

21 East State Street, 17th Floor

Columbus, OH 43215-4228

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

ghummel@mwncmh.com

lmcalister@mwncmh.com

**Attorneys for Ohio Gas Company
and the Ohio Gas Association**

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment of Rules)
4901:2-5-01 and 4901:2-5-02 and)
Rescission of Rules 4901:2-5-03,) Case No. 07-1095-TR-ORD
4901:2-5-05 and 4901:2-5-06, Ohio)
Administrative Code.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On June 9, 2010, the Commission issued an Entry in the proceeding addressing motor carrier rule revisions in which it, *inter alia*, acknowledged that the subject rule revisions newly applied to traditional utility companies; expressed surprise that it had received no comments on the proposed revisions in this proceeding; admitted that the rule revisions had been submitted to JCARR in error; and nevertheless, indicated its intent to proceed with implementation of the subject rule revisions.

In the belief that it is reconciling its rules with certain federal requirements, the Commission has eliminated a long-standing exemption that excluded certain vehicles from Ohio motor carrier safety regulations.¹ The result of this action is that thousands of vehicles operated by traditional utility companies (and others) are subject to the federal regulations for the first time. This change imposes new (some of which are fairly onerous) regulations which may include commercial driver requirements, log book

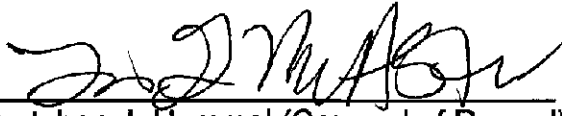
¹ Until amended herein, Rule 4901:2-5-01(B), Ohio Administrative Code provided, in part, that: "Motor vehicle does not include any vehicle operated within Ohio in intrastate commerce by a private motor carrier as defined in section 4923.20 of the Revised Code, which is not a commercial motor vehicle as defined in Title 49, Part 383.5, C.F.R., as amended."

requirements, and medical certifications without regard to the costs of these requirements or the size of the utility company on which they are being imposed for the first time.

Neither the Commission's Entry initiating this proceeding or anything else in the docket in this proceeding was served on Ohio Gas (or any other traditional utility company) or OGA. No comments were filed in this proceeding by Ohio Gas (or any other traditional utility company) or OGA. No Staff Report or comments were filed in this case. There is absolutely no record in this proceeding supporting the Commission's conclusion that the rule revisions were required to reconcile with federal rules. Nor is there any record in this proceeding otherwise supporting the need to impose the subject rule revisions on Ohio Gas (or other traditional utility companies) or any other members of OGA.

The Commission's decision to delay enforcement of the subject rule revisions does not cure the deficiencies leading to their promulgation as enumerated in the errors complained of in this application for rehearing. It is respectfully requested that the Commission grant rehearing for the purpose of reinstating the exemption previously contained in Rule 4901:2-5-01(B).

Respectfully submitted,



Gretchen J. Hummel (Counsel of Record)

Lisa G. McAlister

MCNEES WALLACE & NURICK LLC

21 East State Street, 17th Floor

Columbus, OH 43215-4228

Telephone: (614) 469-8000

Telecopier: (614) 469-4653


ghummel@mwncmh.com

lmcalister@mwncmh.com

**Attorneys for Ohio Gas Company
and the Ohio Gas Association**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing and Memorandum in Support of Ohio Gas Company and the Ohio Gas Association* was served upon the following parties of record this 9th day of July, 2010, via electronic transmission, hand-delivery or first class mail, postage prepaid.


Lisa G. McAlistar

Edwin L. Bramer
Ohio Association of Realtors, Inc.
P.O. Box 328
Blacklick, OH 43004-0328

Ohio Bus Association
33 S. Grant Avenue
Columbus, OH 43215

Arthur J. Arnold
Ohio Railroad Association
Suite 300
172 E. State Street
Columbus, OH 43215

Ohio State Highway Patrol
Licensing & Commercial Standards
P.O. Box 182074
Columbus, OH 43218-2074

Larry Woolum
Ohio Trucking Association
50 W. Broad Street, Suite 1111
Columbus, OH 43215