

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review of)
Chapters 4901-1, Rules of Practice and)
Procedure; 4901-3, Commission Meetings;)
4901-9, Complaint Proceedings; and 4901:1-1,)
Utility Tariffs and Underground Protection, of)
the Ohio Administrative Code)

Case No. 11-776-AU-ORD

COMMENTS OF THE OMA ENERGY GROUP

I. INTRODUCTION

The OMA Energy Group ("OMAEG") is a non-profit entity created by the Ohio Manufacturers' Association for the purpose of educating energy consumers, regulatory boards and suppliers of energy; advancing energy policies to promote adequate, reliable and efficient supply of energy at reasonable prices; and, advocating in critical cases before the Public Utilities Commission of Ohio ("Commission"). The OMAEG's members are all members of the Ohio Manufacturers' Association.

By Entry issued March 2, 2011, the Commission provided certain amendments to its rules of practice and procedure as set forth in Ohio Administrative Code ("OAC") Chapter 4901-1. The Commission invited interest stakeholders to file comments. OMAEG appreciates the opportunity and submits its comments for the Commission's consideration below.

II. COMMENTS

OMAEG generally supports the changes to the Commission's rules of practice and procedure set forth in the March 2, 2011 Entry; in particular, the use of electronic

filing and service. However, OMAEG has some concerns regarding the process proposed for service of pleadings by email.

Rule 4901-1-05(D)(4), OAC, requires that a party consent to electronic service before it is a permitted method of service. Rule 4901-1-03(A), OAC, describes the method for affirmatively consenting to electronic service. Without such affirmative consent, mail or personal delivery service is required. For those instances in which email service is permitted, new rules (Rules 4901-1-02(D)(5) and 4901-1-05(B), OAC) have been proposed that govern the process of electronic filing and email service. Specifically, Rule 4901-1-02(D)(5), OAC, as proposed states:

If an e-filing is accepted, notice of the filing will be sent via electronic mail (email) 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 the 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 parties to the case who are not electronically subscribed to the case.

Elaborating on the language above, proposed Rule 4901-1-05(B), OAC, states:

If an e-filing is accepted by the docketing division, an e-mail notice of the filing will be sent by the commission's e-filing system 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 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 the e-mail notice. A person making an e-filing shall list in the certificate of service included with the e-filing the parties who will be served by e-mail notice by the commission's e-filing system and the parties who will be served by traditional methods by the person making the filing. The certificate of service for an e-filed document shall include the following notice: The PUCO's e-filing 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 docket card who have electronically subscribed to the case).

While OMAEG appreciates the efficiency associated with electronic service, OMAEG is concerned that it will be inherently difficult to determine the parties who have electronically subscribed to a case as well as the parties who have consented to electronic service. OMAEG does not want to fail to timely serve a filing based upon a misunderstanding as to whether that party has electronically subscribed to the case or agreed to electronic service. To clarify the process, OMAEG offers two proposed solutions.

First, OMAEG proposes revisions to the rules to clarify the circumstances in which electronic service is appropriate and make electronic service a default option unless the party/attorney has affirmatively opted-out of email service. This is consistent with the recent trend in Commission proceedings, especially larger cases in which there are numerous parties represented by counsel, to require electronic service of all filings. As such, OMAEG proposes the following modifications:

Rule 4901-1-02(D)(5):

If an e-filing is accepted, notice of the filing will be sent ~~via electronic mail (email)~~ by the commission's e-filing system 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 the 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 parties to the case by e-mail. Service by traditional methods (e.g. service by personal delivery or mail) will only be required if a party or its attorney affirmatively elects to receive service by traditional methods in the first written filing made by that attorney or party in a Commission proceeding in accordance with Rule 4901-1-03(A). ~~who are not electronically subscribed to the case.~~

Rule 4901-1-03:

(A) All pleadings or other papers to be filed with the commission shall contain a caption or cover sheet setting forth the name of the commission, the title of the proceeding, and the nature of the pleading or paper. All

pleadings or papers filed subsequently to the original filing or commission entry initiating the proceeding shall contain the case name and docket number of the proceeding. Such pleadings or other papers shall also contain the name, address, and telephone number of the person filing the paper, or the name, address, and telephone number, and attorney registration number of his or her attorney, if such person is represented by counsel. The party making a filing should include a facsimile transmission (fax) number and/or an electronic message (e-mail) address if the party is willing to accept service of pleadings by (fax) facsimile transmission or e-mail. An attorney or party who is not willing to accept service of filed documents by e-mail or fax shall include the following phrase next to or below its e-mail and/or fax number in all capitals and bold type: **(NOT WILLING TO ACCEPT SERVICE BY E-MAIL OR FAX)**. An attorney or party who is willing to accept service of filed documents by e-mail shall include the following phrase next to or below its e-mail address: (willing to accept service by e-mail).

Rule 4901-1-05(B):

This proposed rule should be stricken in its entirety, as OMAEG's proposal adds the relevant portions into the other rules.

Rule 4901-1-05(D)(4):

Service of a document by e-mail to an attorney or party is presumed to be appropriate unless the attorney or party affirmatively elects to receive service by traditional methods in accordance with Rule 4901-1-03(A). ~~may be made only if the person to be served has consented to receive service of the document by e-mail.~~ Service by e-mail is complete upon the sender receiving a confirmation generated by the sender's computer that the e-mail has been sent. The sender shall retain the confirmation as proof of service until the final disposition of the case.

These modifications should alleviate a great deal of confusion regarding which parties have accepted electronic service and provide the filer with an easy method for determining whether electronic service is appropriate.

Second, OMAEG proposes that the Commission permit attorneys who regularly practice before the Commission to provide written notice to the Commission that they agree to electronic service in any Commission proceeding in which they are participating. OMAEG proposes that the Commission then creates a webpage on the

Commission's website that lists those attorneys and their email addresses who have consented to electronic service. By creating such a resource, the Commission would provide filers with an additional resource to easily identify and determine those attorneys/parties who accept electronic service.

III. CONCLUSION

OMAEG appreciates the opportunity to provide comments and requests that the Commission revise the Staff's proposed rules as set forth herein.

Respectfully submitted on behalf of
OMA ENERGY GROUP



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Summary: Comments of the OMA Energy Group electronically filed by Teresa Orahod on behalf of OMA Energy Group