

**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)	Case No. 11-776-AU-ORD
4901:1-1, Utility Tariffs and Underground)	
Protection, of the Ohio Administrative)	
Code.)	

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of Ohio's residential utility consumers, applies for rehearing of the January 22, 2014 Finding and Order ("Order") of the Public Utilities Commission of Ohio ("Commission" or "PUCO") in this proceeding. That Order contained the PUCO's evaluation of the rules in Ohio Adm. Code Chapters 4901-1, 4901-3, 4901-9 and 4901:1-1 and adopted modifications to some of those rules. OCC maintains that some of the modifications to the PUCO's Rules of Practice and Procedure (Ohio Adm. Code 4909-1) adopted by the PUCO were unjust and unreasonable.

Specifically, the PUCO erred in the following particulars:

- A. The PUCO Erred When It Adopted A New Rule On Paper Filings (Ohio Adm. Code 4901-1-02(B)) That No Longer Provides That The Failure To Submit The Required Number Of Copies For A Paper Filing Does Not Invalidate Or Delay The Effective Date Of The Filing If The Required Number Of Copies Is Submitted Within Two Business Days After Notice From The Docketing Division. *See* Current Version Of Ohio Adm. Code 4901-1-02(D).

- B. The PUCO Erred When It Amended Ohio Adm. Code 4901-1-27(C) And Removed The Opportunity For The Public To Give Unsworn Testimony (In Addition To Sworn Testimony) At PUCO Hearings.
- C. The PUCO Erred When It Amended Ohio Adm. Code 4901-1-30 And Included A New Rule That Requires Testimony From At Least One Party To Support An Oral Stipulation Concerning Issues Of Fact Or The Authenticity Of Documents.

An explanation of the basis for this Application for Rehearing is set forth in the attached Memorandum in Support. Consistent with R.C. 4903.10 and OCC's claims of error, the PUCO should modify its Order.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ *Melissa R. Yost*

Melissa R. Yost, Counsel of Record
Deputy Consumers' Counsel
Kyle L. Kern
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-1291 – Telephone (Yost)
(614) 466-9585 – Telephone (Kern)

Melissa.Yost@occ.ohio.gov

Kyle.Kern@occ.ohio.gov

**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)	Case No. 11-776-AU-ORD
4901:1-1, Utility Tariffs and Underground)	
Protection, of the Ohio Administrative)	
Code.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The OCC jointly filed comments and reply comments regarding the PUCO's Rules of Practice and Procedure, toward promoting fairness in the PUCO's processes for all—including customers and their advocates, public utilities and others—to have a reasonable opportunity to be heard. On January 22, 2014, the PUCO issued an Order that contained its evaluation of the Rules of Practice and Procedure (Ohio Adm. Code 4909-1)—among others—and adopted modifications. The PUCO's modifications to its rules on paper filings, public testimony, and oral stipulations are unjust and unreasonable as discussed below.

II. STANDARD OF REVIEW

Applications for Rehearing are governed by R.C. 4903.10 and Ohio Adm. Code 4901-1-35. This statute provides that, within thirty days after issuance of an order from the Commission, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the

proceeding.”¹ Furthermore, the application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.”²

In considering an application for rehearing, Ohio law provides that the Commission “may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.”³ Furthermore, if the Commission grants a rehearing and determines that “the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same * * *.”⁴

OCC meets both the statutory conditions applicable to an applicant for rehearing pursuant to R.C. 4903.10 and the requirements of the Commission’s rule on applications for rehearing.⁵ Accordingly, OCC respectfully requests that the Commission grant rehearing on the matters specified below.

¹ R.C. 4903.10.

² R.C. 4903.10(B).

³ *Id.*

⁴ *Id.*

⁵ *See* Ohio Adm. Code 4901-1-35.

III. LAW AND ARGUMENT

A. The PUCO Erred When It Adopted A New Rule On Paper Filings (Ohio Adm. Code 4901-1-02(B)) That No Longer Provides That The Failure To Submit The Required Number Of Copies For A Paper Filing Does Not Invalidate Or Delay The Effective Date Of The Filing If The Required Number Of Copies Is Submitted Within Two Business Days After Notice From The Docketing Division. See Current Version Of Ohio Adm. Code 4901-1-02(D).

The current version of the PUCO's Rules on Practice and Procedure contain a provision that guarantees that the failure to submit the required number of copies for a paper filing does not invalidate or delay the effective date of the filing if the required number of copies is submitted to the PUCO Docketing Division within two business days after notice of the deficiency was received.⁶ That provision was omitted from the rules that the PUCO adopted on January 22, 2014. The PUCO should grant OCC's Application for Rehearing and modify its decision so that the current version of Ohio Adm.Code 4901-1-02(D) remains in the PUCO's Rules on Practice and Procedure.

In its Comments, FirstEnergy urged the PUCO to reject the PUCO Staff's proposed language and, instead, maintain the current language in Ohio Adm.Code 4901-1-02(D).⁷ FirstEnergy objected to the PUCO Staff's proposal to include new language in Rule 2(B) such that there will be a penalty for failure to file the required number of copies, specifically that "[f]ailure to submit the required copies may result in the document being stricken from the case file."⁸ FirstEnergy's concern is well stated. There

⁶ Ohio Adm.Code 4901-1-02(D) (current version).

⁷ FirstEnergy Comments at 3-4.

⁸ *Id.* at 3-4.

has been no showing that the current rule has caused problems sufficient to justify this change, especially given the possible severity of the penalty.⁹

Persons filing at the PUCO should be respectful of the PUCO's Docketing Division Staff in regard to late or incomplete filings. However, the PUCO should note that paper filings may be made under duress with little time even for copying. For example, a late-in-the-day paper filing may be the result of an equipment failure that could not have been anticipated. Accordingly, parties should have the assurance that if one copy is filed, the document will be considered filed on time as long as the remaining copies are submitted to the Docketing Division within two business days.

In its January 22, 2014 Order, the PUCO adopted Rule 02(B)(1) that is, in essence, the PUCO Staff's proposed rule plus one modification. That modification is a reference to notice by the Docketing Division. That rule, provides in part, that when making a paper filing, the failure to submit the required number of copies may result in the document being stricken from the case file. The PUCO's modification to its Staff's proposed Rule 02(B)(1)¹⁰ does not give the same assurance provided by Ohio Adm.Code 4901-1-02(D). Under the PUCO's new rule, the deadline for the filer to submit the additional copies without risking the possibility that the document could be stricken from the "case file" is not known. Additionally, it is also unclear what the striking of a document from the "case file" means. Accordingly, the OCC urges the PUCO to maintain the current language in Ohio Adm.Code 4901-1-02(D). In the alternative, the

⁹ OCC Reply Comments at 4.

¹⁰ Attachment A to Order at page 3 of 48.

OCC submits the following clarification to Rule 02(B)(1) as adopted in the PUCO's January 22, 2014 Order:

All applications, complaints, reports, pleadings, or other documents to be paper filed with the commission shall be mailed or delivered to the commission's docketing division at the address shown in paragraph (A) of this rule. In addition to the original, any person paper filing a document for inclusion in a case file must submit the required number of copies of the document. Information regarding the number of copies required by the commission is available under procedural filing requirements on the docketing information system website, by calling the docketing division at 614-466-4095, or by visiting the docketing division at the offices of the commission. As an alternative, a filer may submit twenty copies of the filing. Failure to submit the required number of copies ~~upon within two business days after receipt of~~ notice by the docketing division may result in ~~the document being~~ a delayed filing date ~~stricken from the case file~~. An attorney examiner may require a party to provide additional paper copies of any filed document.

B. The PUCO Erred When It Amended Ohio Adm. Code 4901-1-27(C) And Removed The Opportunity For The Public To Give Unsworn Testimony (In Addition To Sworn Testimony) At PUCO Hearings.

The PUCO Staff proposed to delete the provision of Rule 27(C) that allows unsworn testimony by members of the public at public hearings. The PUCO Staff gave no rationale given for this change. The PUCO adopted the rule as proposed by its Staff. Regardless of the reason for the proposal, unsworn testimony by members of the public at PUCO hearings is a means by which the public can make its views known to the Commission, and has been traditionally a part of public hearings. While no utility should be permitted to use cross-examination to intimidate the public from giving sworn testimony about their utility service, some members of the public may prefer to give unsworn testimony without the potential for cross-examination. The public's options for

testimony should be respected in this regard. At those hearings, the public is advised that unsworn testimony will not be evidence in the case, but members of the public may choose to provide unsworn testimony anyway. The PUCO should reconsider its adoption of the PUCO Staff's proposed rule amendment. Members of the public should continue to be allowed to provide unsworn testimony, as well as sworn testimony, at public hearings.

C. The PUCO Erred When It Amended Ohio Adm. Code 4901-1-30 And Included A New Rule That Requires Testimony From At Least One Party To Support An Oral Stipulation Concerning Issues Of Fact Or The Authenticity Of Documents.

The PUCO Staff proposed amendments to the rule on stipulations. The PUCO adopted the Staff's proposal. Those changes would seem to mandate that at least one party would have to provide testimony to support any oral stipulation entered into on the record by counsel at a hearing. OCC seeks clarification that testimony supporting an "oral stipulation concerning issue of fact, the authenticity of documents"¹¹ would not be required under Rule 30(A) and 30(B).

IV. CONCLUSION

For all the reasons discussed above, the PUCO should grant rehearing on OCC's claims of error and modify its January 22, 2014 Opinion and Order consistent with Ohio law and reason.

¹¹ Ohio Adm. Code 4901-1-30(A).

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ *Melissa R. Yost*

Melissa R. Yost, Counsel of Record
Deputy Consumers' Counsel
Kyle L. Kern
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-1291 – Telephone (Yost)
(614) 466-9585 – Telephone (Kern)

Melissa.Yost@occ.ohio.gov

Kyle.Kern@occ.ohio.gov

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Application for Rehearing* was served on the persons stated below via electronic transmission, this 21st day of February, 2014.

/s/ Melissa R. Yost

Melissa R. Yost
Deputy Consumers' Counsel

SERVICE LIST

William.wright@puc.state.oh.us
amy.spiller@duke-energy.com
elizabeth.watts@duke-energy.com
whitt@carpenterlipps.com
thompson@carpenterlipps.com
stnourse@aep.com
yalami@aep.com
Jk2961@sbc.com
mfl842@sbc.com
mohler@carpenterlipps.com
robinson@citizenpower.com
ejacobs@ablelaw.org
dctalbott@eastmansmith.com
mwsandretto@eastmansmith.com

burkj@firstenergycorp.com
cdunn@firstenergycorp.com
sseiple@nisource.com
bleslie@nisource.com
mwarnock@bricker.com
tsiwo@bricker.com
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org
judi.sobecki@dplinc.com
randall.griffin@dplinc.com
whit@whitt-sturtevant.com
msmalz@ohiopoveritylaw.org

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/21/2014 5:15:00 PM

in

Case No(s). 11-0776-AU-ORD

Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Yost, Melissa R. Ms.