

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Commission's
Review of Chapter 4901:1-23, Ohio
Administrative Code, Regarding
Electric Reliability, Service and Safety**

Case No. 12-2052-EL-ORD

**REPLY COMMENTS OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND
THE TOLEDO EDISON COMPANY**

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INTRODUCTION

Pursuant to the Commission's Entry of January 15, 2014, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("Toledo Edison") (collectively, the "Companies"), respectfully file their reply comments to The Office of Ohio Consumers' Counsel's ("OCC") initial comments on the rules contained in Chapter 4901:1-23 of the Ohio Administrative Code ("O.A.C."). OCC filed their initial comments on February 14, 2014. For the reasons discussed below, the Companies request that the Commission reject OCC's recommended amendment to Chapter 4901:1-23, namely that Staff's notices of probable noncompliance be publicly filed.

FACTORS TO CONSIDER

Pursuant to Section 119.032(C), Ohio Revised Code ("O.R.C."), the Commission must consider the following factors when it reviews the rules and determines whether the rules should be amended, rescinded or continued without change:

- (1) Whether the rules should be continued, without amendment, be amended or be rescinded, taking into consideration the purpose, scope and intent of the statute under which the rule was adopted;
- (2) Whether the rule needs amendment or rescission to give more flexibility at the local level;
- (3) Whether the rule needs amendment to eliminate unnecessary paperwork;
- (4) Whether the rule duplicates, overlaps with, or conflicts with other rules; and
- (5) Whether the rule has an adverse impact on businesses, reviewing the rule as if it were a draft rule being reviewed under sections 107.52 and 107.53 of the Revised Code, and whether any such adverse impact has been eliminated or reduced.

Subsection (D) of Section 119.032, O.R.C. also provides:

In making the review required under division (C) of this section, the agency shall consider the continued need for the rule, the nature of any complaints or comments received concerning the rule, and any relevant factors that have changed in the subject matter area affected by the rule.

Additionally, pursuant to the Governor's Executive Order 2011-01K, the Commission must:

- (a) Determine the impact that a rule has on small businesses;
- (b) Attempt to balance the critical objections of regulation and the cost of compliance by the regulated parties; and
- (c) Amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

REPLY COMMENTS

Reiterating a recommendation that the Commission has twice rejected before,¹ OCC recommends that the Commission “adopt a rule that requires the PUCO Staff to publicly file all notices of probable noncompliance.”² As the OCC notes, the Commission has already rejected this recommendation because the procedure contained in Chapter 4901:1-23 is intended “to expedite resolution of alleged violations and avoid extended and protracted litigation.”³ For the same reasons that the Commission twice rejected OCC's recommendations, the Commission should likewise reject it in this proceeding.

In Case No. 99-1161-EL-ORD, OCC commented that the procedure in Chapter 4901:1-23 should be public.⁴ The Commission rejected that recommendation, and as OCC correctly noted, found that:

¹ See e.g., Case Nos. 99-1611-EL-ORD and 06-653-EL-ORD.

² OCC Comments at 3.

³ *Id.* at 2, *citing* to Case No. 99-1161-EL-ORD, Finding and Order at 6 (April 6, 2000).

⁴ Case No. 99-1161-EL-ORD, OCC Comments at 20 (January 31, 2000).

[t]he purpose of this chapter is to expedite resolution of alleged violations and avoid extended and protracted litigation on each and every alleged violation. If the Commission determines the alleged violations are numerous, flagrant, egregious or involve matters of public safety, the Commission will initiated an investigation. Furthermore, the Commission will maintain its records as it sees fit to comply with its duties and obligations in accordance with the Revised Code.⁵

OCC filed an application for rehearing (“AFR”)⁶ on this issue which was denied by the Commission.⁷

In Case No. 06-653-EL-ORD, OCC again recommended that the procedure in Chapter 4901:1-23 be made public.⁸ In rejecting OCC’s request, the Commission found:

While OCEA’s purpose may be well intended, the result of OCEA’s modifications would be counter-productive. Staff routinely monitors all of the public utilities and entities within the Commission’s jurisdiction to ensure compliance with the Commission’s numerous rules and regulations. As part of its routine duties, Staff also conducts numerous investigations to determine if said public utilities and/or jurisdictional entities are compliant with the Commission’s rules and regulations, which include ongoing review of the Commission’s customer complaint data contained in the Commission’s customer management system or direct contact by customers or local government officials. If the daily activities of Staff required public input, or if each investigation required a hearing, Staff’s performance would be hindered, limiting the monitoring and investigatory work that Staff could accomplish. As stated previously, the adopted rules appropriately balance the Commission’s objectives of providing transparency, fairness, and accountability.⁹

OCC filed an AFR and the Commission denied it for the same reasons contained in its initial Finding and Order.¹⁰ For all of those same reasons, and considering that nothing has changed since the promulgation of Chapter 4901:1-23 in 1999, the Commission should once again reject this recommendation.

⁵ Case No. 99-1161, Finding and Order at 36 (April 6, 2000).

⁶ Case No. 99-1161, OCC AFR at 3-4 (May 5, 2000).

⁷ Case No. 99-1161, Entry on Rehearing at ¶45 (June 8, 2000)

⁸ Case No. 06-653, OCC Comments at 154-157

⁹ Case No. 06-653, Finding and Order at ¶72 (November 5, 2008).

¹⁰ Case No. 06-653, OCC AFR at 20-24 (December 5, 2008); Entry on Rehearing at ¶ 29 (May 6, 2009).

In addition to the fact that the Commission has twice rejected OCC's recommendation, there are other reasons why the Commission should reject it. The process contained in Rule 4901:1-23 expedites solving problems and clears up misunderstandings that may exist. Moreover, not every issue raised by Staff that may be the subject of a notice of probable noncompliance will necessarily injure a residential customer so as to require them to have public input in the process. If a person has an interest or has significant rights that were affected by the alleged rule violation, then the customer can seek recourse through the complaint process. Second, if a settlement agreement is filed pursuant to Rule 4901:-23-04(A), the OCC will get public notice of it. Third, the Commission, as it indicated in its Finding and Order in Case No. 99-1161, may institute a proceeding to investigate the alleged violation. Finally, public disclosure of a notice of probable noncompliance would be inconsistent with Ohio law. Section 4901.16, O.R.C. provides:

[e]xcept in his report to the public utilities commission or when called on to testify in any court or proceeding of the public utilities commission, no employee or agent referred to in section 4905.13 of the Revised Code shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent.

Making the notice a public matter will would be contradictory to the confidentiality protections provided in Ohio law. Put simply, the process has worked for over a decade protecting the public interest while not burdening the process with unnecessary litigation. The Commission should reject OCC's recommendation.

CONCLUSION

The Companies appreciate the opportunity to provide reply comments on the rules contained in Chapter 4901:1-23. The Companies urge the Commission to reject OCC's recommendation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The PUCO's e-filing system will electronically serve notice of filing of this document on the following parties and courtesy copies have been emailed to the following parties:

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Summary: Reply Comments electronically filed by Ms. Carrie M Dunn on behalf of Ohio Edison Company and The Toledo Edison Company and The Cleveland Electric Illuminating Company