

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;) Case No. 11-776-AU-ORD
4901-9, Complaint Proceedings; and 4901:1-)
1, Utility Tariffs and Underground)
Protection, of the Ohio Administrative)
Code.)

ENTRY ON REHEARING

The Commission finds:

- (1) In a finding and order issued on January 22, 2014, the Commission adopted certain modifications to Ohio Adm.Code Chapters 4901-1, 4901-3, 4901-9, and 4901:1-1 and directed that the amended rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission.
- (2) Pursuant to R.C. 4903.10, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (3) On February 21, 2014, Duke Energy Ohio, Inc. (Duke), Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, FirstEnergy), and the Ohio Consumers' Counsel (OCC) filed applications for rehearing arguing that several aspects of the January 22, 2014 finding and order and accompanying rules adopted in this matter are unreasonable and unlawful and must be corrected on rehearing.
- (4) OCC asserts that the Commission erred in adopting a new rule, 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 provided the required number of copies are submitted within two business days of notice from the Commission's docketing

division. OCC maintains that the current version of Ohio Adm.Code 4901-1-02(D) provides the necessary clarification. Therefore, OCC urges the Commission on rehearing to maintain the current language in the amended rule.

The Commission agrees in part with OCC's assignment of error. Specifically, the Commission agrees with the concern that the rule as adopted in the January 22, 2014 finding and order lacks specificity regarding the time frame that a filing party has to avoid having a filing rejected for the failure to provide the correct number of paper copies with the docketing division. To rectify this concern, we have reinserted the two business day time frame found in the current version of Ohio Adm.Code 4901-1-02(D) into newly adopted Ohio Adm.Code 4901-1-02(B). This modification provides parties choosing to file paper copies, rather than filing electronically, a brief opportunity to rectify a filing deficiency yet still provides certainty to the paper filing process.

- (5) Duke claims that adopted Ohio Adm.Code 4901-1-02(C)(1)(c) was not revised as described in the January 22, 2014 finding and order. We agree with Duke's comment and have revised adopted Ohio Adm.Code 4901-1-02(C)(1)(c) accordingly.
- (6) Regarding service of electronically filed documents, Ohio Adm.Code 4901-1-05(B), Duke opines that the system envisioned by the Commission will not work as intended. Duke explains that the rule makes no provision for how a filer can determine which parties are going to be served electronically and, thus, from the perspective of a filing party, there is no way to comply with this rule. Duke recommends clarifying the meaning of being "electronically subscribed" and suggests a mechanism whereby the filer can determine which parties are so subscribed.

We believe Duke's concern is already addressed by the language in the body of the rule. The last sentence of paragraph (B) of the adopted rule specifies that "[T]he PUCO's e-filing system will electronically serve notice of the filing on 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)." Thus, those persons who may be served electronically are listed as such on

the Commission's service list for a particular case. It should be easy enough to determine from the docket card who may be served electronically. Duke's assignment of error is denied.

- (7) Duke also recommends modifying the rule concerning interlocutory appeals in discovery, Ohio Adm.Code 4901-1-23(E). Specifically, Duke asserts that the current rule affords parties the choice of filing an immediate appeal of an examiner's ruling granting a motion to compel discovery or briefing the issue subsequent to hearing. Duke submits that there is nothing special about motions to compel discovery that should single them out, in contrast to other procedural rulings. Thus, Duke advocates for modifying Ohio Adm.Code 4901-1-23(E) to reflect the same choice as is currently authorized in Ohio Adm.Code 4901-1-15(F).

The Commission is puzzled by Duke's assignment of error. Neither Ohio Adm.Code 4901-1-15(F) nor 4901-1-23(E) have changed as a result of this rulemaking proceeding. Thus, the choice Duke recommends through this assignment of error is already in existence under the current rules and is not proposed to be changed by the January 22, 2014 finding and order. Therefore, no modification is necessary. Duke's assignment of error is denied.

- (8) FirstEnergy and OCC claim that it was unreasonable and unlawful to amend Ohio Adm.Code 4901-1-27(C) and remove the option of providing unsworn testimony at public hearings. FirstEnergy asserts that removal of the option for unsworn testimony raises serious due process concerns if the sworn public hearing testimony is afforded equal weight as testimony offered at an evidentiary hearing. FirstEnergy continues that, in order to protect its interests, FirstEnergy may be forced to cross-examine witnesses at public hearings which could seriously extend the length of such hearings and have a profound chilling effect upon the willingness of individuals to provide public testimony. FirstEnergy and OCC suggest that the solution that accommodates both the desire to have members of the public have their say and to assure due process protections for the parties to the proceeding is to keep the option of unsworn and sworn testimony in the rule.

From the Commission's perspective, the issue is not whether public hearing testimony is sworn or unsworn but rather the evidentiary value that attaches to such testimony. In those instances where public hearings are scheduled, the Commission is acting in its quasi-legislative role to afford interested individuals the opportunity to express an opinion in a matter pending before the Commission. A Commission's decision in the way of a finding and order or opinion and order must be based upon record evidence with all the attendant due process rights afforded evidentiary proceedings. Thus, whether the opinions of non-party members of the public are presented in written form through a letter in the docket or in oral form through comments presented at a public hearing, those statements can not serve as the evidentiary basis on which the Commission renders its decision. The Commission has clarified this position through amended adopted Ohio Adm.Code 4901-1-27 appended to this entry on rehearing.

- (9) In its last assignment of error, OCC seeks clarification that testimony supporting an oral stipulation of fact or the authenticity of documents standing alone and that is not part of a proposed resolution of the issues in the proceeding is not necessary. We agree that an oral stipulation of fact or the authenticity of documents standing alone and that is not part of a global document proposing resolution of the issues in the proceeding need not be accompanied by the testimony of a witness. Rather, such matters may merely be stipulated to by counsel for the parties or a pro se individual involved.

It is, therefore,

ORDERED, That the applications for rehearing filed by Duke, FirstEnergy, and OCC be granted in part and denied in part in accordance with the above findings. It is, further,

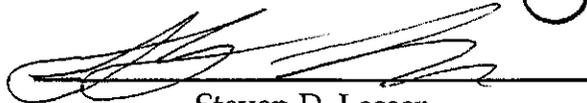
ORDERED, That notice of the issuance of this Entry on Rehearing be served upon all public utilities subject to the jurisdiction of this Commission via the industry electronic mail listserves. It is, further,

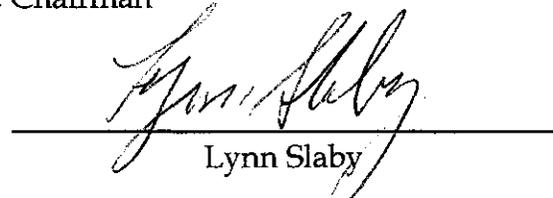
ORDERED, That a copy of this Entry on Rehearing be served upon Ohio Consumers' Counsel; Ohio Telecom Association; Ohio Trucking Association; Ohio Railroad Association; Ohio Gas Association; Ohio Electric Institute; Ohio Cable Television Association; Ohio Manufacturers Association; Ohio Municipal League; the

cities of Cleveland, Columbus, Cincinnati, Dayton, and Toledo; the chair of the Ohio State Bar Association Public Utilities Committee; Ohio Environmental Council; Legal Aid Societies of Cleveland, Columbus, Cincinnati, Dayton, and Toledo; Ohio Chamber of Commerce; Industrial Energy Users-Ohio; Ohio Partners for Affordable Energy; Ohio Gas Marketers Group; and all other interested persons of record.

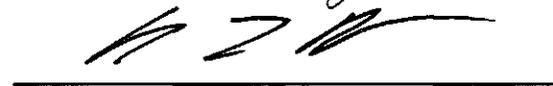
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Shitchler, Chairman


Steven D. Lesser


Lynn Slaby


M. Beth Trombold


Asim Z. Haque

JRJ/vrm

Entered in the Journal

MAR 12 2014


Barcy F. McNeal

Barcy F. McNeal
Secretary

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4901-1-02 Filing of pleadings and other documents.

(A) General provisions

- (1) The official address of the commission's docketing division is: "Public Utilities Commission of Ohio, Docketing Division, 180 East Broad Street, Columbus, Ohio 43215-3793."
- (2) The internet address of the commission's docketing division (DIS) is <http://dis.puc.state.oh.us>.
- (3) The docketing division is open from seven-thirty a.m. to five-thirty p.m., Monday through Friday, except on state holidays.
- (4) Except as discussed in paragraph (D) of this rule, no document shall be considered filed with the commission until it is received and date-stamped by the docketing division. An application for an increase in rates filed under section 4909.18 of the Revised Code, a complaint concerning an ordinance rate filed by a public utility under section 4909.34 of the Revised Code, and a petition filed by a public utility under section 4909.35 of the Revised Code shall not be considered filed until the commission determines that the application, complaint, or petition complies with the requirements of rule 4901-7-01 of the Administrative Code.
- (5) The commission reserves the right to redact any material from a filed document prior to posting the document on the docketing information system if the commission finds the material to be confidential personal information, a trade secret, or inappropriate for posting to its website.
- (6) A party seeking to consolidate a new case with one or more previously filed cases shall file a motion to consolidate the cases.

(B) Paper filing

- (1) 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

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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 within two business days after notice by the docketing division may result in the document being stricken from the case file. An attorney examiner may require a party to provide additional paper copies of any filed document.

- (2) Unless a motion for a protective order is made in accordance with rule 4901-1-24 of the Administrative Code, concurrent with or prior to receipt of the document by the docketing division, any document filed with the docketing division will be made publicly available on the docketing information system.

(C) Facsimile transmission (fax) filing

A person may file documents with the commission via fax under the following conditions:

- (1) The following documents may not be delivered via fax:
- (a) The application, complaint, or other initial pleading that is responsible for the opening of a case.
 - (b) Any document for which protective or confidential treatment is requested under rule 4901-1-24 of the Administrative Code.
 - (c) The service of a notice of appeal of a commission order pursuant to sections 4903.13 and 4923.99 of the Revised Code upon the chairman or a commissioner.
- (2) All documents sent via fax must include a transmission sheet that states the case number, case title, date of transmission, number of pages, brief description of the document, and the name and telephone number of the sender.
- (3) The originator of a fax document must contact the commission's docketing division at (614) 466-4095 prior to sending a fax. A person must notify the docketing division of its intent to send a document by fax by five p.m. on the date the document is to be sent. The person must be prepared to commence transmission at the time the docketing division is notified.
- (4) All documents must be sent to the facsimile machine in the commission's docketing division at (614) 466-0313. If that machine is inoperable, directions

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for alternative arrangements will be given when the originator calls to commence a fax. Unrequested documents sent to any of the commission's other facsimile machines will not be relayed to the docketing division by commission employees.

- (5) Excluding the transmission sheet, all documents transmitted by fax must be thirty pages or less.
- (6) All documents must be legible when received. Illegible documents received via fax will not be filed. If the document is illegible, docketing division may attempt to contact the sender to resolve the problem. The person making a fax filing shall bear all risk of transmission, including all risk of equipment, electric, or telephonic failure or equipment overload or backup. Any document sent by fax that is received in whole or in part after five-thirty p.m. will be considered filed the next business day.
- (7) No document received via fax will be given confidential treatment by the commission.
- (8) If a document is delivered via fax, the party must make arrangements for the original signed document and the required number of copies of the pleading to be delivered to the commission no later than the next business day. Failure to comply with this requirement may result in the document being stricken from the case file.
- (9) Because a document sent to the commission by fax will be date-stamped, and thus filed, the day it is received by the docketing division, the originator of the document shall serve copies of the document upon other parties to the case no later than the date of filing.

(D) Electronic filing (e-file)

A person may e-file documents with the commission under the following conditions:

- (1) All filings must comply with the electronic filing manual and technical requirements located under electronic filing information and links at the docketing information system website.
- (2) The following documents shall not be delivered via e-filing:

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- (a) Any document for which protective or confidential treatment is requested under rule 4901-1-24 of this chapter.
- (b) The service of a notice of appeal of a commission order pursuant to sections 4903.13 and 4923.99 of the Revised Code upon the chairman or a commissioner.
- (3) A public utility may electronically file an application to increase rates pursuant to section 4909.18 of the Revised Code except that a public utility filing an application pursuant to chapter II of the standard filing requirements in rule 4901-7-01 of the Administrative Code shall submit one complete paper copy of the application to the commission's docketing division on the same day that an e-filing of the application is made and shall contact the rate case manager of the commission's utilities department prior to the e-filing of the application to determine the number of paper copies of the application that will be required by the commission's staff.
- (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 inserted as the last page of the filing upon receipt by the commission, except that any e-filed document received after five-thirty p.m. shall be considered filed at seven-thirty a.m. the next business day. The docketing division may reject any filing that does not comply with the electronic filing manual and technical requirements, is unreadable, includes anything deemed inappropriate for inclusion on the commission's web site, or is submitted for filing in a closed or archived case. If an e-filing is rejected by the docketing division, an e-mail message will be sent to inform the filer of the rejection and the reason for the rejection.
- (5) If an e-filing is accepted, notice of the filing will be sent via electronic mail (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 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.

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- (6) The commission's docketing division closes at five-thirty p.m. To allow time for same-day review and acceptance 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, electric, or internet failure.
- (8) E-filed documents must be complete documents. Appendices or attachments to an e-filed document may not be filed by other methods without prior approval.
- (9) Except as otherwise provided by this rule or directed by an attorney examiner, a person filing a document electronically need not submit any paper copy of an e-filed document to the commission's docketing division.
- (E) The commission's docketing information system 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 is one in which no further filings may be made without the consent of the commission's legal department. When a case is closed, any person seeking to make a filing in a case must first contact the attorney examiner assigned to the case or the commission's legal director. If the attorney examiner or legal director agrees to permit the filing, the docketing division will be notified to reopen the case. If an additional filing is permitted, 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 is a closed case that will not be reopened and in which no further filings will be permitted. If additional activity is thereafter required on any matter addressed in an archived case, the commission will open a new case and designate the new case as a related case. The commission's docketing information system displays for each case a related cases tab to provide a link to related cases.
- (4) A reserved case is one set aside for future use. No filings should be made in the case until the party for who it was reserved makes an initial filing.
- (5) A void case is one that was opened in error and no documents may be filed in it.

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4901-1-27 Hearings.

- (A) The commission, the legal director, the deputy legal director, or an attorney examiner shall assign the time and place for each hearing. Unless otherwise ordered, all hearings shall be held at the offices of the commission in Columbus, Ohio. Reasonable notice of each hearing shall be provided to all parties.

- (B) The presiding hearing officer shall regulate the course of the hearing and the conduct of the participants. Unless otherwise provided by law, the presiding hearing officer may, without limitation:
 - (1) Administer oaths and affirmations.
 - (2) Determine the order in which the parties shall present testimony and the order in which witnesses shall be examined.
 - (3) Issue subpoenas.
 - (4) Rule on objections, procedural motions, and other procedural matters.
 - (5) Examine witnesses.
 - (6) Grant continuances.
 - (7) Take such actions as are necessary to:
 - (a) Avoid unnecessary delay.
 - (b) Prevent the presentation of irrelevant or cumulative evidence.
 - (c) Prevent argumentative, repetitious, cumulative, or irrelevant cross-examination.
 - (d) Assure that the hearing proceeds in an orderly and expeditious manner.
 - (e) Prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The presiding hearing officer may, upon motion of any party, direct that a portion of the hearing be conducted in camera and that the corresponding portion of the record be sealed to prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The party requesting such protection shall have the burden of establishing that such

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protection is required. The commission or the presiding hearing officer shall issue a ruling prior to the closing of the case regarding the amount of time that any sealed portion of the hearing record shall remain sealed.

- (C) The presiding hearing officer shall permit members of the public that are not parties to the proceeding, the opportunity to offer ~~sworn or unsworn~~ testimony at the portion or session of the hearing designated for the taking of public testimony.
- (D) Formal exceptions to rulings or orders of the presiding hearing officer are unnecessary if, at the time the ruling or order is made, the party makes known the action which he or she desires the presiding hearing officer to take, or his or her objection to action which has been taken and the basis for that objection.