

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Cynthia Wingo,)	
)	
Complainant,)	
)	
v.)	Case No. 16-2401-EL-CSS
)	
Nationwide Energy Partners, LLC, et al.,)	
)	
Respondents.)	

**COMPLAINANT’S MOTION FOR LEAVE TO FILE REPLY MEMORANDUM IN
SUPPORT OF APPLICATION FOR REHEARING**

Rule 4901-1-35 neither authorizes nor prohibits the filing of a reply memorandum in support of an application for rehearing. To the extent leave to file this reply is necessary, Complainant respectfully requests it under Rules 4901-1-31(A) and 4901-1-12(B)(2). This reply is limited to a procedural issue raised by Nationwide Energy Partners, LLC (NEP); specifically, NEP’s claim that the Application for Rehearing was not timely filed. Consideration of this reply will not unduly prejudice any party.

MEMORANDUM IN SUPPORT

The docketed version of the Application for Rehearing shows that it was received by the Commission at 5:47 p.m. on December 21, 2017. (NEP presumably will not dispute that it received a courtesy copy moments later.) Because the Application was *actually received* by the Commission on the 30th day following the November 21, 2017 Opinion and Order, it is deemed “filed” as of December 21, 2017, in accordance with the judicially-recognized definitions of the terms “filed” and “day.” The Application was *constructively* filed on December 22 per Rule 4901-02-(D)(4), but the actual filing date is the date that matters under R.C. 4903.10. The Application is timely, and must be considered on the merits.

R.C. 4903.10 states that an application for rehearing must be “filed” within thirty “days” after the entry of the order for which rehearing is sought. R.C. 4903.10 does not define the term “file” or “filed.” Under the rules of statutory construction, “[t]he term ‘file’ has a technical or specialized meaning within the legal world, in reference to the presentation of papers or documents to a court, administrative agency, office, or other official entity.” *Bohacek v. Bureau of Employment Servs.*, 9 Ohio App. 3d 59, 63 (8th Dist. 1983). The “generally accepted sense” of this word is “actual rather than constructive delivery ... into the official custody and control (of the recipient).” *Id.*, quoting *Fulton v. State ex rel. General Motors Corp.*, 130 Ohio St. 494, 498 (1936). Thus, a document is “filed” when it is “received” by the tribunal. *Bohacek*, 9 Ohio App. 3d at 59, syllabus ¶ 2 (“For a party to file a timely appeal of the decision of the Unemployment Compensation Board of Review . . . his notice of appeal must be *received* by the board of review within the thirty-day appeal period.”)

The deadline for “filing” the Application was “within 30 days after” November 21, 2017. R.C. 4903.10. “Under the Revised Code, a ‘day,’ for purposes of filing a cause of action, is interpreted to extend to the end of the calendar day.” *State v. Bowman*, 108 Ohio App.3d 276, 278 (5th Dist. 1996). “Fractions of a day are not generally considered in the legal computation of time, and the day on which an act is done or an event occurs must be wholly included or excluded.” *Greulich v. Monnoin*, 142 Ohio St. 113, 117 (1943). “Any other method of computation would require an accurate account to be kept of the exact hour, minute, and second of the occurrence of the act to be timed, would produce endless confusion and strife, and would prove impolitic, if not wholly impracticable.” *Id.*

The docketed version of the Application bears an official filing confirmation that states: “This foregoing document was electronically filed with the Public Utilities Commission of Ohio

Docketing Information System on 12/21/2017 5:47:36 PM.” The application was thus “received” by the Commission and “filed” on the “calendar day” of December 21, 2017. The Application was thus timely filed under R.C. 4903.10.

Rule 4901-1-02(D)(4) states that documents received after 5:30 p.m. “shall be considered filed at seven-thirty a.m. the next business day.” This is a sensible rule for routine motions and submissions that are *not* governed by a statutory deadline. But the rule cannot be applied to change the meaning of *statutory* terms. “It is well settled in Ohio that the Public Utilities Commission is a creature of the General Assembly and may exercise no jurisdiction beyond that conferred by statute.” *Penn Cent. Transp. Co. v. Pub. Util. Comm'n*, 35 Ohio St. 2d 97, 99 (1973). Under R.C. 4903.10, a document is deemed “filed” on the calendar day it is *received* by the Commission.

R.C. 4903.10 is a remedial law. *See Wellston Iron Furnace Co. v. Rinehart*, 108 Ohio St. 117, syllabus (1923) (“All statutes relating to procedure are remedial in their nature and should be liberally construed and applied to effect their respective purposes.”). Modern rules of statutory construction preserve the principle that remedial laws “shall be liberally construed in order to promote the object and assist the parties in obtaining justice.” R.C. 1.11. Given that the deadlines in R.C. 4903.10 are jurisdictional, there is no good reason for enforcing a *constructive* deadline that potentially cuts off rights, even though the actual deadline has been met.

Dated: January 9, 2018

Respectfully submitted,

s/ Mark A. Whitt

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CERTIFICATE OF SERVICE

This document was filed via the Commission's e-filing system on January 9, 2018. Parties who have subscribed to electronic service will receive notice of this filing from the Commission. Service is also being made this day to the following persons by email:

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Case No(s). 16-2401-EL-CSS

Summary: Motion for Leave to File Reply Memorandum in Support of Application for Rehearing electronically filed by Ms. Rebekah J. Glover on behalf of Ms. Cynthia Wingo