

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment of Ohio)	
Admin. Code 4901-1-24 Regarding Motions)	Case No. 18-0322-AU-ORD
for Protective Orders.)	

**COMMENTS OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO**

I. INTRODUCTION

In accordance with the Commission’s February 28, 2018 Entry in this case, The East Ohio Gas Company, d/b/a Dominion Energy Ohio (DEO) respectfully submits the following comments to the proposed modification of paragraphs (D) through (F) of Ohio Admin. Code 4901-1-24, concerning motions for protective orders.

II. COMMENTS

A. Ohio Admin. Code 4901-1-24(D)

DEO appreciates that an affidavit may be necessary in some circumstances to support a motion for protective treatment of confidential information—most notably, in a case without a hearing, and in which the motion is contested. Not every motion will be contested, however, and DEO would support an amendment that only required an affidavit to occur in the case of contested motions.

Many motions for protective order are filed and granted routinely, sometimes simply to request extensions of an existing protective order, and often no party questions the need for information to remain confidential. If no party contests a motion for protective order, and the Commission is not otherwise concerned, it is not clear why additional “fact finding” procedures would be required. The Commission frequently takes legal action on the basis of pleadings,

without affidavits and without evidentiary proceedings. As drafted, however, the rule will require every movant, even in the case of an uncontested motion, to invest the time and expense of identifying the person with knowledge, drafting the affidavit, obtaining signatures, and securing notarization.

Waiting until a motion is contested to require an affidavit also supports procedural efficiency. An affidavit in support of an initial motion will, almost of necessity, do little more than verify the facts set forth in the motion. If a party opposed the motion, the movant would then need to address those issues in its reply. Even if an affidavit had been filed with the original motion, *another* affidavit would in many cases be required to support the reply. Rather than draft, notarize, and file two affidavits (one generically supporting the motion, and one specifically supporting the arguments in reply), it would be more efficient to file a single affidavit at the reply stage. This would eliminate a procedural burden in all cases, without prejudicing opposing parties in contested cases, because the grounds in support of the motion would already be known to them.

DEO would propose the following approach that would eliminate the need for an affidavit except where the motion were contested or where the Commission otherwise believed an affidavit was necessary:

Ohio Adm. Code 4901-1-24(D)(3). The motion for protection of allegedly confidential information shall be accompanied by a memorandum in support setting forth the specific basis of the motion, including a detailed discussion of the need for protection from disclosure, and citations of any authorities relied upon. **If the motion is contested, or if otherwise ordered by the Commission,** ~~f~~ Facts supporting the motion shall be set forth in an affidavit made on personal knowledge. The motion, memorandum in support, and **(if applicable)** affidavit shall be made part of the public record of the proceeding.

A similar revision would be necessary to division (F) of the same rule.

These revisions would ensure that any ruling on a contested motion has adequate factual support, while avoiding the burden and expense where no party contests a motion. And if the Commission believed an affidavit were needed to support an uncontested motion, the rule would permit that as well.

B. Ohio Admin. Code 4901-1-24(E)

As mentioned above, DEO does not object to the concept of requiring affidavits and potentially scheduling hearings to consider motions for protective orders, at least in the case of contested motions. The Commission's proposed revisions, however, should also address the confidentiality of any transcripts of such hearings, which could contain testimony about the very information sought to be protected.

For a hearing on a motion for protective treatment to be most useful to the Commission, an open discourse on the issues relevant to the request for confidentiality, including testimony discussing the nature of the confidential information, may be necessary. But the ability of a witness to openly discuss such issues—and consequently the Commission's ability to reach correct decisions—would be severely hampered in the event that the hearing transcripts were of public record.

As such, DEO proposes to add the following language to the Commission's proposed revisions to Ohio Adm. Code 4901-1-24(E):

Pending a ruling on a motion filed in accordance with paragraph (D) of this rule, the information filed under seal will not be included in the public record of the proceeding or disclosed to the public until otherwise ordered. The commission and its employees will undertake reasonable efforts to maintain the confidentiality of the information pending a ruling on the motion. A document or portion of a document filed with the docketing division that is marked "confidential," "proprietary," or "trade secret," or with any other such marking will not be afforded confidential treatment and protected from disclosure unless it is filed in accordance with paragraph (D) of this rule. The commission, the legal director, the deputy legal director, or an attorney examiner may schedule a hearing to consider any motion for protective treatment. **Any transcript of such hearing**

shall be filed under seal and shall not be included in the public record or disclosed to the public until otherwise ordered.

III. CONCLUSION

DEO appreciates the opportunity to provide comments on the proposed rules. For the foregoing reasons, DEO respectfully requests the Commission act in accordance with its comments.

Dated: March 16, 2018

Respectfully submitted,

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Summary: Comments electronically filed by Ms. Rebekah J. Glover on behalf of The East Ohio Gas Company d/b/a Dominion Energy Ohio