

THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Review of   | : | Case No.      |
| Ohio Adm. Code Chapter 4901-1,   | : | 18-275-AU-ORD |
| Rules Regarding Practice and     | : |               |
| Procedure Before the Commission. | : |               |

|                                  |   |               |
|----------------------------------|---|---------------|
| In the Matter of the Review of   | : | Case No.      |
| Ohio Adm. Code Chapter 4901:1-1, | : | 18-276-AU-ORD |
| Rules Regarding Utility Tariffs  | : |               |
| and Underground Utility          | : |               |
| Protection Service Registration. | : |               |

|                                 |   |               |
|---------------------------------|---|---------------|
| In the Matter of the Review of  | : | Case No.      |
| Ohio Adm. Code Chapter 4901-3,  | : | 18-277-AU-ORD |
| Rules Regarding Open Commission | : |               |
| Meetings.                       | : |               |

|                                |   |               |
|--------------------------------|---|---------------|
| In the Matter of the Review of | : | Case No.      |
| Ohio Adm. Code Chapter 4901-9, | : | 18-278-AU-ORD |
| Rules Regarding Commission     | : |               |
| Complaint Proceedings.         | : |               |

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PROCEEDINGS

before Patricia A. Schabo, Attorney Examiner, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-B, Columbus, Ohio, called at 10:00 a.m. on Thursday, July 12, 2018.

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APPEARANCES:

Ohio Public Utilities Commission  
By Ashley M. Hively, Esq.  
Staff Attorney  
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On behalf of the PUCO.

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1 Thursday Morning Session,  
2 July 12, 2018.

3 - - -

4 ATTORNEY EXAMINER SCHABO: We are here  
5 today for a workshop scheduled for today regarding  
6 the Commission's review of four chapters of the Ohio  
7 Administrative Code.

8 Under Case No. 18-275-AU-ORD, the  
9 Commission is reviewing Chapter 4901-1, which is the  
10 Administrative Provisions and Procedures. Under Case  
11 No. 18-276-AU-ORD, the Commission is reviewing  
12 Chapter 4901:1-1, Utility Tariffs and Underground  
13 Utility Protection Service Registration. Under Case  
14 No. 18-276-AU-ORD, the Commission is reviewing  
15 Chapter 4901-3, pertaining to Open Commission  
16 Meetings, and finally, under Case No. 18-278-AU-ORD,  
17 the Commission is reviewing Chapter 4901-9, Complaint  
18 Proceedings.

19 My name is Trish Schabo. I'm the  
20 Attorney Examiner assigned by the Commission to these  
21 cases. With me today is Ashley Hively, who is with  
22 the Commission's Legal Department. Jeff Jones, also  
23 from the Legal Department, is with us in the crowd.

24 We will be moderating this workshop,  
25 taking notes of any comments and generally listening

1 to what you have to say.

2 Before we get started, let me provide  
3 the obligatory overview of why we are here. In  
4 undertaking the statutory mandate to evaluate our  
5 rules against a Business Impact Analysis and provide  
6 that analysis to the Common Sense Initiative Office,  
7 the Commission has determined that it is appropriate  
8 and beneficial to hold a workshop with interested  
9 stakeholders.

10 The purpose of this workshop is to get  
11 your input regarding each of the rules under review  
12 in the four chapters that I just referenced. This is  
13 just your initial opportunity to provide feedback on  
14 the current state of the rules. Nothing said today  
15 will be considered binding on any of the interested  
16 stakeholders.

17 During the next step of our review  
18 process, the Commission will consider any comments  
19 elicited today or filed in response to the workshop  
20 and will issue a proposed set of rules, which will  
21 then be subject to the typical comment and reply  
22 comment process. With the comments and reply  
23 comments you will have the opportunity to formally  
24 offer any recommendations.

25 Today we merely seek and appreciate your

1 initial thoughts and any recommendations you have on  
2 how the rules can be improved.

3           Given the rule -- given the number of  
4 the rules, we decided to bring a court reporter  
5 today. Additionally, when we open the floor to  
6 comments, we will be taking the comments beginning  
7 with those under review in 18-275-AU-ORD, basically  
8 starting with Practice and Procedure, moving on to  
9 Tariffs and Underground Protection Registration, then  
10 Open Meetings, and then Complaint Proceedings.

11           When the time comes, if you have a  
12 comment or recommendation, we ask that you come up to  
13 the podium. If you have any trouble hearing what is  
14 being said, please let me know. Also, there is  
15 currently a hearing in 11-A, which is just on the  
16 other side of that barrier, so please be courteous  
17 with any hallway conversations.

18           Finally, regardless of whether you are  
19 here to comment or observe, please use the sign-in  
20 sheet.

21           With that said, are there any procedural  
22 questions?

23           (No response.)

24           ATTORNEY EXAMINER SCHABO: Everybody  
25 here is a pro. All right. Well, then we'll open the

1 floor up to comments or recommendations for 4901-1.

2 Miss Fleisher, would you like to begin?

3 MS. FLEISHER: Thank you very much, your  
4 Honor. And I'm here just really with one  
5 comment/suggestion for this set of rules, which is an  
6 issue that we have raised in a few cases over the  
7 last few years, but I think could benefit from a full  
8 conversation in the rulemaking process, which is the  
9 issue of timing of rebuttal testimony. You know, it  
10 gets everyone very excited, but we see it as really  
11 important not just to the process but the substance  
12 of what comes before the Commission for decision, and  
13 specifically I think that the current regime where  
14 rebuttal testimony is -- is filed by the applicant,  
15 usually the utility, after the close of all the  
16 direct testimony and cross is really a recipe for  
17 trouble in a lot of cases in that it -- what it does  
18 is it gives utilities an opportunity, you know, just  
19 often by virtue of just the amount of testimony they  
20 can file in a complex case and the often short timing  
21 for intervenors to analyze and look at that  
22 testimony, it gives the utilities that opportunity  
23 to -- to do two things; one, put in things that  
24 should have been in their direct case and that can be  
25 used to sort of fix up problems that have been

1 revealed with their direct case. Although that's not  
2 supposed to happen, I think as a practical matter  
3 sometimes it just does, despite the best efforts of  
4 the Attorney Examiners, but even if it's stuff that's  
5 properly in rebuttal testimony -- and I'll speak of  
6 experience here from First -- for example, the First  
7 Energy ESP case. There are such tight turnaround  
8 times, that anything that is remotely complex or  
9 technical and especially just coming out of a  
10 hearing, there's really just not time to properly  
11 analyze it and respond to it to create a full record  
12 before the Commission, and it's -- you know, usually  
13 you don't even get to depose witnesses, rebuttal  
14 witnesses. Occasionally you do. There is almost --  
15 I'm not aware of any time when there's been an  
16 opportunity for written discovery, and it just  
17 backloads everything in a way that means that a  
18 rebuttal case is usually done quick and dirty and not  
19 the way we'd like to see it done.

20           And I will note that Ohio really is an  
21 outlier in this respect. I have not done a  
22 conference with 50 states of late, but I can tell you  
23 that just having looked through case schedules,  
24 usually that is a metric, address the rules, but --  
25 occasionally it is, Maryland, New Jersey,



1 Pennsylvania, Virginia, West Virginia, Michigan,  
2 Kentucky, Wisconsin, Illinois, and Mississippi all  
3 provide for filing of rebuttal testimony a short time  
4 before the beginning of the direct case, and  
5 that's -- you know, we're not looking for a month  
6 before. Maybe a week before might be nice, because  
7 then during the conduct -- the conduct of the direct  
8 case, in the background you have time to do the work  
9 on analyzing and figuring out a response to rebuttal  
10 that otherwise has to happen in a couple of days,  
11 maybe over a weekend, before you're back in rebuttal  
12 hearing, but it's not filed until after the direct  
13 case.

14           And, you know, being perfectly honest  
15 about how this has gone for us, we have raised  
16 this -- this idea in cases before in setting  
17 procedural schedules and have not been granted a  
18 schedule that does require filing of rebuttal  
19 testimony before the direct case, but we think this  
20 rulemaking process is the perfect place to really  
21 have the full conversation with all stakeholders,  
22 explore some of the practical aspects about how it  
23 would or could work, give everybody a chance to be  
24 heard on the issue who might have views. We believe  
25 there are a number of other stakeholders who would

1 support the same approach that we're proposing, and  
2 so we'd really just like to see the issue brought up  
3 here, without any guarantees as to how it might turn  
4 out, and in particular, it -- we think that it is,  
5 you know, the sort of issue that in a case, in the  
6 heat of a case, when you're just trying to get it  
7 done, it's not really conducive to -- to debating the  
8 issue fully, and so we think this is a good  
9 opportunity to do that.

10 ATTORNEY EXAMINER SCHABO: So would you  
11 like to see that as something added or changed to  
12 4901-1-29, specific to Expert Testimony?

13 MS. FLEISHER: Yes. Yeah, I think that  
14 would be the place -- place for it, and we'd be happy  
15 to provide proposed language. You know, I think  
16 if -- there's time -- there's witness testimony and  
17 timing stuff in there already, that it's pretty easy  
18 to extrapolate what it might look like, you know, no  
19 earlier -- or no later than seven days prior to the  
20 hearing or something like that. Again, we're not  
21 looking to really, like, extend the schedule ahead of  
22 the hearing by a lot, but just sort of move this  
23 piece backwards a little bit. And, you know, it  
24 would also, we think, be more -- just more efficient  
25 overall in terms of any deposition. You know, often

1 rebuttal witnesses are the same as folks who are  
2 providing direct testimony, so you can depose them on  
3 everything all at once. You could cross them on  
4 everything all at once instead of having these two  
5 stages of the case sort of artificially separated  
6 out.

7 ATTORNEY EXAMINER SCHABO: Okay.

8 MS. FLEISHER: So that's all we have.

9 ATTORNEY EXAMINER SCHABO: All right.

10 Thank you.

11 Mr. Jones.

12 MR. JONES: Can you have the witnesses  
13 identify themselves and who they represent?

14 ATTORNEY EXAMINER SCHABO: Yes. Thank  
15 you.

16 MS. FLEISHER: I apologize. I did not  
17 think of it. My name is Madeline Fleisher, and I'm a  
18 senior attorney with the Environmental Law and Policy  
19 Center.

20 ATTORNEY EXAMINER SCHABO: Thank you.

21 Any other comments under the  
22 procedure rules?

23 MS. THOMPSON: Good morning.

24 ATTORNEY EXAMINER SCHABO: Good morning.

25 MS. THOMPSON: On behalf of Columbia Gas

1 of Ohio and Dominion Energy Ohio, my name is Melissa  
2 Thompson, and I am the Director of Regulatory Policy  
3 for Columbia.

4 Columbia and Dominion would like to  
5 thank the Commission for hosting this workshop and  
6 for the opportunity to present comments this morning.  
7 Rule workshops such as these provide the companies  
8 and interested stakeholders an informal forum to  
9 present their initial thoughts on regulations. Such  
10 commentary helps alleviate the need to file extensive  
11 written comments and permits dialogue for proposed  
12 rule additions, deletions, and changes.

13 This morning Columbia and Dominion have  
14 worked together to provide a high-level list of  
15 comments to discuss regarding the Commission's  
16 procedural rules, complaint rules, and tariff  
17 administration rules. As we're taking comments on  
18 the procedural rules, I'll begin there.

19 Our first comment is regarding Ohio  
20 Administrative Code 4901-1-05, the Service of  
21 Pleadings rule. The Commission's existing Service of  
22 Pleadings rule in Section 5 allows parties to serve  
23 pleadings through various means, such as hand  
24 delivery, mail, fax, e-mail, or service via the  
25 Commission's DIS system. While a variety of means of

1 service may have been necessary when the rules were  
2 initially established, the prevalent method of  
3 service has been e-mail. To mirror the rule with the  
4 practice of many attorneys, the Companies propose  
5 requiring attorneys representing parties before the  
6 Commission to utilize e-mail service. In the event  
7 e-mail service may be impractical, then the Companies  
8 request that only the counsel of record receive  
9 service by another method.

10 Any questions regarding that rule or  
11 comment?

12 ATTORNEY EXAMINER SCHABO: So you  
13 specifically have carved out any pro se from --

14 MS. THOMPSON: Right.

15 ATTORNEY EXAMINER SCHABO: -- that might  
16 seem -- okay. I do not have any questions.

17 MS. THOMPSON: Okay. Our second comment  
18 is in regards to Ohio Administrative Code  
19 4901-1-08(D), as in dog. That's Representation at  
20 Settlement Conferences. The Commission's existing  
21 rule allows parties to have other persons who are not  
22 attorneys present at settlement conferences. The  
23 Companies are concerned that having non-licensed  
24 attorneys present at settlement conferences engaging  
25 in negotiations regarding legal matters may

1 constitute the unauthorized practice of law. The  
2 Companies, therefore, recommend that the Commission  
3 revise the rule to note that any non-attorneys and  
4 non-parties present at settlement conferences may not  
5 negotiate on behalf of any party or otherwise engage  
6 in the practice of law without a license.

7 Are there any questions concerning that  
8 comment?

9 ATTORNEY EXAMINER SCHABO: No.

10 MS. THOMPSON: Next, the Companies  
11 propose a change to Ohio Administrative Code  
12 4901-1-11, 4901-1-12, and 4901-1-16. This is in  
13 regards to Intervention and Intervenor Discovery.  
14 The Commission's existing rules in many instances  
15 treat persons with pending motions to intervene as  
16 parties. One of these rights includes the right to  
17 receive service of any pleading, as well as the right  
18 to serve discovery requests. Recognizing that many  
19 intervenors participate in Commission proceedings,  
20 the Companies request that the rules be revised to  
21 only allow parties with granted motions to intervene  
22 to serve discovery or to receive service of pleadings  
23 and other filings in the case.

24 The Companies further recognize that,  
25 due to the number of intervenors in a proceeding,

1 there can be many motions to intervene filed in the  
2 docket. Therefore, to expedite the approval of these  
3 motions, the Companies also request that motions to  
4 intervene be deemed automatically granted on the 31st  
5 day after filing, unless otherwise suspended by the  
6 Commission, Legal Director, Deputy Legal Director, or  
7 Attorney Examiners by entry.

8 ATTORNEY EXAMINER SCHABO: Okay.

9 MS. THOMPSON: Any questions?

10 MS. HIVELY: No.

11 MS. THOMPSON: Next, the Companies  
12 propose a change to Ohio Administrative Code  
13 4901-1-16. The Commission's rules require discovery  
14 to be supplemented in limited circumstances, such as  
15 a request for supplementation prior to hearing. Some  
16 parties are routinely served blanket requests to  
17 supplement all responses to discovery. The  
18 Companies, therefore, propose that any requests to  
19 supplement responses should specify those requests to  
20 be supplemented as well as to serve those responses  
21 separately.

22 Our next proposed change is for Ohio  
23 Administrative Code 4901-1-24, Confidentiality. The  
24 Companies recommend adding a provision to Section 24  
25 recognizing the confidentiality of infrastructure

1 identifying information, such as facility maps,  
2 pipeline pressures and MAOP, pipeline material, and  
3 other critical energy infrastructure information.

4 There are certain proceedings in which this  
5 information is necessary to be disclosed, but  
6 protection from the public record is vital.

7 Currently there is no confidentiality protection  
8 given to those items and we have to request for it to  
9 be confidential, and so rather than going through  
10 that process, the Companies do recommend to have that  
11 confidentiality recognized in the Commission's rules.

12 The Companies' next proposed change is  
13 to Ohio Administrative Code 4901-1-29, regarding  
14 Expert Testimony. The Commission's rules in Ohio  
15 Administrative Code 4901-1-28(C), which applies to  
16 rate cases, allows any party to present rebuttal  
17 testimony in response to any direct testimony or  
18 other evidence. This is the only place in the  
19 Commission's rules that acknowledge rebuttal  
20 testimony. The Companies recognize that the  
21 Commission has recent case precedent holding that the  
22 request for rebuttal testimony is not required to be  
23 granted. Rather than relying on case law, Columbia  
24 and Dominion recommend that a new rule be added to  
25 the section that would state that rebuttal testimony



1 is at the option of the Commission.

2 Our next change is for Ohio  
3 Administrative Code 4901-1-31. The Commission's  
4 rules permit striking a brief if a party fails to  
5 attach a copy of an unreported decision. Rather than  
6 allowing parties to move to strike a brief, the  
7 Companies recommend amending this rule to give a  
8 party notice of the deficiency and to have the  
9 opportunity to cure before a brief is stricken.

10 That concludes all of our proposed  
11 comments and changes to the Administrative Rules.

12 ATTORNEY EXAMINER SCHABO: Okay.

13 MS. THOMPSON: Thank you.

14 ATTORNEY EXAMINER SCHABO: You're  
15 welcome. Actually, just -- stand there for just a  
16 minute.

17 Does anybody else in the room have any  
18 procedure rule comments?

19 (No response.)

20 ATTORNEY EXAMINER SCHABO: Okay. Let's  
21 move on to 4901:1-1, which is Tariffs. Did you have  
22 some comments as to that rule?

23 MS. THOMPSON: We have one comment.

24 ATTORNEY EXAMINER SCHABO: All right.  
25 Let's just proceed, then.

1 MS. THOMPSON: Okay. This actually is a  
2 comment regarding a proposed new section to this  
3 rule, so not for the existing three sections under  
4 this rule.

5 The Companies' tariffs require non-rate  
6 changes and updates occasionally. These changes  
7 require an application, and typically, after a  
8 certain period of time, they're approved. For these  
9 non-rate changes that update language to the tariff,  
10 less discovery is typically required. Therefore, the  
11 Companies request that the Commission add a new rule  
12 to prevent non-rate tariff changes to automatically  
13 go into effect within 30 days of filing, unless  
14 suspended by the Commission. This will allow  
15 noncontroversial changes to tariffs to go into effect  
16 automatically, without requiring a Commission Order.  
17 A recent example of where such an approval process  
18 would be warranted is updating of tariffs with the  
19 new refund language reflecting the recent Supreme  
20 Court decision regarding the filed rate doctrine.

21 That's all of our comments on that  
22 section.

23 ATTORNEY EXAMINER SCHABO: All right.  
24 Any other comments on Tariffs and Underground  
25 Protection Registration?

1 (No response.)

2 ATTORNEY EXAMINER SCHABO: No. Are  
3 there any comments regarding the Commission's Open  
4 Meetings rule in 4901-3?

5 (No response.)

6 ATTORNEY EXAMINER SCHABO: Okay. Then  
7 we'll move on to the last rule under review, which is  
8 our Complaint Proceedings, and that is Chapter  
9 4901-9.

10 Miss Tompson, would you care to proceed?

11 MS. THOMPSON: Thank you, your Honor.  
12 The Companies have four proposed changes to this rule  
13 section. The first is a change to Ohio  
14 Administrative Code 4901-9-01(A). The Companies  
15 respond to every complaint that's filed at the  
16 Commission against them. Some of these complaints  
17 filed pro se can be difficult to decipher and  
18 understand. The Companies request that, for these  
19 types of complaints, that the rules permit the  
20 utilities to file a motion requesting a more definite  
21 statement of the complaint. Such a motion would stay  
22 the deadline for filing an Answer and permit the  
23 utility a more complete -- allow the utility to more  
24 completely respond to the complaint filed and narrow  
25 the issues in the proceeding.

1           ATTORNEY EXAMINER SCHABO: Thank you.

2           MS. THOMPSON: The next change requested  
3 by the utility is Ohio Administrative Code  
4 4901-9-01(B), as in boy. The Commission's current  
5 rule requires a public utility to file an Answer in  
6 every proceeding, even if the utility has settled  
7 with the complaining customer before the 20-day  
8 Answer deadline passes. If a settlement is reached,  
9 then an Answer is superfluous and can cause confusion  
10 for the customer when the public utility serves its  
11 Answer, especially if the public utility is denying  
12 the allegations in the Complaint. Therefore, the  
13 Companies request that this rule be amended to stay a  
14 utility's requirement to file an Answer once a  
15 settlement has been reached with the complainant and  
16 that settlement has been notified to the Commission.

17           ATTORNEY EXAMINER SCHABO: Okay.

18           MS. THOMPSON: The next rule change is  
19 Ohio Administrative Code 4901-9-01(C). Recently the  
20 Commission noted that its rules do not allow for  
21 motions for summary judgment. There are times in a  
22 case where, and especially in a complaint case or  
23 other proceedings, where a motion for summary  
24 judgment would be helpful to expedite the proceeding.  
25 Therefore, the Companies request that the Commission

1 allow for motions for summary judgment to be filed to  
2 allow the Commission to more expeditiously rule on  
3 cases that are ripe for a decision without going to  
4 hearing.

5           Finally, the Companies are proposing a  
6 new section to 4901-9-01. Specifically, the  
7 Companies are looking for a new provision to address  
8 vexatious litigators. In recent years the Companies  
9 have been experiencing repeated complaints by certain  
10 individuals. In the case of one particular  
11 complainant, he had been deemed a vexatious litigator  
12 in several forums in Ohio, including the Ohio Supreme  
13 Court. Because of the tendency of certain  
14 individuals to repeatedly file comments and numerous  
15 proceedings at the Commission, the Companies request  
16 that the Commission add a new section to the rules  
17 allowing the utilities to file a motion requesting  
18 the Commission to label certain complainants as  
19 vexatious litigators based either on the  
20 complainant's conduct before the Commission or  
21 because of a prior Ohio civil -- civic -- civil court  
22 has labeled the complainant as such. A ruling  
23 outlining -- a rule outlining the process for  
24 identifying a vexatious litigator would also help  
25 standardize the process of going -- of identifying

1 complainants as vexatious.

2 Are there any other questions?

3 ATTORNEY EXAMINER SCHABO: So I'm  
4 curious, on the vexatious litigator's part, if you  
5 would be -- if a company would move to have someone  
6 deemed a vexatious litigator here based on their  
7 conduct somewhere else, does that preclude them from  
8 filing a legitimate complaint here at the Commission?  
9 Because you would be requiring -- in the court  
10 system, if a court has labeled someone a vexatious  
11 litigator, they must go to the judge that labeled  
12 them so and seek permission for leave to file  
13 anything. Would the Commission be giving the court  
14 the discretion to say whether or not their complaint  
15 in this administrative body is legitimate?

16 MS. THOMPSON: The way that the  
17 Companies see a vexatious litigator is that once  
18 deemed a vexatious litigator at the Commission, if  
19 that complainant wanted to file an actual complaint  
20 with reasonable grounds, they would need to seek  
21 leave from the Commission to file that complaint.

22 ATTORNEY EXAMINER SCHABO: Okay. But  
23 you would still be using their behavior in another  
24 forum to get to that first step of having them  
25 declared a vexatious litigator?

1 MS. THOMPSON: If you were to use their  
2 conduct in another forum to deem them a vexatious  
3 litigator here at the Commission without having --  
4 actually having them file, then, yes, you'd be using  
5 their other --

6 ATTORNEY EXAMINER SCHABO: Okay.

7 MS. THOMPSON: -- proceedings.

8 ATTORNEY EXAMINER SCHABO: Okay. All  
9 right. Thank you.

10 MS. THOMPSON: Thank you.

11 ATTORNEY EXAMINER SCHABO: Are there any  
12 other comments or recommendations with regard to the  
13 Commission's complaint procedures?

14 (No response.)

15 ATTORNEY EXAMINER SCHABO: No. All  
16 right. Thank you for coming today and participating.  
17 A Commission entry issuing a set of proposed rules  
18 that will then be open to comment and reply comment  
19 will be forthcoming in the near future. Thank you  
20 very much. Have a good day. We can go off the  
21 record.

22 (Thereupon, the rule review workshop was  
23 concluded at 10:25 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, July 12, 2018, and carefully compared with my original stenographic notes.

\_\_\_\_\_  
Valerie J. Sloas, Registered  
Professional Reporter and  
Notary Public in and for  
the State of Ohio.

My commission expires June 10, 2021.  
(VJS-87272)



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**in**

**Case No(s). 18-0275-AU-ORD, 18-0276-AU-ORD, 18-0277-AU-ORD, 18-0278-AU-ORD**

Summary: Transcript in the matter of the Review of Ohio Admin. Code Chapter 4901 hearing held on 07/12/18 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Sloas, Valerie J. Mrs.