

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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8 On behalf of the PUCO.

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1 Thursday Morning Session,
2 July 12, 2018.

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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 Thompson, 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

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

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

24

25

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)

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/19/2018 9:54:43 AM

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.