

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Ohio )  
Adm.Code Chapter 4901-1 Rules Re- ) Case No. 18-275-AU-ORD  
garding Practice and Procedure Before )  
the Commission. )

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

In the Matter of the Review of Ohio )  
Adm.Code Chapter 4901-3 Rules Re- ) Case No. 18-277-AU-ORD  
garding Open Commission Meetings. )

In the Matter of the Review of Ohio )  
Adm.Code Chapter 4901-9 Rules Re- ) Case No. 18-278-AU-ORD  
garding Commission Complaint Pro- )  
ceedings. )

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**INITIAL COMMENTS OF  
COLUMBIA GAS OF OHIO, INC. AND  
DUKE ENERGY OHIO, INC.**

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Pursuant to the Commission's December 4, 2019 Entry in the above-referenced dockets, Columbia Gas of Ohio, Inc. ("Columbia") and Duke Energy Ohio, Inc. ("Duke") are submitting these Initial Comments for the Commission's consideration. Staff's proposed changes to Ohio Adm.Code Chapters 4901-1, 4901:1-1, 4901-3, and 4901-9 reflect some of the changes suggested at the Commission's workshop held on July 12, 2019. Columbia and Duke request that the Commission consider revising these rules as described in these Initial Comments.

## **Ohio Adm.Code 4901-1-14 – Procedural Rulings and Conferences**

In proceedings before the Commission, typically a procedural entry is issued by the administrative law judge within several weeks of an application being filed. Sometimes the parties are consulted prior to this entry being filed, and other times the entry is issued without the parties' input. Columbia and Duke believe that, for certain proceedings, a procedural conference would be beneficial to align dates with all parties and discuss other procedural matters.

Therefore, Columbia and Duke request the following rule change to Ohio Adm.Code 4901-1-14 (Staff proposed changes are in red, Columbia's proposed changes are in blue):

### **Ohio Adm.Code 4901-1-14 – Procedural Rulings and Conferences**

The legal director, the deputy legal director, or an ~~attorney-examiner~~ALJ may rule, in writing, upon any procedural motion or other procedural matter. A copy of any such ruling shall be served upon all parties to the proceeding. Upon request of the parties or by order of the Commission or ALJ, a procedural conference may be held with all parties to a proceeding prior to a procedural entry being issued.

## **Ohio Adm.Code 4901-1-21(E) – Limiting Scope of Discovery in Depositions**

Depositions are an effective method by which parties can obtain discovery without propounding numerous interrogatories. The Commission's rules provide parties the ability to request the production of documents at deposition. However, there are times when this method of obtaining documents is utilized after the deadline has passed for the formal issuance of requests for production of documents. Moreover, parties have utilized this section in the past to ask a witness to produce an overly broad collection of documents at his or her deposition.

Therefore, Columbia and Duke request the following amendments to Ohio Adm.Code 4901-1-21(E):

(E) The notice to a party deponent may be accompanied by a request, made in compliance with rule 4901-1-20 of the Administrative Code, for the production of documents or tangible things regarding which the party deponent has personal

[knowledge](#) at the taking of the deposition. [Notwithstanding the foregoing, the request for production of documents or tangible things provided for in this rule shall not be used to obtain discovery after a deadline set forth in rule 4901-1-17, by entry of an ALJ, or by order of the Commission.](#)

#### **Ohio Adm.Code 4901-1-24 – Automatic Approval of Motion for Projective Orders**

The Commission's rules provide parties the ability to protect information that the parties, and ultimately the Commission, deem confidential. The parties are charged with the obligation to ensure that this information remains confidential by filing motions to continue the Commission-ordered confidential treatment. These motions must be filed at least forty-five days before the confidential treatment expires. Columbia and Duke believe this process could be streamlined by having the motions automatically approved if the Commission fails to act on them before the existing protective order expires. The automatic approval process would not relieve the party of its burden to maintain and establish the continued need to keep the information confidential.

Therefore, Columbia and Duke request the following amendments to Ohio Adm.Code 4901-1-24(F):

(F) Unless otherwise ordered, any order prohibiting public disclosure pursuant to paragraph (D) of this rule shall automatically expire twenty-four months after the date of its issuance, and such information may then be included in the public record of the proceeding. A party wishing to extend a protective order beyond twenty-four months shall file an appropriate motion at least forty-five days in advance of the expiration date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure. [The motion shall be automatically approved on the expiration date of the existing order, unless otherwise ordered by the commission.](#) Nothing precludes the commission from reexamining the need for protection issue de novo during the twenty-four month period if there is an application for rehearing on confidentiality or a public records request for the redacted information.

#### **Ohio Adm.Code 4901-9-02 – Vexatious Litigator**

One of the comments provided by Columbia at the Commission's workshop in this case was to include a section addressing vexatious litigators. Columbia appreciates the Commission's proposed rules adding a specific section to recognize the problem of vexatious litigators and to provide parties a way to avoid harassing proceedings.

The new rule contemplates many of the circumstances in which Columbia has encountered vexatious litigators. The one criterion not specifically identified in this new section is duplicative proceedings. In Columbia's experience, vexatious litigators tend to file multiple proceedings that make duplicative allegations or simply attempt to re-litigate previous cases already decided by the Commission.

Therefore, Columbia and Duke request the following amendments to Ohio Adm.Code 4901-9-02:

(A) If the commission, sua sponte or on motion by a party, determines that a complaint or course of conduct in a complaint case filed under section 4905.26 or 4927.21 of the Revised Code is frivolous, duplicative, or is filed, prosecuted, or conducted for an improper purposes, it may impose appropriate sanctions on the person who signed the complaint or pursued the course of conduct, the represented party, or both....

(B) If a party habitually, persistently, and without reasonable cause engages in frivolous or duplicative conduct under paragraph (A) of this rule, the commission may, sua sponte or on motion by a party, find the party to be a vexatious litigator....

Respectfully submitted by,

**DUKE ENERGY OHIO, INC.**

/s/ Jeanne W. Kingery

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## CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 13th day of January, 2020, upon the parties listed below.

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**1/13/2020 2:58:46 PM**

**in**

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

Summary: Comments /Initial Comments electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc. and Duke Energy Ohio, Inc.