BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of Ohio Adm. Code Chapter 4901-1 Rules Regarding Practice and Procedure before the Commission.	))))	Case No. 18-0275-AU-ORD
In the Matter of the Review of Ohio Adm. Code Chapter 4901-1 Rules Regarding Utility Tariffs and Underground Utility Protection Service Registration.	))))	Case No. 18-0276-AU-ORD
In the Matter of the Review of Ohio Adm. Code Chapter 4901-1 Rules Regarding Open Commission Meetings.	))))	Case No. 18-0277-AU-ORD
In the Matter of the Review of Ohio Adm. Code Chapter 4901-1 Rules Regarding Commission Complaint Proceedings.	))))	Case No. 18-0278-AU-ORD

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

I. INTRODUCTION

In accordance with the Commission's December 4, 2019 Entry in this case, The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO) files its initial comments to the proposed revisions of Ohio Adm. Code Chapters 4901-1, 4901:1-1, 4901-3, and 4901-9.

II. COMMENTS TO CHAPTER 4901-1

A. Rule 4901-1-01

1. Section (A) and *passim* – Administrative Law Judge.

In this revision, the Commission proposes adding a definition of "Administrative Law Judge (ALJ)" and then, throughout the rules, substituting that term for "attorney examiner." DEO does not oppose this change.

DEO does suggest that the Commission consider adding to the definition a direct reference to R.C. 4901.18, which empowers the Commission to appoint "examiners" and enumerates their powers. DEO does not believe such a change is needed for the proper functioning or application of the rules. Rather, DEO is aware of analogous situations in which litigants have challenged the authorization of and role played by ALJs, and for that reason DEO believes it would be prudent to make the statutory connection clear. *See In re Application of Am. Transm. Sys., Inc.*, 125 Ohio St.3d 333, 2010-Ohio-1841, ¶¶ 18–28 (rejecting challenge to Power Siting Board's delegation of duties, and ALJ's role, in issuance of decision). DEO has no doubt that the authorization exists; DEO's recommendation is simply to make it explicit and avoid potential questions that may be raised by litigants eager to identify any possible line of attack.

A proposed revision follows:

> (A) "Administrative law judge" (ALJ) has the same meaning attributed to attorney examiner; the terms are interchangeable throughout these and other commission rules and both terms refer to the positions authorized under section 4901.18 of the Ohio Revised Code.

B. Rule 4901-1-02

2. Section (B): Paper copies.

DEO supports the Commission's proposal to reduce the default number of copies for a paper filing from twenty to two. It is not clear to DEO whether this change would also affect the number of copies required for various case types, as set forth on the Docketing Division's webpage (*https://www.puco.ohio.gov/docketing/procedural-filing-requirements*). But in view of this revision, DEO recommends that the Commission and its docketing personnel also consider reducing the number of paper copies called for under those requirements, recognizing that the Commission and its Staff retain the discretion to call for more copies if needed in a given case.

C. Rule 4901-1-05

3. Section (D): Email Service

DEO supports the Commission's recommendation that email be the default method used when service of a document is required. DEO proposes only a minor organizational change to make clear that the provision of the rule setting forth the effective date of email service—currently found in section (D)(4)—applies to *any* email service, not merely email service to a *pro se* party. A proposed additional revision (with proposed revisions accepted) follows:

> Unless service is completed through the commission's e-filing system as set forth in paragraph (B) of this rule or email service is impractical, an attorney representing a party before the commission shall accomplish service upon other attorney-represented parties by email. Otherwise, service upon an attorney or party may be personal or by mail, by fax, or email under the following conditions:
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> (1) Personal service is complete by delivery of the copy to the attorney or to a responsible person at the office of the attorney. Personal service to a party not represented by an attorney is complete by delivery to the party or to a responsible person at the address provided by the party in its pleadings.
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> (2) Service by mail to an attorney or party is complete by mailing a copy to his or her last known address. If the attorney or party to be served has previously filed and served one or more pleadings or documents in the proceeding, the term "last known address" means the address set forth in the most recent such pleading or document.
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> (3) Service of a document to an attorney or party by fax may be made only if the person to be served has consented to receive service of the document by fax. Service by fax is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served.
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> (4) Service of a document by email to a party not represented by an attorney may be made only if the party to be served has consented to receive service of the document by email. ~~Service by email is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served.~~
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> (5) Any service by email under this rule is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served.

D. Rule 4901-1-26

4. Section (F) – Settlement authority

Under the current rules—in a complaint case only—public utilities are required to "investigate prior to the settlement conference the issues raised," "be prepared to discuss settlement of the issues raised," and "have the requisite authority to settle those issues." These requirements currently appear in Rule 4901-1-26(F), and also in the complaint procedures rule, Rule 4901-9-01(H). The proposed revisions alter the requirements in the former rule, and make these requirement applicable in *all* cases.

The expectations embedded in the proposed revisions are certainly reasonable ones, and DEO supports them in and of themselves. But while complaint cases are usually fairly simple, and the path to settlement often quick and obvious, the same cannot be said of every Commission case. Whether or not to settle a complex case, and how to achieve that end, are decisions that the Company believes should be left to the discretion of each party. In some instances, a party may justifiably determine not to budge from a given position, no matter what other concessions may be secured. Or a party may be in a position where timing concerns do not permit efforts towards settlement. Would a party in such cases stand in violation of this rule?

DEO appreciates that the rule could be interpreted in ways to avoid a finding of a violation. But in DEO's view, regulatory violations should not even be a question. Much as DEO would often desire a quicker path to resolution, DEO does not believe that the rules should purport to impose obligations on parties outside of complaint cases to reach settlement.

III. COMMENTS TO CHAPTER 4901-9

E. Rule 4901-9-02 – Vexatious litigators.

DEO supports the Commission's proposed revision. DEO fully supports the right of customers to have their complaints heard and resolved by the Commission, but no one should have a right to abuse the Commission's process.

The Commission clearly has authority to issue such a rule. Ohio law vests the Commission with power "to govern its proceedings and to regulate the mode and manner of *all* valuations, tests, audits, inspections, investigations, and hearings relating to parties before it." R.C. 4901.13 (emphasis added). This power provides the Commission with "discretion to decide how . . . it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort." *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St. 2d 559, 560 (1982). This power has been long recognized. *State ex rel. Columbus Gas & Fuel Co. v. Pub. Util. Comm.*, 122 Ohio St. 473, 475 (1930) ("The public utilities commission is invested with a discretion as to its order of business, and there is such a wide latitude of that discretion that this court may not lawfully interfere with it, except in extreme cases."). The Court has gone so far as describing the Commission as possessing "*inherent* power to manage the orderly flow of its business." *Senior Citizens Coalition v. Pub. Util. Comm.*, 69 Ohio St.2d 625, 627 (1982) (emphasis added). If it were otherwise, parties could abuse the Commission's process at will.

The Commission has the power to adopt the rule. The rule itself sets forth appropriate standards and authorizes sensible remedies. This rule should be adopted.

IV. CONCLUSION

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

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Respectfully submitted,

/s/ Andrew J. Campbell

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Summary: Comments Initial Comments of The East Ohio Gas Company d/b/a Dominion Energy Ohio electronically filed by Mr. Christopher T Kennedy on behalf of The East Ohio Gas Company d/b/a Dominion Energy Ohio