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. 18-275-AU-ORD
In the Matter of the Review of Ohio Adm.Code Chapter 4901:1-1 Rules Regarding Utility Tariffs and Underground Utility Protection Service Registration.	Case No. 18-276-AU-ORD
In the Matter of the Review of Ohio Adm.Code Chapter 4901-3 Rules Regarding Open Commission Meetings.	Case No. 18-277-AU-ORD
In the Matter of the Review of Ohio Adm.Code Chapter 4901-9 Rules Regarding Commission Complaint Proceedings.	Case No. 18-278-AU-ORD

REPLY COMMENTS OF
COLUMBIA GAS OF OHIO, INC.,
THE EAST OHIO GAS COMPANY D/B/A
DOMINION ENERGY OHIO,
DUKE ENERGY OHIO, INC.,
AND VECTREN ENERGY DELIVERY OF OHIO, INC.

Pursuant to the Commission's January 16, 2020 Entry in the above-referenced dockets, Columbia Gas of Ohio, Inc. ("Columbia") ") and The East Ohio Gas Company d/b/a Dominion Energy Ohio ("DEO"), Duke Energy Ohio, Inc. ("Duke Energy Ohio"), and Vectren Energy Delivery of Ohio, Inc. ("VEDO") (collectively,

"the Companies") submit these reply comments for the Public Utilities Commission of Ohio's ("Commission") consideration. The Companies' decision not to address an initial comment by another commenting entity should not be construed as agreement with such initial comment.

Ohio Adm.Code 4901-1-08 – Practice before the Commission, representation of corporations, and designation of counsel of record.

In its initial comments, the Office of the Ohio Consumers' Counsel ("OCC") opposes the proposed changes in this rule, expressing concern that the rule change could limit the ability of non-lawyer experts to participate in settlement discussions.[1] The FirstEnergy companies supported the proposed change.[2]

The Companies support the proposed change in the rule. The proposed rule merely ensures the Commission's rules are in compliance with the Supreme Court of Ohio's guidelines and precedent regarding the unauthorized practice of law. The Companies appreciate OCC's concern and agrees that non-lawyer experts are important to settlement negotiations, but suggest that the OCC's reading is too narrow. Regardless of whether an entity's lawyer is even present, any non-lawyer expert acting as an agent of, or at the direction of, a lawyer may freely participate in settlement discussions.

Ohio Adm.Code 4901-1-09 – *Ex parte* discussion of cases

OCC recommends the Commission add language to make this rule also applicable to "anyone else reasonably expected to be involved in the decisional process of the proceeding."[3] Additionally, OCC believes there should be 7 days' notice for *ex parte* communications and 14 days to respond to an *ex parte* disclosure.[4]

The Commission should reject OCC's proposed changes. As an initial matter, OCC provides citations to other jurisdictions adopting the rule, but provides no rationale for why such a provision is warranted in Ohio. The proposal is also unworkable as a practical matter. How would any member of Staff or any party to a case know that a Staff member will be "reasonably expected to be involved in the decisional process" of the proceeding? The Commission does not have separate advisory and litigation staff. The practical effect of OCC's proposal would be

[1] OCC Initial Comments at 3-4.
[2] FirstEnergy Initial Comments at 3.
[3] OCC Initial Comments at 4-6.
[4] OCC Initial Comments at 5-6.

to chill all contact with Staff by outside parties (including OCC), even for settlement purposes, and incentivization of more litigation. The Companies believe the current system functions well and provides parties opportunities to resolve issues with Staff.

OCC's recommendations on timing of *ex parte* communications should also be rejected. OCC identifies no instances where it has been harmed or prejudiced without these rules. Further, *ex parte* communications are rare. *Ex parte* communications are largely only needed in emergency or sudden instances where inviting all the parties is not practical and the current disclosure requirements are adequate to protect the integrity of the Commission's proceedings.

Ohio Adm.Code – 4901-1-10 – Parties

OCC also recommends the Commission add a new subsection that recognizes as a party "any person with a statutorily recognized right to intervene."[5] The Commission should reject this proposed change. OCC does not identify any party to Commission cases that has a statutory right to intervene. The comment seems to infer that OCC has a statutory right to intervene. However, OCC has a statutory *opportunity*[6] to intervene, not a right to intervene, and the Commission should make that distinction clear in its order in this case.

Ohio Adm.Code 4901-1-15 – Interlocutory Appeals

OCC makes several suggestions related to interlocutory appeals.[7] The Commission should reject all of the suggestions. OCC identifies no actual instances in which it has been prejudiced by the current rule, instead generally arguing that the rule favors utilities. Even assuming the rule does favor utilities (the Companies do not concede), it provides some balance to Commission proceedings in which the applicant (usually a utility) carries a distinctly heavier discovery burden than intervening parties. The rule provides proper safeguards on the discovery process and should be retained.

Ohio Adm.Code 4901-1-11 and 4901-1-16 – General Provisions of Discovery

Ohio Power Company ("AEP Ohio") suggests several changes to Ohio Adm.Code 4901-1-16, which the Companies support. Specifically, the Companies

[5] OCC Initial Comments at 6.
[6] R.C. 4911.02(B)(2)(c).
[7] OCC Initial Comments at 9-10.

support the inclusion of AEP Ohio's language in new subsection (C) concerning discovery, because parties need to have the opportunity to supplement or review responses in a current proceeding when such responses from a previous proceeding may be stale.[8]

Importantly, AEP Ohio proposes changes to subsection (H) requiring that a party is not included for purposes of discovery unless its motion to intervene has been ruled upon (either granted in whole, granted limited intervention, or denied).[9] The Companies believe that the Commission could accept the rule language change proposed by AEP Ohio if the Commission were to add a provision to the rules stating that all motions to intervene were granted automatically within 45 days of their filing, unless the Commission within the 45-day period acted to deny the motion, or allow itself additional time to consider the motion. This way all parties would know whether a party was granted intervention before discovery was served or taken from the parties to the case. The Companies support these changes and believes they will bring fair and reasonable intervention rules and trial procedure to Commission proceedings. To effectuate this change, the Commission would need to alter the following rule.

> **Ohio Adm.Code 4901-1-11(C)**
> (C) Any person desiring to intervene in a proceeding shall file a motion to intervene with the commission, and shall serve it upon all parties in accordance with rule 4901-1-05 of the Administrative Code. The motion shall be accompanied by a memorandum in support, setting forth the person's interest in the proceeding. The same procedure shall be followed where a statute of this state or the United States confers a right to intervene. **The motion to intervene shall be deemed automatically approved on the forty-sixth day after the date of the motion filing unless the approval timeline is suspended, the motion is only granted in part, or the motion is denied by order of the commission, the legal director, the deputy legal director, or an administrative law judge.**

Ohio Adm.Code 4901-1-17 – Time periods for discovery

Next, OCC suggests additional language in Rule 4901-1-17 to "make it more clear that discovery (including the duty to answer discovery) begins immediately upon filing for intervention in a docketed case. "[10] Specifically, OCC suggests the

[8] AEP Ohio Comments at 2.
[9] AEP Ohio Initial Comments at 4.
[10] OCC Initial Comments at 11.

following addition to the rule – "A proceeding is commenced with the docketing of the matter by the Commission."

Again, the Commission should reject this suggested rule addition. Many times the docketing division opens up case numbers at the beginning of a year for purposes of reserving those case numbers for future use that year. For example, the -221, -321, and -421 dockets are reserved at the beginning of every year for Columbia to update its uncollectible expense ("UEX"), percentage of income payment plan ("PIPP"), and Choice / SCO Reconciliation Rider ("CSRR") riders. Also, the Commission itself opens a docket for Columbia's standard choice offer ("SCO") auction. Similar dockets are opened for DEO, Duke Energy Ohio, and other companies. The proposed language would permit discovery from any party that files a motion to intervene before a utility even files an application in the docket. This change will only promote unnecessary discovery. OCC provides no examples of how it is prejudiced by the current rule and the Commission should not adopt OCC's proposed rule.

Ohio Adm.Code 4901-1-19 – Interrogatories and response time

In this rule, OCC first asks for a shortened discovery time period in dockets that have an automatic approval period of less than 45 days.[11] The Commission should decline to adopt an accelerated time frame, by rule, for applications with automatic approval processes of less than 45 days. Time periods for economic development, energy efficiency arrangement, and unique arrangement cases are shorter because these cases, by their nature, need to move quickly for economic development or other commercial purposes. The Staff review of these cases is sufficient scrutiny when considering the need for speed to get these applications approved.

OCC also proposes a rule addition imposing a "duty" to respond to discovery unless the Commission "has ruled otherwise."[12] OCC provides no rationale for why this rule is needed or what it is intended to accomplish. The rule change itself is also confusing to the Companies. Would the rule require responses to discovery requests even if a motion for protective order is pending? OCC's proposal is duplicative of existing Commission rules regarding discovery that impose obligations on responses to discovery. The Commission should reject this proposal.

[11] OCC Initial Comments at 12. Columbia notes that OCC also proposed a similar provision in Ohio Adm.Code 4901-1-20. The Commission should similarly reject OCC's proposal for Ohio Adm.Code 4901-1-20.

[12] OCC Initial Comments at 12.

Further, OCC asks the Commission to prohibit a responding party to respond to a discovery request through on-site inspection of electronically-stored documents.[13] The Commission should reject a ban on responding to discovery responses through on-site inspection of documents. There are times it is much more efficient to ask a party to come review the material on-site and then narrow what the requesting party might actually need for its case. This situation occurs frequently when a party requests information that is found in a utility's computer systems such as those for billing, job orders, customer accounts, or other investment and expenditure tracking. These systems often times present practical challenges to extracting large amounts of information, whether through electronic means or printing unreasonable numbers of pages of documents.

It is incorrect to assume that retrieving electronically stored information will be simple or easy because it is stored electronically. Moreover, a responding party (especially a utility) might have very sensitive information that it does not want to leave its possession, even with confidentiality agreements in place. The risk of accidental disclosure is created as soon as the highly sensitive information leaves a party's possession. The risk of disclosure is also accentuated in cases where the receiving party is a public entity and subject to public records requests. The Commission should reject OCC's suggestion as the proper balance already exists and OCC cites no abuse of this practice. This comment also applies to OCC's proposal to make a similar revision to Ohio Adm. Code 4901-1-20(E).

Ohio Adm.Code 4901-1-21 – Depositions

OCC makes several proposed suggestions for this rule.[14] The Commission should reject all of OCC's proposed changes.

OCC proposes an addition to subsection (E) to require the production of documents or tangible things at a deposition "no later than the earlier of seven (7) days following the notice of deposition or at the beginning of the deposition."[15] In its joint Initial Comments, Columbia and Duke Energy Ohio proposed tightening of this rule to ensure this rule cannot be gamed.[16] OCC's proposal would further

[13] OCC Initial Comments at 13.

[14] OCC also made other proposed suggestions for this rule. The Companies take no position on those proposed changes.

[15] OCC Initial Comments at 14.

[16] Columbia and Duke Energy Ohio Initial Comments at 2-3.

ingrain into this rule opportunities to utilize the rule to gain discovery of documents after a discovery deadline has passed. Columbia again suggests the Commission adopt its proposed changes to this subsection, and the Companies recommend rejecting OCC's proposal.

OCC also asks the Commission to modify subsection (F) to impose more stringent obligations on corporations related to producing witnesses for deposition.[17] OCC provides no examples of how it has been prejudiced by the current rule. Adding OCC's proposed language will also likely lead to the Commission adjudicating more and more disputes over what is "reasonable particularity." For these reasons the Commission should reject OCC's proposed additions to this rule.

Moreover, OCC suggests additional language to the Commission's newly proposed rule related to the use of depositions at hearing.[18] This language would allow a deposition to be used as substantive evidence if a subpoena to have that witness testify at hearing is quashed. OCC's proposed language cuts too broad a swath. There are many evidentiary reasons why a subpoena might be quashed for hearing, such as irrelevance of the witness, inadmissibility of the matters the witness might testify to, or where prejudice of the witness would outweigh the probative value of the witness. And OCC seems to acknowledge the current rule worked effectively to admit the deposition of the transcript in the limited problem it is trying to remedy. OCC's suggestion should not be adopted by the Commission.

Ohio Adm.Code 4901-1-24 – Motions for Protective Orders

Industrial Energy Users-Ohio ("IEU-Ohio") filed comments requesting the Commission to add rules to establish a process for parties in a proceeding to object to another party's claim of trade secret.[19] IEU-Ohio further asks the Commission to require any trade secret be determined prior to the start of an evidentiary hearing unless good cause exists for a party to raise the issue during or after a hearing.[20] IEU-Ohio claims it needs this process, but doesn't point to an instance when there has been a deficiency with not deciding the trade secret claims prior to hearing. The Companies do not believe a new rule or process is needed. Currently, the Commission and administrative law judges decide these issues on a case-by-case

[17] OCC Initial Comments at 15.
[18] OCC Initial Comments at 16.
[19] IEU-Ohio Initial Comments at 2.
[20] IEU-Ohio Initial Comments at 3.

basis, which gives the Commission flexibility to decide these issues. Therefore, the Companies request that the Commission reject IEU-Ohio's suggested comment.

Ohio Adm.Code 4901-1-25 – Subpoenas

OCC proposes modifying the rules on subpoenas to make additional parties and additional service methods permissible.[21] OCC has not shown that these modifications are either appropriate or consistent with Ohio law and Commission practice regarding subpoenas. As such, the Commission should not adopt OCC's rule changes, but may address these issues as needed when necessary under the circumstances, and with appropriate briefing.

Ohio Adm.Code 4901-1-26 – Prehearing conferences

OCC also proposes the Commission modify this rule to nullify the consequences of failing to attend a pre-hearing conference only if the prehearing conference is transcribed.[22] It is the Companies experience that the administrative law judges accommodate schedules to avoid the issues OCC raises. OCC again cites to no instances where it has been prejudiced by this rule. OCC's proposal would also increase the Commission's costs as the likely practical effect is that all pre-hearing conferences would be transcribed. Finally, adopting OCC's proposed change would incent a party to skip pre-hearing conferences to try to void decisions made at such a pre-hearing conference. OCC's proposed rule addition should be rejected.

Ohio Adm.Code 4901-1-28 – Reports of investigation and objections thereto

OCC proposes modifying this rule such that any "report admitted into evidence shall be admitted for the truth of the matters asserted in the report, and subject to subsection (E) to this rule, . . . shall not be considered hearsay."[23] The Companies oppose this recommendation.

Staff reports can and do cover a wide range of topics, and may include a wide variety of statements, assertions, and other sources of facts relied upon. Whether any of those should be admissible, and for what purpose, is an extremely fact- and issue-sensitive inquiry that could vary within the report depending on the statement and depending on the purpose for which it is offered. This is clearly not something that can be settled globally by rule, but something that should be

[21] OCC Initial Comments at 17-19.
[22] OCC Initial Comments at 19.
[23] OCC Initial Comments at 19-20.

raised and decided upon in the context of an evidentiary hearing or when otherwise necessary.

Ohio Adm.Code 4901-1-29 – Expert testimony

OCC proposes a number of changes to this rule that would require the adoption of a procedural schedule apparently in every case, with a number of specific timing requirements.[24] This is yet another proposal unfit for the rules and that should be left to the reasonable, case-by-case discretion of the Commission or the administrative law judge.

What kind of schedule should be issued, if any, is an issue that clearly varies depending on the case. The proposal is not needed to empower the Commission or the law department, as the Commission already clearly possesses such power, nor is this a topic feasible to address by rule. Adopting this rule would likely have no effect but to require the additional step of waiving the rule in the many situations in which the rule would not apply. The Companies recommend that the Commission reject this proposal.

Ohio Adm.Code 4901-1-30 – Stipulations

The Environmental Law and Policy Center ("ELPC") filed comments requesting that the Commission's rules require that, if a non-unanimous settlement is reached, the utility must still put on evidence that it meets the "original burden of proof applicable to the proceeding."[25] Similarly, OCC filed comments that propose a new subsection to Ohio Adm.Code 4901-1-30(H) requesting that the party bearing the burden of proof shall continue to bear such a burden after a stipulation is filed.[26] OCC implies that, without this rule change, "the burden of proof shifts to those opposing the settlement."[27]

These proposed rule changes, however, ignore years of Commission and Supreme Court of Ohio case precedent.[28] When the Commission reviews settlement agreements, whether unanimous or not unanimous, the Commission applies

[24] OCC Initial Comments at 21-22.
[25] ELPC Initial Comments at 3.
[26] OCC Initial Comments at 25-26.
[27] OCC Initial Comments at 26.
[28] *See, e.g., In re Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005); *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order

the three-part test.[29] Inherent within the three-part test reviewing the settlement, which may be significantly different than what the utility originally filed, is the burden of proof. The burden of proof is on the parties, and in most cases primarily on the public utility, to prove that the settlement meets the test. The burden of proof never shifts to any other party, but remains squarely on the parties proving they meet the three-part test. The Commission further may place substantial weight on the terms of the stipulations.[30] Further, the Commission has disagreed that a Stipulation must address a majority of the issues raised by parties to determine a reasonable resolution of issues.[31] The burden of proof doesn't shift away, nor is it diminished. By ELPC and OCC implying that it does, ELPC and OCC miss the reality of settlement review. Therefore, the Companies request that the Commission reject ELPC and OCC's proposed rule changes.

OCC further proposes several additional changes to the Commission's rules on settlements. OCC first requests that the rule be amended to allow for a stipulation to be entered into without a utility.[32] As an initial matter, there is no rule that prohibits a settlement without a utility. OCC has a solution in search of a problem. And, what OCC's proposal misses, is that a settlement typically involves binding the utility to an action. If a utility is not party to a settlement, then it has no say in its activities as an operator, activities that it will be held responsible to meet. Therefore, to prohibit other parties from dictating the activities of the utility (as the operator ultimately responsible to the Commission), the Companies recommend that the Commission reject OCC's proposed changes.

OCC also requests that *all* parties to a proceeding be invited to settlement meetings in Ohio Adm.Code 4901-1-30(B).[33] In most proceedings, all parties are invited to settlement meetings at the beginning of the negotiations. There are also times, however, when parties have expressed unwavering opposition to a settlement proposal, and their continued presence in future settlement negotiations

---

on Remand (Apr. 14, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *See also*, *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992).

[29] *Id.*

[30] *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992).

[31] *In re Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation to Extend and Increase its Infrastructure Replacement Program*, Case No. 16-2422-GA-ALT, Opinion and Order (January 31, 2018) at ¶70.

[32] OCC Comments at 22-23, 26.

[33] OCC Comments at 22.

only serves unfairly to provide such parties with information that may be used to develop positions contrary to the settlement. The utility should have the flexibility to negotiate cases to reach a settlement with the parties willing to make a good faith attempt to settle proceedings. In addition, there are some circumstances in which it is more efficient to break the parties into groups with similar sets of interests for discussion of specific topics. The Commission should not amend the rule to require all parties to be present at every settlement meeting if any party is unwilling to engage in good faith settlement negotiations.

OCC further requests that the Commission adopt a new section, Ohio Adm.Code 4901-1-30(F), to require a list of factors for the Commission to review a stipulation.[34] These factors, contrary to OCC's assertion, are not "derived from" the Commission's three-part test. Instead, the Commission has rejected these factors when raised by OCC. For example, in Columbia's extension of its Demand Side Management Program, OCC argued a lack of diversity of parties as a factor for rejecting the stipulation reached in that case.[35] In response, the Commission found that it "will not require any single party, including OCC, or class of customers to agree to a stipulation in order to meet the first criterion of the three-part test."[36] As previously stated, the Supreme Court of Ohio has endorsed the Commission's three-part test.[37] The Commission should not deviate from its precedent or that of the Supreme Court of Ohio affirming this test.

OCC next argues that the Commission should adopt a new rule subsection to prohibit a utility from "offering cash or cash equivalents" to induce parties to sign settlement agreements.[38] OCC's proposed rules, however, are meant to supplement the three-part test. The crux of OCC's argument is that any agreement with a party, which involves a monetary value, is not in the beneficial to ratepayers

---

[34] OCC Comments at 24–25.

[35] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of Demand-Side Management Programs for Its Residential and Commercial Customers*, Case No. 16-1309-GA-AAM, *et al.*, Opinion and Order (December 21, 2016) at ¶¶51, 58.

[36] *See Id.* at ¶59 (*citing In re FirstEnergy*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 43; *In re Ohio Power Co.*, Case No. 13-1693-EL-RDR, *et al.*, Opinion and Order (Mar. 31, 2016) at 52-53; *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 10; *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26, *citing Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005 at 18, Entry on Rehearing (Mar. 23, 2005) at 7-8.).

[37] *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992).

[38] OCC Comments at 25.

or in the public interest. Such an isolated statement removes the holistic approach of the three-part test, which reviews the settlement as a package. The Commission should not exclude certain types of settlements, but should review any stipulation on a case-by-case basis. Therefore, the Commission should reject OCC's proposed rule changes.

Finally, OCC requests that the Commission include a new rule subsection, Ohio Adm.Code 4901-1-30(I), which prohibits the Commission from approving any stipulation that "violates any statute or prior commission entry or order."[39] OCC's proposed rules changes, again, attempt to supplant the Commission's well-established three-part test. The third prong of the Commission's test asks whether a stipulation violates any important regulatory principle or practice. An important regulatory principle or practice is whether a stipulation violates any statute. Moreover, the Supreme Court of Ohio has spoken about Commission precedent and the Commission's ability to deviate from its precedent. Specifically, the Court "instructed the commission to 'respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.'"[40] The Court further noted that its precedent did "not mean, however, that the commission may never revisit a particular decision, only that if the commission does change course, it must explain why."[41] OCC's proposed rule changes are contrary to Supreme Court of Ohio precedent and the Commission's well-established precedent. OCC's proposed changes should not be adopted.

Ohio Adm.Code 4901-1-35 – Applications for rehearing

In this rule, OCC proposes a rule revision that would prohibit the Commission from granting rehearing for more than 60 days for further consideration of a party's arguments unless the additional time (greater than 60 days) is to schedule a hearing for the taking of additional evidence.[42] While the Companies are sympathetic to the OCC's recommendation, the Supreme Court of Ohio has affirmed the Commission's ability to grant itself more time on rehearing for the limited purpose

[39] OCC Comments at 26-27.

[40] *In re Ohio Power Co.*, 2015-Ohio-2056, 144 Ohio St. 3d 1, 40 N.E.3d 1060, 2015 Ohio LEXIS 1380 at ¶16 *(citing Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St. 2d 403, 431, 330 N.E.2d 1 (1975), *superseded on other grounds by statute as recognized in Babbit v. Pub. Util. Comm.*, 59 Ohio St. 2d 81, 89, 391 N.E.2d 1376 (1979).

[41] *Id.* (*citing In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 52, *citing, e.g., Util. Serv. Partners, Inc. v. Pub. Util. Comm.*, 124 Ohio St.3d 284, 2009-Ohio-6764, 921 N.E.2d 1038, ¶ 18.)

[42] OCC Initial Comments at 28.

of considering a party's application for rehearing.[43] Finally, OCC has vehicles to attempt to force the Commission to issue orders that it believes the Commission is taking too long to issue.[44] The Commission should again reject OCC's recommendation.

Ohio Adm.Code 4901-1-39 – Supporting documentation for tariff filings

OCC proposes adding a new rule that would require a utility to file workpapers with its tariff filings.[45] The Companies appreciate the concern raised by OCC, but the proposed rule is not tailored narrowly enough nor is it needed. For example, the large gas utilities (except for Duke Energy Ohio) have a monthly standard choice offer ("SCO") rate that changes monthly but has no workpapers since it is simply the month end New York Mercantile Exchange ("NYMEX") close price plus the adder approved by the Commission. Moreover, tariff filings are reviewed by the Commission Staff, who are able to spot and inquire with a utility about any calculation errors or other problems with such a filing. Cases whereby a utility automatically updates a rider are also subject to periodic audits whereby OCC can participate and rectify any concerns it has with the calculation of a rider rate. The Commission should reject OCC's proposed rule addition.

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

Four A Energy Consulting Services, LCC ("Four A Energy") files comments in this proceeding requesting the Commission to significantly alter the newly proposed vexatious litigator rule in Ohio Adm.Code 4901-9-02.[46] Four A Energy further asks to include two new sections to the rule: (1) to assume a Commission finding of a non-frivolous complaint when a settlement conference is scheduled, and (2) to introduce a new type of proceeding, an inquiry, where a complaint is reviewed.[47] Four A Energy asserts its changes are necessary to "level the playing field in complaint proceedings."[48]

The changes proposed by Four A Energy strip away the vexatious litigator provisions which several utilities, including the Companies, supported during the

[43] *State Ex Rel Consumers' Counsel v. Pub. Util. Comm.*, 102 Ohio St.3d 301, 2004-Ohio-2894, 809 N.E.2d 1146 at ¶ 19.
[44] *State Ex Rel Office of the Ohio Consumers' Counsel v. Haque*, 151 Ohio St.3d 1404, 2017-Ohio-8297, 84 N.E.2d 1044 at ¶ 1.
[45] OCC Initial Comments at 28-30.
[46] Four A Energy Comments at 2-4.
[47] *Id.*
[48] *Id.* at 2.

rule workshop for this proceeding and initial comments. The need for this section is evident as the utilities do face vexatious litigators at the Commission,[49] and, unlike courts in Ohio, the Commission has not yet codified a rule guideline to declare these individuals vexatious. Further, Four A Energy's proposed rule language for 4901-9-02(C) ignores the purpose of settlement – to further understand parties' positions. There are times when a utility will attend a settlement negotiation and attempt to settle a case. If the complainant insists on pursuing his/her complaint with the Commission, and this complaint is without merit, the utility may file a motion to dismiss. And, the motion can be granted.[50] Under Four A Energy's proposed subsection (C), this motion could not be granted.

Finally, the Commission should reject Four A Energy's proposed subsection (D) which establishes an alternative "inquiry" in lieu of a hearing. This proposal lacks any specificity as to how it will ensure that the utility and customer are entitled to the due process and evidentiary procedures afforded at hearing. Further, Four A Energy does not explain how the current hearing process, which has been in place for years, has prejudiced complainants in Ohio. Four A Energy also does not explain how its "inquiry" remedies unspecified harms from the existing process. The Commission should not deviate from its existing system of hearing complaint cases that are not settled. The Commission should, therefore, reject Four A Energy's proposed rule changes to Ohio Adm.Code 4901-9-02.

To the extent that any other parties opposed the vexatious litigator provisions, the Companies would make clear that they continue to support the adoption of this rule. The proposed rule would not limit the availability of the Commission's

---

[49] *In the Matter of the Complaint of Gregory T. Howard v. Columbia Gas of Ohio, Inc.*, PUCO Case No. 17-2536-GA-CSS, Entry (May 16, 2018); *In the Matter of the Complaint of Gwendolyn Tandy v. Columbia Gas of Ohio, Inc.*, PUCO Case Nos. 17-1568-GA-CSS, 17-155-GA-CSS, 15-1922-GA-CSS, 15-1139-GA-CSS, 15-396-GA-CSS, 14-795-GA-CSS, 12-2326-GA-CSS, 12-2106-GA-CSS.

[50] "Finally, the Commission finds that we have similarly dismissed other complaints alleging only that Commission-approved rates should not be charged, or otherwise questioning the reasonableness of such rates, as those complaints did not state reasonable grounds for complaint." *In the Matter of the Complaint of Bert Pavicic v. The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 11-2700-GA-CSS, Opinion and Order (July 15, 2011) 2011 Ohio PUC LEXIS 878, *6 (*citing, e.g., Steve Gannis v. The Cleveland Electric Illuminating Company*, Case No. 94-154-EL-CSS, Entry (May 14, 1994); *David Hughes v. The Cleveland Electric Illuminating Company*, Case No. 94-969-EL-CSS, Entry (September 1, 1994); *Avery Dennison Company v. Dominion East Ohio*, Case No. 00-989-GA-CSS, Entry (December 14, 2000); *Emil Seketa v. The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 06-549-GA-CSS, Entry (August 9, 2006); *Mary E. Young v. Ohio American Water Company*, Case No. 05-1170-WW-CSS, Entry (November 1, 2006).

process to any person; it would merely protect other stakeholders (including the Commission and its employees) from repeated abuse of that process. And indeed, even a party that does repeatedly abuse that process, and is thus deemed a vexatious litigator, does not absolutely forfeit its right to complain, but merely becomes subject to reasonable conditions on filing additional complaints. The Commission should adopt this rule.

Respectfully submitted by,

/s/ Joseph M. Clark
Joseph M. Clark, Counsel of Record

Stephen B. Seiple, Asst. General Counsel (0003809)
Joseph M. Clark, Sr. Counsel (0080711)
P.O. Box 117
290 W. Nationwide Blvd.
Columbus, Ohio 43216-0117
Telephone: (614) 460-6988
E-mail: sseiple@nisource.com
josephclark@nisource.com

(Willing to accept service by e-mail)

ATTORNEYS FOR
COLUMBIA GAS OF OHIO, INC.

/s/ Christopher T. Kennedy
Christopher T. Kennedy (0075228)

Lucas A. Fykes (0098471)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3912
Facsimile: (614) 675-9448
kennedy@whitt-sturtevant.com
fykes@whitt-sturtevant.com

Andrew J. Campbell (0081485)
The KeyBank Building
88 E. Broad Street, Suite 1303
Columbus, Ohio 43215
Telephone: (614) 601-1777
andrew.j.campbell@dominionenergy.com

(All counsel willing to accept service by e-mail)

ATTORNEYS FOR
THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO AND VECTREN ENERGY DELIVERY OF OHIO, INC

DUKE ENERGY OHIO, INC.

/s/ *Jeanne W. Kingery*
Jeanne W. Kingery, Counsel of Record
Rocco O. D'Ascenzo (0077651)
Deputy General Counsel
Jeanne W. Kingery (0012172)
Associate General Counsel
Larisa M. Vaysman (0090290)
Senior Counsel
139 E. Fourth Street, 1303-Main
P.O. Box 961
Cincinnati, Ohio 45201-0960
Telephone: (513) 287-4359
Rocco.D'Ascenzo@duke-energy.com
Jeanne.Kingery@duke-energy.com
Larisa.Vaysman@duke-energy.com

(Willing to accept service by e-mail)

ATTORNEYS FOR
DUKE ENERGY OHIO, INC.

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 10th day of February, 2020, upon the parties listed below.

/s/ Joseph M. Clark
Joseph M. Clark
Attorney for
COLUMBIA GAS OF OHIO, INC.

SERVICE LIST

Bruce Weston
Maureen Willis
Christopher Healey
Amy Botschner O'Brien
Bryce McKenney
Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, OH 43215

Email:
Christopher.healey@occ.ohio.gov
maureen.willis@occ.ohio.gov
Amy.botschner.obrien@occ.ohio.gov
Bryce.mckenney@occ.ohio.gov

Thomas R. Hays,
Counsel for Lucas County
8355 Island Lane
Maineville, OH 45039
The Northwest Ohio Aggregation Coalition

Email: trhayslaw@gmail.com

Matthew R. Pritchard
Rebekah J. Glover

Counsel for Industrial Energy Users - Ohio
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215

Email:
mpritchard@mcneeslaw.com
rglover@mcneeslaw.com

Chad Endsley
Leah F. Curtis
Amy M. Milam
Ohio Farm Bureau Federation
280 North High Street
Columbus, OH 43218-2383

Email:
cendsley@ofbf.org
lcurtis@ofbf.org
amilam@ofbf.org

Bethany Allen, Counsel of Record
Michael Nugent
Joseph Oliker
IGS Energy
6100 Emerald Parkway
Dublin, OH 43016

Email:
bethany.allen@igs.com
Michael.nugent@igs.com
joe.oliker@igs.com

Frank P. Darr
Ohio Telecom Association
6800 Linbrook Blvd.
Columbus, OH 43235

Email: Fdarr2019@gmail.com

Emily V. Danford
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

Email: edanford@firstenergycorp.com

Steven T. Nourse
Christen M. Blend
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215

Email:
stnourse@aep.com
cmblend@aep.com

Donald Marshall
Four A Energy Consulting Services, LLC
6566 Glenway Avenue
Cincinnati, OH 45211

Email: eagleenergy@fuse.net

Robert Kelter, Senior Attorney
Nikhil Vijaykar, Staff Attorney
Environmental Law & Policy Center
35 E. Wacker Drive, Suite 1600
Chicago, IL 60601

Email:
rkelter@elpc.org
nvijaykar@elpc.org

Leslie Kovacik
Counsel for City of Toledo
420 Madison Avenue
Toledo, OH 43604

Email:
LeslieKovacik@toledo.oh.gov

John A. Borell, Sr.
Assistant Lucas County Prosecuting Attorney
Deputy Chief, Civil Division
700 Adams Street
Suite 250
Toledo, OH 43604
The Northwest Ohio Aggregation Coalition

Email: john.borell@co.lucas.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/10/2020 3:13:10 PM

in

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

Summary: Reply Comments electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc. and East Ohio Gas Company D/B/A Dominion Energy Ohio and Duke Energy Ohio, Inc. and Vectren Energy Delivery of Ohio, Inc.