

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE PROPER  
PROCEDURES AND PROCESS FOR THE  
COMMISSION'S OPERATIONS AND  
PROCEEDINGS DURING THE DECLARED  
STATE OF EMERGENCY AND RELATED  
MATTERS.

CASE NO. 20-591-AU-UNC

E-FILED CONFIDENTIAL DOCUMENTS  
DURING THE DECLARED STATE OF  
EMERGENCY.

CASE NO. 20-2000-XX-XXX

### ENTRY

Entered in the Journal on April 8, 2020

#### I. SUMMARY

{¶ 1} Due to the declaration of a state of emergency, the Commission directs that certain provisions of Ohio Adm.Code 4901-1-02 and Ohio Adm.Code 4901-1-24 be waived in order to permit the electronic filing of documents for which protective or confidential treatment is requested. The Commission further adopts the procedures and processes for the electronic filing of confidential documents attached to this Entry for the duration of the emergency or until otherwise ordered by the Commission.

#### II. DISCUSSION

{¶ 2} The Supreme Court has found that the Commission is vested with considerable discretion "to decide how, in light of its internal organization and docket considerations, 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, 433 N.E.2d 212 (1982); *see also Sanders Transfer, Inc. v. Pub. Util. Comm.*, 58 Ohio St.2d 21, 23, 387 N.E.2d 1370 (1979) ("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.").

{¶ 3} Ohio Adm.Code Chapter 4901-1 contains administrative provisions and procedure applicable to Commission proceedings. Included within that chapter are Ohio Adm.Code 4901-1-02, which governs the filing of pleadings and other documents, and Ohio Adm.Code 4901-1-24, which governs motions for protective orders. Additionally, Ohio Adm.Code 4901-1-38 provides that the Commission may waive any requirement of the chapter, other than a requirement mandated by statute from which no waiver is permitted, upon good cause shown.

{¶ 4} On March 9, 2020, the governor signed Executive Order 2020-01(D) (Executive Order), declaring a state of emergency in Ohio to protect the well-being of its citizens from the dangerous effects of COVID-19. The Executive Order requires all state agencies to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effectively immediately and shall remain in effect until the COVID-19 emergency no longer exists. The Ohio Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/>.

{¶ 5} Pursuant to R.C. 3701.13, the Ohio Department of Health (Ohio DOH) has authority over “all matters relating to the preservation of life and the health of the people” and is the “ultimate authority in matters of quarantine and isolation.” The Ohio DOH may further “make special or standing orders \* \* \* for preventing the spread of contagious or infectious diseases.” R.C. 3701.13. On March 12, 2020, the Director of the Ohio DOH issued an Order to prevent the spread of COVID-19 in the State of Ohio (Director’s Order). Among other things, the Director’s March 12, 2020 Order directs that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible \* \* \*.” Subsequently, on March 22, 2020, and amended on April 2, 2020, the Director of the Ohio (DOH) issued a Stay at Home Order (Order) directing that from March 23, 2020,

until May 1, 2020, with certain outlined exceptions, “all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence.” The DOH specified that “the intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the greatest extent possible.”

{¶ 6} On March 12, 2020, the Commission opened this proceeding and issued the first of several entries in response to the current state of emergency. As is relevant, the March 12, 2020 Entry suspended all paper and facsimile filing of documents with the Commission’s docketing division until further notice. March 12, 2020 Entry at ¶ 9.

{¶ 7} Subsequently, on March 16, 2020, the attorney examiner issued an entry modifying the March 12, 2020 filing directives. The March 16, 2020 Entry reiterated that in-person filing of documents with the Commission’s docketing division remains suspended during the declared emergency; encouraged all participants to file documents electronically; and reinstated the ability to file documents by facsimile. The Entry cautioned, however, that any document for which a filer seeks confidential treatment must be mailed to the Commission. March 16, 2020 Entry at ¶ 5(c).

{¶ 8} In an ongoing effort to further promote the Governor’s and the Director’s endeavors to keep all Ohioans safe during this declared emergency, the Commission finds it prudent to temporarily lift restrictions against the electronic filing of documents for which a filer seeks confidential treatment. Accordingly, pursuant to Ohio Adm.Code 4901-1-38, the Commission directs that the provisions of Ohio Adm.Code Chapter 4901-1 regarding the electronic filing of confidential information be waived. Furthermore, the Commission directs participants who intend to use electronic filing for the submission of documents for which protective or confidential treatment is requested under Ohio Adm.Code 4901-1-24 to follow the procedures attached to this Entry as Attachment A. The waiver of specified rules and the substitute procedures for the electronic filing of potentially confidential documents

set forth in Attachment A shall remain in effect for the duration of the state of emergency or until otherwise ordered by the Commission.

{¶ 9} Specifically, the Commission waives:

- (a) Ohio Adm.Code 4901-1-02(D)'s prohibition of the electronic filing of any document for which protective or confidential treatment is requested under Ohio Adm.Code 4901-1-24.
- (b) Ohio Adm.Code 4901-1-24(D)(2)'s requirement that, in filing a motion for a protective order under Ohio Adm.Code 4901-1-24, the filer submit two unredacted copies of the material for which confidential treatment is sought under seal. The Commission clarifies that each page of the allegedly confidential material filed pursuant to the procedures set forth in this Entry must still be marked as "confidential," "proprietary," or "trade secret."

{¶ 10} Additionally, to the extent necessary to effectuate these primary waivers, the Commission further waives:

- (a) Ohio Adm.Code 4901-1-02(D)(2)(1) to the extent that the electronic filing manual and technical requirements located under electronic filing information and links at the docketing information system website may not be immediately updated.
- (b) The last sentence of Ohio Adm.Code 4901-1-24(E). The Commission clarifies that no document or portion of a document will be afforded confidential treatment and protected from disclosure unless it is filed in accordance with the procedures set forth in this Entry, until otherwise ordered by the Commission.
- (c) The last sentence of Ohio Adm.Code 4901-1-24(G) to omit reference to documents submitted via e-filing.

{¶ 11} Participants who chose to electronically file documents containing confidential information are reminded to exercise caution in following the new filing procedures and to confirm that filings are completed correctly. All confidential electronically filed documents must be filed in Case No. 20-2000-XX-XXXX and the instructions followed as provided in Attachment A. Additionally, while the Commission is providing a means by which to submit potentially confidential documents electronically, the Commission will continue to accept ordinary mail filing of confidential documents at this time. Finally, the Commission reiterates that in-person filing of documents with the Commission's docketing division remains suspended during the declared emergency.

### III. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That, for the duration of the emergency or until otherwise ordered by the Commission, provisions of Ohio Adm.Code 4901-1-02 and Ohio Adm.Code 4901-1-24 described in Paragraph 9 and Paragraph 10 are waived to permit the electronic filing of documents containing confidential information. It is, further,

{¶ 14} ORDERED, That the procedural directives set forth as Attachment A be adopted by the Commission and adhered to by any party or person electronically filing documents containing potentially confidential information, in accordance with Paragraph 8, until otherwise ordered by the Commission. It is, further,

{¶ 15} ORDERED, That parties and other interested persons may continue to file documents containing confidential, proprietary, or trade make via ordinary mail, as stated in Paragraph 11, until otherwise ordered by the Commission. It is, further,

{¶ 16} ORDERED, That notice of this Entry be served via the Electric-Energy, Gas-Pipeline, Railroad, Telephone, Transportation, and Water industry service lists.

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

PAS/hac

### ELECTRONIC FILING OF CONFIDENTIAL DOCUMENTS

In response to the state of emergency declared by Governor DeWine, the Public Utilities Commission of Ohio (PUCO or Commission) has issued an Entry on April 8, 2020 authorizing the electronic filing of confidential documents in the Docketing Information System (DIS) as a temporary procedural relief from the required paper filing of confidential documents.

In accordance with the Commission's April 8, 2020 Entry, parties and persons intending to file documents containing trade secret, proprietary, or otherwise confidential information via electronic filing shall adhere to the following procedures and processes during this state of emergency or until otherwise ordered by the Commission.

**Electronically filing a confidential document.** If you do not already have an e-filing profile in DIS, you will need to create one:

<https://www.puco.ohio.gov/docketing/create-an-e-filing-profile/>.

The Commission provides the following instructions, which includes several controls to ensure confidential e-filings are not made public. These requirements must be met to comply with filing a confidential document electronically in DIS:

1. File the document in Case No. 20-2000-XX-XXX, which has been opened to specifically receive confidential documents. Do NOT file a confidential document in the case number to which the document pertains.
2. Complete and submit a Confidential Electronically Filed Document Cover Sheet (see attached) as the first page of the confidential document PDF.
3. Select "Confidential Document" for the document type when e-filing and use the word "confidential" in the summary of the docketing card field. (e.g. Confidential Testimony of Bob Smith or Confidential Document: Exhibit C-3, C-5, C-7 on behalf of XYZ Company LLC).
  - a. No source files are to be filed. If PUCO staff requires source files, PUCO staff will contact the filer and those documents can be filed separately.
4. If applicable, file the public version of your confidential document in the case number to which the document pertains.

Following your confidential e-filing:

1. The PUCO Docketing Division (Docketing) review the confidential e-filings. For the duration of the declared state of emergency, filers will receive a second email notice with the subject: **Rejection email notice**. This *does not* necessarily mean your document was rejected. As this is an emergency procedure, the document must be “rejected” by Docketing to prevent it from being publicly published.
2. If you do not receive a rejection email notice, check your spam folder. While the subject line of the email may say the document was rejected, the body of the email will have a description that indicates the status of confidential submissions: (1) the confidential filing has been received and accepted; or (2) the confidential filing has been rejected (with the reason noted).
  - a. A Confidential Target Document, a placeholder indicating a confidential document was filed, will be filed by Docketing in the actual intended case (not in Case No. 20-2000-XX-XXX). It is recommended that the filer review the intended case and “subscribe” to the case to ensure your document was filed.

### **Confidential Filing Disclaimer**

By submitting confidential documents to DIS you agree to the following:

The PUCO is not responsible for publication of documents deemed to be confidential to the Docketing Information System (DIS) that are not filed in compliance with required confidential submission protocol in Attachment A from the Entry issued by the Commission on April 8, 2020 in Case No. 20-591-AU-UNC. Confidential information being electronically filed in DIS must be filed with a completed Confidential Electronically Filed Document Cover Sheet, a document type of confidential document, descriptive language that includes the word “confidential” in the document card summary field, and filed in Case No. 20-2000-XX-XXX exclusively. Failure to file such confidential documents in accordance with the confidential submission protocols, may result in publication and incur liability for you or the organization holding the trade secret under Ohio law for misappropriation or other liability for disclosure of confidential information.



**Need help filing your confidential document?** Please look for our [Electronic filing manual and technical requirements](#) and [E-Filing Video Tutorial](#) on the [PUCO DIS webpage](#). You may receive assistance on filing confidential documents by emailing Docketing's staff at [docketing@puco.ohio.gov](mailto:docketing@puco.ohio.gov).

- Instructions for the filing of confidential documents can be accessed at: (<https://www.puco.ohio.gov/docketing/emergency-procedures-electronic-filing-of-confidential-documents/>).
- A Confidential Electronically Filed Document Cover Sheet can be accessed at: (<https://www.puco.ohio.gov/docketing/emergency-procedures-electronic-filing-of-confidential-documents/>).

**PUCO Docketing Emergency Operation Hours:** Pursuant to Ohio Adm.Code 4901-1-02, the docketing division accepts filings from 7:30 a.m. to 5:30 p.m., Monday through Friday, except on state holidays. However, during the Covid-19 Emergency, the docketing division will respond to emails at [docketing@puco.ohio.gov](mailto:docketing@puco.ohio.gov) during the hours of 8:00 a.m. to 5:00 p.m. You may call the Docketing office at (614) 466-4095 during the hours of 1:00 p.m. to 5:00 p.m.

# CONFIDENTIAL

## Electronically Filed Document

*Confidential Electronic Filing Case Number:* **20-2000-XX-XXX\***

*\*All confidential filings are being e-filed into Case No. 20-2000-XX-XXX pursuant to the confidential filing protocols in Attachment A of the Commission Entry issued on April 8, 2020 in Case No. 20-591-AU-UNC. The confidential filing will then be associated with the actual intended case number for which the filing is being made (see "Actual Intended Case Number" below).*

*Actual Intended Case Number:\** \_\_\_\_\_

*Page Count:* \_\_\_\_\_

*Date Filed:* \_\_\_\_\_

*Filed By:* \_\_\_\_\_

*On Behalf Of:* \_\_\_\_\_

*Summary of Document\*\*:* \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*\*\* Please use the word "confidential" in the summary of the document. (e.g. Confidential Testimony of Bob Smith or Confidential Document: Exhibit C-3, C-5, C-7 on behalf of XYZ Company LLC).*

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

**Commission of Ohio Docketing Information System on**

**4/8/2020 3:30:33 PM**

**in**

**Case No(s). 20-0591-AU-UNC, 20-2000-XX-XXX**

Summary: Entry directing that certain provisions of Ohio Adm.Code 4901-1-02 and Ohio Adm. Code 4901-1-24 be waived in order to permit the electronic filing of documents for which protective or confidential treatment is requested. The Commission further adopts the procedures and processes for the electronic filing of confidential documents attached to this Entry for the duration of the emergency or until otherwise ordered by the Commission electronically filed by Docketing Staff on behalf of PUCO