

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)
of Standard Filing Requirements for Rate) Case No. 19-2103-AU-ORD
Increases in Ohio Adm. Code Chapter)
4901-7.)

**COMMENTS ON IMPROVING THE PUCO'S STANDARD FILING
REQUIREMENTS FOR UTILITY FILINGS THAT AFFECT CONSUMERS'
UTILITY SERVICES
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

The stated purpose of the standard filing requirements contained in Ohio Adm. Code 4901-7 and Appendix A, is to provide PUCO Staff with the opportunity to thoroughly review the information provided by utilities in their applications, and to challenge it when necessary.¹ But this opportunity should also be extended to other parties, including the Office of the Ohio Consumers’ Counsel. The Public Utilities Commission of Ohio (“PUCO”) has invited comments and reply comments on its Staff’s proposed changes to these standards in the Ohio Administrative Code.² The Office of the Ohio Consumers’ Counsel (“OCC”) appreciates this opportunity to provide recommendations to protect residential utility consumers in Ohio in response to utility applications for an increase in rates under R.C. 4909.18, all complaints filed under R.C.

¹ Ohio Adm. Code 4901-7(A)(1) (“The standard filing requirements are designed to assist the commission in performing a thorough and expeditious review of applications for rate increases. Schedules contained in the filing requirements may be designed to provide support for the applicant utility's position or to provide supplemental information to facilitate the commission staff's review of the rate application”).

² *In re the Commission’s Review of the Standard Filing Requirements in Chapter 4901-7 of the Ohio Administrative Code*, Case No. 19-2103-AU-ORD, Entry, (December 16, 2020).

4909.34, and all petitions under R.C. 4909.35. The PUCO should adopt OCC's recommendations and certain of its Staff's recommendations.

II. RECOMMENDATIONS

Parties such as OCC (for its state role) need access to all information provided in a utility application. But as the rules currently stand, only PUCO Staff receives some of that data—the information is not publicly filed in the docket and therefore is not always part of the record. Some standard filing information is also not routinely shared with OCC without discovery or data requests. This process can be inefficient, can delay OCC's review, and can waste the time of OCC and even the PUCO in resolving discovery disputes as compared to just providing the information to OCC at the outset. This should change. Importantly, most of the information provided to the PUCO constitutes a public record under R.C. 4901.12. Further, OCC is statutorily entitled to receive any information provided to the PUCO.³

It is important that OCC and other parties be provided with copies all of schedules, work papers, and any supplemental information that the utilities file with their applications in order to evaluate the impact of the utility's filing on consumers. To protect consumers, OCC offers the following recommended revisions to the standard filing requirements.

The PUCO should adopt OCC's recommended changes.

³ R.C. 4911.09 and R.C. 4911.16.

A. O.A.C. 4901-7, Appendix A, Chapter II (A)(1): For consumer protection, the PUCO should modify the purpose of the standard filing requirements to facilitate reviews by the PUCO, OCC, and others.

For consumer protection, OCC and other parties should have access to all information included in utility applications filed with the PUCO. But currently, the purpose of the standard filing requirements, as written, only states they are designed to assist “the commission in performing a thorough and expeditious review of applications.” OCC has a statutory right and obligation to protect consumers and should have the same expeditious access as the PUCO to all schedules and information that the utilities provide to the PUCO at the outset of their case. Although OCC and other parties can usually obtain this additional information through discovery and data requests, the process is not expeditious.

It is imperative for consumer protection that OCC and other parties be provided with copies all of schedules, work papers, and any other supplemental information that the utilities file with their applications in order to fully evaluate the impact of the utility’s filing on consumers. Utility applications, especially ones that result in higher rates for consumers, should be fully transparent. For example, there are numerous calculations and worksheets that are used in determining the rates charged to consumers and other effects of a filing on consumers. These documents, when—and if—they are publicly filed, or provided through discovery, are usually obtained as a pdf. The calculations used are not verifiable in a pdf. And sometimes the calculations behind the numbers, in excel format, are only provided to PUCO Staff.

Information and data provided to the PUCO or its Staff as part of an application is a public record under R.C. 4901.12, and OCC is statutorily entitled to receive any

information provided to the PUCO under R.C. 4911.09 and R.C. 4911.16. This is especially true of public records. To protect consumers, the PUCO should modify O.A.C.

4901-7, Appendix A, Chapter II (A)(1) as follows:

(1) Purpose

The standard filing requirements are designed to assist the commission and parties in performing a thorough and expeditious review of applications for rate increases. Schedules contained in the filing requirements may be designed to provide support for the applicant utility's position or to provide supplemental information to facilitate the commission staff's and parties' review of the rate application.

B. O.A.C. 4901-7, Appendix A, Chapter II (A)(3): For consumer protection, the PUCO should modify the minimum requirements of the standard filing requirements to facilitate, for the PUCO, OCC, and others, access to and review of any information the PUCO may require utilities to supplement during the course of the Staff investigation of a case.

As stated previously, information and data provided to the PUCO or its Staff as part of an application is a public record under R.C. 4901.12. All parties should have access to this information. Moreover, OCC is statutorily entitled to receive any information provided to the PUCO under R.C. 4911.09 and R.C. 4911.16. To provide all parties the opportunity to review all information provided by a utility, the PUCO should modify O.A.C. 4901-7, Appendix A, Chapter II (A)(3) as follows:

(3) Minimum requirements

The standard filing requirements contain the minimum information which utilities are required to submit with their application for an increase in rates. The schedules contained in the filing requirements provide the basic information normally required to support a utility's rate request. If the applicant utility believes that additional information is necessary to support its case or is proposing a position which requires a departure from the basic schedules (e.g., a special revenue adjustment proposal), the utility should supplement the standard filing requirements, in the docket, as required to support its position. In addition, the commission may require utilities to supply information to supplement these requirements

during the course of the staff investigation of a specific case. Any such supplements shall be filed in the docket or otherwise provided to parties as well as the commission or its Staff.

- C. **O.A.C. 4901-7, Appendix A, Chapter II (A)(4)(d): For consumer protection, the PUCO should modify the minimum requirements of the standard filing requirements to facilitate, for the PUCO, OCC, and others, access to and review of waiver requests by a utility.**

To provide all parties the opportunity to review any waivers requested by a utility, the PUCO should modify O.A.C. 4901-7, Appendix A, Chapter II (A)(4)(d) as follows:

- (d) A request for waiver of any of the provisions of the standard filing requirements must set forth the specific reasons in support of the request. The commission shall grant the request for a waiver upon good cause shown by the utility. In determining whether good cause has been shown, the commission shall give due regard, among other things to:
- (i) Whether other information, which the utility would provide if the waiver is granted, is sufficient so that the commission staff and parties can effectively and efficiently review the rate application.
 - (ii) Whether the information, which is the subject of the waiver request, is normally maintained by the utility or reasonably available to it from the information which it maintains.
 - (iii) The expense to the utility in providing the information, which is the subject of the waiver request.
- D. **O.A.C. 4901-7, Appendix A, Chapter II (A)(5)(d): to support the review of the most up to date data, the PUCO should modify the minimum requirements of the standard filing requirements to facilitate an update to the projected test year data for the PUCO, the OCC, and other parties.**

When utilities file financial information with their applications, it is usually at least a few months old. But as with other data provided to the PUCO or its Staff, updated projected test year data is not always quickly shared with other parties such as OCC. OCC's recommended change to this rule will improve the review process by timely providing accurate projected test year financial data for all parties to review.

The PUCO should modify O.A.C. 4901-7, Appendix A, Chapter II (A)(5)(d) as follows:

(d) "Projected test year data" - to comply with the statutory requirements regarding the test year, the utility may use estimated valuation data and up to twelve months of estimated operating income data in its application. However, if estimated valuation data and/or more than nine months of estimated operating income data is provided in the application, the utility must provide, within two months of the date of filing, actual valuation data and operating income statements which include no less than three months of actual data. The utility must also explain any material differences between the estimated and actual data to Staff and all parties.

Notwithstanding the above provisions, any natural gas, waterworks, or sewage disposal system company that elects to use a date certain that is beyond the application filing date need not provide, within two months of the date of filing, actual valuation data. Instead, such natural gas, waterworks, or sewage disposal system company must provide the data required within 30 days after the date certain to Staff and to all parties.

The utility must file a comparison of the twelve-month actual income statement versus the partially forecasted income statement and any variances within three months after the end of the test year. The utility must also explain any material differences between estimated and actual data to Staff and all parties.

E. O.A.C. 4901-7, Appendix A, Chapter II (A)(7): For consumer protection, the PUCO should modify this rule to provide copies of filed schedules to the OCC and other parties as well as PUCO Staff.

In order to protect consumers, OCC needs copies of all schedules filed by the utilities. These are already provided to the PUCO Staff, but they are not routinely provided to OCC. The PUCO should adopt OCC's recommendation to require the utilities to provide these copies to OCC when they are provided to Staff. To protect consumers, the PUCO should modify O.A.C. 4901-7, Appendix A, Chapter II (A)(7) as follows:

(7) Schedule format

Schedules shown are for illustrative purposes only and can be modified to fit the individual company, as long as the data intent is complied with. Utilities are not required to submit data on reproduced copies of the schedules but should submit the data in substantially the same format as contained in the schedules. All schedules submitted to the commission should be typed. Additional schedules should be submitted as required to support the company's application; such schedules should be identified by the next assigned schedule in the appropriate section.

All schedules submitted must also be provided to the staff and the Office of the Ohio Consumers' Counsel in a native electronic format. The electronic format must use links to retrieve data from related schedules and, if applicable, relevant working papers. Absent a showing of good cause by the applicant, schedules and work papers containing numerical data shall be submitted on spreadsheets that contain active formulas and calculations and must be linked so that changes propagate through the schedules and work papers.

F. O.A.C. 4901-7, Appendix A, Chapter II (A)(8): For consumer protection, the PUCO should modify this rule to provide copies of all working papers supporting the standard filing requirements schedules and the required Cost-of-Service study, as well as any utility-sponsored cost studies to the OCC as well as PUCO Staff.

The PUCO should modify this rule so that all parties have access to all the information that a public utility provides as part of its application. The public, OCC, and other parties should have expeditious access to all working papers, required cost-of-service studies, and any utility sponsored cost studies filed by the utilities at the PUCO. This information will allow OCC (and other parties) to timely review the information and effectively represent consumers. These are already provided to the PUCO Staff, but they are not routinely (or timely) provided to OCC. Providing this information to OCC and other parties when it is provided to the PUCO Staff will accommodate a more expeditious review, consistent with the discovery rules under Oh. Adm. Code 4901-1-16. The PUCO should adopt OCC's recommendation to require the utilities to provide these copies to OCC and other parties when they are provided to PUCO Staff.

To protect consumers, the PUCO should modify O.A.C. 4901-7, Appendix A, Chapter II (A)(8) as follows:

(8) Working papers

All utility working papers supporting the standard filing requirements schedules and the required cost-of-service study, as well as any company-sponsored cost studies, shall be delivered to the commission staff and the Office of the Ohio Consumers' Counsel as specified in paragraph (C)(7) of Chapter II in this appendix.

G. O.A.C. 4901-7, Appendix A, Chapter II (A)(9): For consumer protection, the PUCO should reject its Staff's proposal to remove the rule's current provision that the PUCO's review could be used to determine if a utility should be subject to further investigation. The PUCO should also modify the minimum requirements of the standard filing requirements for the management policies, practices, and organization of utility companies to include sharing the information with all parties.

A utility's current management policies, practices, and organization are important for all parties to review when considering an application. Any information provided to the PUCO should be readily accessible to all parties. This information could also illuminate any current or imminent problems with the utility that the PUCO Staff, OCC, or other parties may determine needs to be investigated further to represent and protect customers. Therefore, the PUCO should reject its Staff's recommendation to eliminate the standard filing requirement for the PUCO Staff's ability to use this information to determine if "specific areas of a company's management and/or operations should be the subject of further investigation." The PUCO should also adopt OCC's recommendation to require the utilities to provide this information to OCC and parties when it is provided to PUCO Staff.

To protect consumers, the PUCO should modify O.A.C. 4901-7, Appendix A, Chapter II (A)(9) as follows:

- (9) Management policies, practices, and organization of utility companies
 - (a) Information to be filed under paragraphs (B)(8), and (9) of Chapter II of this appendix is required for the purposes of the commission's and parties' consideration of the applicant utility's management policies, practices, and organization in fixing rates. These filing requirements are designed for the applicant utility to present pertinent information, in a succinct manner, that would provide the commission and parties with sufficient knowledge of the applicant utility's management process or system. The commission's and parties' review could be used to determine if specific areas of a company's management and/or operations should be the subject of further investigation.

H. O.A.C. 4901-7, Appendix A, Chapter II (B)(8): For consumer protection, the PUCO should modify this rule to include requiring the utility to provide information about the utility's corporate governance and lobbying efforts.

H.B. 6 has been described as probably involving the biggest bribery scandal in Ohio's history. It is claimed that \$61 million was spent on lobbying efforts. This scandal also brought about an arrest of the former Speaker of the Ohio House (and four other political operatives, two which have pleaded guilty), the firing of FirstEnergy executives and the resignation of the PUCO's chairman. Transparency is extremely important in this area. Consumers deserve to know how their state government, for legislation and regulation, may be influenced by utility (and affiliate) lobbying efforts.

To protect consumers from inappropriate and excessive (or potentially unlawful) lobbying efforts and for transparency, the PUCO should modify O.A.C. 4901-7, Appendix A, Chapter II (B)(8) as follows:

- (8) An executive summary of applicant utility's corporate process utilized by the board of directors and corporate officers. This would include a discussion of all pertinent elements of the

applicant utility's management process encompassing such areas as corporate governance, policy and goal setting, strategic and long-range planning, organization structure, decision-making, ring fencing (plans and methods for protecting the regulated distribution company that limit the exposure of the operating company from the action of its parent company and/or subsidiary), controlling process, internal and external communications (identified as Schedule S-4.1), and disclosure of utility and affiliate spending on regulatory relations and legislative lobbying.

- I. **O.A.C. 4901-7, Appendix A, Chapter II (C)(1)-(4): For consumer protection, the PUCO should modify this rule to require providing all utility supplemental information to OCC and other parties as well as to the Staff in the PUCO's Rates and Analysis Department. The PUCO should also reject its Staff's proposal to remove from the rule the first four documents currently required as part of the supplemental information.**

In order to protect consumers, OCC and other parties need all supplemental information provided at filing by the utilities. This information is already provided to the PUCO Staff, but not routinely provided to OCC or other parties. The PUCO should adopt OCC's recommendation to require the utilities to provide this information to OCC when it is provided to Staff.

The PUCO should also reject its Staff's recommendation to remove from the rule the first four documents required in a filing. There should be no objection to providing all pertinent information about a utility with a pending application. This is especially applicable when this information is subject to change (i.e. securities and exchange forms, annual reports, FERC reports, and stock and bond prospectuses). OCC also recommends a clarification that this information should be provided to the Rates and Analysis Department of the PUCO.

To protect consumers, the PUCO should modify O.A.C. 4901-7, Appendix A, Chapter II (C)(1)-(4) as follows:

(C) Supplemental information provided at filing

The applicant utility must deliver four copies of the following information, if applicable, to the Rates and Analysis Department, office of the rate case manager, and other parties, including the Office of the Ohio Consumers' Counsel, at the time of the filing of the application. A document provided in a prior case may be incorporated by reference to the prior case:

- (1) The most recent federal regulatory agency's (FERC,) audit report.
- (2) Prospectuses of current stock and/or bond offering of the applicant, and/or of parent company if applicant is a wholly owned subsidiary. In the event there are no current offerings, then provide the most recent offerings to staff and parties.
- (3) Annual reports to shareholders of the applicant, and/or parent company, if applicant is wholly-owned subsidiary, for the most recent five years and the most recent statistical supplement.
- (4) The most recent SEC Form 10-K, 10-Q, and 8-K of the applicant, and/or parent company, if applicant is wholly owned subsidiary. In addition, upon filing with the SEC, provide all subsequent 10-K, 10-Q, and 8-K SEC reports to the staff and parties through the date of the hearing.

III. CONCLUSION

OCC appreciates this opportunity to provide comments on the PUCO's standard filing requirements and its Staff's recommended changes. OCC and other parties need the same information that is provided to the PUCO Staff when a utility files an application. Most, if not all, of a utility application is a matter of public record under R.C. 4901.12. And OCC is entitled to any information that the PUCO receives—especially public records—under R.C. 4911.09 and R.C. 4911.16. This information should be provided to parties expeditiously and not delayed by discovery requests and utility disputes over discovery, especially for public records. Immediate access to public utility application data would expediate OCC and other parties' efforts to protect consumers. To protect consumers, the PUCO should adopt OCC's recommendations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments were served on the persons stated below via electronic transmission this 15th day of January 2021.

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Summary: Comments Comments on Improving the PUCO's Standard Filing Requirements for Utility Filings that Affect Consumers' Utility Services by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Wilson, Ambrosia E.