

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S  
REVIEW OF THE RULES IN OHIO ADM.  
CODE CHAPTER 4901:1-26.

CASE NO. 22-863-EL-ORD

## FINDING AND ORDER

Entered in the Journal on November 16, 2022

### I. SUMMARY

{¶ 1} The Commission adopts the proposed amendments to Ohio Adm.Code Chapter 4901:1-26, as determined in and attached to this Finding and Order.

### II. DISCUSSION

#### A. *Applicable Law*

{¶ 2} R.C. 121.951(A)(1), effective June 8, 2022, requires the Commission to amend or rescind rules identified in its base inventory – using the criteria listed in R.C. 106.03(A) – as necessary to reduce the total number of regulatory restrictions by thirty percent over the course of three years. The Commission opened this docket to review the Dispute Resolution rules in Ohio Adm.Code Chapter 4901:1-26.

{¶ 3} In performing the above review, R.C. 106.03(A) requires the Commission to determine, among other things, whether the rule should be amended or rescinded (including for the purpose of accomplishing the requirements of R.C. 121.951) because it exceeds or conflicts with the purpose, scope, or intent of the statute(s) under which the rule was adopted; creates a compliance or oversight burden that is greater than the burden that would be created if the agency accomplished the intended purpose of the restriction by other means; is no longer useful or beneficial; or duplicates, overlaps with, or conflicts with a federal or state law or rule.

{¶ 4} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis

(BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.

{¶ 5} Pursuant to R.C. 121.95(F), a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions. In accordance with R.C. 121.95, and prior to January 1, 2020, the Commission identified rules having one or more regulatory restrictions that require or prohibit an action, prepared a base inventory of these restrictions in the existing rules, and submitted this base inventory to Joint Committee on Agency Rule Review (JCARR), as well as posted this inventory on the Commission's website at <https://puco.ohio.gov/wps/portal/gov/puco/documents-and-rules/resources/restrictions>. With regard to the amendments discussed in this Finding and Order with respect to Ohio Adm.Code Chapter 4901:1-26, the Commission has both considered and satisfied the requirements in R.C. 121.95(F).

#### ***B. Procedural History***

{¶ 6} The Commission and Staff evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-26. No significant substantive changes were proposed. Rather, the changes Staff recommended address amending rules throughout all chapters to conform with the purpose of R.C. 121.951(A)(1), by eliminating regulatory restrictions.

{¶ 7} By Entry issued on October 5, 2022, the Commission requested comments on Staff's proposed revisions to Ohio Adm.Code Chapter 4901:1-26 and ordered that comments should be filed by October 19, 2022.

{¶ 8} Dayton Power and Light Company d/b/a AES Ohio (AES Ohio) timely filed comments on October 19, 2022.

### III. CONCLUSION

{¶ 9} In making its rules, an agency is required by R.C. 106.03(A) to consider the continued need for the rules, the nature of any complaints or comments received concerning the rules, and any relevant factors that have changed in the subject matter area affected by the rules. Further, R.C. 121.951(A)(1) requires state agencies to reduce their total number of regulatory restrictions. The Commission has evaluated Ohio Adm.Code Chapter 4901:1-26 and recommends amending the rules as demonstrated in the attachment to this Finding and Order.

{¶ 10} In its comments, AES Ohio noted that it does not agree with eliminating a party's opportunity to respond to another party's unilateral mediation request. In response to AES Ohio's comments, the Commission has amended Ohio Adm.Code 4901:1-26-03 to state "The other party to the pending formal complaint may provide a response within seven business days of service of the request for mediation. Any such response should also be served simultaneously upon the party requesting the mediation."

{¶ 11} An agency must also demonstrate that it has evaluated the impact of the rule on businesses, pursuant to R.C. 106.03(A)(6) and 121.82(A). Moreover, pursuant to R.C. 121.95(F), the agency must remove two or more existing regulatory restrictions for every new regulatory restriction added. The Commission has included stakeholders in the development of these rules, has considered the impact of the rules on businesses, and has adhered to the requirement regarding the removal of regulatory restrictions.

{¶ 12} Accordingly, at this time, the Commission finds that the amendments throughout Ohio Adm.Code Chapter 4901:1-26, as described in the attachment to this Finding and Order, should be adopted and filed with JCARR, the Secretary of State, and the Legislative Service Commission (LSC). The Commission also finds that no changes should be made to the designated "No Change" Ohio Adm.Code 4901:1-26-01, as described in the attachment to this Finding and Order.

{¶ 13} The rules are posted on the Commission's Docketing Information System website at <http://dis.puc.state.oh.us>. To minimize the expense of this proceeding, the Commission will serve a paper copy of this Finding and Order only. All interested persons are directed to input case number 22-863 into the Case Lookup box to view this Finding and Order, as well as the rules, or to contact the Commission's Docketing Division to request a paper copy.

#### IV. ORDER

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That amended Ohio Adm.Code 4901:1-26-02; 4901:1-26-03; and 4901:1-26-04 throughout Ohio Adm. Code Chapter 4901:1-26 be adopted. It is, further,

{¶ 16} ORDERED, That designated "No Change" Ohio Adm.Code 4901:1-26-01 be adopted with no changes. It is, further,

{¶ 17} ORDERED, That the adopted rules be filed with JCARR, the Secretary of State, and LSC, in accordance with divisions (D) and (E) of R.C. 111.15. It is, further,

{¶ 18} ORDERED, That a copy of this Finding and Order, with the rules and BIA, be served upon the Common Sense Initiative at [CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov). It is, further,

{¶ 19} ORDERED, That a copy of this Entry be served upon all investor-owned electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, and the Electric-Energy industry list-serve.

**COMMISSIONERS:**

*Approving:*

Jenifer French, Chair  
Lawrence K. Friedeman  
Dennis P. Deters

JML/IMM/hac

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**NO CHANGE**

**4901:1-26-01 Purpose and scope.**

The alternative dispute resolution procedures in this chapter are available for pending formal complaints between nonmercantile, nonresidential customers, on the one hand, and electric utilities, electric service companies, electric cooperatives, or governmental aggregators, on the other hand. The purpose of this chapter is to facilitate efficient resolution of pending formal complaints between nonmercantile, nonresidential customers, on the one hand, and electric utilities, electric service companies, electric cooperatives, or governmental aggregators, on the other hand. This chapter is not intended to alter or diminish the commission's (or its staff's) authority to conduct investigations and to take remedial action when deemed necessary. This chapter is not intended to alter or diminish the commission's (or its staff's) dispute resolution procedures for informal disputes.

**AMENDED**

**4901:1-26-02 Definitions.**

- (A) "Mediation" is a voluntary, alternative dispute resolution process available to resolve formal complaints pending at the commission that are between nonmercantile, nonresidential customers, on the one hand, and electric utilities, electric service companies, electric cooperatives, or governmental aggregators, on the other hand. Under this mediation process, a neutral third party, who is independent of the parties, assists the parties in reaching their own settlement. The mediator does not have the power to impose a resolution. The role of the mediator and the goal of the process are to help the parties achieve their own resolution.
- (B) "Arbitration" is a voluntary, alternative dispute resolution process available to resolve formal complaints pending at the commission that are between nonmercantile, nonresidential customers, on the one hand, and electric utilities, electric service companies, electric cooperatives, or governmental aggregators, on the other hand. Under this arbitration process, the parties present evidence and legal arguments to a neutral third party, called an arbitrator or an arbitration panel, who renders a decision. ~~The parties are required to accept the arbitration decision when commission personnel acts as the arbitrator, except to the limited extent set forth in this chapter.~~
- (C) "Commission" means the public utilities commission of Ohio.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

- (D) "Certified arbitration process" means a commercial arbitration process, the use of which has been approved by the commission pursuant to paragraphs (B) and (J) of rule 4901:1-26-04 of the Administrative Code for resolving disputes arising under formal complaints filed with the commission.

**AMENDED**

**4901:1-26-03      Mediation.**

- (A) Any party to a pending formal complaint may ask the commission to mediate that matter by notifying the chief of the electric section of the commission's legal department in writing and serving a copy of the mediation request on the other party in the case.
- ~~(B) To request mediation, a party to the pending formal complaint shall notify the chief of the electric section of the commission's legal department in writing. The party seeking mediation shall simultaneously serve a copy of the mediation request on the other party in the case. The request shall contain the following information:~~
- ~~(1) The name, address, telephone number, and fax number of the party in the case making the request.~~
  - ~~(2) The name, address, telephone number, and fax number of the other party in the case.~~
  - ~~(3) If different from paragraphs (B)(1) and (B)(2) of this rule, the name, address, telephone number, and fax number of the party representatives to whom inquiries should be made.~~
  - ~~(4) The dispute resolution history, including meeting times and locations.~~
  - ~~(5) A statement concerning the differences existing between the parties, including relevant documentation and arguments concerning matters to be mediated.~~
- ~~(C)~~ (B) The other party to the pending formal complaint may provide a response within seven business days of service of the request for mediation. The Any such response ~~to a request for mediation shall~~ should also be served simultaneously ~~served~~ upon the party requesting the mediation.
- ~~(D)~~ (C) The commission will appoint a mediator, who is independent of the parties, to conduct the mediation. The mediator may be commission personnel. The mediator will promptly contact the parties in the case and establish a time to commence mediation. The mediator will work

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

with the parties to establish an appropriate schedule and procedure for the mediation. The mediator may receive technical assistance from commission staff.

~~(E)~~ (D) The mediator's function is to impartially encourage voluntary settlement by the parties. ~~the mediator may not compel a settlement.~~ The mediator may schedule meetings of the parties, direct the parties to prepare for those meetings, hold private caucuses with each party, request that the parties share information, attempt to achieve a mediated resolution, and, if successful, assist the parties in preparing a written agreement.

~~(F) To ensure a full and frank discussion of the issues, the parties shall agree to provide, on an expedited basis, information requested by the other party relevant to the mediated issues. Where appropriate, such information shall be provided pursuant to appropriate protective agreements.~~

~~(G)~~ (E) Parties submitting to mediation under this rule agree to participate, in good faith, in the mediation process for a minimum of thirty calendar days after initiation of the mediation process by the mediator and for a maximum of forty-five calendar days, unless the mediator extends that time frame. ~~Participants in the mediation sessions shall attend those sessions and shall have the actual authority to enter into a settlement of the matters at issue.~~

~~(H)~~ (F) Mediations conducted under this rule ~~shall be~~ are subject to Ohio confidentiality statutes (e.g., Chapter 2710 of the Revised Code).

~~(I) Parties to the mediation shall reduce to writing the mediated resolution of all or any portion of the mediated issues and submit it to the mediator.~~

~~(J)~~ (G) A member of the commission or a commission employee who serves as mediator ~~shall~~, by virtue of having served in such capacity, ~~be precluded from serving~~ cannot serve in a decision-making role or as a witness on matters subject to mediation in a formal commission case involving the same parties and the same issues.

**AMENDED**

**4901:1-26-04      Arbitration.**

~~(A) All parties to a pending formal complaint must agree that the dispute (or a portion thereof) should be resolved through arbitration.~~



**\*\*\*DRAFT - NOT FOR FILING\*\*\***

- ~~(B)~~ (A) If all parties to the pending formal complaint agree that the dispute (or a portion thereof) should be resolved through arbitration, the parties ~~shall~~ may jointly file a request with the commission to stay the proceeding pending the arbitration, outlining ~~The parties shall outline~~ with sufficient specificity the issues for which arbitration is being sought. In the joint request, the parties may seek to have the commission assign its personnel to be the arbitrator or the parties may request that the issues to be arbitrated be assigned to a commission-approved, certified arbitration process approved pursuant to paragraph ~~(J)~~ (G) of this rule.
- ~~(C)~~ ~~The commission will consider a request to stay the formal complaint proceeding pending an arbitration and grant it within fifteen calendar days, if the issues to be arbitrated do not involve a policy matter that the commission itself wishes to consider or if the commission does not have concerns with the commercial arbitration process proposed. If granted, the formal commission docket shall be suspended pending completion of the arbitration process.~~
- ~~(D)~~ (B) If commission personnel is not the arbitrator, the parties ~~shall~~ will notify the commission once they have engaged the arbitrator.
- ~~(E)~~ (C) ~~The arbitrator shall have the authority allowed by law. The arbitrator shall issue the~~ Any arbitration award will be made in writing and served it upon the parties by the arbitrator.
- ~~(F)~~ (D) ~~By electing arbitration under this rule, the parties shall not disclose communications made in the course of and relating to the subject matter of the arbitration, except as permitted in this chapter or under circumstances consistent with those applicable to mediation communications under~~ Arbitrations conducted under this rule are subject to Ohio confidentiality statutes (e.g., Chapter 2710, of the Revised Code). By electing arbitration under this rule, no appeals of any intermediary rulings made by the arbitrator are permitted ~~the parties shall not appeal (to the commission or any court) any intermediary rulings made by the arbitrator.~~
- ~~(G)~~ ~~Where the parties request to have commission personnel act as arbitrator and such request is granted by the commission, the parties shall, within one hundred and twenty calendar days from the date upon which the commission approves their case for arbitration, complete the arbitration and receive an arbitration award. The parties may jointly apply or the arbitrator may apply to the commission for an extension of this deadline for good cause shown.~~
- ~~(H)~~ (E) If the parties accept the arbitration award, a copy of the arbitration award need not be filed

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

with the commission. ~~but, at a minimum, an executive summary of the award (including the issues decided, the facts as determined, who prevailed, and the type of award granted) shall be filed (within thirty calendar days of the issuance of an arbitration award) in the commission's docket, along with the~~ The parties' joint motion to dismiss the complaint (or involved portion thereof) should be filed within thirty calendar days of the issuance of the arbitration award, in light of their acceptance of the award.

(H)(F) When commission personnel acts as the arbitrator, the ~~arbitration award shall~~ parties will be bound by the arbitration award ~~final and binding upon the parties,~~ except as described in this provision. Within thirty calendar days of the issuance of an arbitration award, any party to the arbitration may seek commission review of the arbitration award, but such ~~request for review shall not seek de novo review of the legal and factual conclusions made by the arbitrator. The commission will~~ review ~~the record of the arbitration proceeding will be limited~~ to ascertaining ~~only~~ the existence of any grounds identified in Chapter 2711 of the Revised Code, such as fraud, corruption, misconduct, impropriety, or mistake by the arbitrator. The commission may impose a briefing schedule or other procedure, where appropriate. ~~Requests for commission review shall include the arbitration record as needed and a brief or supporting memorandum. Any opposing brief/memorandum shall be filed within fifteen calendar days of filing of the request for review (or eighteen calendar days, if the other party's filing was served by mail). The commission will endeavor to issue its ruling on the review request within forty five calendar days after any opposing brief/memorandum is filed.~~ Upon consideration of the review request, the commission may confirm, vacate, modify or enforce the arbitration award. If the commission vacates the arbitration award (in whole or in part), the commission ~~shall~~ will specify whether the matter should be remanded to the same arbitrator. Any commission decision to confirm, vacate, modify or enforce the arbitration award under this provision is subject to rehearing pursuant to section 4903.10 of the Revised Code, and any final commission decision is subject to appeal pursuant to section 4903.13 of the Revised Code.

(J)(G) Electric utilities, electric service companies, electric cooperatives, and governmental aggregators may file an application with the commission seeking certification to use a proposed commercial arbitration process for any class of formal complaints or for all potential formal complaints. ~~Such an application shall contain the terms and conditions under which~~

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

~~potential complaints may be referred to a particular commercial arbitration process pursuant to this rule. Such terms and conditions may include, but are not limited to, which parties shall bear the cost of the arbitration process, what class of potential complaints may be referred to commercial arbitration, and whether such arbitration shall be binding on either or both of the parties.~~ The commission staff ~~shall~~ will review such an application seeking certification to use a commercial arbitration process and recommend to the commission whether the application should be approved. The commission may approve such an application if the commission is satisfied that the commercial arbitration process is fair, cost-effective, and does not result in prejudice against any potential future parties. By approving an application pursuant to this provision, the commission retains the right to evaluate, in each individual formal complaint proceeding, whether to grant a request to stay the formal complaint proceeding pending arbitration.

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**11/16/2022 2:45:32 PM**

**in**

**Case No(s). 22-0863-EL-ORD**

Summary: Finding & Order adopting the proposed amendments to Ohio Adm.Code Chapter 4901:1-26, as determined in and attached to this Finding and Order electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio