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**

FINDING AND ORDER

Entered in the Journal on October 18, 2023

I. SUMMARY

{¶ 1} The Commission adopts certain amendments to the rules in Ohio Adm.Code Chapters 4901-1, 4901:1-1, 4901-3, and 4901-9.

II. PROCEDURAL HISTORY

A. Applicable Law

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. Based on the requirement under

R.C. 121.951(A)(1), the Commission also incorporates numerous changes to the rules to meet the requirement for state agencies to reduce their total number of regulatory restrictions. The Commission opened these dockets to review Ohio Adm.Code Chapter 4901-1, Administrative Provisions and Procedures; Ohio Adm.Code Chapter 4901:1-1, Utility Tariffs and Underground Utility Protection Service Registration; Ohio Adm.Code Chapter 4901-3, Open Commission Meetings; and Ohio Adm.Code Chapter 4901-9, Complaint Proceedings.

{¶ 3} In performing this review, R.C. 106.03(A) requires the Commission to determine whether the rules:

> (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
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> (b) Need amendment or rescission to give more flexibility at the local level;
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> (c) Need amendment or rescission to eliminate unnecessary paperwork;
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> (d) Incorporate a text or other material by reference and, if so, whether the citation accompanying the incorporation by reference would reasonably enable the Joint Committee on Agency Rule Review (JCARR) or a reasonable person to whom the rules apply to find and inspect the incorporated text or material readily and without charge and, if the rule has been exempted in whole or in part from R.C. 121.71 to 121.74 because the incorporated text or material has one or more characteristics described in R.C. 121.75(B), whether the

incorporated text or material actually has any of those characteristics;

(e) Duplicate, overlap with, or conflict with other rules;

(f) Have an adverse impact on businesses, as determined under R.C. 107.52;

(g) Contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and

(h) Require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 4} Also, under R.C. 121.82, in the course of developing draft rules, the Commission must evaluate whether those rules will have an adverse effect on businesses and prepare a business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the Commission is tasked to incorporate features into the draft rules to eliminate or adequately reduce the adverse business impact. R.C. 121.82 also requires the Commission to provide a copy of the draft rules and BIA to the Common Sense Initiative office for comment.

{¶ 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 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 Chapters 4901-1, 4901:1-1, 4901-3, and 4901-9, the Commission has both considered and satisfied the requirements in R.C. 121.95(F).

B. Procedural History

{¶ 6} On July 12, 2018, the Commission held a workshop in these proceedings to enable interested stakeholders to propose revisions to Ohio Adm.Code Chapters 4901-1, 4901:1-1, 4901-3, and 4901-9. Representatives of several interested stakeholders attended the workshop, and two provided comments.

{¶ 7} The Commission evaluated the rules contained in Ohio Adm.Code Chapters 4901-1, 4901:1-1, 4901-3, and 4901-9 and considered the revisions proposed during the workshop. As a result of its review, the Commission proposed changes throughout these chapters. These changes include a number of minor, non-substantive changes intended to improve clarity, better align language with that used in the related statutory provisions, or correct typographical errors. Based on stakeholder feedback, the Commission also proposed several substantive changes to the rules.

{¶ 8} By Entry issued on December 4, 2019, the Commission requested comments and reply comments on Staff's proposed revisions to Ohio Adm.Code Chapters 4901-1, 4901:1-1, 4901-3, and 4901-9. Motions to extend the procedural schedule were granted on January 2, 2020, and January 16, 2020, and as to the second extension, the administrative law judge (ALJ) ordered that initial and reply comments be filed by January 13, 2020, and February 10, 2020, respectively.

{¶ 9} Consistent with the Entries issued on December 4, 2019, January 2, 2020, and January 16, 2020, initial written comments were timely filed by the Ohio Farm Bureau Federation (OFBF), Ohio Telecom Association (OTA), Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy), Ohio Power Company (AEP Ohio), Industrial Energy Users-Ohio (IEU-Ohio), The East Ohio Gas Company d/b/a Dominion Energy Ohio (Dominion), Environmental Law & Policy

Center (ELPC), Interstate Gas Supply, Inc. (IGS), Columbia Gas of Ohio, Inc. (Columbia), Duke Energy Ohio, Inc. (Duke), Ohio Consumers' Counsel (OCC), Northwest Ohio Aggregation Coalition (NOAC), Northeast Ohio Public Energy Council (NOPEC), Edgemont Neighborhood Coalition (ENC), and Four A Energy Consulting Services, LLC (Four A). Reply comments were then timely filed on February 10, 2020, by OTA; Ohio Energy Group (OEG); IEU-Ohio; AEP Ohio; FirstEnergy; Ohio Manufacturers' Association Energy Group (OMAEG); The Dayton Power and Light Company (AES Ohio); IGS; collectively by OCC and NOAC; collectively by Columbia, Dominion, Duke, and Vectren Energy Delivery of Ohio, Inc. (Gas Companies); and collectively by Coalition on Homelessness and Housing in Ohio, Harcatus Tri-County Community Action Organization, The Ohio Poverty Law Center, The Legal Aid Society of Cleveland, Pro Seniors, Inc., and Southeastern Ohio Legal Services (Consumer Groups).

III. DISCUSSION

A. General Comments

{¶ 10} Staff provided a number of proposals to update the language of these rules. Many of the proposals were terminology changes, such as replacing the often-misunderstood title of "attorney examiner" with the more commonly recognized title of "administrative law judge" throughout the rules. Other changes include updating sections of the Ohio Revised Code that were amended or renumbered since the last time the rules were reviewed. Because these updates are not substantive changes and rather update the terminology of the rule to be current, we do not find it necessary to discuss each individual change in the rules discussed below. Rather, the Commission finds these updates to be appropriate and adopts these changes as a general matter here. Additionally, any proposed amendment not addressed in this order nor made to the rules is not warranted and is thus denied by the Commission. Furthermore, R.C. 121.951(A)(1) was promulgated after Staff proposed amendments to the rules and parties submitted comments. However, to promote efficiency and avoid duplicative cases, the Commission has incorporated certain

amendments to meet the requirement for state agencies to reduce their total number of regulatory restrictions, as required by the statute.

{¶ 11} In its comments, OFBF notes that it has no concerns with the proposed rule amendments relative to electronic filing but offers suggestions to improve the administration of the electronic filing rules. OFBF identifies problems with the information presented in the "Parties of Record" Tab under the electronic case record in the Commission's e-filing system. OFBF states that there is a column for "Parties of Record" and a column for "Attorneys" that does not accurately pair together. Additionally, OFBF notes that the "Attorney" column fails to accurately name all attorneys representing a party of record. Instead, it only lists the person who electronically filed the document on behalf of the party, which is often a legal assistant, paralegal, or other supporting staff. In such cases where the document is filed by one attorney but there are multiple co-counsel for the party, only the filing attorney is listed. OFBF notes that in practice, to be certain that one has included all appropriate attorneys in communications, one must re-review each document filed by a party of record to verify each attorney named in the signature block of a filed document. Finally, OFBF explains that the "Parties of Record" tab fails to include the email addresses for any parties of record or attorneys for parties of record listed, even though it includes an asterisk indicating that a particular filer has agreed to be served automatically via electronic mail. OFBF notes that in practice, a person must refer back to the docket and review an individual document filed by the party to be served in order to obtain the relevant email addresses. (OFBF Initial Comments at 1-2.) IGS agrees with this proposal, stating one current list of email addresses for counsel in the proceeding accessible on the Docketing Information System (DIS) would be beneficial for all involved (IGS Reply Comments at 13).

{¶ 12} The Commission notes that the e-filing system suggestions by OFBF are well taken. Although the suggestions are not rule changes, the Commission will take these comments into consideration as it considers further DIS enhancements.

C. Administrative Code Chapter 4901-1

1. OHIO ADM.CODE 4901-1-01 (DEFINITIONS)

{¶ 13} IEU-Ohio proposes that the docketing website listed in this rule be updated (IEU-Ohio Initial Comments at 3). The Commission has reviewed the website listing and ensured the website address listed in the rule to be the accurate webpage for the docketing information system.

{¶ 14} Dominion suggests that the Commission consider adding a reference to R.C. 4901.18 to the definition of ALJ, which empowers the Commission to appoint "examiners" and enumerates their powers (Dominion Initial Comments at 2). The Commission agrees with the comments by Dominion and has modified the language accordingly.

2. OHIO ADM.CODE 4901-1-02 (FILING OF PLEADINGS AND OTHER DOCUMENTS)

{¶ 15} Dominion supports reducing the number of copies for a paper filing from twenty to two, as proposed by Staff (Dominion Initial Comments at 2). Noting that no comments were filed in opposition to this rule change proposed by Staff, the Commission agrees and adopts the change.

{¶ 16} OCC and NOAC propose that when seeking to reopen a case, the rule should require that all other parties to the case be included on any such communication. To accomplish this goal, OCC and NOAC propose additional language be added to division (E)(2). (OCC and NOAC Initial Comments at 2.)

{¶ 17} The Commission finds that OCC and NOAC's proposed modification is unnecessary at this time. We note that no stakeholder has identified instances in which the current rule has prejudiced them. Attempts to reopen cases are not frequent, thus additional regulatory restrictions are unnecessary to govern the practice.

3. OHIO ADM.CODE 4901-1-03 (FORM OF PLEADINGS AND OTHER PAPERS)

{¶ 18} IGS notes that because the Commission's proposed change in Ohio Adm.Code 4901-1-05(D) establishes service by email as the default method for any party represented by an attorney in a Commission proceeding, that change should be reflected in Ohio Adm.Code 4901-1-03(A), as well. The change would require attorneys to provide their email addresses in the pleading and remove attorneys' option to include a fax number or email address if they are willing to accept service by fax or email. (IGS Initial Comments at 2-3.) IEU-Ohio is also in favor of this revision (IEU-Ohio Reply Comments at 3).

{¶ 19} The Commission finds IGS's proposal reasonable and adopts the proposal to establish email as the default method of service upon parties represented by an attorney. We emphasize that this amendment affects only parties represented by an attorney, although email or fax service is available to pro se parties should they request it. The Commission has modified the language accordingly.

{¶ 20} IGS also proposes, either in this rule or in Ohio Adm.Code 4901-1-02, to add the requirement that electronically filed documents must be filed in a way that they can be searched electronically. IGS states that while the electronic filing manual requires source files that allow for search functions, not all stakeholders file searchable source documents. IGS notes that this change would provide benefits to stakeholders when reviewing the dockets, as filings before the Commission can reach hundreds of pages of content. (IGS Initial Comments at 1-2; IGS Reply Comments at 12.) OCC and NOAC propose this same rule change by creating a new division (D) in this rule (OCC and NOAC Initial Comments at 2). IEU-Ohio is generally in favor of these proposals and proposes a slight adjustment in which parties are required to ensure that e-filed documents are searchable, parties are prohibited from intentionally making e-filed documents unsearchable, and that parties work together informally to resolve any issues with the e-filed documents (IEU-Ohio Reply Comments at 2).

{¶ 21} Initially, the Commission notes that sections 1.08 and 5.04 of the electronic filing manual states that PDFs should be created from electronic source files rather than scanned images to provide more accurate content indexing and allow for search functions. Further, existing rule Ohio Adm.Code 4901-1-02(D)(1) requires that all e-filed documents must comply with the electronic filing manual. Additionally, if a document is filed without search capability, a party may reach out to the filing party to request a document with search capability. If the filing party refuses to provide a document with search capability, the requesting party could file a motion to compel the production or filing of such a document. Because the electronic filing manual already requires PDFs to allow for search functions and parties have the ability to request searchable documents or file a motion to compel, the Commission finds that no rule change is necessary.

4. OHIO ADM.CODE 4901-1-04 (SIGNING OF PLEADINGS)

{¶ 22} Staff did not suggest any changes to Ohio Adm.Code 4901-1-04, which provides the requirements for signatures on pleadings. Similarly, no filed comments discussed this rule. As such, the Commission amends the rule only to reduce the number of regulatory restrictions.

5. OHIO ADM.CODE 4901-1-05 (SERVICE OF PLEADINGS AND OTHER PAPERS)

{¶ 23} IEU-Ohio states that the general practice among attorneys practicing in front of the Commission is to electronically serve all listed counsel for each party, not just the counsel of record or first-listed counsel. To reflect that practice, IEU-Ohio proposes that division (C) of this rule be updated to reflect that practice. (IEU-Ohio Initial Comments at 3-4.) IGS supports IEU-Ohio's proposal, but suggests different wording, which would require service to all counsel and also prevent the disqualification of proper service based on a procedural technicality (IGS Reply Comments at 13). The Commission finds that no rule change is necessary, as IEU-Ohio concedes that it is currently the general practice of attorneys to serve all listed counsel for each party.

{¶ 24} At the workshop, counsel on behalf of Columbia and Dominion requested to change the rule that currently allows parties to serve pleadings through various means to require attorneys to complete service via email (Tr. at 12-13). Staff proposed language that would effectuate this suggestion.

{¶ 25} IEU-Ohio also notes that it supports the proposed rule change to require electronic service on attorney-represented parties. But it notes that reliance on the e-filing system may not be practical or timely, such as when a document is filed near close of business and may not be sent until the following morning. IEU-Ohio proposes to add to the Commission's proposed rule to require electronic service the day a document is filed. In some circumstances, it would be impractical and cumbersome to update a service list in real time, so IEU-Ohio suggests that the obligation to electronically serve be limited to parties that have made an appearance no later than the day before a document is filed. (IEU-Ohio Initial Comments at 5.)

{¶ 26} IGS notes its support for the proposed change to establish service by email as the default method for any party represented by an attorney in a Commission proceeding. IGS also notes that this change should eliminate the mailing of Commission entries and orders to those parties represented by an attorney. Additionally, IGS recommends that mailing Commission entries and orders to those parties represented by an attorney should be eliminated from the Commission's process, which would produce savings to the Commission in time and postage. (IGS Initial Comments at 2-3.)

{¶ 27} OCC and NOAC argue that the phrase "or email service is impractical" should be deleted because email service from one attorney to another is always more practical than other forms of service (OCC and NOAC Initial Comments at 3). IEU-Ohio agrees that email service should be the preferred method of service among attorney-represented parties but insists that the rule should provide for exceptions, as sometimes the file size of documents is too large for email (IEU-Ohio Reply Comments at 3).

{¶ 28} Dominion states that it supports the recommendation that email be the default method when service is required. But Dominion also proposes a change that it says would clarify that service via email is complete upon transmission is applicable to all and not just upon pro se parties. (Dominion Initial Comments at 3.)

{¶ 29} The Commission notes that many of these proposals will be adopted. The requirement that attorneys accept service via email is not overly burdensome and will result in faster and more efficient service. As suggested by IGS, these changes may eliminate the need for mailing of Commission entries and orders to those parties represented by an attorney, which will reduce administrative costs for the Commission.[1] The applicable proposals will be adopted, and the rule modified to reflect those changes. However, IEU-Ohio's proposal to require email service in addition to service through the e-filing system will not be adopted. IEU-Ohio reasons that if an e-filed document is filed late in the day, the e-filing system may not send a notification email until the following business day. We note that the general practice among attorneys is to email a courtesy copy of the filing to parties accepting email service, which enhances communication among the parties. However, the Commission does not find it necessary to adopt a rule mandating this practice.

6. OHIO ADM.CODE 4901-1-06 (AMENDMENTS)

{¶ 30} Staff suggested a minor change of the term "attorney examiner" to "ALJ" to Ohio Adm.Code 4901-1-06, which provides for the amendment of pleadings filed with the Commission. No comments discussed this rule. As such, the Commission finds that Staff's change will be adopted, and no additional changes are necessary.

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[1] DIS automatically serves electronic service notices rather than mailed hard copies on all individuals who have e-filed documents in the case. These individuals have an asterisk next to their name on the "Party List" tab in DIS. However, if an individual has not e-filed documents in the case, then the docketing division automatically sends paper copies of Commission entries and orders to those individuals, regardless if they have included "willing to accept electronic service" in their signature line. Future DIS updates may allow individuals to sign up for electronic service on their own.

7. OHIO ADM.CODE 4901-1-07 (COMPUTATION OF TIME)

{¶ 31} Staff suggested minor changes, including the terms "fax" and "email" to Ohio Adm.Code 4901-1-07, which provides for the computation of time prescribed or allowed by the Commission. No comments discussed this rule. As such, the Commission finds that Staff's changes will be adopted, and the only additional changes reduce the number of regulatory restrictions in this rule.

8. OHIO ADM.CODE 4901-1-08 (PRACTICE BEFORE THE COMMISSION, REPRESENTATION OF CORPORATIONS, AND DESIGNATION OF COUNSEL OF RECORD)

{¶ 32} At the workshop, Columbia and Dominion recommended amending Ohio Adm.Code 4901-1-08(D) to state that non-attorney and non-parties at a settlement conference may not negotiate on behalf of a party, which they argue would prevent the unauthorized practice of law (Tr. at 14). Additionally, Staff proposed language that would implement this change.

{¶ 33} FirstEnergy states that it supports the proposed changes to this rule that it states would require the attendance of an attorney on behalf of an entity at a prehearing conference (FirstEnergy Initial Comments at 3). The Gas Companies support the proposed change because they state that it would ensure that the rule is in compliance with the Ohio Supreme Court's guidelines against the unauthorized practice of law. The Gas Companies note OCC and NOAC's concern and agree that non-lawyer experts are important to settlement negotiations. The Gas Companies believe the proposed rule change would allow for non-lawyer experts to participate in the settlement process. (Gas Co. Reply Comments at 2.)

{¶ 34} OCC and NOAC state their opposition to the proposed changes to division (D), which they say would limit parties' ability to use non-lawyer experts in settlement

discussions and expand the requirement to all cases rather than only complaint cases. OCC and NOAC explain that the rule change could be interpreted to mean that technical experts are not allowed to speak during settlement meetings, which would interfere with candid and in-depth settlement discussions. Alternatively, OCC and NOAC argue that the rule should be modified to clarify that it only applies when settlement is discussed in the presence of an ALJ and not to private settlement discussions between parties. (OCC and NOAC Initial Comments at 4.)

{¶ 35} Upon review of the comments, the Commission agrees that the newly proposed language is unnecessary and, therefore, we have eliminated the relevant language from the rule. Importantly, we find that this proposed rule change is likely to cause confusion and different interpretations by affected stakeholders. For instance, FirstEnergy notes that the rule change would require the attendance of an attorney to represent entities at prehearing conferences. OCC and NOAC state that the modification would prevent the participation of non-lawyer experts in settlement conferences. Neither of these interpretations are intended by Staff's proposed language. The Ohio Supreme Court already has a rule preventing the unauthorized practice of law, and the proposed modification has resulted in unintended interpretations by stakeholders. For these reasons, the Commission declines to adopt this change.

9. OHIO ADM.CODE 4901-1-09 (EX PARTE DISCUSSION OF CASES)

{¶ 36} FirstEnergy suggests adding that ex parte restrictions shall not apply to discussions between a party and an ALJ assigned to mediate a case while the case is being mediated (FirstEnergy Initial Comments at 3-4). IEU-Ohio does not take a position on this proposal but responds that if this proposal is adopted, this exception should be limited to instances where a formal mediation has been initiated (IEU-Ohio Reply Comments at 4).

{¶ 37} The Commission finds this proposal to be superfluous. The language of the rule is clear that the restrictions apply to an ALJ "assigned to the case," and settlement

conferences are not mediated by ALJs assigned to the case. Other ALJs mediate settlement conferences and subsequent settlement conversations, in part to avoid the risk of ex parte communications. For these reasons, the Commission declines to adopt the proposed change.

{¶ 38} OCC and NOAC propose to expand the rule to apply to "anyone else reasonably expected to be involved in the decisional process of the proceeding" rather than just the Commissioners and the ALJ. Additionally, OCC and NOAC request a seven-day notice for any discussion discussing the merits of the case. OCC and NOAC also propose the addition of a 14-day response time for parties to respond to any ex parte filing. (OCC and NOAC Initial Comments at 6.)

{¶ 39} IEU-Ohio, AES Ohio, and the Gas Companies oppose the proposal to apply the rule to anyone reasonably expected to be involved in the decision process because it would not be possible for parties to ascertain which Staff members are reasonably expected to be involved in the decision process (IEU-Ohio Reply Comments at 4; Gas Co. Reply Comments at 2-3; AES Ohio Reply Comments at 2-3). Similarly, FirstEnergy opposes the amendments proposed by OCC and NOAC. It notes that the amendment is unnecessary and would create uncertainty. (FirstEnergy Reply Comments at 2-4.) IEU-Ohio also asserts that this process would be unduly burdensome and could encourage parties to retreat from working with Staff rather than working collaboratively (IEU-Ohio Reply Comments at 4). The Gas Companies argue that the rule would effectively chill contact with Staff, even for settlement purposes (Gas Co. Reply Comments at 2-3). AES Ohio argues that expanding the restriction on ex parte communications is contrary to Ohio law, because R.C. 4903.081 prohibits only communications between a party to the proceedings and Commissioners or an ALJ associated with the case. AES Ohio also argues that ex parte communications are only between a decision-maker and a party. *See State v. Pickens*, 2016-Ohio-5257, 60 N.E.3d 20, ¶ 20 (1st Dist.), citing *State v. Jenkins*, 15 Ohio St.3d 164, 473 N.E.2d 264 (1984), paragraph thirteen of the syllabus. It asserts that because Staff are not decision makers, ex parte rules should not apply to communications with Staff. (AES Ohio Reply Comments at 2-3.)

{¶ 40} The Gas Companies also oppose OCC and NOAC's proposal regarding the timing of ex parte communications because they argue that the rule is unnecessary, as ex parte communications are a rare occurrence. (Gas Co. Reply Comments at 2-3.) AES Ohio also opposes the proposed time deadlines proposed by OCC and NOAC. It states that OCC and NOAC have not shown that the current rule has harmed or prejudiced them, and seven-day notice is not practical because ex parte communications sometimes must occur in emergency situations. (AES Ohio Reply Comments at 2-3.)

{¶ 41} The Commission agrees with the stakeholders who responded to OCC and NOAC's proposals. The phrase "anyone else reasonably expected to be involved in the decisional process" does not provide sufficient clarity and would likely cause confusion for stakeholders. Additionally, as pointed out by AES Ohio, ex parte communications are communications between a decision maker and a party. Although Staff may provide analysis in the form of reports, Staff is not a decision maker in Commission proceedings. Thus, we decline to expand the rule as proposed. Furthermore, we find that the additional timing restrictions proposed by OCC and NOAC are also unnecessary. Ex parte communications are rare and sometimes arise in an emergency situation, so a requirement that they be scheduled seven days in advance could inhibit emergency communications. As to the proposal for a 14-day response time for parties to respond to any ex parte filing, OCC and NOAC have not provided any evidence that there is a need for a response period, and the Commission does not see the need for such an amendment. Thus, we decline to adopt these proposed amendments.

10. OHIO ADM.CODE 4901-1-10 (PARTIES)

{¶ 42} ELPC states that Staff can have a significant influence over the outcome of proceedings. ELPC seeks to make changes to this rule that would (1) prohibit Staff from ex parte communications with the ALJ or Commissioners, and (2) subject Staff to discovery. To accomplish those changes, ELPC proposes certain changes to division (C) of the rule. (ELPC Initial Comments at 2-3.) OCC and NOAC support ELPC's proposal, noting that

Staff's role is similar to other intervening parties, so it would be unfair if only Staff is allowed to communicate with the Commissioners or the ALJ. They also note that communications that a utility is barred from having directly with the Commissioners could be indirectly relayed by Staff. (OCC and NOAC Reply Comments at 2-3, 9-10; OCC and NOAC Initial Comments at 11.)

{¶ 43} OCC and NOAC recommend amending division (C) to provide that Staff is considered a party for purposes of discovery[2] if Staff (1) signs a stipulation and will testify to support it, or (2) will submit pre-filed testimony. OCC and NOAC also note that discovery on Staff should be limited to taking the deposition of Staff witnesses. (OCC and NOAC Initial Comments at 6.) FirstEnergy opposes this proposed amendment, arguing that it would give parties the opportunity to ask improper questions of Staff regarding confidential settlement communications. FirstEnergy asserts that allowing questions about settlement negotiations would have a chilling effect. (FirstEnergy Reply Comments at 4.)

{¶ 44} As an initial matter, we note that Staff has a unique role and responsibilities in cases that is not shared by all intervening parties. In many proceedings in which Staff participates, Staff has an obligation to file in the docket a report of investigation, and any Staff person contributing to the report may be subpoenaed to testify at the hearing. Moreover, parties may file a motion that all or part of such report may be stricken upon motion of any party for good cause shown. Because of Staff's unique role and responsibilities, the recommendations to prohibit Staff from ex parte communications with the ALJ or Commissioners and to subject Staff to discovery are, therefore, denied.

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[2] OCC and NOAC also propose additional language to be added to Ohio Adm.Code 4901-1-16(I) and Ohio Adm. Code 4901-1-21(A) that would support their proposal to allow discovery on Staff. As all amendments relate to the same subject matter, all these proposals will be considered here.

{¶ 45} OCC and NOAC propose adding a new division (A)(9) that would recognize as a party "Any person with a statutorily recognized right to intervene" (OCC and NOAC Initial Comments at 6).

{¶ 46} A number of stakeholders oppose the proposed change. AEP Ohio states that OCC appears to imply that it has a statutory right to intervene. AEP Ohio and the Gas Companies note that OCC has a statutory opportunity, not a right, to intervene and argues that the Commission should make this fact clear in its order. (AEP Ohio Reply Comments at 6; Gas Co. Reply Comments at 3.) IEU-Ohio views OCC's change as unnecessary because Ohio Adm.Code 4901-1-11 already allows intervention if a statute confers a right to intervene. IEU-Ohio also argues that the proposal could create an additional regulatory cost and burden for other parties, and it is unclear if the proposal could make OCC a party to many proceedings that may not warrant OCC's participation. (IEU-Ohio Reply Comments at 5.)

{¶ 47} The Commission does not find this proposed change to be necessary. OCC and NOAC have not identified a specific problem that would be solved by their proposal. As pointed out by IEU-Ohio, Ohio Adm.Code 4901-1-11 already allows intervention if a statute confers a right to intervene, so the proposal would be duplicative. For these reasons, the Commission declines to adopt this amendment.

11. OHIO ADM.CODE 4901-1-11 (INTERVENTION)

{¶ 48} AEP Ohio proposes adding a division to this rule that would authorize the ALJ to grant limited intervention to a person but would not allow that person to serve discovery or notice depositions until either a procedural schedule is established or the ALJ otherwise authorizes. AEP Ohio argues that this change would enable the ALJ to place appropriate limits on discovery in proceedings where discovery is unnecessary, unduly burdensome, or premature. (AEP Ohio Initial Comments at 4-5.)

{¶ 49} IEU-Ohio opposes AEP Ohio's proposed addition, arguing that there is no reasonable basis for the rule change. IEU-Ohio also asserts that it would "hinder due process and the public interest by denying discovery opportunities until the Commission grants intervention, which historically is often deferred until later stages of a proceeding." (IEU-Ohio Reply Comments at 5.) IGS argues that the Commission should reject AEP Ohio's proposal to limit discovery by intervening parties, as it is unfair, unreasonable, and an attempt to frustrate the discovery process (IGS Reply Comments at 9-10).

{¶ 50} The Commission finds that there is not a sufficient need for the blanket rule change proposed by AEP Ohio. We note that, pursuant to the current rules, parties may file a motion for a protective order if they believe that discovery is unnecessary, unduly burdensome, or premature.

{¶ 51} **Division (B)(5)** - OCC and NOAC propose deleting division (B)(5), which requires the ALJ to consider, among other things, the extent to which the person's interest is represented by existing parties when reviewing a motion to intervene. OCC and NOAC argue that requiring the ALJ to consider that factor is contrary to R.C. 4903.221 and to Ohio Supreme Court precedent. (OCC and NOAC Initial Comments at 7-8.)

{¶ 52} AEP Ohio argues that OCC and NOAC's proposal to remove division (B)(5) should be rejected. AEP Ohio points out that, even if (B)(5) were removed, motions to intervene could still be denied if a person's interest is adequately represented by existing parties, pursuant to (A)(2). Furthermore, AEP Ohio notes that the Ohio Supreme Court recognized that language in (B)(5) is part of the Commission's consideration when determining whether to grant or deny a motion to intervene. *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 824, 2006-Ohio-5853, 856 N.E.2d 940, ¶16. AEP Ohio further argues that this revision would only delay proceedings and increase the burden on the utilities and Staff. (AEP Ohio Reply Comments at 6-7.)

{¶ 53} The Commission finds persuasive the arguments of AEP Ohio, as the substance of division (B)(5) is also represented in division (A)(2). Additionally, we note that

OCC and NOAC have not pointed to a single case where they have been prejudiced by this rule or to any case whatsoever where intervention has been denied because of overlapping interests. For that reason, we decline to adopt the proposed amendment.

{¶ 54} **Division (F)** - Additionally, OCC and NOAC propose an amendment to division (F), which would allow motions to intervene filed out of time to be granted for good cause rather than under extraordinary circumstances. OCC and NOAC argue that change would bring the rule into compliance with R.C. 4903.221, which provides that the Commission may grant a late motion to intervene "for good cause shown." (OCC and NOAC Initial Comments at 8-9.)

{¶ 55} AEP Ohio disagrees with OCC and NOAC's recommendation. AEP Ohio argues that reducing this burden on parties who file late motions to intervene is unnecessary, would delay proceedings, and would incentivize untimely filings. (AEP Ohio Reply Comments at 7.)

{¶ 56} We find that this proposal will better reflect the language in R.C. 4903.221. The Commission does not believe that this change would incentivize untimely filings or delay proceedings, as the statute provides the Commission with the discretion, rather than the requirement, to grant late-filed motions to intervene if good cause is shown. A late-filing party thus risks denial if the motion is filed out of time. The language proposed by OCC and NOAC does not reflect the Commission's discretion, so the proposed amendment has been modified to better reflect the statutory language. Thus, we adopt the proposal and modify the language of the rule in accordance with the language in R.C. 4903.221.

12. OHIO ADM.CODE 4901-1-12 (MOTIONS)

{¶ 57} Staff suggested a minor change of the term "attorney examiner" to "ALJ" to Ohio Adm.Code 4901-1-12, which provides for the requirements for the filing of motions. No comments discussed this rule. As such, the Commission finds that Staff's change will be

adopted, and the Commission also adopts certain changes that will reduce the number of regulatory restrictions in the rule.

13. OHIO ADM.CODE 4901-1-13 (CONTINUANCES AND EXTENSIONS OF TIME)

{¶ 58} Staff suggested a minor change of the term "attorney examiner" to "ALJ" to Ohio Adm.Code 4901-1-13, which provides for the requirements for continuances and extensions of time. No comments discussed this rule. As such, the Commission finds that Staff's change will be adopted and adopts other changes that will reduce the number of regulatory restrictions in the rule.

14. OHIO ADM.CODE 4901-1-14 (PROCEDURAL RULINGS)

{¶ 59} In their joint comments, Columbia and Duke state that, for certain proceedings, a procedural conference would be beneficial to align dates with all parties and discuss other procedural matters. They propose that the title of this rule be changed to "Procedural rulings and conferences" and the following language be added at the end of the rule: "Upon request of the parties or by order of the Commission or ALJ, a procedural conference may be held with all parties to a proceeding prior to a procedural entry being issued." (Columbia and Duke Initial Comments at 2.) IEU-Ohio supports this proposal and notes that allowing all parties to consult with one another and with the ALJ regarding scheduling issues could prevent conflicts later in the proceedings (IEU-Ohio Reply Comments at 6).

{¶ 60} Similarly, IEU-Ohio proposes a division be added to this rule that would encourage the Commission to hold prehearing conferences and issue procedural schedules near the outset of a contested proceeding, which would reduce unnecessary motion practice, outline the scope of potential contested issues, and establish the timeframe necessary to review those issues (IEU-Ohio Initial Comments at 5).

{¶ 61} We find these amendment proposals to be unnecessary at this time. Prehearing conferences and informal email communications are already regularly utilized to discuss deadlines and hearing dates for proceedings. Additionally, if a party finds that it will be unable to comply with a deadline or hearing date, it may file a motion for extension of time or a motion to extend the procedural schedule. If no prehearing conference is scheduled, a party may request that a prehearing conference be scheduled. A party may coordinate with other parties and propose agreed-upon dates for the ALJ's consideration. Ultimately, there are existing procedures in place to address the concern. For these reasons, we decline to adopt the proposed amendments to this rule.

15. OHIO ADM.CODE 4901-1-15 (INTERLOCUTORY APPEALS)

{¶ 62} OCC and NOAC propose amendments to expand the availability of interlocutory appeals. They note that division (A)(1) of this rule allows an interlocutory appeal if (1) a motion to compel is granted but not if one is denied and (2) if a motion for protective order is denied but not if one is granted. OCC and NOAC allege that these rules favor utilities and propose that the rule be amended to allow interlocutory appeals if either a motion to compel or motion for protective order is granted or denied. Additionally, OCC and NOAC argue that division (A)(3) should be amended to allow for an interlocutory appeal if the Commission "quashes or refuses to quash a subpoena." OCC and NOAC also propose that the rule should be amended to provide that a non-presiding ALJ considers interlocutory appeals to avoid a presiding ALJ from being asked to certify an appeal from his/her own decision. OCC and NOAC propose another change, which would provide that undue prejudice or expense to a party is an independent justification for an interlocutory appeal. They also propose to change the rule, which currently allows for the Commission to defer ruling on an interlocutory appeal until "some later point in the proceeding." OCC and NOAC propose adding the following limitation to that division of the rule: "provided that there is no harm to the parties by deferring the ruling." (OCC and NOAC Initial

Comments at 9-10.) IEU-Ohio states that it supports the amendments to this rule proposed by OCC and NOAC (IEU-Ohio Reply Comments at 6).

{¶ 63} The Gas Companies assert that the Commission should reject all the proposed amendments to this rule proposed by OCC and NOAC. They note that the parties have not identified any specific instances in which they have been prejudiced by the existing rule. Additionally, the Gas Companies argue that the availability of interlocutory appeals provide balance to proceedings because the utility typically caries a heavier discovery burden than intervening parties. (Gas Co. Reply Comments at 3.)

{¶ 64} FirstEnergy also opposes the proposed amendments to this rule. It argues that the availability of interlocutory appeals should not be expanded because there is generally no right to an immediate or interlocutory appeal. FirstEnergy also argues that interlocutory appeals can result in a fragmented presentation of issues, so those appeals should be limited. FirstEnergy notes that those additional issues proposed by OCC and NOAC can be raised in any appeal of the final order in the case. FirstEnergy argues that presiding ALJs are capable of reviewing interlocutory appeals objectively, so the rule should not be amended to require a non-presiding ALJ to resolve interlocutory appeals. It also argues that OCC and NOAC have presented no justification for their request that undue prejudice or expense be considered an independent basis for an interlocutory appeal, so that amendment should not be implemented. Finally, FirstEnergy argues that the proposed change to restrict the Commission's ability to defer an interlocutory appeal is unworkable and unnecessary. (FirstEnergy Reply Comments at 4-6.)

{¶ 65} Upon review of the comments filed on this matter, the Commission determines that there is no need to modify the rule as proposed by OCC and NOAC. We emphasize that interlocutory appeals are a unique opportunity available under specific, narrow circumstances. Interlocutory appeals would present an additional litigation and administrative burden if frequently utilized. In making this ruling, we note that parties still have every opportunity to submit arguments through motions, memoranda contra, and

reply briefs. Any party may file an application for rehearing to reargue any of the issues that are not available for interlocutory appeal. Further, we will not adopt the proposed modification that would limit the time for ruling on an interlocutory appeal contingent on the arbitrary standard of harm done. The question of harm done would be yet another issue to be argued by the parties and resolved by an ALJ. Should a party believe that delay would cause harm, that party may present the reasons for that belief into the interlocutory appeal itself. Additionally, we decline to amend the rule to require that a non-presiding ALJ considers interlocutory appeals, noting that presiding ALJs are capable of and required to review interlocutory appeals objectively. For these reasons, OCC and NOAC's proposals for this rule will not be adopted.

16. OHIO ADM.CODE 4901-1-16 (GENERAL PROVISIONS AND SCOPE OF DISCOVERY)

{¶ 66} AEP Ohio proposes an amendment that would recognize the discovery limitations found in Chapter 4901-1 of the Administrative Code. (AEP Ohio Initial Comments at 2). No stakeholder objected to this suggestion in its comments, and the Commission believes that this change would increase the rule's clarity. For these reasons, we adopt this proposed change and modify the attached rule accordingly.

{¶ 67} OCC and NOAC argue that the rule should be amended to add that supplementation of responses must be provided within five business days or any shorter deadline established by the ALJ (OCC and NOAC Initial Comments at 11).

{¶ 68} AES Ohio opposes the proposed amendment, arguing that the amendment is inconsistent with the Civil Rules of Procedure, which require that parties seasonably supplement responses in limited situations. Civ. R. 26(E)(1). AES Ohio argue that a five-day turnaround time would be onerous because of the significant number of discovery requests often served on utilities. (AES Ohio Reply Comments at 3.)

{¶ 69} The Commission declines to modify the rule as proposed by OCC and NOAC. As noted by AES Ohio, there are sometimes a significant number of responses that

are subject to supplementation. Adopting a blanket rule requiring a five-day response time would not account for the differences in each proceeding. However, parties already have the means to request supplemental responses through a motion to compel if a party believes supplementation is untimely. Thus, the proposed modification will not be adopted.

{¶ 70} **Division (C)** - AEP Ohio also proposes a new division (C) that would prevent parties from using discovery responses in other proceedings without first meeting certain criteria (AEP Ohio Initial Comments at 2). The Gas Companies agree with this proposed amendment because it would give parties the opportunity to supplement or review discovery responses when prior responses may be stale (Gas Co. Reply Comments at 4).

{¶ 71} Numerous parties oppose this proposal. IEU-Ohio notes that the amendment could limit the information available in a case and may establish additional regulatory burdens. IEU-Ohio also notes that it would be more practical to have the ALJ make a determination on evidence relevancy rather than relying on a blanket rule. (IEU-Ohio Reply Comments at 7-8.) OMAEG argues that the proposal conflicts with R.C. 4903.082, which requires that all parties be granted ample rights of discovery (OMAEG Reply Comments at 3). IGS notes that the Commission previously rejected attempts to limit the use of discovery in subsequent proceedings. *See In re FirstEnergy*, Case No. 14-1297-EL-SSO, Entry (July 22, 2015) at 6, citing *In re Duke Energy Ohio*, Case Nos. 14-841-EL-SSO, et al., Entry (Aug. 27, 2014) at 3-6; Entry on Rehearing (Oct. 22, 2014) at 4-7. IGS urges the Commission to maintain its current practice of considering the use of discovery in subsequent proceedings on a case-by-case basis because the ALJ is best suited to make a relevancy determination. (IGS Reply Comments at 4-5.) OCC and NOAC argue that this rule change would waste time and increase the number of discovery requests. OCC and NOAC state that information from one proceeding is commonly relevant to other proceedings. (OCC and NOAC Reply Comments at 7-8.)

{¶ 72} Upon thorough review of the comments filed on this matter, the Commission determines that there is no need to modify the rule as proposed by AEP Ohio. We do not find the reasons to adopt this modification to be persuasive and note that the rule change would likely decrease efficiency and delay proceedings. To the extent that AEP Ohio is concerned with irrelevant evidence being introduced, it may make objections based on relevancy on a case-by-case basis. Accordingly, AEP Ohio's proposal will not be adopted.

{¶ 73} **Division (D)(5)** - AEP Ohio also proposes a clarification in division (D)(5) to make it clear that requests for discovery supplementation can only be made after the original discovery response but still must be within the period for discovery (AEP Ohio Initial Comments at 3). AES Ohio supports AEP Ohio's proposed amendment (AES Ohio Reply Comments at 3).

{¶ 74} Additionally, at the workshop, Columbia and Dominion proposed a change that would require specific discovery responses to supplement rather than allowing blanket requests to supplement all responses to discovery (Tr. at 15). Neither stakeholder proposed specific language to effectuate this proposal in written comments.

{¶ 75} IEU-Ohio generally opposes AEP Ohio's proposal, stating that it goes too far. Instead, IEU-Ohio proposes a rule that prohibits blanket requests for supplementation and also allows parties to use reasonable discretion to seek updates for information as it becomes available. IEU-Ohio does not propose specific language to be added to the rule to accomplish its proposal. (IEU-Ohio Reply Comments at 7-8.)

{¶ 76} IGS responds that AEP Ohio's proposed change to (D)(5) is inefficient and should be rejected. IGS states that regardless of when or how the request to supplement is submitted, the response will be the subsequently acquired information. Additionally, IGS argues that the requirement to file to supplement the record within the time period of discovery conflicts with existing Ohio Adm.Code 4901-1-17(F), which states that the time period for discovery does not apply to requests for the supplementation of prior responses. (IGS Reply Comments at 6-7.) OMAEG also opposes AEP Ohio's proposed change, arguing

that it conflicts with R.C. 4903.082, which requires that all parties be granted ample rights of discovery (OMAEG Reply Comments at 3).

{¶ 77} Upon thorough review of the comments filed on this matter, the Commission determines that there is no need to modify the rule as proposed by AEP Ohio. R.C. 4903.082 requires that all parties be granted ample rights of discovery. We decline to adopt the proposed amendments at this time.

{¶ 78} **Division (G)** - AEP Ohio also proposes to add language that would prevent discovery requests from intervenors, other than Commission Staff, regarding reports or annual filings for which a hearing is not required and/or never ordered (AEP Ohio Initial Comments at 3-4).

{¶ 79} Numerous parties oppose this proposal. IEU-Ohio notes that the Commission has already rejected similar arguments in a prior rulemaking proceeding. *In re Comm. Rev. of its Rules Regarding Practice and Procedure Before the Comm.*, Case No. 11-776-AU-ORD (*2011 Rules Proceeding*), Finding and Order (Jan. 22, 2014) at 22-24. IEU-Ohio argues that parties should have access to as much information as possible, even in cases where a hearing is not required. (IEU-Ohio Reply Comments at 9.) OEG notes that early discovery requests may eliminate subsequent intervenor requests for a hearing by allowing parties to resolve potential misunderstandings or disputes. OEG also notes that this change would further encumber ALJs and require them to resolve intervenor requests for discovery rights in proceedings where hearings are not yet scheduled. (OEG Reply Comments at 1.) IGS asserts that discovery is necessary even in proceedings without hearings to request additional details and clarification, which allows the parties to provide thorough feedback in comments. In addition, IGS asserts that discovery can be used as a tool to avoid a hearing, and without such a tool, parties will be more likely to request hearings to access discovery rights. (IGS Reply Comments at 7-8.) OMAEG states that the proposed amendment would limit parties' participation. OMAEG argues that discovery is

important during regulatory proceedings as a check and balance on the regulated public utility. (OMAEG Reply Comments at 2-3).

{¶ 80} OCC and NOAC argue that R.C. 4903.082 guarantees all parties and intervenors have ample rights of discovery, which is not limited to cases involving hearings. OCC and NOAC note that even in cases without a hearing, discovery is important to the proceeding because it allows parties to obtain sufficient information to provide substantive comments. They argue that the proposed rule would cause issues in proceedings in which a response is required in a short period of time, like a 30-day deadline for objections because discovery must begin immediately. Additionally, they argue that the requirement that parties seek leave to file discovery from the ALJ would be a burden because there would be numerous motions for discovery. OCC and NOAC assert that it would be better to reject AEP Ohio's proposal and permit parties to move for protection if they are subject to unreasonable discovery requests. (OCC and NOAC Reply Comments at 3-5.)

{¶ 81} The Commission acknowledges that not all proceedings result in a hearing, so discovery is sometimes utilized by intervenors in order to provide substantive comments. As noted by OCC and NOAC, parties may move for a protective order if they are subject to unreasonable discovery requests. After a thorough review of the comments submitted in response to this proposal, we reject the proposed amendment.

{¶ 82} **Division (H)** - AEP Ohio proposes to change the rule to reflect that a person is not a party to a proceeding until they have been granted intervention. It seeks to remove division (H) from this rule or modify division (H) to clarify that a party does not include a person with a pending motion to intervene. AEP Ohio also notes that this would give the Commission an opportunity to consider limited intervention that could restrict discovery as part of granting the intervention. (AEP Ohio Initial Comments at 4.) Similarly, at the workshop, Columbia and Dominion proposed to change portions of Ohio Adm. Code 4901-

1-11, 4901-1-12, and 4901-1-16[3] to prohibit persons with pending motions to intervene from serving discovery and receiving service of filings in the case until their motion to intervene is granted. In correlation with that suggestion, the companies propose that motions to intervene be deemed automatically granted on the 31st day after filing unless suspended, which they say would expedite approval of those motions. (Tr. at 15.)

{¶ 83} The Gas Companies support AEP Ohio's proposed amendment. They argue that the rule could be adopted if a change was made in Ohio Adm.Code 4901-1-11(C) that would state all motions to intervene are automatically granted within 45 days of filing unless the Commission acts to deny the motion or suspend the deadline within the 45-day period. (Gas Co. Reply Comments at 4.) AES Ohio supports the proposal, noting that it is burdensome to respond to discovery from parties that are not ultimately granted intervention. It notes that the number of intervenors has increased, including 24 intervening parties in AES Ohio's last rate case. AES Ohio reasons that the proposed change would remove the incentive to file a motion to intervene just for the purpose of requesting and acquiring information from the utility. (AES Ohio Reply Comments at 4.)

{¶ 84} IEU-Ohio opposes AEP Ohio's proposal, asserting that it has not proposed a workable alternative to a long-established practice that would address the concerns raised by AEP Ohio while still maintaining the rights of other parties (IEU-Ohio Reply Comments at 10). OEG argues that the proposal would increase the burden on the Commission because ALJs would need to rule on motions to intervene within a limited period of time so that intervenors would have sufficient time to serve and review discovery. OEG notes that motions to intervene are often not ruled upon until well into the proceeding. (OEG Reply Comments at 2.) IGS states that the Ohio Supreme Court has found that intervention should be liberally allowed for those with an interest in the proceedings. *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶¶ 16, 18.

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[3] As these proposed changes relate to the same subject matter, all the proposals will be considered with this rule.

IGS asserts that the amendment is unnecessary, as it is unlikely that a party makes discovery requests and is subsequently denied intervention. IGS also notes that the existing rules provide an avenue to challenge a motion to intervene. According to IGS, AEP Ohio's proposed rule would impute an additional burden upon the ALJs to provide parties with access to discovery rights as quickly as possible. (IGS Reply Comments at 8-9.) OMAEG also opposes this change, arguing that it conflicts with R.C. 4903.082, which requires that all parties be granted ample rights of discovery (OMAEG Reply Comments at 2-3). OCC and NOAC argue that R.C. 4903.221 guarantees parties a right to intervene in any Commission proceeding where they may be adversely affected, and R.C. 4903.221 contemplates full intervention rather than limited intervention. Additionally, OCC and NOAC argue that discovery should be able to begin as soon as a motion to intervene is filed, as the rule currently allows. They explain that motions to intervene are not often ruled upon immediately and sometimes are not ruled upon until the hearing. (OCC and NOAC Reply Comments at 3, 6.)

{¶ 85} The Commission notes that parties to a Commission proceeding already have adequate means to protect themselves from improper discovery requests without further limiting the opportunities to conduct discovery as proposed. The stated concerns with discovery requests from parties who are ultimately not permitted to intervene are inflated, as it is rare for a motion to intervene to be denied, and these proposals could interfere with the statutory rights of discovery. For these reasons, the Commission rejects these proposed modifications to the rule.

{¶ 86} **Division (I) -** IEU-Ohio seeks amendments to Ohio Adm. Code 4901-1-16(I), 4901-1-21(A), and 4901-1-25(D).[4] IEU-Ohio notes that Commission Staff is largely exempt from discovery rules. It requests that the Commission consider rules that facilitate an expedited exchange of documents or information housed by Staff and already subject to

[4] As these proposed changes relate to the same subject matter, all the proposals will be considered with this rule.

public records law, but that may not be able to be made available as quickly as necessary through traditional records requests. (IEU-Ohio Initial Comments at 6.)

{¶ 87} IGS, OCC, and NOAC agree with IEU-Ohio's proposed amendment, arguing that it will allow proceedings to be more efficient with the most accurate information possible (IGS Reply Comments at 10; OCC and NOAC Reply Comments at 9).

{¶ 88} Staff has a unique role and responsibilities in cases that is not shared by all intervening parties, including an obligation to file a report of investigation. Additionally, Staff relies on other entities to obtain its information, so discovery of information from Staff is not the most direct way of obtaining information. Because of Staff's unique role and responsibilities, the proposal to subject Staff to discovery requests rather than the more fitting public records requests is denied.

17. OHIO ADM.CODE 4901-1-17 (TIME PERIODS FOR DISCOVERY)

{¶ 89} OCC and NOAC propose an amendment in division (A) to clarify that discovery may begin immediately upon filing intervention in a docketed case (OCC and NOAC Initial Comments at 11).

{¶ 90} AEP Ohio opposes OCC and NOAC's modification, stating that requiring a party to respond to discovery before being granted intervention would delay the proceedings and place an unnecessary burden on the responding party (AEP Ohio Reply Comments at 7). AES Ohio also disagrees with the proposed amendment, noting that parties should be granted intervention before they are allowed to serve discovery requests (AES Ohio Reply Comments at 4-5). The Gas Companies argue that proceedings are sometimes initiated by the Commission for purposes of reserving case numbers or without action by utilities. They emphasize that the proposed amendment would authorize discovery even before an application was filed in certain circumstances, which would promote unnecessary discovery. (Gas Co. Reply Comments at 4-5.)

{¶ 91} FirstEnergy also opposes the proposed amendment, noting that discovery could be used as a premature fishing expedition in certain cases. For example, FirstEnergy states that discovery in a monitoring case or a rider audit is premature until the filing of the monitor's report or audit report. *See, e.g.*, *In re FirstEnergy*, Case No. 17-2474-EL-RDR, Entry (Nov. 1, 2018) at ¶ 15; *see also In re FirstEnergy*, Case No. 15-1739-EL-RDR, Transcript (Dec. 1, 2016) at 21. FirstEnergy argues that ALJs should have the flexibility to address discovery on a case-by-case basis, and allowing premature discovery would increase the administrative burden. FirstEnergy notes that the Commission previously rejected OCC's proposed amendment to broadly define "proceeding" under the rules, noting that the right to intervene in, conduct discovery, and present evidence don't exist in every Commission case. *See, In re Matter of the Review of Chapter 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, Case No. 06-685-AU-ORD (*2006 Rules Proceeding*), Finding and Order (Dec. 6, 2006) at 3-4. FirstEnergy also argues that full discovery is normally reserved for cases where a hearing is required. (FirstEnergy Reply Comments at 6-9.)

{¶ 92} OMAEG supports OCC and NOAC's proposed revision to clarify that discovery begins as soon as a proceeding commences. Additionally, OMAEG proposes that the Commission should also clarify that an intervenor may seek discovery immediately upon the filing of an intervention and that a party is obligated to answer that discovery unless the party seeks a motion for protective order. OMAEG emphasizes that intervening parties and the discovery process are integral pieces of the Commission's regulatory process. (OMAEG Reply Comments at 3-4.)

{¶ 93} The Commission finds this proposal to be unnecessary. As pointed out by FirstEnergy, discovery may not be appropriate as soon as a case is docketed. The amendment is not necessary because a party has recourse if a responding party refuses to respond to discovery requests. Additionally, the proposal would eliminate the Commission's discretion to conduct its proceedings in a manner it deems appropriate and could unduly delay the outcome of many cases. This request is denied.

18. OHIO ADM.CODE 4901-1-18 (FILING AND SERVICE OF DISCOVERY REQUESTS AND RESPONSES)

{¶ 94} Staff suggested minor changes, including the terms "ALJ" and "email" to Ohio Adm.Code 4901-1-18, which provides for the filing and service of discovery. No comments discussed this rule. As such, the Commission finds that Staff's changes will be adopted, as well as other changes to reduce the number of regulatory restrictions.

19. OHIO ADM.CODE 4901-1-19 (INTERROGATORIES AND RESPONSE TIME)

{¶ 95} **Division (A), Number of Requests -** AEP Ohio suggests that the number of interrogatories, requests for production, and requests for admission a party can serve under Ohio Admin.Code 4901-1-19, -20, and -22,[5] respectively, should be limited. AEP Ohio suggests limiting discovery to forty requests under each rule unless special permission is granted by the ALJ. (AEP Ohio Initial Comments at 5-6.) AES Ohio supports this proposed limitation, noting that public utility litigation is no more complicated than state and federal lawsuits that employ similar discovery limitations (AES Ohio Reply Comments at 6).

{¶ 96} A number of parties oppose AEP Ohio's proposal to limit discovery in this way. IEU-Ohio notes that detailed discovery requests are necessary and give parties the opportunity to fully investigate the breadth of a case. IEU-Ohio states that this proposal would pose an undue burden on any non-applicant and would be an extreme measure that could be addressed more easily with a motion for protective order when necessary. (IEU-Ohio Reply Comments at 10-11.) IGS urges the Commission to reject AEP Ohio's proposal to limit the number of discovery requests because cases before the Commission can be lengthy and complex. IGS notes that multiple cases are often consolidated and the limit on discovery would impede a party's ability to prepare for hearing. IGS contends that

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[5] As these proposed changes relate to the same subject matter, the proposed amendments to all these rules will be considered together here.

rather than reducing discovery, the limitation would increase the number of discovery motions. IGS asserts that the Commission has rejected this limitation before and should continue to do so here. *See In re FirstEnergy*, Case Nos. 99-1212-EL-ETP, et al., Entry (Jan. 31, 2000) at 4. (IGS Reply Comments at 6.) OMAEG also opposes this change, arguing that it conflicts with R.C. 4903.082, which requires that all parties be granted ample rights of discovery (OMAEG Reply Comments at 3).

{¶ 97} OCC and NOAC oppose AEP Ohio's proposal because parties are guaranteed ample rights of discovery, citing R.C. 4903.082. They argue that for lengthy utility applications or proposals, a limited number of discovery requests would not allow intervenors to properly evaluate the filing. They also note that sometimes utilities do not file supporting documentation or analysis, so discovery is critical. OCC and NOAC also argue that parties would routinely need more than 40 discovery requests, so it would create a burden for the ALJs to consider and rule on requests to serve additional discovery. They note that parties already have a means under existing rules to protect themselves from objectionable discovery requests. (OCC and NOAC Reply Comments at 10-12.)

{¶ 98} The Commission agrees that parties already have adequate means to protect themselves from improper discovery requests without further limiting the opportunities to conduct discovery. The proposal would directly conflict with R.C. 4903.082, which states that all parties "shall be granted ample rights of discovery," and the Commission must review the discovery rules regularly "to aid full and reasonable discovery by all parties." Setting a maximum number of discovery requests, as proposed, would slow down proceedings, as an increase in discovery motions would be expected. For these reasons, the proposal to limit the number of discovery requests to 40 will not be adopted.

{¶ 99} **Division (A), Discovery Deadline and Duty to Respond -** OCC and NOAC propose to modify the 20-day deadline for responding to interrogatories if there is a deadline for response to an application or other filing that is less than 45 days. In that situation, OCC and NOAC propose that the deadline for responding to interrogatories be

set at seven days. OCC and NOAC propose the same changes to 4901-1-20(C).[6] They also propose to add at the end of division (A) of this rule: "Parties have a duty to respond to discovery unless the PUCO has ruled otherwise." (OCC and NOAC Initial Comments at 12-13.) IEU-Ohio supports this provision and asserts the exchange of information between parties should be made as seamless as possible to facilitate open and productive proceedings (IEU-Ohio Reply Comments at 11-12).

{¶ 100} A number of stakeholders oppose the proposal. The Gas Companies argue that Staff review is sufficient scrutiny for accelerated applications, so the proposal is unnecessary. The Gas Companies also disagree with the proposal to impose a duty to respond to discovery because they state that it is confusing and does not explain the obligation when a motion for protective order is pending. (Gas Co. Reply Comments at 5.) AES Ohio also asserts that the Staff review of those cases is sufficient scrutiny. It opposes the proposal to add that there is a duty to respond to discovery, noting that it would be duplicative of existing rules. AES Ohio hypothesizes that the proposal is aimed to avoid the need to file motions to compel and to prevent motions for protective order. (AES Ohio Reply Comments at 5-6.) FirstEnergy notes that the rules currently allow for requests for expedited discovery responses, so the proposal is not necessary. FirstEnergy also asserts that the proposed rule could be abused if discovery is requested the day before a legal holiday. If the amendment is adopted, FirstEnergy suggests that discovery should be deemed served on the next regular business day if it is served after 12:00 p.m. on the last business day before a legal holiday. FirstEnergy also notes that the amendment that parties have a duty to respond to discovery should not be implemented because there are numerous circumstances that a party can decline to respond to discovery, such as when making objections, moving for a protective order, seeking additional time to respond, or refusing duplicate requests. (FirstEnergy Reply Comments at 9-10.)

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[6] Because these proposed changes relate to the same subject matter, the proposed amendments to both rules will be considered together here.

{¶ 101} OTA responds that changing the discovery deadline from twenty days to seven would be unnecessary and cumbersome in the telecommunications space, where regulated telephone companies file tariff revisions and other notifications, which are subject to 30-day approvals. OTA also notes that the rule change could be anticompetitive in telecommunications, where competition is rampant, and the regulatory process can be used to slow or frustrate business responses. OTA argues that the current system has worked well within the existing discovery process because condensed proceedings are generally not controversial. Additionally, OTA notes that the Commission is enabled to adjust the time for responses to discovery and has shortened response dates when justified, so no change is necessary. (OTA Reply Comments at 8-9.)

{¶ 102} We find these proposed rule changes to be unnecessary. As noted by the responding parties, a party requesting discovery can request expedited responses. Additionally, while there is a requirement to respond to discovery requests, responding parties can decline to respond to requests under certain conditions. Thus, adding a requirement that parties have a duty to respond to discovery could cause confusion and is not needed. For these reasons, we decline to adopt the proposed changes.

{¶ 103} **Division (D)** - OCC and NOAC also propose an addition to division (D) that requires electronic documents to be shared electronically rather than requiring a requestor to travel to the responding party's office and look at the electronic documents there. They also propose adding the same requirement to Ohio Adm.Code 4901-1-20.[7] (OCC and NOAC Initial Comments at 12-13.)

{¶ 104} The Gas Companies argue that the Commission should reject this proposed change. They argue that on-site review is more efficient at times because requests often involve large amounts of information that would practically be challenging to extract

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[7] As these proposed changes relate to the same subject matter, the proposed amendments to both rules will be considered together here.

electronically or with printing. The Gas Companies state that the information may be sensitive, and the risk of disclosure increases when the information leaves a party's possession. (Gas Co. Reply Comments at 6.) AES Ohio also opposes the rule change that would prevent on-site inspection of documents. AES Ohio notes that on-site inspection is sometimes more efficient and helps to prevent disclosure of sensitive information. (AES Ohio Reply Comments at 5-6.) Similarly, FirstEnergy opposes this proposal. It argues that rather than adopting an inflexible rule, the parties should try to agree amongst themselves and present the issue to an ALJ when they cannot agree on a solution. FirstEnergy notes that on-site review may be more convenient, less burdensome, less costly, or otherwise preferable because of confidentiality. (FirstEnergy Reply Comments at 10.)

{¶ 105} As currently written, the rule allows for flexibility regarding on-site document review. We note that circumstances may arise in which on-site review is the most sensible means to provide the requested information. While we note that on-site review should not be frequently utilized, the current rule allows flexibility that the proposed amendment would not. If problems arise concerning the planning, coordination, or necessity for on-site document review, and if the parties cannot work out an accommodation, the issue may be presented to ALJ for resolution. We find that this amendment should not be adopted.

20. OHIO ADM.CODE 4901-1-20 (PRODUCTION OF DOCUMENTS AND THINGS; ENTRY UPON LAND OR OTHER PROPERTY)

{¶ 106} OCC and NOAC suggest a change to this rule to limit the number of discovery requests, which was discussed and rejected above under the heading for Ohio Adm.Code 4901-1-19 (OCC and NOAC Initial Comments at 13-14).

{¶ 107} Staff suggested a minor change of the term "attorney examiner" to "ALJ" to Ohio Adm.Code 4901-1-20, which provides for the requirements for production of

documents. The Commission finds that Staff's change will be adopted, and no additional changes are necessary.

21. OHIO ADM.CODE 4901-1-21 (DEPOSITIONS)

{¶ 108} **Division (E) -** OCC and NOAC propose an addition that would require the production of documents for a deposition to be made no later than seven days after the notice of deposition or at the beginning of the deposition. OCC and NOAC note that there is sometimes confusion among the parties about the production deadline in such circumstances. (OCC and NOAC Initial Comments at 14.) OMAEG supports OCC and NOAC's proposed modification (OMAEG Reply Comments at 2).

{¶ 109} The Gas Companies oppose the proposed addition, stating that parties could use the rule to discover documents after the discovery deadline has passed (Gas Co. Reply Comments at 6-7). AES Ohio also opposes this amendment. It argues that the current 20-day deadline is reasonable, and no party should be able to circumvent that requirement by serving deposition notices. (AES Ohio Reply Comments at 7.) Similarly, FirstEnergy opposes the proposed amendment. It argues that the amendment could be used to circumvent the 20-day deposition deadline found in Ohio Adm.Code 4901-1-20. (FirstEnergy Reply Comments at 11-12.)

{¶ 110} The Commission finds that the existing rules provide the parties with ample discovery opportunities. OCC and NOAC have not identified how the existing rules have prejudiced their ability to depose witnesses. Thus, the proposal will not be adopted.

{¶ 111} Columbia and Duke state that depositions are a method by which parties can obtain discovery, and sometimes this method of obtaining documents is used after the discovery deadline or is used to request an overly broad collection of documents. To prevent discovery after the deadline and to narrow the discovery requests associated with depositions, Columbia and Duke propose an amendment to division (E) of this rule that would limit the production of documents at a deposition to documents over which the

deponent has personal knowledge. The proposed rule would also state that the rule shall not be used to obtain discovery after a discovery deadline has passed. (Columbia and Duke Initial Comments at 2-3.)

{¶ 112} AEP Ohio supports Columbia and Duke's joint comments because limiting the scope of documents and tangible things a deponent must produce facilitates the efficient exchange of information during a deposition. AEP Ohio agrees that the practice of using the deposition rule to obtain documents after a deadline is inappropriate, and this amendment would help curtail the practice. (AEP Ohio Reply Comments at 7-8.) AES Ohio also supports the proposed changes (AES Ohio Reply Comments at 7).

{¶ 113} A number of parties oppose Columbia and Duke's proposed amendment. IEU-Ohio asserts that deponents should be required to bring to the deposition any materials relied on for their testimony, regardless of whether it was already produced, or the deadline has passed, as well as discovery responses where the deponent is the sponsoring witness. IEU-Ohio notes that any concern with the scope of discovery requests may be handled though motions for protective orders or procedural conference. (IEU-Ohio Reply Comments at 13.) OMAEG argues that a corporate designee should be required to produce documents relating to the matters in which they have been designated by their company to testify, regardless as to whether the individual has personal knowledge. Additionally, OMAEG argues that discovery through depositions should not be narrowed or otherwise limited by other discovery tools. (OMAEG Reply Comments at 2.)

{¶ 114} Additionally, OCC and NOAC assert that parties could game the system with the proposed amendment by withholding documents from a witness so that the witness would not have personal knowledge and would not have to produce the documents. They also note that the fact that a witness does not have personal knowledge of a document could be evidence. OCC and NOAC also contend that there may not be a witness with personal knowledge of a relevant document, which would prevent the production of it. They argue that there are already protections against a request for an

overly broad collection of documents at a deposition. Additionally, OCC and NOAC argue that document requests through deposition should be allowed even if the deadline for other discovery has lapsed, as is the current practice. They argue that the proposed change would render this rule useless. OCC and NOAC also emphasize that the Commission rejected Columbia and Duke's same proposal in the last rule review case. *See 2011 Rules Proceeding*, Finding and Order (Jan. 22, 2014) at 26. (OCC and NOAC Reply Comments at 13-15.)

{¶ 115} As was the case in the last proceeding considering amendments to these rules, we see no reason to modify or adopt new language addressing this issue. The existing rules allow for the filing of motions for protective order if a responding party believes the requests are overly broad or burdensome. Accordingly, the rules will not be modified in accordance with this proposed amendment.

{¶ 116} **Division (F)** - OCC and NOAC also propose that if a party produces a corporate witness of its choosing who is unable to answer questions within the scope of the deposition, the party should be required to produce another witness for a future deposition who can answer the questions and bear the cost of the subsequent deposition (OCC and NOAC Initial Comments at 15).

{¶ 117} The Gas Companies oppose this proposed amendment, arguing that it would lead to additional discovery disputes. They also note that OCC and NOAC have not identified how they have been prejudiced by the current rule. (Gas Co. Reply Comments at 7.) AES Ohio also opposes this proposal, noting that it would lead to more disputes between parties to determine what is within the scope of the deposition. It also argues that the proposed rule change would lead to more rounds of depositions. AES Ohio emphasizes that even well-prepared deponents do not have a perfect memory and cannot predict all questions asked at a deposition. (AES Ohio Reply Comments at 7-8.) FirstEnergy opposes this amendment, noting that it is unnecessary, as the rule already addresses the obligations of the deposing and responding parties. FirstEnergy also opposes the suggestion that the

responding party bear the cost of subsequent depositions because the rule already provides for multiple depositions. (FirstEnergy Reply Comments at 12.)

{¶ 118} The Commission finds that OCC and NOAC's recommendation should not be adopted. If a corporate representative is unable to answer important questions on matters on which examination is requested and the parties are not able to come to an agreement on next steps, then the deposing party may file a motion in the docket. However, the Commission is not aware that inability to answer questions is such a rampant issue for corporate depositions that a rule would be required to rectify the problem. Accordingly, the recommended amendment is denied.

{¶ 119} **Division (K)** - OCC and NOAC also propose a change to division (K) that would govern a situation where a witness is deposed less than ten days before testifying at a hearing. Under the current rule, a deposed witness has ten days to review a deposition transcript. The change would allow the deposed witness to sign the deposition within ten days or the date the witness is scheduled to testify at the hearing, whichever is earlier. (OCC and NOAC Initial Comments at 15.)

{¶ 120} FirstEnergy opposes this proposal, noting that the revision is unnecessary and the ALJ has discretion to address this issue on a case-by-case basis (FirstEnergy Reply Comments at 12-13).

{¶ 121} We note that OCC and NOAC have not identified instances in which they have been prejudiced by the current rule. In the rare instance in which the timing of a deposition means that the deponent will not be required to sign the deposition by the date the witness is scheduled to testify at hearing, the deposing party can raise the issue at hearing or in advance of hearing. For these reasons, we find the proposed rule change to be unnecessary.

{¶ 122} **Division (N)(2)** - FirstEnergy supports Staff's proposal to add division (N)(2), which would disallow the use of a deposition transcript as substantive evidence in

lieu of the deponent appearing to present testimony at a hearing (First Energy Initial Comments at 4). OCC and NOAC oppose this proposed change, arguing that if a witness is subpoenaed to appear at a hearing and then the subpoena is quashed, then it would be helpful to admit the deposition transcript into evidence (OCC and NOAC Reply Comments at 15-16).

{¶ 123} OCC and NOAC propose that a change be made to the rule that would allow a deposition to be used as substantive evidence if a subpoena seeking to compel testimony of a witness at hearing is quashed. OCC and NOAC seek this change because they state in a recent hearing a marketer did not produce any witness because all its employees are out of state, so the only way to have cross-examination in evidence was the deposition transcript. (OCC and NOAC Initial Comments at 16.)

{¶ 124} A number of stakeholders oppose OCC and NOAC's proposed amendment. The Gas Companies note that the existing rule allows the admission of a deposition transcript when no witness can be produced at hearing, as confirmed by OCC. They note that there are other reasons why a subpoena may be quashed, including irrelevance, inadmissibility, and prejudice, and the Gas Companies argue that a deposition should not be admitted under those circumstances. (Gas Co. Reply Comments at 7.) AES Ohio opposes this proposed amendment, noting that the rules of evidence do not permit admission of a deposition transcript to be used if a subpoena has been quashed for evidentiary reasons (AES Ohio Reply Comments at 8). Similarly, FirstEnergy opposes this proposal, noting that the language already proposed by Staff states "unless otherwise ordered," which allows the Commission to consider depositions as evidence on a case-by-case basis. FirstEnergy also notes that if a party was not present at the witness's deposition, then using the deposition transcript at hearing in lieu of live testimony would deprive that party of its right to cross-examine the witness. FirstEnergy states that this proposed rule would result in more rigorous objections at depositions and counsel should be permitted to conduct a redirect of the witness. (FirstEnergy Reply Comments at 13.)

{¶ 125} We agree with Staff's proposed amendment to the rule. Importantly, the language "unless otherwise ordered" provides flexibility in the event that there is reason to allow a deposition to be used as substantive evidence. For this reason, we do not find OCC and NOAC's concerns about the proposed language to be persuasive and decline to adopt their proposed modification to Staff's language.

22. OHIO ADM.CODE 4901-1-22 (REQUESTS FOR ADMISSION)

{¶ 126} OCC and NOAC suggest a rule change to address the potential problem of parties mixing answers to requests for admission with objections. OCC and NOAC propose to require parties answering requests for admission to sign the objections and answers separately so that the person seeking discovery knows who to call as a deponent or witness. They also add that reasons for the objections should be stated separately from the answer admitting or denying the request; however, OCC and NOAC do not propose language for this amendment. (OCC and NOAC Initial Comments at 16-17.)

{¶ 127} We find the proposal to require objections and answers to be signed separately to be reasonable. We note that the change will provide additional clarity to discovery responses and will not cause an undue burden for the responding party. However, we decline to adopt a modification to require the reasons for the objections to be stated separately from the answer admitting or denying the request, as no language was proposed to effectuate this change, and the proposal is not detailed enough for the Commission to unilaterally modify the rule.

23. OHIO ADM.CODE 4901-1-23 (MOTIONS TO COMPEL DISCOVERY)

{¶ 128} In their reply comments, OCC and NOAC propose an amendment to this rule that would require the ALJ to rule on any motion to compel within 14 days of the final pleading. They argue that without a timely ruling on a motion to compel, a party may be unable to explore certain topics. (OCC and NOAC Reply Comments at 7.)

{¶ 129} The Commission finds that the stakeholders have provided insufficient reasons to revise the rule at this time and, therefore, the request shall be denied. Under the existing rules, any party experiencing discovery difficulties may always take advantage of the opportunity to file a request for an expedited ruling. In addition, a party may request that the ALJ establish an abbreviated time schedule for filing memorandum contra and/or reply memorandum when a motion to compel is filed in the case. The proposed change would increase the administrative burden for the Commission, even when discovery issues are not pressing. Additionally, the Commission notes that OCC and NOAC did not propose this amendment in their initial comments, which would have allowed other stakeholders to comment on the proposal. Thus, the proposed amendment will not be adopted.

24. OHIO ADM.CODE 4901-1-24 (MOTIONS FOR PROTECTIVE ORDERS)

{¶ 130} At the workshop, Columbia and Dominion proposed an addition to this rule recognizing the confidentiality of infrastructure information, such as facility maps, pipeline pressures, and pipeline material. Under the current rules, utilities must request that information be kept confidential, but the companies recommend adding it to the rules to avoid the need to make such requests. (Tr. at 15-16.) Neither stakeholder provided written comments on this proposal or proposed amendment language for the rule.

{¶ 131} We do not find it necessary to amend the rule to recognize the confidentiality of infrastructure information, as reviewing that information on a case-by-case basis will not prejudice any party and will ensure consistency among proceedings.

{¶ 132} IEU-Ohio proposes that the Commission require an affidavit to accompany motions for protective orders alleging trade secrets. It also seeks a process for parties to object to trade secret claims. Specifically, IEU-Ohio asserts that parties should be able to raise objections to trade secret claims by their own motion because some parties may not be able to object within 15 days of the filing of the motion for protective order. Additionally, IEU-Ohio proposes that all trade secret claims should be resolved before the start of an

evidentiary hearing unless good cause exists for the claim to be made during or after the hearing. (IEU-Ohio Initial Comments at 2-3.)

{¶ 133} OCC and NOAC support the proposal that trade secret claims be resolved before the evidentiary hearing begins. They assert that it would prevent holding certain portions of a hearing in a closed session and later having to go back and remove redacted portions of the transcript. Additionally, OCC and NOAC support IEU-Ohio's proposal that all motions for protective order must be submitted with an affidavit. However, they seek to ensure that only a party seeking a protective order for its own trade secret be required to file an affidavit with the motion, as sometimes a party files information acquired from another party. (OCC and NOAC Reply Comments at 17-18.)

{¶ 134} AES Ohio opposes this change. AES Ohio notes that requiring motions for protective order for a trade secret to be accompanied by an affidavit is being considered in another Commission proceeding and has not yet been ruled upon. *See In re Amendment of Ohio Adm.Code 4901-1-24*, Case No. 18-322-AU-ORD, Entry (Feb. 28, 2018). AES Ohio first argues that an affidavit should not be required if information is already deemed confidential pursuant to Ohio Adm.Code 4901:1-10, such as social security number, customer account number, and usage. AES Ohio also argues that the Commission should permit an unsworn statement to support a trade secret claim, which AES Ohio states is acceptable under the Federal Rules of Evidence. *See* 28 U.S.C. 1746. AES Ohio asserts that motions for protective order must be filed quickly, but that there could be difficulties obtaining an affidavit quickly. It also argues that intervening parties that have been provided information pursuant to a confidentiality agreement should not be required to submit an affidavit. (AES Ohio Reply Comments at 8-10.) Similarly, the Gas Companies oppose this proposed change, noting that a new rule or process is not needed because such disputes are currently decided on a case-by-case basis, which allows flexibility (Gas Co. Reply Comments at 7-8).

{¶ 135} We decline to adopt IEU-Ohio's proposed amendment at this time. As noted by AES Ohio, Case No. 18-322-AU-ORD has been opened to consider this very issue.

Numerous comments have been filed in that docket, so it would be inappropriate to adopt the changes based on the more limited comments received on the issue in this case.

{¶ 136} In their joint comments, Columbia and Duke state that division (F) requires a party wishing to extend a protective order beyond 24 months to file a motion at least 45 days before the expiration of the protective order. They suggest that to streamline the process, the motion should be automatically approved if the Commission does not act on the motion before the protective order expires. (Columbia and Duke Initial Comments at 3.)

{¶ 137} OCC and NOAC oppose this proposed change. They argue that the modification would be superfluous because when a motion to extend is pending, division (E) of the rule already provides that the information remains protected. They also assert that automatic approval is in conflict with the goal of transparency in Commission proceedings, because Commission documents and records are generally considered public records. *See* R.C. 4901.12. (OCC and NOAC Reply Comments at 16-17.)

{¶ 138} The Commission finds the recommendation to automatically approve motions to extend a protective order reasonable, and thus, has modified the rule accordingly. We do not agree with OCC and NOAC that this change is in conflict with transparency, as this only applies to motions to renew an already-approved protective order. Moreover, the rule requires that the motion to extend a protective order must be filed at least 45 days before the expiration of the existing protective order, so the Commission will have the opportunity to review and consider the motion, including the ability to deny the motion. Additionally, we note that although Case No. 18-322-AU-ORD was opened to consider amendments to this rule, this amendment was not proposed by Staff or any commentors in that case, so it is most appropriately considered here instead.

25. OHIO ADM.CODE 4901-1-25 (SUBPOENAS)

{¶ 139} FirstEnergy supports Staff's proposed clarification in division (F) but proposes replacing the phrase "in courts of record" with "as provided in section 2335.06 of the Revised Code" (FirstEnergy Initial Comments at 4-5). We note that this amendment provides additional clarity and therefore adopt the language as proposed.

{¶ 140} OCC and NOAC propose a number of changes to this rule. First, they propose a change that would state corporations can be subpoenaed to produce relevant witnesses. They also suggest that service of a subpoena on a party's attorney should be sufficient. Additionally, they argue that the service of a subpoena should not be limited to the State of Ohio and should be allowed throughout the United States. OCC and NOAC also propose adding a new division to this rule that would require marketers to consent to jurisdiction, including subpoenas, even if they are located out-of-state. OCC and NOAC assert that this new division would update the rule to properly apply R.C. 4928.09(A)(1)(a) and 4929.21(A)(1)(a). (OCC and NOAC Initial Comments at 17-18.)

{¶ 141} Several stakeholders oppose the proposed OCC and NOAC amendments. FirstEnergy argues that the rule revisions to subpoena corporations are unnecessary because they are already able to be subpoenaed. FirstEnergy asserts that service on a witness' attorney should not be allowed unless the attorney acknowledges representation and accepts the service, which would prevent errors regarding attorney representation. FirstEnergy also asserts that the Commission's subpoena power does not reach out-of-state witnesses, so the rule should not and cannot be modified to allow for subpoenas outside of Ohio. *See McFarland v. Slattery*, 1983 Ohio App. Lexis 12925, at *5 (8th Dist.) (citing Civ. R. 45(E)). (FirstEnergy Reply Comments at 13-14.) IGS disagrees that OCC and NOAC's proposed addition to require marketers to consent to jurisdiction is the proper application of R.C. 4928.09(A)(1)(a) and 4929.21(A)(1)(a). IGS argues that the Commission already requires suppliers to consent to jurisdiction in the supplier certification application process, so the rule change is unnecessary. (IGS Reply Comments at 11.) Similarly, the Gas

Companies oppose the amendments proposed by OCC and NOAC, noting that the changes are not necessary (Gas Co. Reply Comments at 8).

{¶ 142} We find the proposals from OCC and NOAC to be unnecessary at this time. As pointed out in reply briefs, the current rules allow for the subpoena of corporations, so the amendment is not necessary. We also decline to extend subpoena authority for competitive suppliers outside of the state of Ohio as a blanket rule. We reject the proposal to provide for service on a party's attorney, because the service of a subpoena on an attorney could cause confusion. Additionally, the service of subpoenas in this rule largely reflects the Ohio Rules of Civil Procedure, which does not allow for service on a party's attorney. Civ. R. 45(B). Furthermore, the proposal to adopt a section regarding subpoena power over marketers is unnecessary. As noted by OCC and NOAC, the Revised Code provides that marketers are required to consent to service of subpoenas regarding their operation in Ohio. Nothing in the rule conflicts with this requirement, so the amendment is not needed. Thus, we reject those proposals and decline to modify the language as proposed.

26. OHIO ADM.CODE 4901-1-26 (PREHEARING CONFERENCES)

{¶ 143} Dominion notes that division (F) requires utilities to "investigate prior to the settlement conference the issues raised," "be prepared to discuss settlement of the issues raised," and "have the requisite authority to settle those issues." Dominion asserts that these requirements should be removed from this division, as they already appear in Ohio Adm.Code 4901-9-01(H), which applies to complaint cases. Dominion notes that non-complaint cases are often complex, and decisions on whether to settle should be left to the parties rather than required by rule. (Dominion Initial Comments at 4.) We find this proposal to be reasonable and find that division (F) should be removed as proposed.

{¶ 144} OCC and NOAC propose a change to division (B) of this rule, which currently states that failure to attend a prehearing conference constitutes a waiver of objection to the agreements or rulings at the conference. OCC and NOAC propose to

narrow this rule to only apply to transcribed prehearing conferences because they state that sometimes prehearing conferences are informal and scheduled with short notice. (OCC and NOAC Initial Comments at 19.)

{¶ 145} The Gas Companies oppose OCC and NOAC's proposal to narrow the scope of the rule to apply only to transcribed prehearing conferences. They assert that the rule would increase the frequency of transcribed prehearing conferences, which would increase Commission costs. They also note that ALJs regularly accommodate party schedules when scheduling prehearing conferences. (Gas Co. Reply Comments at 8.)

{¶ 146} While recognizing OCC and NOAC's concerns that prehearing conferences are occasionally scheduled with short notice, we disagree with the proposed solution to limit division (B) to only transcribed conferences. The fact that a prehearing conference is not transcribed does not necessarily mean that there was short notice for the conference. We also note that parties' schedules are accommodated whenever possible when scheduling prehearing conferences. For these reasons, we decline to modify the rule as proposed.

27. OHIO ADM.CODE 4901-1-27 (HEARINGS)

{¶ 147} Staff suggested a minor terminology change to Ohio Adm.Code 4901-1-27, which provides the rules applicable to hearings. No comments discussed this rule. As such, the Commission finds that Staff's change will be adopted, as will other changes to reduce the number of regulatory restrictions.

28. OHIO ADM.CODE 4901-1-28 (REPORTS OF INVESTIGATION AND OBJECTIONS THERETO)

{¶ 148} At the workshop, Columbia and Dominion proposed to add that rebuttal testimony is at the option of the Commission be added to division (C) of this rule (Tr. at 16). We note that no party has opposed this proposal and find that the rule will be modified to reflect the proposal.

{¶ 149} OCC and NOAC propose a change to this rule to clarify an issue that arose in a recent case. In that case, OCC and NOAC state that a party argued that a Staff report could be admitted only as evidence of what Staff said, and not for the truth of what is stated in the Staff report. They propose to add a sentence in division (A) clarifying that the findings in the Staff report shall be admitted for the truth of the matters asserted. OCC and NOAC assert that the addition they propose would also clarify that the Commission is not bound by the findings of a Staff report but can consider it when making its findings of fact. They also note that a similar change should be made to rule 4901-1-28(E), which addresses Staff reports in other types of cases. (OCC and NOAC Initial Comments at 19-20.)

{¶ 150} A number of stakeholders oppose the proposed amendment. IGS responds that the proposal would unreasonably interfere with a party's due process. IGS emphasizes that parties may submit objections to a Staff report, which shifts the burden to Staff to support the Staff report with testimony. IGS notes that if a Staff report comes into the record without supporting testimony, no party would have the chance to cross-examine the opinions and assertions detailed in the report. (IGS Reply Comments at 12.) The Gas Companies state that Staff reports include many topics, statements, assertions, and sources relied upon. The Gas Companies argue that the admissibility of each item in the Staff report varies depending on the situation and should be decided on a case-by-case basis. (Gas Co. Reply Comments at 8-9.) FirstEnergy notes that the proposal is unnecessary because the rule already states that a Staff report shall be deemed admitted into evidence. FirstEnergy supports the current rule, which allows for the admission of the Staff report into evidence and allows for challenges and objections to the Staff report. (FirstEnergy Reply Comments at 14-15.)

{¶ 151} The Commission rejects the proposed amendment, finding that it is unnecessary and could cause confusion regarding the procedures for providing testimony in support of a Staff report. OCC and NOAC state that they offer this proposal because they believe it would have prevented a conflict that arose in one case. Because this issue does not arise frequently in Commission proceedings, and the language could be interpreted to

change other existing Commission procedures, we decline to adopt OCC and NOAC's proposal.

{¶ 152} OCC and NOAC also propose that parties should be able to raise new objections to a Staff report if Staff modifies the report after objections are filed (OCC and NOAC Initial Comments at 20). The Commission finds that the proposal will ensure fairness in proceedings and thus modifies the rule accordingly. However, to ensure that this change does not serve to delay the proceedings, we adopt a 15-day deadline for the filing of such objections.

29. OHIO ADM.CODE 4901-1-29 (EXPERT TESTIMONY)

{¶ 153} At the workshop, counsel on behalf of ELPC requested Ohio Adm.Code 4901-1-29 be amended to require that rebuttal testimony be filed a week before the direct case. ELPC noted that a number of other states have that requirement and argued that allowing the rebuttal testimony to be filed after that time gives the utilities an advantage by allowing them to use the rebuttal testimony to strengthen any weaknesses in their direct case. (Tr. at 10-11.) No stakeholders commented on this suggestion in their written comments.

{¶ 154} The Commission declines to adopt the proposal at this time. The existing rule allows for rebuttal testimony to be filed within the time limits established by the Commission or presiding hearing officer. We prefer to leave this timeline open to determination on a case-by-case basis rather than enacting a blanket rule applicable to all Commission proceedings. Should ELPC anticipate a problem with rebuttal testimony in a proceeding, it can advocate for a timeline, and the ALJ can issue a deadline that is most fitting for that particular case.

{¶ 155} IEU-Ohio argues that the review of testimony is a central component to hearing preparation. In proceedings where Staff is acting as a party, IEU-Ohio argues that it is vital that other parties be given ample opportunity to consider the position Staff intends

to take at hearing, to know which Staff members will be testifying, and on what subject matters cross-examination will be appropriate. To that end, IEU-Ohio proposes to remove the phrase "except testimony to be offered by the commission staff" from Rule 4901-1-29(A). IEU-Ohio also proposes a new rule that requires Staff to identify its witnesses and the subject matter of testimony no later than one week before the commencement of hearing, and either require Staff to also file testimony one week before hearing or provide the other parties a break in the hearing schedule to prepare. (IEU-Ohio Initial Comments at 6-7.)

{¶ 156} IGS, OCC, and NOAC respond in support of IEU-Ohio's proposed modification to require Staff to file testimony one week before hearing or provide the other parties a break in the hearing schedule to prepare. IGS argues that the proposal would provide broad discovery rights and allow the parties to adequately prepare for hearings with a minimal burden on Staff. OCC and NOAC contend that the requirement would increase transparency and fairness in Commission proceedings. (IGS Reply Comments at 10; OCC and NOAC Reply Comments at 18-19.)

{¶ 157} As discussed more fully above, we note that Staff has a unique role and responsibilities in cases that is not shared by all parties. Similar to our findings in prior rulemaking cases, the rule already affords the presiding hearing examiner the discretion to determine under the appropriate circumstances to require the prefiling of Staff testimony, and we find no reason to modify this long-standing position. *See 2006 Rules Proceeding*, Finding and Order (Dec. 6, 2006) at 49; *2011 Rules Proceeding*, Finding and Order (Jan. 22, 2014) at 35-36.

{¶ 158} OCC and NOAC argue that those with the burden of proof and those supporting a settlement should file testimony first so that other parties have the opportunity to file testimony later, which would provide an opportunity for those other parties to review supporting testimony before their due dates for filing testimony. OCC and NOAC also argue that the rules should be modified to require the utility to file testimony before other parties. They propose testimony filed by the utility to be filed 18 days before the hearing

and testimony by other parties to be filed seven days before the hearing. (OCC and NOAC Initial Comments at 21-22.)

{¶ 159} IEU-Ohio opposes OCC and NOAC's proposed revision to require testimony to be filed a specific number of days before the hearing, noting that it is too rigid to work for every case. However, IEU-Ohio does not oppose providing parties with sufficient time to review testimony before hearing and suggests that the presiding ALJs proactively manage the procedural schedule by setting reasonable deadlines for testimony that balance parties' needs. (IEU-Ohio Reply Comments at 13-14.) The Gas Companies also oppose OCC and NOAC's proposal, noting that there should not be a specific timing requirement and rather should be decided on a case-by-case basis (Gas Co. Reply Comments at 9). Similarly, FirstEnergy opposes the proposal, noting that it would reduce ALJ discretion to adjust testimony deadlines on a case-by-case basis. It also adds that the current rule is reciprocal, and changes are unnecessary. (FirstEnergy Reply Comments at 15.)

{¶ 160} Upon review of the comments, the Commission agrees that the proposed amendments are unnecessary and, therefore, we decline to modify the rule as suggested. To the extent that OCC and NOAC find that the timeline for filing testimony is impactful in a particular case, they may request those deadlines or extensions in an individual case.

30. OHIO ADM.CODE 4901-1-30 (STIPULATIONS)

{¶ 161} **Division (B) -** OCC and NOAC argue that the rule should require inviting all parties in a proceeding to all settlement meetings (OCC and NOAC Initial Comments at 22).

{¶ 162} The Gas Companies and AES Ohio oppose the proposed change, noting that while all parties are typically invited to settlement discussions, it is not productive to invite all parties to continued conferences when one party has an unwavering opposition to a settlement proposal. They note that the utilities should have flexibility to negotiate with the parties that make a good faith effort to settle the proceeding and not be required to include

other parties who do not make a good faith effort. AES Ohio adds that it is impractical to invite all parties to any discussion that could be considered a settlement meeting, adding that the proposal is unnecessary because any party can challenge the first prong of the settlement test utilized by the Commission. (Gas Co. Reply Comments at 10-11; AES Ohio Reply Comments at 11.) FirstEnergy agrees and notes that the proposal would prohibit one-on-one discussions and small group caucuses that are essential to the negotiation process. It also notes that the Ohio Supreme Court has found that serious bargaining took place even without a conventional meeting with all parties in attendance. *See In re Application of Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218, ¶ 46. (FirstEnergy Reply Comments at 16-17.)

{¶ 163} IEU-Ohio also opposes the proposal, arguing it would be an inefficient use of counsel's time and could hinder the parties' ability to negotiate, heightening regulatory cost and burden, and harming public interest (IEU-Ohio Reply Comments at 14-15). OTA notes that this proposed amendment is not consistent with OCC and NOAC's proposed division (F)(7), which would consider whether parties were invited to participate in settlement meetings (OTA Reply Comments at 7).

{¶ 164} The Commission finds that OCC and NOAC's proposed modification is unnecessary at this time. The reply comments raise the fact that it would be an impractical requirement, as sometimes parties express unwavering opposition to a settlement proposal, and one-on-one discussions and small group caucuses are often effective tools in reaching settlement. Additionally, parties can object to the stipulation meeting the first prong of the Commission's stipulation analysis if they felt as though they were left out of the negotiation process. As such, we decline to modify the rule as proposed.

{¶ 165} **Burden of Proof -** ELPC proposes modifications to this rule that require parties to create a complete record and meet a reasonable burden of proof. ELPC states that parties regularly file non-unanimous stipulations addressing significant utility proposals and spending and then support the stipulation with a single piece of testimony that

describes the settlement while providing minimal detail on the merits of the utility's proposal. ELPC proposes adding a new division (E) that would require stipulating parties to meet the original burden of proof applicable to the proceeding when filing a non-unanimous stipulation. (ELPC Initial Comments at 3.) OCC and NOAC support ELPC's proposal and suggest an adjustment. Rather than shifting the burden of proof onto the stipulating parties, they propose that the rules should clarify that the filing of the stipulation does not alter the burden of proof. They assert that this change is important because if a stipulation does not include a utility but the utility had the burden of proof, the burden should not shift to the stipulating parties. (OCC and NOAC Reply Comments at 19-20.)

{¶ 166} FirstEnergy opposes the proposed amendment, arguing that the Commission does scrutinize the merits of proposals when evaluating stipulations (FirstEnergy Reply Comments at 20-21). Similarly, AEP Ohio opposes the proposed revisions (AEP Ohio Reply Comments at 10). The Gas Companies and AES Ohio oppose ELPC's proposed amendment, as well as OCC and NOAC's version of the amendment. They contend that while there is a not an existing rule that a utility must sign a settlement agreement, a stipulation typically binds a utility's actions and thus the utility should be a party to any settlement agreement. They also argue that the burden of proof still exists when a settlement is filed and rests on the parties signing the stipulation. (Gas Co. Reply Comments at 9-10; AES Ohio Reply Comments at 13, 15.)

{¶ 167} OCC and NOAC also propose two new divisions of the stipulation rules. New division (H) would clarify that after a stipulation is reached, the burden of proof is still borne by the entity which originally bore the burden of proof. New division (I) would provide that stipulations cannot be used to violate any law by virtue of agreement by the parties. OCC and NOAC provide no justification or rationale for these proposed additions. (OCC and NOAC Initial Comments at 25-26.)

{¶ 168} AEP Ohio opposes OCC and NOAC's proposals. AEP Ohio first notes that it is unreasonable to suggest that a stipulation could be reached without the utility being a

party to the stipulation, because the utility is in the best position to determine the needs of its system and customers. AEP Ohio also states that OCC and NOAC have failed to show why the current criteria is inadequate, noting that Staff represents the interests of all intervenors and would therefore satisfy the requirement of representing the interest of a class of consumers. AEP Ohio also argues that the proposed changes would increase the ratepayer and utilities' costs because cases would settle less frequently, resulting in more litigation. Additionally, AEP Ohio argues that the proposal would give OCC veto power over all settlements, which is unreasonable and will harm ratepayers and utilities' ability to provide safe and adequate service to them. (AEP Ohio Reply Comments at 8-10.)

{¶ 169} The Gas Companies argue that OCC and NOAC's proposed change that prohibits the Commission from approving a stipulation that violates any statute or prior Commission order or entry should be rejected. They note that the third prong of the existing three-part test asks if the stipulation violates any important regulatory principle or practice. The Gas Companies note that the Ohio Supreme Court has already ruled that the Commission should respect its own precedent but may also revisit a decision and change course. *See In re Ohio Power Co.*, 144 Ohio St. 3d 1, 2015-Ohio-2056, 40 N.E.3d 1060, ¶ 16. (Gas Co. Reply Comments at 12.)

{¶ 170} FirstEnergy opposes the proposal that the burden of proof would remain with the party that bore the burden because a stipulation does not shift the burden of proof (FirstEnergy Reply Comments at 20).

{¶ 171} The Commission has routinely determined that, in considering the reasonableness of a stipulation, the Commission will apply a three-part analysis. The Supreme Court of Ohio endorsed the Commission's analysis in *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). Thus, the burden of proof does not shift to other parties when a stipulation is filed. To be clear, all requirements for an application remain in effect even when a stipulation is filed. The

Commission must also consider the stipulation requirements when a stipulation is filed. For these reasons, we decline to adopt the proposed amendments to change the long-standing stipulation analysis, which has been utilized by the Commission and approved by the Ohio Supreme Court for many years.

{¶ 172} **Division (E), Stipulations -** OCC and NOAC argue that utilities have superior bargaining power in settlement negotiations. To counteract the unfairness that OCC and NOAC perceive, they propose amending division (E) to add that for stipulations reached with utilities in electric security plan (ESP) proceedings, there should be a rebuttable presumption that serious bargaining did not occur. They also propose that the Commission should evaluate every provision of the stipulation separately rather than considering the stipulation as a package. OCC and NOAC also propose that the Commission should find that no serious bargaining occurred if a stipulation lacks a diversity of interests, specifically including a party that represents the interests of an entire class of customers. (OCC and NOAC Initial Comments at 22-24.)

{¶ 173} IEU-Ohio opposes OCC and NOAC's proposed revisions creating a presumption that serious bargaining did not occur and evaluating each provision of a stipulation separately. IEU-Ohio notes that it is a very rare occurrence for parties to present a credible claim that serious bargaining did not happen during settlement negotiations. IEU-Ohio also opposes the proposal to require diversity of interests, noting that this position would essentially give veto power to a small number of intervenors when collaboration and not litigation should be the encouraged outcome. (IEU-Ohio Reply Comments at 15-16.)

{¶ 174} AES Ohio opposes the proposals, noting that the Commission has routinely rejected the proposal to require a diversity of interest component in the stipulation review. *See In re Ohio Power Co.,* Case Nos. 16-1852-EL-SSO, et. al, Opinion and Order (Apr. 25, 2018) at ¶ 130, citing *In re Ohio Power Co,* Case Nos. 14-1693-EL-RDR, et. al, Opinion and Order (Mar. 31, 2016) at 121; *see also*, *In re Columbia Gas of Ohio, Inc*, Case Nos. 16-1309-GA-UNC, et. al, Opinion and Order (Dec. 21, 2016) at ¶ 59, citing *In re FirstEnergy*, Case No.

14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 43. AES Ohio also argues that including a presumption that serious bargaining did not occur would slow the ESP process. Furthermore, AES Ohio opposes the amendment that would require the Commission to review each component of a stipulation separately. It argues that settlements blend multiple viewpoints and interests, which is evidenced by the provision frequently included in stipulations that allows a party to withdraw from the stipulation if there is any material change. (AES Ohio Reply Comments at 11-12, 14.)

{¶ 175} Similarly, FirstEnergy opposes the proposed change. It notes that there is no legal basis for creating a rebuttable presumption or otherwise altering the three-factor test that has been in place for over 34 years. FirstEnergy also argues that rejecting a stipulation because a particular interest is lacking would allow a single intervenor, such as OCC, to effectively hold veto power, which the Commission has already considered and rejected. *See, e.g., In re Ohio Power Co.*, Case Nos. 16-1852- EL-SSO, et al., Second Entry on Rehearing, (Aug. 1, 2018) at ¶¶ 59-61; *In re Dayton Power & Light Co.,* Case Nos. 16-395-EL-SSO, et al., Opinion and Order, (Oct. 20, 2017) at ¶ 21. (FirstEnergy Reply Comments at 17-18.)

{¶ 176} We note that the current test utilized by the Commission to consider a stipulation, and recognized by the Ohio Supreme Court, does not incorporate a diversity of interests component. As noted by AES Ohio, we have rejected previous attempts by OCC to revise the test to require consideration of a stipulation based on the diversity of the signatory parties. *See In re Ohio Power Co.,* Case Nos. 16-1852-EL-SSO, et. al, Opinion and Order (Apr. 25, 2018) at ¶ 130, citing *In re Ohio Power Co,* Case Nos. 14-1693-EL-RDR, et. al, Opinion and Order (Mar. 31, 2016) at 121. The proposed definition of diversity of interests includes the requirement that a party broadly represents the interests of an entire class of customers. We note that this requirement would effectively give OCC and NOAC veto power in many Commission proceedings. Additionally, the definition is not tailored enough to demonstrate exactly which entities would qualify. Cities, townships, and other localities could arguably qualify under that definition.

{¶ 177} As to the proposals to add a rebuttable presumption that serious bargaining did not occur and to evaluate every provision of the stipulation separately, we find these proposals to be unnecessary. OCC and NOAC did not provide justification for these amendments other than their broad assertion that the utilities have superior bargaining power. Specifically, we note that the proposal to evaluate every provision of the stipulation separately is illogical. Negotiating parties evaluate the stipulation as a whole by prioritizing certain issues and giving way in others. The parties do not evaluate each provision separately, so it would not be appropriate for the Commission to do so either. For the aforementioned reasons, we decline to adopt these proposed modifications.

{¶ 178} **Division (F) -** OCC and NOAC also propose the addition of a list of eight factors that the Commission should use to evaluate a stipulation. Some of those factors include the breadth of interests represented by the parties supporting the stipulation, whether stipulating parties made concessions, and the benefit or harm to the public interest. (OCC and NOAC Initial Comments at 24-25.)

{¶ 179} OTA opposes the proposal because no factor is conclusive and the list is not exhaustive, so the listed factors could be outweighed by some unanticipated matter. OTA asserts that, as a practical matter, nothing would be irrelevant since anything could be considered by the Commission pursuant to OCC's proposed test. Additionally, OTA argues that the listed factors are so broadly worded that they provide nothing actionable for a party or the Commission. (OTA Reply Comments at 6-7.) IEU-Ohio also disagrees with the proposal, arguing it is an attempt to strongly weigh OCC's inclusion or exclusion on a settlement when considering whether to approve a stipulation. IEU-Ohio is concerned the proposal would not serve the public interest because it would essentially provide a single party, OCC, with a veto power over settlements. (IEU-Ohio Reply Comments at 16-17.)

{¶ 180} The Gas Companies oppose the implementation of the proposed eight factors to evaluate a stipulation. They argue that the Commission has previously ruled that it will not require any single party to agree to a stipulation in order to meet the first criterion

of the three-part test. *See In re Columbia Gas of Ohio, Inc.*, Case Nos. 16-1309-GA-AAM, et al., Opinion and Order (Dec. 21, 2016) at ¶ 59. They also argue that the existing three-part test is sufficient and supported by precedent. (Gas Co. Reply Comments at 11.) Similarly, FirstEnergy opposes the proposal, noting that there is insufficient evidence that the proposed eight-factor test would balance interests appropriately (FirstEnergy Reply Comments at 18-19). AES Ohio also opposes the newly proposed eight factors to evaluate stipulations. AES Ohio asserts that the Supreme Court of Ohio has endorsed the existing three-part test. See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 2006-Ohio-4706 at ¶ 16; *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). AES Ohio also asserts that the Commission has already rejected many of those factors when raised by OCC. (AES Ohio Reply Comments at 14-15.)

{¶ 181} OCC's suggestion to modify division (F) must be denied for the same reasons illustrated earlier in this Finding and Order. As discussed above, the existing three-part test has been used by the Commission to review stipulations for many years and has been utilized by the Ohio Supreme Court. OCC has not provided adequate reasons to overturn this long-standing precedent and has not provided an alternative test that would be clearly defined and able to be administered consistently. Thus, we decline to begin evaluating stipulations based on OCC's proposed, non-inclusive list of factors.

{¶ 182} **Division (G) -** OCC and NOAC also argue that the utilities should not be allowed to offer cash or cash equivalents to induce parties to sign settlements. (OCC and NOAC Initial Comments at 25.)

{¶ 183} A number of stakeholders oppose this proposal. The Gas Companies oppose the proposal from OCC and NOAC, noting that the three-part test reviews the settlement as a package, and the Commission should not exclude certain types of settlement from consideration (Gas Co. Reply Comments at 11-12). FirstEnergy agrees with the Gas

Companies, noting that OCC and NOAC's proposal ignores the bargaining process and would reduce the number of settlements reached. FirstEnergy also notes that the Commission has previously rejected the proposal. *See In re Ohio Edison Co., the Cleveland Elec. Illuminating Co., and the Toledo Edison Co.,* Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 44; *In re Dayton Power and Light Co.*, Case Nos. 16-395-EL-SSO, et al., Opinion and Order (Oct. 20, 2017) at ¶ 21. (FirstEnergy Reply Comments at 19-20.) AES Ohio opposes this proposal, arguing that payments often promote economic development that benefits all of Ohio, fund education and energy reduction for residential customers, upgrade services for small businesses and public entities that serve the citizens of Ohio, and provide assistance for low-income customers. AES Ohio argues that these are important state policies that benefit ratepayers and the public interest. (AES Ohio Reply Comments at 13-14.)

{¶ 184} The Commission finds that the proposal to prohibit cash incentives would frustrate the settlement process and result in fewer settlements. More importantly though, cash incentives often provide significant benefits to Ohio consumers. Prohibiting these cash incentives would not only frustrate the settlement process, but it would also remove the ability for parties to negotiate significant benefits for Ohio consumers. Thus, we decline to adopt the proposal.

31. OHIO ADM.CODE 4901-1-31 (BRIEFS AND MEMORANDA)

{¶ 185} At the workshop, Columbia and Dominion proposed an amendment that a party failing to attach a copy of an unreported decision to a brief should receive notice of the deficiency and an opportunity to cure before the brief is stricken (Tr. at 17).

{¶ 186} We first note that the rule states that failure to comply with the requirement to attach an unreported decision to a brief or memorandum "may be grounds for striking the brief or memorandum." Ohio Adm.Code 4901-1-31(C). Therefore, the rule allows for flexibility on a case-by-case basis. Additionally, adding a requirement that a party will

always have the opportunity to cure before the brief is stricken disincentivizes parties from complying with the requirement when initially filing a document. As such, we find no reason to adopt Columbia and Dominion's proposal.

32. OHIO ADM.CODE 4901-1-32 (ORAL ARGUMENTS)

{¶ 187} Staff suggested a minor change of the term "attorney examiner" to "ALJ" to Ohio Adm.Code 4901-1-32, which provides for oral arguments during a proceeding. No comments discussed this rule. As such, the Commission finds that Staff's change will be adopted, and no additional changes are necessary.

33. OHIO ADM.CODE 4901-1-33 (ADMINISTRATIVE LAW JUDGE'S REPORTS AND EXCEPTIONS THERETO)

{¶ 188} Staff suggested a minor change of the term "attorney examiner" to "ALJ" to Ohio Adm.Code 4901-1-33, which provides for the possibility of a written report filed by the ALJ. No comments discussed this rule. As such, the Commission finds that Staff's change will be adopted, as well as other changes to reduce the number of regulatory restrictions.

34. OHIO ADM.CODE 4901-1-34 (REOPENING OF PROCEEDINGS)

{¶ 189} Staff suggested a minor change of the term "attorney examiner" to "ALJ" to Ohio Adm.Code 4901-1-34, which provides for the reopening of a proceeding. No comments discussed this rule. As such, the Commission finds that Staff's change will be adopted, and no additional changes are necessary.

35. OHIO ADM.CODE 4901-1-35 (APPLICATIONS FOR REHEARING)

{¶ 190} OCC and NOAC propose that the rule should be amended to provide that the Commission will rule on applications for rehearing within a specified reasonable

amount of time so a party's right to appeal is not unduly delayed. The time frame proposed by OCC and NOAC is sixty days. (OCC and NOAC Initial Comments at 28.)

{¶ 191} FirstEnergy, the Gas Companies, and AES Ohio oppose the proposal. They all note that the Ohio Supreme Court has found that the Commission can grant rehearing for the limited purpose of allowing additional time to consider arguments. *State ex rel. Consumers' Counsel v. Pub. Util. Comm.*, 102 Ohio St.3d 301, 2004-Ohio-2894, 809 N.E.2d 1146, ¶ 19. FirstEnergy argues that the proposal would be a severe and unworkable limit on rehearing that is not found in the Revised Code. FirstEnergy states that some cases are too complex with voluminous records to allow full consideration within the time period proposed by OCC and NOAC. The Gas Companies also argue that the rule change is unnecessary because parties have vehicles to force the issue if they believe the Commission is taking too long. (FirstEnergy Reply Comments at 21-22; Gas Co. Reply Comments at 12-13; AES Ohio Reply Comments at 16.)

{¶ 192} The Commission agrees with the comments submitted on behalf of FirstEnergy, the Gas Companies, and AES Ohio and find that OCC and NOAC have failed to demonstrate how the existing timeline to rule on applications for rehearing has caused harm. Furthermore, applications for rehearing are often complex and require more time to consider than the timeline proposed. Finally, we note that the legislature does not require such a timeline, and the Ohio Supreme Court has noted that the Commission can grant an application for rehearing for the purpose of allowing additional time to consider the application. *State ex rel. Consumers' Counsel* at ¶ 19. For these reasons, we decline to adopt the proposed amendment.

36. OHIO ADM.CODE 4901-1-36 (SUPREME COURT APPEALS)

{¶ 193} Staff suggested the addition of the phrase "or her" and the replacement of references to "chairman" with "chairperson" in Ohio Adm.Code 4901-1-36, which provides for the process for appeals to the Ohio Supreme Court. No comments discussed this rule.

As such, the Commission finds that Staff's changes will be adopted, and no additional changes are necessary.

37. OHIO ADM.CODE 4901-1-37 (COMMISSION WORKSHOPS)

{¶ 194} Staff suggested the replacement of references to "chairman" with "chairperson" in Ohio Adm.Code 4901-1-37, which provides for the informational Commission workshops. Additionally, Staff suggests changing the prohibition against transcribing workshops to instead state that the workshops "need not" be transcribed. No comments discussed this rule. As such, the Commission finds that Staff's changes will be adopted, as well as other changes to eliminate certain regulatory restrictions.

38. OHIO ADM.CODE 4901-1-38 (GENERAL PROVISIONS)

{¶ 195} Staff did not suggest any changes to Ohio Adm.Code 4901-1-38, which encompasses the general provisions of this chapter. Similarly, no filed comments discussed this rule. As such, the Commission finds no changes to be necessary.

39. PROPOSED NEW RULE: OHIO ADM.CODE 4901-1-39 (SUPPORTING DOCUMENTATION FOR TARIFF FILINGS)

{¶ 196} OCC and NOAC propose a new rule to address their allegation that utilities frequently file updated tariffs without sufficient supporting documentation. The new rule would require utilities to file all documentation supporting the calculation of tariff rates in the docket. OCC and NOAC argue that without sufficient documentation, including workpapers explaining how the rates are calculated, it is impossible for parties to know whether the rates charged to customers are just and reasonable and consistent with Commission orders. They propose that the rule would apply when a utility is required to file new tariffs following a Commission order and when electric distribution utility rider tariffs are updated periodically and automatically approved. OCC and NOAC propose that

this requirement would not apply if the rate is unchanged, if the rate is set at zero, or if the rate is a flat monthly dollar amount set in an order. (OCC and NOAC Initial Comments at 28-30.)

{¶ 197} A number of stakeholders oppose the proposal. AEP Ohio argues that it would add an unnecessary burden on the utilities and that parties can already obtain this information by requesting it from the utilities. AEP Ohio also asserts that making these documents part of the docket would confuse customers and only serve as a convenience for OCC so it would not have to request the documents from the utilities. (AEP Ohio Reply Comments at 10.) FirstEnergy states that the proposal is unnecessary and argues that there is an established practice for providing supporting documents and workpapers, including processes approved in previous ESP proceedings (FirstEnergy Reply Comments at 22-23). The Gas Companies argue that the rule is not needed because Staff review and inquire about calculation errors or missing information. They also argue that OCC can participate in rider proceedings and rectify concerns with any calculations. The Gas Companies note that some filings, for example monthly standard choice offer filings, never have workpapers to file. (Gas Co. Reply Comments at 13.) AES Ohio states that there are sufficient checks on the utility filings such that the rule is not necessary. It argues that Staff reviews the filings, and the riders are typically subject to periodic audits. AES Ohio also argues that OCC and NOAC have the ability to intervene and request discovery and that workpapers sometimes include confidential information and should therefore not be filed in the public docket. (AES Ohio Reply Comments at 16.)

{¶ 198} We find the proposed new rule to be unnecessary. While the rule would provide a convenience for those interested in the tariff proceeding, interested parties have the means under the existing rule to intervene and discover that information. Additionally, Staff already reviews the filings and has the ability to request additional information if necessary for its review. We also note that no other stakeholders commented with support for the proposal. Finally, this amendment would add regulatory restrictions, which would

hinder the goal of regulatory restriction reduction. For these reasons, we decline to adopt the proposed new rule.

D. Administrative Code Chapter 4901:1-1

1. OHIO ADM.CODE 4901:1-1-01 (CONSUMER INFORMATION)

{¶ 199} Staff suggested a minor terminology correction to Ohio Adm.Code 4901:1-1-01, which provides that a utility must provide customers with certain information upon request. No comments discussed this rule. As such, the Commission finds that Staff's change will be adopted, as well as an additional change to remove a regulatory restriction.

2. OHIO ADM.CODE 4901:1-1-02 (UNDERGROUND UTILITY PROTECTION SERVICE REGISTRATION)

{¶ 200} Staff initially suggested a minor terminology correction to Ohio Adm.Code 4901:1-1-02, which provides that underground utility protection service must comply with certain rules. No comments discussed this rule. Upon further review, Staff has determined that certain requirements for new underground utility protection services is not needed, as R.C. 153.64(A)(4)(c) requires that such services were in existence on March 14, 1989. For this reason, Staff does not anticipate new underground utility protection services to register with the Commission. Upon review, the Commission finds that this unnecessary section will be eliminated, and no additional changes are necessary.

3. OHIO ADM.CODE 4901:1-1-03 (DUTY TO DISCLOSE TARIFFS)

{¶ 201} Staff updated the cross-references to the Revised Code in Ohio Adm.Code 4901:1-1-03, which provides the requirements for a utility to disclose new rates to customers. Staff also suggested other minor changes to the rule. No comments discussed this rule. As

such, the Commission finds that Staff's change will be adopted, as well as other changes to eliminate certain regulatory restrictions.

E. Administrative Code Chapter 4901-3

1. OHIO ADM.CODE 4901-3-01 (COMMISSION MEETINGS)

{¶ 202} OCC argues that R.C. 121.22(A) is to be liberally construed to require public officials to conduct all deliberations upon official business only in open meetings. OCC proposes an addition be added to division (A)(1) of this rule to require that all deliberations are conducted in open meetings. OCC also proposes the addition of a Georgia rule that requires every member of the Commission to reserve his/her opinion and refrain from committing in advance until all facts and evidence are submitted (OCC Initial Comments at 2-3).

{¶ 203} We find these proposals to be unnecessary at this time. We note that no stakeholder has commented in support of these proposals, nor has OCC offered sufficient justification for the amendments. As to the first proposal, we note that the requirements of R.C. 121.22 are already outlined in that statute and find no need to reflect those requirements in this rule. Similarly, we find the second proposal to be unnecessary, and note that OCC has not identified any existing problem that the proposed amendment would resolve. For these reasons, we decline to modify the rule as proposed.

2. OHIO ADM.CODE 4901-3-02 (PHOTOGRAPHING, FILMING, AND RECORDING)

{¶ 204} Staff did not initially suggest any changes to Ohio Adm.Code 4901-3-02, which provides instructions for recording Commission meetings and public hearings. Similarly, no filed comments discussed this rule. However, the Commission finds that certain amendments to reduce the number of regulatory restrictions are appropriate.

F. Administrative Code Chapter 4901-9

1. OHIO ADM.CODE 4901-9-01 (COMPLAINT PROCEEDINGS)

{¶ 205} At the workshop, Columbia and Dominion requested that Ohio Adm.Code 4901-9-01(A) be amended to permit utilities to file a motion requesting a more definite statement of the complaint, because they state that some complaints filed pro se can be difficult to decipher and understand. Next, they recommended that Ohio Adm.Code 4901-9-01(B) be amended to stay a utility's requirement to file an answer once a settlement has been reached and the Commission has been notified of the settlement. (Tr. at 20.)

{¶ 206} We first note that neither Columbia nor Dominion submitted proposed language to effectuate these proposals in written comments. We note that no stakeholder submitted written comments in support of these proposals. We find the proposed changes to be unnecessary, as the rule already requires a complainant to file with the complaint "a statement which clearly explains the facts" and "a statement of the relief sought." We also note that it is common practice for ALJs to issue entries requesting a more definite statement of the facts if the complaint does not provide the required information. As to the suggestion regarding the requirement to file an answer, we note that it is rare that a settlement is reached before an answer is filed and decline to modify the rules to account for such infrequent situations.

{¶ 207} FirstEnergy proposes to amend division (G) to require that a motion be filed and good cause shown in order to hold settlement conferences somewhere other than at the Commission offices. FirstEnergy contends that this proposed change balances the importance of a productive settlement conference with circumstances in which a telephonic settlement conference may be warranted. (FirstEnergy Initial Comments at 6.)

{¶ 208} FirstEnergy proposes to add a new division (I) to address requests for telephonic hearings. It notes that there may be circumstances where a party is unable to travel to the Commission's offices in Columbus for a hearing due to a medical condition

covered by The Americans with Disabilities Act and proposes a new division to accommodate such requests. (FirstEnergy Initial Comments at 6-7.)

{¶ 209} The Commission notes comments were received before the COVID-19 pandemic was upon us. Since March 2020, settlement conferences have been successfully held telephonically to allow for social distancing, and hearings have been successfully held virtually and telephonically. Because FirstEnergy's first proposal would further limit the flexibility of settlement conferences, we decline to adopt the proposal. Furthermore, in order to better reflect the new common practice at the Commission, we modify the rule to allow for settlement conferences to take place at the Commission offices unless otherwise ordered. Additionally, the Commission has provided significant flexibility as to hearings during the COVID-19 pandemic. During this time, hearings have been held at the Commission offices, virtually, and telephonically. The requirement for a signed statement by a medical professional in order to hold a hearing in a location or method other than at the Commission offices would restrict the Commission's ability to make determinations about hearing format on a case-by-case basis. However, in recent months the Commission has generally required a medical request in order to convert a settlement conference to be held virtually or telephonically, so the Commission is already implementing this suggestion without the need for a rule change. For these reasons, we decline to adopt the proposal.

{¶ 210} AEP Ohio states that it has spent considerable time and resources attempting to address a few customer complaints that, it believes, were outside the Commission's jurisdiction and/or failed on their face to state reasonable grounds to support the complaint. It suggests adding a requirement that the Commission Staff determine whether the Commission has jurisdiction over a complaint and that the complainant has stated reasonable grounds for a complaint prior to the utility having to attend a settlement conference. (AEP Ohio Initial Comments at 7.)

{¶ 211} OCC and NOAC do not support AEP Ohio's recommendation to require Commission Staff to determine if a complaint has stated reasonable grounds. They argue

that Staff may not be subject to ex parte communication limitations. (OCC and NOAC Reply Comments at 9.) IEU-Ohio adds that if this proposal is considered, the Commission should clarify at what point during the process it would conduct this review, as it is hard to envision how this proposal would work in practice outside of a ruling on a motion to dismiss, which would render this change meaningless (IEU-Ohio Reply Comments at 17).

{¶ 212} The Commission finds that this proposal could cause significant complications, including the issues raised by OCC, NOAC, and IEU-Ohio. We note that if a party has concerns regarding jurisdiction and whether the complainant has stated reasonable grounds, that party may raise those issues in motion practice. However, those issues need not be resolved prior to a settlement conference, as those conferences are often opportunities for the exchange of information and informal resolution of the case. For these reasons, we reject the proposal.

{¶ 213} OCC and NOAC state that division (B) of this rule should be modified to provide additional information to the public. They argue that additional information about the formal complaint process may help avoid vexatious litigation. OCC and NOAC propose an addition to the rule requiring that an explanation of the complaint process and a sample complaint form be provided on the Commission's website for consumer reference. (OCC and NOAC Initial Comments at 3; OCC and NOAC Reply Comments at 8, 9-10.)

{¶ 214} We note that the Commission website includes webpages that provide help with a complaint, contact information for the Commission call center, an online complaint form, a recently added "chat with us" feature, as well as information for faxing or mailing a complaint to the Commission. The Commission website provides that consumers may initiate an informal complaint with the Commission. Then if that attempt is unsuccessful, a consumer has the opportunity to file a formal complaint. Consumers are guided through these steps by Commission call center employees who explain the formal complaint process if the informal complaint process does not resolve the dispute. Because many disputes are resolved before a formal complaint is initiated, we find that a sample complaint form or

overview of the formal complaint process could be confusing to consumers. For these reasons, we reject the proposal to include these requirements in the rule. However, we may change our website in the future to provide additional information to consumers if we find that additional information would be helpful.

{¶ 215} At the workshop, Columbia and Dominion requested that the Commission permit motions for summary judgement in Ohio Adm.Code 4901-9-01(C) (Tr. at 20-21). Similarly, FirstEnergy proposes a new rule that would allow motion for summary judgement practice in complaint proceedings in a new Ohio Adm.Code 4901-9-03.[8] Additionally, FirstEnergy's proposed language would allow for the motion for summary judgement to be granted in full or in part. (FirstEnergy Initial Comments at 8-9.)

{¶ 216} AEP Ohio supports the proposal to allow summary judgement practice in complaint proceedings. AEP Ohio states that this proposal would reduce the resources utilities must spend on proceedings with no genuine issues of material fact. AEP Ohio asserts that reducing this expense benefits all ratepayers and reduces the burden of an unnecessary proceeding on the complainants, the Commission, and the utility. (AEP Ohio Reply Comments at 10-11.)

{¶ 217} OCC and NOAC disagree and argue that permitting motions for summary judgement would disadvantage residential customers (OCC and NOAC Reply Comments at 8).

{¶ 218} The Commission notes that we refused to adopt suggestions to allow summary judgement practice in the most recent rule review proceeding. *2011 Rules Proceeding*, Finding and Order (Jan. 22, 2014) at 39. Our reasoning for rejecting the proposal still applies, including that a motion to dismiss can be filed in a proceeding and would result

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[8] Because the same idea was proposed by different stakeholders to be housed in different rules, we analyze the proposals together here.

in a similar outcome. Thus, we decline to adopt the proposals to allow motions for summary judgement.

2. PROPOSED OHIO ADM.CODE 4901-9-02 (VEXATIOUS LITIGATORS)

{¶ 219} At the workshop, Columbia and Dominion proposed the addition of a new division in this chapter that would address vexatious litigators (Tr. at 21.) In response to feedback received at the workshop, Staff proposed language in this new rule regarding vexatious litigators. Dominion asserts that the Commission has the authority to issue this rule, and Dominion supports the addition of this rule. (Dominion Initial Comments at 5.)

{¶ 220} OTA asserts that there is a practical need for this rule and supports the creation of such a rule. However, OTA recommends amended language that would provide for future filing restrictions on a vexatious litigator. (OTA Initial Comments at 4-5; OTA Reply Comments at 6.)

{¶ 221} FirstEnergy states that it supports this proposed addition to the rule because it would encourage efficient resolution of customer complaint matters. It proposes an addition to the definition of what constitutes a "frivolous" course of conduct to include conduct that (1) demonstrates a disregard for the Commission's Rules of Practice, or (2) amounts to an abuse of process. (FirstEnergy Initial Comments at 7-8.) OCC and NOAC oppose FirstEnergy's proposed language, arguing it would require customers to retain a lawyer to file a complaint against a utility. They state that the proposal would endanger consumer and ratepayers' rights to bring complaints to the Commission. (OCC and NOAC Reply Comments at 7-8.) IEU-Ohio does not take a formal position on FirstEnergy's proposed revision but suggests clarifying the meaning of disregarding Commission rules and abuse of process. IEU-Ohio notes that not every violation of the rules rises to the level of vexatious litigation, which should be reserved for the most egregious situations. (IEU-Ohio Reply Comments at 18.)

{¶ 222} In their joint comments, Columbia and Duke note that the proposed language does not account for duplicative allegations or attempts to re-litigate cases. They suggest adding "duplicative" to the definitions of vexatious litigator. (Columbia and Duke Initial Comments at 4.) OCC and NOAC disagree with this proposal, noting that a review of the formal complaints reveal that duplicative complaints are very rare at the Commission (OCC and NOAC Reply Comments at 6-7).

{¶ 223} Four A proposes a number of changes to this rule that it purports would help level the playing field, including removing frivolous as a reason to impose sanctions in division (A) of the rule. Four A asserts that significant time and money will be spent arguing what rises to the level of frivolous. Four A also proposes changes to division (B), which would make the ALJ, rather than the Commission, responsible for determining whether a party is a vexatious litigator. Four A proposes the addition of a division to this rule that would require an ALJ to proceed with a "formal inquiry" in which the utility submits relevant facts and the complainant presents written questions, then the ALJ would render a decision whether the complainant is a vexatious litigator. Additionally, Four A proposes that if the ALJ sets the case for a settlement conference, then the complaint is therefore not frivolous. (Four A Initial Comments at 2-4.)

{¶ 224} OTA opposes Four A's suggestions, noting that the proposal to remove the reference to claims that are frivolous would eliminate too much of the rule's scope. OTA also points out that Ohio Adm.Code 4901-9-01(G) requires that a complaint case be scheduled for a settlement conference, so Four A's proposal that a claim is not frivolous if set for settlement conference would mean that no claims are frivolous. OTA also disagrees with Four A's proposal that would limit a party's ability to make a motion that the complaint is frivolous, or the complainant is a vexatious litigator. OTA also argues that Four A's proposal to create a formal inquiry creates ethical concerns with the ALJ acting on questions presented by a complainant and does not have an adequate relationship to the rule Four A is seeking to amend. (OTA Reply Comments 3-4.)

{¶ 225} The Gas Companies also oppose Four A's proposal to assume that a complaint is not frivolous when scheduled for a settlement conference. They note that settlement conferences are often used to further understand the parties' positions. And they assert that motions to dismiss could reasonably be filed after a settlement conference but that the proposal from Four A would no longer allow motions to dismiss after a settlement conference. The Gas Companies also oppose the proposal to introduce an inquiry when a complaint is reviewed. They assert that Four A has not identified how the existing hearing process has prejudiced complainants. They also argue that the proposal lacks specificity and would strip away the heart of the vexatious litigator rule. The Gas Companies state that they continue to support the adoption of the vexatious litigator rule because it would protect stakeholders from abuse of the complaint process. (Gas Co. Reply Comments at 13-15.)

{¶ 226} OCC and NOAC oppose the addition of the vexatious litigator rule and argue that there is no statutory authority for the proposed rule. Specifically, they argue that R.C. 2323.52 expressly provides the authority to declare a vexatious litigator in Ohio's civil courts but that no such authority was extended to the Commission. OCC and NOAC note that R.C. 4905.26 requires the Commission to hold a hearing on the complaint if it is based on reasonable grounds. They argue that that statute would be restricted if the new vexatious litigator rule is adopted. OCC and NOAC also argue that R.C. 4901.13 does not give the Commission the power to enact this rule. Additionally, OCC and NOAC argue that vexatious litigation is not such a significant problem at the Commission that it warrants this limitation on consumers' rights to file a complaint. OCC and NOAC state that over the last ten years, only twelve individuals filed two complaints involving utilities, and only four individuals filed three or more complaints involving utilities. OCC and NOAC also argue that there is the potential for utilities to exploit the rule to deter consumers from bringing a complaint. They instead propose that providing the public with more information and assistance with formal complaint proceedings would help prevent frivolous or duplicative

complaints. (OCC and NOAC Initial Comments at 1-2; OCC and NOAC Reply Comments at 1-7.)

{¶ 227} OTA disagrees with OCC and NOAC's position and argues that the Commission has authority to enact the rule because the Commission has express statutory authority to adopt rules governing its proceedings. Additionally, OTA points out that neither R.C. 2323.51 nor 2323.52 expressly prevents other political entities such as the Commission from adopting rules limiting vexatious or frivolous conduct. OTA also emphasizes that the proposed rule would not deny a complainant's right to file a complaint, but rather may sanction an individual if a complainant abuses the process. And OTA explains that even a person determined to be a vexatious litigator is not precluded from filing new actions but rather may be slowed while the Commission determines if the complaint has merit. (OTA Reply Comments at 2-3.)

{¶ 228} Upon review of the comments, the Commission agrees that the newly proposed Ohio Adm.Code 4901-9-02 is unnecessary and, therefore, we have eliminated the proposed rule from the chapter. We also note that motions to dismiss may be filed in complaint cases where the utility believes the complainant is a vexatious litigator, as the Commission already has the authority to dismiss meritless complaints.

IV. CONCLUSION

{¶ 229} 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. The Commission has evaluated Ohio Adm.Code Chapters 4901-1, 4901:1-1, 4901-3, and 4901-9 and recommends amending the rules as demonstrated in the attachment to this Finding and Order.

{¶ 230} An agency must also demonstrate that it has included stakeholders in the development of the rule, that it has evaluated the impact of the rule on businesses, and that

the purpose of the rule is important enough to justify the impact. The agency must seek to eliminate excessive or duplicative rules that stand in the way of job creation. Moreover, 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 sought to eliminate excessive or duplicative rules that stand in the way of job creation, and has adhered to the requirement to reduce the number of regulatory restrictions.

{¶ 231} Accordingly, at this time, the Commission finds that the amendments to Ohio Adm.Code 4901-1-01, -02, -03, -04, -05, -06, -07, -08, -09, -10, -11, -12, -13, -14, -15, -16, -17, -18, -19, -20, -21, -22, -23, -24, -25, -26, -27, -28, -29, -30, -31, -32, -33, -34, -35, -36, -37; 4901:1-1-01, -02, and -03; 4901-3-01 and -02; and 4901-9-01 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 Ohio Adm.Code 4901-1-38.

{¶ 232} 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 numbers 18-275, 18-276, 18-277, or 18-278 into the Case Lookup box to view this Finding and Order, as well as the rules and BIAs, or to contact the Commission's Docketing Division to request a paper copy.

V. ORDER

{¶ 233} It is, therefore,

{¶ 234} ORDERED, That amended Ohio Adm.Code 4901-1-01, -02, -03, -04, -05, -06, -07, -08, -09, -10, -11, -12, -13, -14, -15, -16, -17, -18, -19, -20, -21, -22, -23, -24, -25, -26, -27, -28, -29, -30, -31, -32, -33, -34, -35, -36, -37; 4901:1-1-01, -02, and -03; 4901-3-01 and -02; and 4901-9-01 be adopted. It is, further,

{¶ 235} ORDERED, That Ohio Adm.Code 4901-1-38 be adopted with no changes. It is, further,

{¶ 236} 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,

{¶ 237} ORDERED, That the final rules be effective on the earliest day permitted. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapters 4901-1, 4901:1-1, 4901-3, and 4901-9 shall be in compliance with R.C. 106.03. It is, further,

{¶ 238} ORDERED, That a copy of this Finding and Order, with the rules be served upon the Common Sense Initiative at CSIPublicComments@governor.ohio.gov. It is, further,

{¶ 239} ORDERED, That a copy of this Finding and Order be sent to all public utilities subject to the jurisdiction of this Commission via the industry service lists. It is, further,

{¶ 240} ORDERED, That a copy of this Finding and Order be served upon all other interested persons of record.

COMMISSIONERS:
Approving:
Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

JWS/PAS/dr

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AMENDED

4901-1-01 Definitions.

As used in this chapter:

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

~~(A)~~ (B) "Business day" means any day that is not a Saturday, Sunday, or legal holiday.

~~(B)~~ (C) "Commission" means the public utilities commission.

~~(C)~~ (D) "Docketing information system" means the commission's system for electronically storing documents filed in a case. The internet address of the docketing information system is http://dis.puc.state.oh.us.

~~(D)~~ (E) "Electric utility" means an electric light company as defined in section 4905.03 of the Revised Code and an electric services company as defined in section 4928.01 of the Revised Code.

~~(E)~~ (F) "Electronic filing" (e-filing) means the submission of digitized electronic files to the commission's docketing information system.

~~(F)~~ (G) "Electronic mail" (~~e-mail~~email) means the exchange of digital messages across the internet or other computer network.

~~(G)~~ (H) "Emergency rate proceeding" means any case involving an application for an emergency rate adjustment filed under section 4909.16 of the Revised Code.

~~(H)~~ (I) "Facsimile transmission" (fax) means the transmission of a source document by a facsimile machine or other electronic device that encodes a document into signals and transmits and reconstructs the signals to print a duplicate of the source document at the commission's docketing division or a party's location.

~~(I)~~ (J) "Gas utility" means a gas or natural gas company as defined in section 4905.03 of the Revised Code.

~~(J)~~ (K) "General rate proceeding" means any case involving an application for an increase in rates filed under section 4909.18 of the Revised Code, a complaint or petition filed under section

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4909.34 or 4909.35 of the Revised Code, or an investigation into the reasonableness of a public utility's rates initiated by the commission under section 4905.26 of the Revised Code.

~~(K)~~ (L) "Long-term forecast report" has the meaning set forth in section 4935.04 of the Revised Code.

~~(L)~~ (L) ~~"Motor carrier proceeding" means any proceeding involving the regulation of one or more motor transportation companies or private motor carriers.~~

~~(M)~~ (M) ~~"Motor transportation company" has the meaning set forth in section 4921.02 of the Revised Code.~~

~~(N)~~ (M) "Person" means a person, firm, corporation, unincorporated association, government agency, the United States, the state of Ohio or one of its political subdivisions, or any other legally cognizable entity including any entity defined as a "person" in division (A) of section 4906.01 of the Revised Code.

~~(O)~~ (N) "Presiding hearing officer" means the commissioner or ~~attorney examiner~~ ALJ presiding at a public hearing or prehearing conference.

~~(P)~~ (O) "Private motor carrier" has the meaning set forth in section 4923.02 of the Revised Code.

~~(Q)~~ (P) "Public utility" has the meaning set forth in section 4905.02 of the Revised Code.

~~(R)~~ (Q) "Purchased gas adjustment proceeding" means any proceeding heard under section 4905.302 of the Revised Code and rule 4901:1-14-08 of the Administrative Code.

~~(S)~~ (R) "Railroad" has the meaning set forth in section 4907.02 of the Revised Code.

~~(T)~~ (S) "Reporting person" means any person ~~required to file~~filing a long-term forecast report under section 4935.04 of the Revised Code.

AMENDED

4901-1-02 Filing of pleadings and other documents.

(A) General provisions

(1) The official address of the commission's docketing division is: "Public Utilities Commission of Ohio, Docketing Division, 180 East Broad Street, Columbus, Ohio 43215-3793."

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(2) The internet address of the commission's docketing division (~~DIS)~~ is http://dis.puc.state.oh.us.

(3) The docketing division is open from seven-thirty a.m. to five-thirty p.m., Monday through Friday, except on state holidays.

(4) Except as discussed in paragraph (D) of this rule, no document ~~shall be~~is considered filed with the commission until it is received and date-stamped by the docketing division. An application for an increase in rates filed under section 4909.18 of the Revised Code, a complaint concerning an ordinance rate filed by a public utility under section 4909.34 of the Revised Code, and a petition filed by a public utility under section 4909.35 of the Revised Code ~~shall~~is not ~~be~~ considered filed until the commission determines that the application, complaint, or petition complies with the requirements of rule 4901-7-01 of the Administrative Code.

(5) The commission reserves the right to redact any material from a filed document or reject a filed document prior to posting the document on the docketing information system if the commission finds the material to be confidential personal information, a trade secret, or inappropriate for posting to its website.

(6) A party seeking to consolidate a new case with one or more previously filed cases ~~shall~~may file a motion to consolidate the cases.

(B) Paper filing

(1) All applications, complaints, reports, pleadings, or other documents to be paper filed with the commission shall be mailed or delivered to the commission's docketing division at the address shown in paragraph (A) of this rule. In addition to the original, any person paper filing a document for inclusion in a case file must submit ~~the required number of~~ two copies of the document. ~~Information regarding the number of copies required by the commission is available under procedural filing requirements on the docketing information system website, by calling the docketing division at 614-466-4095, or by visiting the docketing division at the offices of the commission. As an alternative, a filer may submit twenty copies of the filing.~~ Failure to submit the ~~required~~correct number of copies within two business days after notice by the docketing division may result in the document being stricken from the case file. An ~~attorney examiner~~ALJ may require a party to provide additional paper copies of any filed document.

(2) Unless a motion for a protective order is made in accordance with rule 4901-1-24 of the Administrative Code, concurrent with or prior to receipt of the document by the

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docketing division, any document filed with the docketing division will be made publicly available on the docketing information system.

(C) Facsimile transmission (fax) filing

A person may file documents with the commission via fax under the following conditions:

(1) The following documents may not be delivered via fax:

(a) The application, complaint, or other initial pleading that is responsible for the opening of a case.

(b) Any document for which protective or confidential treatment is requested ~~under rule 4901-1-24 of the Administrative Code~~.

(c) A notice of appeal of a commission order to the Ohio supreme court filed pursuant to section 4903.13 of the Revised Code or service of that notice upon the ~~chairman~~chairperson or a commissioner.

(2) All documents sent via fax must include a transmission sheet that states the case number, case title, date of transmission, number of pages, brief description of the document, and the name and telephone number of the sender.

(3) The originator of a fax document must contact the commission's docketing division at (614) 466-4095 prior to sending a fax. A person must notify the docketing division of its intent to send a document by fax by five p.m. on the date the document is to be sent. ~~The person must be prepared to commence transmission at the time the docketing division is notified.~~

(4) All documents must be sent to the facsimile machine in the commission's docketing division at (614) 466-0313. If that machine is inoperable, directions for alternative arrangements will be given when the originator calls to commence a fax. Unrequested documents sent to any of the commission's other facsimile machines will not be relayed to the docketing division by commission employees.

(5) Excluding the transmission sheet, all documents transmitted by fax must be thirty pages or less.

(6) All documents must be legible when received. Illegible documents received via fax will not be filed. If the document is illegible, docketing division may attempt to contact the sender to resolve the problem. The person making a fax filing ~~shall bear~~bears all risk of transmission, including all risk of equipment, electric, or telephonic failure or equipment

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overload or backup. Any document sent by fax that is received in whole or in part after five-thirty p.m. will be considered filed the next business day.

(7) No document received via fax will be given confidential treatment by the commission.

(8) If a document is delivered via fax, the party must make arrangements for the original signed document and the required number of copies of the pleading to be delivered to the commission no later than the next business day. Failure to comply with this requirement may result in the document being stricken from the case file.

(9) Because a document sent to the commission by fax will be date-stamped, and thus filed, the day it is received by the docketing division, the originator of the document shall serve copies of the document upon other parties to the case no later than the date of filing.

(D) Electronic filing (e-file)

A person may e-file documents with the commission under the following conditions:

(1) All filings must comply with the electronic filing manual and technical requirements located under electronic filing information and links at the docketing information system website.

(2) The service of a notice of appeal of a commission order pursuant to sections 4903.13 and 4923.99 of the Revised Code upon the chairperson or a commissioner~~The following documents shall~~ may not be delivered via e-filing.~~:~~

~~(a)~~ (a) ~~Any document for which protective or confidential treatment is requested under rule 4901-1-24 of the Administrative Code.~~

~~(b)~~ (b) ~~The service of a notice of appeal of a commission order pursuant to sections 4903.13 and 4923.99 of the Revised Code upon the chairman or a commissioner.~~

(3) A public utility may electronically file an application to increase rates pursuant to section 4909.18 of the Revised Code except that a public utility filing an application pursuant to chapter II of the standard filing requirements in rule 4901-7-01 of the Administrative Code shall submit one complete paper copy of the application to the commission's docketing division on the same day that an e-filing of the application is made and shall contact the rate case manager of the commission's ~~utilities~~rates and analysis department prior to the e-filing of the application to determine the number of paper copies of the application that will be required by the commission's staff.

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(4) Provided that a document is not subsequently rejected by the docketing division, an e-filed document will be considered filed as of the date and time recorded on the confirmation page that is electronically inserted as the last page of the filing upon receipt by the commission, except that any e-filed document received after five-thirty p.m. ~~shall be~~is considered filed at seven-thirty a.m. the next business day. The docketing division may reject any filing that does not comply with the electronic filing manual and technical requirements, is unreadable, includes anything deemed inappropriate for inclusion on the commission's ~~web site~~website, or is submitted for filing in a closed or archived case. If an e-filing is rejected by the docketing division, an ~~e-mail~~email message will be sent to inform the filer of the rejection and the reason for the rejection.

(5) If an e-filing is accepted, notice of the filing will be sent via ~~electronic mail (e-mail~~email~~)~~ to all persons who have electronically subscribed to the case, including the filer. This ~~e-mail~~email notice will constitute service of the e-filed document upon those persons electronically subscribed to the case. Upon receiving the ~~e-mail~~email notice that the e-filed document has been accepted by the commission's docketing division, the filer shall serve copies of the document in accordance with rule 4901-1-05 of the Administrative Code upon parties to the case who are not electronically subscribed to the case.

(6) The commission's docketing division closes at five-thirty p.m. To allow time for same-day review and acceptance of e-filings, persons making e-filings are encouraged to make their filings by no later than four p.m.

(7) The person making an e-filing ~~shall bear~~bears all risk of transmitting a document including, but not limited to, all risk of equipment, electric, or internet failure.

(8) E-filed documents must be complete documents. Appendices or attachments to an e-filed document may not be filed by other methods without prior approval.

(9) Except as otherwise provided by this rule or directed by an ~~attorney examiner~~ALJ, a person filing a document electronically need not submit any paper copy of an e-filed document to the commission's docketing division.

(E) The commission's docketing information system designates the status of each case under the case number and case name on the docket card. As discussed in this rule, attempts to make filings in certain designated cases will be denied.

(1) An open case is an active case in which filings may be made.

(2) A closed case is one in which no further filings may be made without the consent of the commission's legal department. When a case is closed, any person seeking to make a

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filing in a case must first contact the ~~attorney examiner~~ALJ assigned to the case or the commission's legal director. If the ~~attorney examiner~~ALJ or legal director agrees to permit the filing, the docketing division will be notified to reopen the case. If an additional filing is permitted, the case status will be changed to open and service of the filing must be made by the filer upon the parties to the case in accordance with rule 4901-1-05 of the Administrative Code.

(3) An archived case is a closed case that will not be reopened and in which no further filings will be permitted. If additional activity is thereafter required on any matter addressed in an archived case, the commission will open a new case and designate the new case as a related case. The commission's docketing information system displays for each case a related cases tab to provide a link to related cases.

(4) A reserved case is one set aside for future use. No filings should be made in the case until the party for who it was reserved makes an initial filing.

(5) A void case is one that was opened in error, and no documents may be filed in it.

AMENDED

4901-1-03 Form of pleadings and other papers.

(A) All pleadings or other papers to be filed with the commission shall contain ~~a caption or cover sheet setting forth~~ the name of the commission, the title of the proceeding, and the nature of the pleading or paper. All pleadings or papers filed subsequently to the original filing or commission entry initiating the proceeding shall contain the case name and docket number of the proceeding. Such pleadings or other papers shall also contain the name, address, and telephone number of the person filing the paper, or the name, address, telephone number, email addresses and attorney registration number of his or her attorney, if such person is represented by counsel. ~~The party making a filing should include a fax number and/or an e-mail address if the party is willing to accept service of pleadings by fax or e-mail. An attorney or~~ A party not represented by an attorney who is willing to accept service of filed documents by fax ~~shall~~may include a fax number and the following phrase next to or below its fax number: (willing to accept service by fax). ~~An attorney or~~ A party not represented by an attorney ~~party~~ who is willing to accept service of filed documents by ~~e-mail~~ email ~~shall~~ may include the following phrase next to or below its ~~e-mail~~ email address: (willing to accept service by ~~e-mail~~email).

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(B) All pleadings or other papers to be filed with the commission shall be printed, typewritten, or legibly handwritten on eight and one-half by eleven-inch paper. This requirement does not apply to:

(1) Original documents to be offered as exhibits.

(2) Copies of original documents to be offered as exhibits, where compliance with this requirement would be impracticable.

(3) Forms approved or supplied by the commission.

(C) Nothing in paragraph (B) of this rule ~~prohibits~~ disallows the filing of photocopies of documents that otherwise meet the requirements of that paragraph.

AMENDED

4901-1-04 Signing of pleadings.

All applications, complaints, or other pleadings filed by any person shall be signed by that person or by his or her attorney, but need not be verified unless specifically required by law or by the commission. Persons who e-file or fax file documents ~~shall~~ may use "/s/" followed by their name to indicate a signature or an electronic signature where applicable.

AMENDED

4901-1-05 Service of pleadings and other papers.

(A) Unless otherwise ordered by the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ALJ, all pleadings or papers filed with the commission subsequent to the original filing or commission entry initiating the proceeding shall be served upon all parties, no later than the date of filing. Such pleadings or other papers shall contain a certificate of service. The certificate of service shall state the date and manner of service, identify the names of the persons served, and be signed by the attorney or the party who files the document. The certificate of service for a document served by mail or personal service shall also include the address of the person served. The certificate of service for a document served by fax shall also include the fax number of the person to whom the document was transmitted. The certificate of service for a document served by ~~e-mail~~ email shall also include the ~~e-mail~~ email address of the person to whom the document was sent.

(B) If an e-filing is accepted by the docketing division, an ~~e-mail~~ email notice of the filing will be sent by the commission's e-filing system to all persons who have electronically subscribed to

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the case. The ~~e-mail~~ email notice will constitute service of the document upon the recipient. Upon receiving notice that an e-filing has been accepted by the docketing division, the filer shall serve copies of the document in accordance with this rule upon all other parties to the case who are not served via the ~~e-mail~~ email notice. A person making an e-filing shall list in the certificate of service included with the e-filing the parties who will be served by ~~e-mail~~ email notice by the commission's e-filing system and the parties who will be served by traditional methods by the person making the filing. The certificate of service for an e-filed document shall include the following notice: The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties: (list the names of the parties referenced on the service list of the docket card who have electronically subscribed to the case).

(C) If a party has entered an appearance through an attorney, service of pleadings or other papers shall be made upon the attorney instead of the party. If the party is represented by more than one attorney, service need be made only upon the "counsel of record" designated under rule 4901-1-08 of the Administrative Code. If no counsel of record is listed for a party with multiple counsel then service ~~shall~~ may be made on the first-listed counsel in the initial pleading.

(D) Unless service is completed through the commission's e-filing system as set forth in paragraph (B) of this rule or email service is impractical, (e.g., due to file size) an attorney representing a party before the commission may accomplish service upon other attorney-represented parties that have intervened or made an appearance no later than the day before the filing by email. Otherwise, ~~Service~~ service upon an attorney or party may be personal or by mail, by fax, or ~~e-mail~~ email under the following conditions:

(1) Personal service is complete by delivery of the copy to the attorney or to a responsible person at the office of the attorney. Personal service to a party not represented by an attorney is complete by delivery to the party or to a responsible person at the address provided by the party in its pleadings.

(2) Service by mail to an attorney or party is complete by mailing a copy to his or her last known address. If the attorney or party to be served has previously filed and served one or more pleadings or documents in the proceeding, the term "last known address" means the address set forth in the most recent such pleading or document.

(3) Service of a document to an attorney or party by fax may be made only if the person to be served has consented to receive service of the document by fax. Service by fax is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served.

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(4) Service of a document by ~~e-mail~~ email to ~~an attorney or~~ a party not represented by an attorney may be made only if the ~~person~~ party to be served has consented to receive service of the document by ~~e-mail~~email. ~~Service by e-mail is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served '.~~

(5) Service by email is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served.

(E) For purposes of this rule, the term "party" includes, in addition to those identified in rule 4901-1-10 of the Administrative Code, all persons who have filed motions to intervene that are pending at the time a pleading or document is to be served, provided that the person serving the pleading or other document has been served with a copy of the motion to intervene.

(F) The commission or the legal director, deputy legal director, or ~~attorney examiner~~ ALJ may order in certain cases that pleadings or documents be served in a specific manner to expedite the exchange of information.

AMENDED

4901-1-06 Amendments.

Unless otherwise provided by law, the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may, upon their own motion or upon motion of any party for good cause shown, authorize the amendment of any application, complaint, long-term forecast report, or other pleading filed with the commission.

AMENDED

4901-1-07 Computation of time.

Unless otherwise provided by law or by the commission:

(A) In computing any period of time prescribed or allowed by the commission, the date of the event from which the period of time begins to run ~~shall~~ is not ~~be~~ included. The last day of the period so computed ~~shall be~~ is included, unless it falls on a Saturday, Sunday, or legal holiday, in which case the period of time ~~shall run~~ runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Unless otherwise noted, time is measured in calendar, not business, days.

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(B) Whenever a party is permitted or required to take some action within a prescribed period of time after a pleading or other paper is served upon him or her and service is made by mail, three days ~~shall~~may be added to the prescribed period of time.

(C) Whenever a party is permitted or required to take some action within a prescribed period of time after a pleading or other paper is served upon him or her and service is made by personal, ~~facsimile transmission~~fax, or ~~electronic message (e-mail)~~email service and is completed after five thirty p.m., one day ~~shall~~may be added to the prescribed period of time. The applicable time zone is the time zone where the recipient is located, but ~~it may not~~will be no earlier than the actual close of the commission offices.

(D) If the commission office is closed to the public for the entire day that constitutes the last day for doing an act or closes before its usual closing time on that day, the act may be performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

AMENDED

4901-1-08 Practice before the commission, representation of corporations, and designation of counsel of record.

(A) Except as otherwise provided in section 4901.14 of the Revised Code and paragraphs (B), (C), and (D) of this rule, each party not appearing in propria persona shall be represented by an attorney-at-law authorized to practice before the courts of this state. Corporations must be represented by an attorney-at-law.

(B) An out-of-state attorney may seek permission to appear pro hac vice before the commission in any activity of a case upon the filing of a motion~~. The motion shall include all the information and documents required by paragraph (A)(6) of~~ and compliance with section 2 of rule XII of the Supreme Court Rules for the Government of the Bar of Ohio.

(C) Certified legal interns may appear before the commission under the direction of a supervising attorney, in accordance with rule II of the Supreme Court Rules for the Government of the Bar of Ohio. No legal intern ~~shall~~ may participate in a commission hearing in the absence of the supervising attorney without the written consent of the supervising attorney and the approval of the commission or the presiding hearing officer.

(D) If a prehearing conference is scheduled to discuss settlement of the issues in a ~~complaint~~ complaint case, any person~~, except an out-of-state attorney not in compliance with paragraph (B) of this rule,~~ except an out-of-state attorney not in compliance with paragraph (B) of this rule, with the requisite authority to settle the issues in the case may represent a party at the ~~conference~~conference.

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(E) Where a party is represented by more than one attorney, one of the attorneys shall be designated as the "counsel of record," who ~~shall have~~ has principal responsibility for the party's participation in the proceeding. The designation "counsel of record" shall appear following the name of that attorney on all pleadings or papers submitted on behalf of the party.

(F) No attorney ~~shall~~ may withdraw from a commission proceeding without prior written notice to the commission and serving a copy of the notice upon the parties to the proceeding.

AMENDED

4901-1-09 Ex parte discussion of cases.

After a case has been assigned a formal docket number, no commissioner or ~~attorney examiner~~ ALJ assigned to the case ~~shall~~ may discuss the merits of the case with any party to the proceeding or a representative of a party, unless all parties have been notified and given the opportunity to be present or to participate by telephone, or a full disclosure of the communication insofar as it pertains to the subject matter of the case is made. When an ex parte discussion occurs, a representative of the party or parties participating in the discussion shall prepare a document identifying all the participants and the location of the discussion, and fully disclosing the communications made. Within two business days of the occurrence of the ex parte discussion, the document shall be provided to the commission's legal director, the legal director's ~~or his~~ designee, or to an ~~attorney examiner~~ ALJ present at the discussion for review. Upon completion of the review, the final document with any necessary changes shall be filed with the commission's docketing division within two business days and the filer shall serve a copy upon the parties to the case and to each participant in the discussion. The document filed and served shall include the following language: Any participant in the discussion who believes that any representation made in this document is inaccurate or that the communications made during the discussion have not been fully disclosed ~~shall~~ may prepare a letter explaining the participant's disagreement with the document, ~~and shall~~ file the letter with the commission, and serve the letter upon all parties and participants in the discussion within two business days of receipt of this document.

AMENDED

4901-1-10 Parties.

(A) The parties to a commission proceeding ~~shall include~~includes:

(1) Any person who files an application, petition, long-term forecast report, or complaint.

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(2) Any public utility, railroad, or private motor carrier against whom a complaint is filed.

(3) Any public utility, railroad, or private motor carrier whose rates, charges, practices, policies, or actions are designated as the subject of a commission investigation.

(4) Any person granted leave to intervene under rule 4901-1-11 of the Administrative Code.

(5) Any municipal corporation which that has enacted an ordinance which is subsequently challenged in a complaint filed under section 4909.34 of the Revised Code.

(6) Any person cited for failure to maintain liability insurance as required by section ~~4921.11~~4921.09 ~~or 4923.08~~ of the Revised Code.

(7) Any person who files a request for an administrative hearing in a transportation civil forfeiture case.

(8) Any other person expressly made a party by order of the commission.

(B) If any public utility, railroad, or private motor carrier referred to in paragraph (A)(2) or (A)(3) of this rule is operated by a receiver or trustee, the receiver or trustee shall also be made a party.

(C) Except for purposes of rules 4901-1-02, 4901-1-03, 4901-1-04, 4901-1-05, 4901-1-06, 4901-1-07, 4901-1-12, 4901-1-13, 4901-1-15, 4901-1-18, 4901-1-26, 4901-1-30, 4901-1-31, 4901-1-32, 4901-1-33, and 4901-1-34 of the Administrative Code, the commission staff ~~shall~~ is not ~~be~~ considered a party to any proceeding.

4901-1-11 Intervention.

(A) Upon timely motion, any person ~~shall be permitted to~~may intervene in a proceeding upon a showing that:

(1) A statute of this state or the United States confers a right to intervene.

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

(B) In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ ~~shall~~should consider:

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(1) The nature and extent of the prospective intervenor's interest.

(2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.

(3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.

(4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

(5) The extent to which the person's interest is represented by existing parties.

(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~~applies where a statute of this state or the United States confers a right to intervene.

(D) Unless otherwise provided by law, the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ may:

(1) Grant limited intervention, which permits a person to participate with respect to one or more specific issues, if the person has no real and substantial interest with respect to the remaining issues or the person's interest with respect to the remaining issues is adequately represented by existing parties.

(2) Require parties with substantially similar interests to consolidate their examination of witnesses or presentation of testimony.

(E) A motion to intervene will not be considered timely if it is filed later than five days prior to the scheduled date of hearing or after any specific deadline established by order of the commission for purposes of a particular proceeding.

(F) A motion to intervene which is not timely filed ~~will be granted only under extraordinary circumstances.~~may at the discretion of the commission, the legal director, the deputy legal director, or the ALJ, be granted for good cause shown.

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4901-1-12 Motions.

(A) All motions, unless made at a public hearing or transcribed prehearing conference, or unless otherwise ordered for good cause shown, shall be in writing and shall be accompanied by a memorandum in support. The memorandum in support shall contain a brief statement of the grounds for the motion and citations of any authorities relied upon.

(B) Except as otherwise provided in paragraphs (C) and (F) of this rule:

(1) Any party may file a memorandum contra within fifteen days after the service of a motion, or such other period as the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ ~~requires~~orders.

(2) Any party may file a reply memorandum within seven days after the service of a memorandum contra, or such other period as the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ ~~requires~~orders.

(C) Any motion may include a specific request for an expedited ruling. The grounds for such a request shall be set forth in the memorandum in support. If the motion requests an extension of time to file pleadings or other papers of five days or less, an immediate ruling may be issued without the filing of memoranda. In all other situations, the party requesting an expedited ruling may first contact all other parties to determine whether any party objects to the issuance of such a ruling without the filing of memoranda. If the moving party certifies that no party objects to the issuance of such a ruling, an immediate ruling may be issued. If any party objects to the issuance of such a ruling, or if the moving party fails to certify that no party has any objection, any party may file a memorandum contra within seven days after the service of the motion, or such other period as the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ ~~requires~~orders. No reply memoranda ~~shall~~may be filed in such cases unless specifically requested by the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ALJ.

(D) All written motions and memoranda shall be filed with the commission and served upon all parties in accordance with rule 4901-1-05 of the Administrative Code.

(E) For purposes of this rule, the term "party" includes all persons who have filed motions to intervene which are pending at the time a motion or memorandum is to be filed or served.

(F) Notwithstanding paragraphs (B) and (C) of this rule, the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ may, upon their own motion, issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party.

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(G) The presiding hearing officer may direct that any motion made at a public hearing or transcribed prehearing conference be reduced to writing and filed and served in accordance with this rule.

(H) A motion for a hearing on a long-term forecast report under division (D)(3) of section 4935.04 of the Revised Code shall be filed within forty-five days of the filing of the report.

AMENDED

4901-1-13 Continuances and extensions of time.

(A) Except as otherwise provided by law, and notwithstanding any other provision in this chapter, continuances of public hearings and extensions of time to file pleadings or other papers may be granted upon motion of any party for good cause shown, or upon motion of the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ALJ.

(B) A motion for an extension of time to file a document must be timely filed so as to permit the commission, legal director, deputy legal director, or ~~attorney examiner~~ ALJ sufficient time to consider the request and to make a ruling prior to the established filing date. If two or more parties have similar documents due the same day and a party intends to seek an extension of the filing date, the moving party must file its motion for an extension sufficiently in advance of the existing filing date so that other parties who might be disadvantaged by submitting their filing prior to the movant submitting its filing will not be disadvantaged. If two or more parties have similar documents due the same day and the motion for an extension is filed fewer than five business days before the document is scheduled to be filed, then the moving party, in addition to regular service of the motion for an extension, must provide a brief summary of the request to all other parties ~~orally, by facsimile transmission, or by electronic message by~~ no later than five-thirty p.m. on the day the motion is filed.

(C) A copy of any written ruling granting or denying a request for a continuance or extension of time shall be served upon all parties to the proceeding.

(D) Nothing in this rule restricts or limits the authority of the presiding hearing officer to issue oral rulings during public hearings or transcribed prehearing conferences.

AMENDED

4901-1-14 Procedural rulings.

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The legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may rule, in writing, upon any procedural motion or other procedural matter. A copy of any such ruling ~~shall~~will be served upon all parties to the proceeding.

AMENDED

4901-1-15 Interlocutory appeals.

(A) Any party who is adversely affected thereby may take an immediate interlocutory appeal to the commission from any ruling issued under rule 4901-1-14 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference that does any of the following:

(1) Grants a motion to compel discovery or denies a motion for a protective order.

(2) Denies a motion to intervene, terminates a party's right to participate in a proceeding, or requires intervenors to consolidate their examination of witnesses or presentation of testimony.

(3) Refuses to quash a subpoena.

(4) Requires the production of documents or testimony over an objection based on privilege.

(B) Except as provided in paragraph (A) of this rule, no party may take an interlocutory appeal from any ruling issued under rule 4901-1-14 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference unless the appeal is certified to the commission by the legal director, deputy legal director, ~~attorney examiner~~ALJ, or presiding hearing officer. The legal director, deputy legal director, ~~attorney examiner~~ALJ, or presiding hearing officer ~~shall~~will not certify such an appeal unless he or she finds that the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure from past precedent and an immediate determination by the commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the commission ultimately reverse the ruling in question.

(C) Any party wishing to take an interlocutory appeal from any ruling must file the interlocutory appeal with the commission within five days after the ruling is issued. An extension of time for the filing of an interlocutory appeal may be granted only under extraordinary circumstances. The interlocutory appeal shall set forth the basis of the appeal and citations of any authorities relied upon. A copy of the ruling or the portion of the record that contains the ruling shall be attached to the interlocutory appeal. If the record is unavailable, the

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interlocutory appeal must set forth the date the ruling was issued and must describe the ruling with reasonable particularity.

(D) Unless otherwise ordered by the commission, any party may file a memorandum contra within five days after the filing of an interlocutory appeal.

(E) Upon consideration of an interlocutory appeal, the commission may, in its discretion either:

(1) Affirm, reverse, or modify the ruling.

(2) Dismiss the appeal, if the commission is of the opinion that the issues presented are moot, the party taking the appeal lacks the requisite standing to raise the issues presented or has failed to show prejudice as a result of the ruling in question, or the issues presented should be deferred and raised at some later point in the proceeding.

(F) Any party that is adversely affected by a ruling issued under rule 4901-1-14 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference and that (1) elects not to take an interlocutory appeal from the ruling or (2) files an interlocutory appeal that is not certified by the ~~attorney examiner~~ ALJ may still raise the propriety of that ruling as an issue for the commission's consideration by discussing the matter as a distinct issue in its initial brief or in any other appropriate filing prior to the issuance of the commission's opinion and order or finding and order in the case.

AMENDED

4901-1-16 General provisions and scope of discovery.

(A) The purpose of rules 4901-1-16 to 4901-1-24 of the Administrative Code is to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings. These rules are also intended to minimize commission intervention in the discovery process.

(B) Except as otherwise provided in paragraphs (G) and (I) of this rule, any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained through interrogatories, requests for the production of documents and things or permission to enter upon land or other property, depositions, and requests for admission. Aside from the express limits reflected in Chapter 4901-1 of the Administrative Code, The frequency of using these

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discovery methods is not limited unless the commission orders otherwise under rule 4901-1-24 of the Administrative Code.

(C) Any party may, through interrogatories, require any other party to identify each expert witness expected to testify at the hearing and to state the subject matter on which the expert is expected to testify. Thereafter, any party may discover from the expert or other party facts or data known or opinions held by the expert which are relevant to the stated subject matter. A party who has retained or specially employed an expert may, with the approval of the commission, require the party conducting discovery to pay the expert a reasonable fee for the time spent responding to discovery requests.

(D) Discovery responses which are complete when made need not be supplemented with subsequently acquired information except in the following situations:

(1) The response identified each expert witness expected to testify at the hearing or stated the subject matter upon which each expert was expected to testify.

(2) The responding party later learned that the response was incorrect or otherwise materially deficient.

(3) The response indicated that the information sought was unknown or nonexistent and such information subsequently became known or existent.

(4) An order of the commission or agreement of the parties provides for the supplementation of responses.

(5) ~~Requests~~Reasonable requests for the supplementation of responses are submitted prior to the commencement of the hearing.

(6) The response addressed the identity and location of persons having knowledge of discoverable matters.

(E) The supplementation of responses required under paragraphs (D)(1) to (D)(3) and (D)(6) of this rule shall be provided within five business days of discovery of the new information.

(F) Nothing in rules 4901-1-16 to 4901-1-24 of the Administrative Code precludes parties from conducting informal discovery by mutually agreeable methods or by stipulation.

(G) A discovery request under rules 4901-1-19 to 4901-1-22 of the Administrative Code may not seek information from any party which is available in prefiled testimony, prehearing data submissions, or other documents which that party has filed with the commission in the

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pending proceeding. Before serving any discovery request, a party must first make a reasonable effort to determine whether the information sought is available from such sources.

(H) For purposes of rules 4901-1-16 to 4901-1-24 of the Administrative Code, the term "party" includes any person who has filed a motion to intervene which is pending at the time a discovery request or motion is to be served or filed.

(I) Rules 4901-1-16 to 4901-1-24 of the Administrative Code do not apply to the commission staff.

AMENDED

4901-1-17 Time periods for discovery.

(A) Except as provided in paragraph (E) of this rule, discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible. Unless otherwise ordered for good cause shown, discovery must be completed prior to the commencement of the hearing.

(B) In general rate proceedings, no party may serve a discovery request later than fourteen days after the filing and mailing of the staff report of investigation ~~required by~~under section 4909.19 of the Revised Code.

(C) In emergency rate proceedings, no party may serve a discovery request later than twenty days prior to the commencement of the hearing.

(D) In purchased gas adjustment proceedings, no party may serve a discovery request later than thirty days after the filing of the audit report ~~required by~~under rule 4901:1-14-07 of the Administrative Code.

(E) In long-term forecast report proceedings, no party may serve a discovery request later than twenty-five days prior to the commencement of the evidentiary hearing. Discovery may begin in long-term forecast report proceedings:

(1) Immediately after the filing with the commission of a long-term forecast report which contains a substantial change from the preceding report as defined by section 4935.04 of the Revised Code.

(2) Immediately after the filing with the commission of a long-term forecast report when the most recent hearing on a forecast report by the reporting person has been more than four years prior.

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(3) Immediately after good cause to conduct a hearing on a long-term forecast report has been determined by order of the commission.

(4) Immediately after a reporting person files its first long-term forecast report under section 4935.04 of the Revised Code.

(F) The restrictions set forth in paragraphs (B), (C), (D), and (E) of this rule do not apply to requests for the supplementation of prior responses served under paragraph (D)(5) of rule 4901-1-16 of the Administrative Code.

(G) Notwithstanding the provisions of paragraphs (B), (C), (D), and (E) of this rule, the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may shorten or enlarge the time periods for discovery, upon their own motion or upon motion of any party for good cause shown.

AMENDED

4901-1-18 Filing and service of discovery requests and responses.

Except as otherwise provided in rules 4901-1-23 and 4901-1-24 of the Administrative Code, and unless otherwise ordered for good cause shown, discovery requests and responses shall be served upon all parties but ~~shall~~should not be filed with the commission. Discovery requests and responses shall be served upon staff counsel if staff is participating in the proceeding. For purposes of this rule, the term "response" includes written responses or objections to interrogatories served under rule 4901-1-19 of the Administrative Code, written responses or objections to requests for the production of documents or tangible things or requests for permission to enter upon land or other property served under rule 4901-1-20 of the Administrative Code, and written responses or objections to requests for admission served under rule 4901-1-22 of the Administrative Code. It does not include any documents or tangible things produced for inspection or copying under rule 4901-1-20 of the Administrative Code. Discovery requests and responses shall be served upon all parties to the proceeding by ~~e-mail~~email, unless otherwise ordered by the commission, legal director, deputy legal director, or ~~attorney examiner~~ALJ. The electronic copy of the discovery requests ~~shall~~should be reasonably useable for word processing and provided by ~~electronic mail,~~ email, unless other means are agreed to by the parties.

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4901-1-19 Interrogatories and response time.

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(A) Any party may serve upon any other party written interrogatories, to be answered by the party served. If the party served is a corporation, partnership, association, government agency, or municipal corporation, it shall designate one or more of its officers, agents, or employees to answer the interrogatories, who shall furnish such information as is available to the party. Each interrogatory shall be answered separately and fully, in writing and under oath, unless it is objected to, in which case the reason for the objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and the objections shall be signed by the attorney or other person making them. The party upon whom the interrogatories have been served shall serve a copy of the answers or objections upon the party submitting the interrogatories and all other parties within twenty days after the service thereof, or within such shorter or longer time as the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may allow. The party submitting the interrogatories may move for an order under rule 4901-1-23 of the Administrative Code with respect to any objection or other failure to answer an interrogatory.

(B) Subject to the scope of discovery set forth in rule 4901-1-16 of the Administrative Code, interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the interrogatories are served. An interrogatory which is otherwise proper is not objectionable merely because it calls for an opinion, contention, or legal conclusion, but the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ may direct that such interrogatory need not be answered until certain designated discovery has been completed, or until some other designated time. The answers to interrogatories may be used to the extent permitted by the rules of evidence, but such answers are not conclusive and may be rebutted or explained by other evidence.

(C) Where the answer to an interrogatory may be derived or ascertained from public documents on file in this state, or from documents which the party served with the interrogatory has furnished to the party submitting the interrogatory within the preceding twelve months, it is a sufficient answer to such interrogatory to specify the title of the document, the location of the document or the circumstances under which it was furnished to the party submitting the interrogatory, and the page or pages from which the answer may be derived or ascertained.

(D) Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, and the burden of deriving the answer is substantially the same for the party submitting the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party submitting the interrogatory a reasonable opportunity to examine, audit, or inspect such records.

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AMENDED

4901-1-20 Production of documents and things; entry upon land or other property.

(A) Subject to the scope of discovery set forth in rule 4901-1-16 of the Administrative Code, any party may serve upon any other party a written request to:

(1) Produce and permit the party making the request, or someone acting on his or her behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, or data compilations, which are in the possession, custody, or control of the party upon whom the request is served.

(2) Produce for inspection, copying, sampling, or testing any tangible things which are in the possession, control, or custody of the party upon whom the request is served.

(3) Permit entry upon designated land or other property for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(B) The request shall set forth the items to be inspected either by individual item or by category, and shall describe each category with reasonable particularity. The request shall also specify a reasonable time, place, and manner for conducting the inspection and performing the related acts.

(C) The party upon whom the request is served shall serve a written response within twenty days after the service of the request, or within such shorter or longer time as the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may allow. The response shall state, with respect to each item or category, that the inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reason for the objection shall be stated. If an objection is made to part of an item or category, that part shall be specified. The party submitting the request may move for an order under rule 4901-1-23 of the Administrative Code with respect to any objection or other failure to respond to a request or any part thereof, or any failure to permit inspection as requested.

(D) Where a request calls for the production of a public document on file in this state, or a document which the party upon whom the request is served has furnished to the party submitting the request within the preceding twelve months, it is a sufficient response to such request to specify the location of the document or the circumstances under which the document was furnished to the party submitting the request.

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4901-1-21 Depositions.

(A) Any party to a pending commission proceeding may take the testimony of any other party or person, other than a member of the commission staff, by deposition upon oral examination with respect to any matter within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code. The attendance of witnesses and production of documents may be compelled by subpoena as provided in rule 4901-1-25 of the Administrative Code.

(B) Any party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to the deponent, to all parties, and to the commission. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient for identification. If a subpoena duces tecum is to be served upon the person to be examined, a designation of the materials to be produced thereunder shall be attached to or included in the notice. Notice to the commission is made by filing a copy of the notice of deposition provided to the person to be deposed or a copy of the subpoena in the case file.

(C) If any party shows that he or she was unable with the exercise of diligence to obtain counsel to represent him or her at the taking of a deposition, the deposition may not be used against such party.

(D) The commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ALJ, in response to the filing of a motion, may order that a deposition be recorded by other than stenographic means, in which case the order ~~shall~~will designate the manner of recording the deposition, and may include provisions to assure that the recorded testimony will be accurate and trustworthy. If such an order is made, any party may arrange to have a stenographic transcription made at his or her own expense.

(E) The notice to a party deponent may be accompanied by a request, made in compliance with rule 4901-1-20 of the Administrative Code, for the production of documents or tangible things at the taking of the deposition.

(F) A party may in the notice and in a subpoena name a corporation, partnership, association, government agency, or municipal corporation and designate with reasonable particularity the matters on which examination is requested. The organization so named shall choose one or more of its officers, agents, employees, or other persons duly authorized to testify on its behalf, and shall set forth, for each person designated, the matters on which he or she will

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testify. The persons so designated shall testify as to matters known or reasonably available to the organization.

(G) Depositions may be taken before any person authorized to administer oaths under the laws of the jurisdiction in which the deposition is taken, or before any person appointed by the commission. Unless all of the parties expressly agree otherwise, no deposition ~~shall~~may be taken before any person who is a relative, employee, or attorney of any party, or a relative or employee of such attorney.

(H) The person before whom the deposition is to be taken shall put the witness ~~on~~ under oath or affirmation, and shall personally or by someone acting under his direction and in his presence record the testimony of the witness. Examination and cross-examination may proceed as permitted in commission hearings. The testimony shall be recorded stenographically or by any other means ordered under paragraph (D) of this rule. If requested by any of the parties, the testimony shall be transcribed at the expense of the party making the request.

(I) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope upon the party taking the deposition, who shall transmit them to the officer~~, who in turn shall~~ to propound them to the witness and record the answers verbatim.

(J) At any time during the taking of a deposition, the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ALJ, in response to a motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass, or oppress the deponent or party, may order the person conducting the examination to cease taking the deposition, or may limit the scope and manner of taking the deposition as provided in rule 4901-1-24 of the Administrative Code. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for such an order.

(K) If and when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him or her, unless such examination and reading are expressly waived by the witness and the parties. Any changes in form or substance that the witness desires to make ~~shall~~may be entered upon the deposition by the officer with a statement of the reasons given by the witness for making the changes. The deposition shall then be signed by the witness unless the signing is expressly waived by the parties or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within ten days after its submission to him or her, the officer shall sign it and state

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on the record the fact of the waiver or the illness or absence of the witness, or the fact of the refusal to sign together with the reasons, if any, given for such refusal. The deposition may then be used as fully as though signed, unless the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ALJ, upon motion to suppress, holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(L) The officer shall certify on the deposition that the witness was duly sworn by him or her and that the deposition is a true record of the testimony given by the witness. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(M) Documents and things produced for inspection during the examination of the witness shall, upon request of any party, be marked for identification and annexed to the deposition, except that:

(1) The person producing the materials may substitute copies to be marked for identification, if all parties are afforded a fair opportunity to verify the copies by comparison with the originals,

(2) If the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to the deposition.

(N) Except as stated in paragraph (N)(2) of this rule, ~~Depositions~~ depositions may be used in commission hearings to the same extent permitted in civil actions in the court of common pleas.~~courts of record~~. ~~Unless otherwise ordered for good cause shown, any depositions to be used as evidence must be filed with the commission at least three days prior to the commencement of the hearing. A deposition need not be prefiled if used to impeach the testimony of a witness at hearing.~~

~~(O)~~ (1) **Unless otherwise ordered for good cause shown, any depositions to be used as evidence must be filed with the commission at least three days prior to the commencement of the hearing. A deposition need not be prefiled if used to impeach the testimony of a witness at hearing.**

(2) Unless otherwise ordered for good cause shown, a deposition cannot be used as substantive evidence in lieu of the deponent appearing to present testimony at hearing.

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AMENDED

4901-1-22 Requests for admission.

(A) Any party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any specific matter within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code, including the genuineness of any documents described in the request. Copies of any such documents shall be served with the request unless they are or have been otherwise furnished for inspection or copying. Objections are to be separately noted and not combined with answers to requests for admission.

(B) Each matter of which an admission is requested shall be separately set forth. The party to whom a request for admission has been directed shall quote each request for admission immediately preceding the corresponding answer or objection. The matter is admitted unless, within twenty days after the service of the request, or within such shorter or longer time as the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection, signed by the party or by his or her attorney. If an objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully make an admission or denial. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer or deny only part of the matter of which an admission is requested, the party shall specify that portion which is true and qualify or deny the remainder. An answering party may not give lack of information as a reason for failure to admit or deny a matter unless the party states that he or she has made reasonable inquiry and that information known or readily obtainable is insufficient to enable him or her to make an admission or denial. A party who considers the truth of a matter of which an admission has been requested to be a genuine issue for the hearing may not, on that basis alone, object to the request, but may deny the matter or set forth the reasons why an admission or denial cannot be made.

(C) Any party who has requested an admission may move for an order under rule 4901-1-23 of the Administrative Code with respect to any answer or objection. Unless it appears that an objection is justified, the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ ~~shall~~will order that answer be served. If an answer fails to comply with the requirements of this rule, the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ may:

(1) Order that the matter be admitted for purposes of the pending proceeding.

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(2) Order that an amended answer be served.

(3) Determine that final disposition of the matter should be deferred until a prehearing conference or some other designated time prior to the commencement of the hearing.

(D) Unless otherwise ordered by the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ALJ, any matter admitted under this rule is conclusively established against the party making the admission, but such admission may be rebutted by evidence offered by any other party. An admission under this rule is an admission for purposes of the pending proceeding only and may not be used for any other purpose.

(E) If any party refuses to admit the truth of a matter which is subsequently proved at the hearing, and the commission determines that the party's refusal to admit the truth of the matter was not justified, the commission may impose a portion of the costs of the proceeding upon such party, in accordance with the second division of section 4903.24 of the Revised Code.

AMENDED

4901-1-23 Motions to compel discovery.

(A) Any party, upon reasonable notice to all other parties and any persons affected thereby, may move for an order compelling discovery, with respect to:

(1) Any failure of a party to answer an interrogatory served under rule 4901-1-19 of the Administrative Code.

(2) Any failure of a party to produce a document or tangible thing or permit entry upon land or other property as requested under rule 4901-1-20 of the Administrative Code.

(3) Any failure of a deponent to appear or to answer a question propounded under rule 4901-1-21 of the Administrative Code.

(4) Any other failure to answer or respond to a discovery request made under rules 4901-1-19 to 4901-1-22 of the Administrative Code.

(B) For purposes of this rule, an evasive or incomplete answer ~~shall~~will be treated as a failure to answer.

(C) No motion to compel discovery ~~shall~~may be filed under this rule until the party seeking discovery has exhausted all other reasonable means of resolving any differences with the party or person from whom discovery is sought. A motion to compel discovery shall be accompanied by:

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(1) A memorandum in support, setting forth:

(a) The specific basis of the motion, and citations of any authorities relied upon.

(b) A brief explanation of how the information sought is relevant to the pending proceeding.

(c) Responses to any objections raised by the party or person from whom discovery is sought.

(2) Copies of any specific discovery requests which are the subject of the motion to compel~~,~~ and copies of any responses or objections thereto.

(3) An affidavit of counsel, or of the party seeking to compel discovery if such party is not represented by counsel, setting forth the efforts which have been made to resolve any differences with the party or person from whom discovery is sought.

(D) The commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may grant or deny the motion in whole or in part. If the motion is denied in whole or in part, the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ may issue such protective order as would be appropriate under rule 4901-1-24 of the Administrative Code.

(E) Any order of the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ granting a motion to compel discovery in whole or in part may be appealed to the commission in accordance with rule 4901-1-15 of the Administrative Code. If no application for review is filed within the time limit set forth in that rule, the order of the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ becomes the order of the commission.

(F) If any party or person disobeys an order of the commission compelling discovery, the commission may:

(1) Seek appropriate judicial relief against the disobedient person or party under section 4903.04 or 4905.60 of the Revised Code.

(2) Prohibit the disobedient party from further participating in the pending proceeding.

(3) Prohibit the disobedient party from supporting or opposing designated claims or defenses, or from introducing evidence or conducting cross-examination on designated matters.

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(4) Dismiss the pending proceeding, if such proceeding was initiated by an application, petition, or complaint filed by the disobedient party, unless such a dismissal would unjustly prejudice any other party.

(5) Take such other action as the commission considers appropriate.

AMENDED

4901-1-24 Motions for protective orders.

(A) Upon motion of any party or person from whom discovery is sought, the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may issue any order that is necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such a protective order may provide that:

(1) Discovery not be had.

(2) Discovery may be had only on specified terms and conditions.

(3) Discovery may be had only by a method of discovery other than that selected by the party seeking discovery.

(4) Certain matters not be inquired into.

(5) The scope of discovery be limited to certain matters.

(6) Discovery be conducted with no one present except persons designated by the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ALJ.

(7) A trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.

(8) Information acquired through discovery be used only for purposes of the pending proceeding, or that such information be disclosed only to designated persons or classes of persons.

(B) No motion for a protective order shall be filed under paragraph (A) of this rule until the person or party seeking the order has exhausted all other reasonable means of resolving any differences with the party seeking discovery. A motion for a protective order filed pursuant to paragraph (A) of this rule shall be accompanied by:

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(1) A memorandum in support, setting forth the specific basis of the motion and citations of any authorities relied upon.

(2) Copies of any specific discovery requests that are the subject of the request for a protective order.

(3) An affidavit of counsel, or of the person seeking a protective order if such person is not represented by counsel, setting forth the efforts that have been made to resolve any differences with the party seeking discovery.

(C) If a motion for a protective order filed pursuant to paragraph (A) of this rule is denied in whole or in part, the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ may require that the party or person seeking the order provide or permit discovery, on such terms and conditions as are just.

(D) Upon motion of any party or person with regard to the filing of a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Any order issued under this paragraph ~~shall~~will minimize the amount of information protected from public disclosure. The following requirements apply to a motion filed under this paragraph:

(1) All documents submitted pursuant to paragraph (D) of this rule should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information. Such redacted documents should be filed with the otherwise required number of copies for inclusion in the public case file.

(2) Two unredacted copies of the allegedly confidential information shall be filed under seal, along with a motion for protection of the information, with the secretary of the commission, the chief of the docketing division, or the chief's designee. Each page of the allegedly confidential material filed under seal must be marked as "confidential," "proprietary," or "trade secret."

(3) The motion for protection of allegedly confidential information shall be accompanied by a memorandum in support setting forth the specific basis of the motion, including a detailed discussion of the need for protection from disclosure, and citations of any

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authorities relied upon. The motion and memorandum in support shall be made part of the public record of the proceeding.

(E) Pending a ruling on a motion filed in accordance with paragraph (D) of this rule, the information filed under seal will not be included in the public record of the proceeding or disclosed to the public until otherwise ordered. The commission and its employees will undertake reasonable efforts to maintain the confidentiality of the information pending a ruling on the motion. A document or portion of a document filed with the docketing division that is marked "confidential," "proprietary," or "trade secret," or with any other such marking will not be afforded confidential treatment and protected from disclosure unless it is filed in accordance with paragraph (D) of this rule.

(F) Unless otherwise ordered, any order prohibiting public disclosure pursuant to paragraph (D) of this rule ~~shall~~ automatically ~~expire~~expires twenty-four months after the date of its issuance, and such information may then be included in the public record of the proceeding. A party wishing to extend a protective order beyond twenty-four months shall file an appropriate motion at least forty-five days in advance of the expiration date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure. A timely-filed motion will be automatically approved on the expiration date of the existing order, unless otherwise ordered by the commission. Nothing precludes the commission from reexamining the need for protection ~~issue~~ de novo ~~during the twenty-four month period~~ if there is an application for rehearing on confidentiality or a public records request for the redacted information.

(G) The requirements of this rule do not apply to information submitted to the commission staff. However, information submitted directly to the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ that is not filed in accordance with the requirements of paragraph (D) of this rule may be filed with the docketing division as part of the public record. No document received via fax ~~or e-filing~~ will be given confidential treatment by the commission.

AMENDED

4901-1-25 Subpoenas.

(A) The commission, any commissioner, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may issue subpoenas~~,~~ upon their own motion or upon motion of any party. A subpoena shall command the person to whom it is directed to attend and give testimony at the time and place specified therein. A subpoena may also command such person to produce the books, papers, documents, or other tangible things described therein. A party may request a subpoena by either of the following methods:

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(1) A party may file a motion for a subpoena with the docketing division. A completed subpoena form, ready for signature, shall accompany the motion. The ~~attorney examiner~~ ALJ assigned to the case, or the legal director or deputy legal director or their designee, will review the filing and, if appropriate, sign the subpoena. The ~~attorney examiner~~ALJ, legal director, deputy legal director, or designee will return via United States mail the signed subpoena, with a cover letter, to the party that filed the motion. A copy of the cover letter will be docketed in the case file.

(2) To receive expedited treatment, a motion for a subpoena and the subpoena itself should first be submitted in person to the ~~attorney examiner~~ ALJ assigned to the case, or to the legal director or a designee, for signature of the subpoena. After the subpoena is signed, a copy of the motion for a subpoena and a copy of the signed subpoena shall then be filed with the docketing division by the requesting party and served upon the parties to the case. The person seeking the subpoena shall retain the original signed subpoena and make arrangements for its service.

(B) Arranging for service of a signed subpoena is the responsibility of the person requesting the subpoena. A subpoena may be served by any other person who is not a party and who is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering it to such person, or by reading it to him or her in person, leaving it at his or her place of residence, leaving it at his or her business address if the person is a party or employee of a party to the case, or mailing the subpoena via United States mail as certified or express mail, return receipt requested, with instructions to the delivering postal authority to show to whom delivered, date of delivery, and address where ~~deliver~~delivered. A subpoena may be served at any place within this state. The person serving the subpoena shall file a return thereof with the docketing division. When the subpoena is served by mail, the person filing the return shall include the signed receipt with the return.

(C) The commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ALJ, upon their own motion or upon motion of any party, may quash a subpoena if it is unreasonable or oppressive, or condition the denial of such a motion upon the advancement by the party on whose behalf the subpoena was issued of the reasonable costs of producing the books, papers, documents, or other tangible things described therein.

(D) A subpoena may require a person, other than a member of the commission staff, to attend and give testimony at a deposition, and to produce designated books, papers, documents, or other tangible things within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code. Such a subpoena is subject to the provisions of rule 4901-1-24 of the Administrative Code as well as paragraph (C) of this rule.

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(E) Unless otherwise ordered for good cause shown, all motions for subpoenas requiring the attendance of witnesses at a hearing must be filed with the commission no later than ten days prior to the commencement of the hearing or, if expedited treatment is requested, no later than five days prior to the commencement of the hearing.

(F) Any persons subpoenaed to appear at a commission hearing, other than a party or an officer, agent, or employee of a party, shall receive the same witness fees and mileage expenses provided in civil actions ~~in~~ as provided in section 2335.06 of the Revised Code ~~courts of record~~. For purposes of this paragraph, the term "employee" includes consultants and other persons retained or specially employed by a party for purposes of the proceeding. If the witness is subpoenaed at the request of one or more parties, the witness fees and mileage expenses shall be paid by such party or parties. If the witness is subpoenaed upon motion of the commission, a commissioner, the legal director, the deputy legal director, or an ~~attorney examiner~~ALJ, the witness fees and mileage expenses ~~shall~~will be paid by the state, in accordance with section 4903.05 of the Revised Code. Unless otherwise ordered, a motion for a subpoena requiring the attendance of a witness at a hearing shall be accompanied by a deposit in the form of a check made payable to the person subpoenaed sufficient to cover the required witness fees and mileage expenses for one day's attendance. A separate deposit ~~shall be~~is required for each witness. The deposit shall be tendered to the fiscal officer of the commission, who ~~shall retain it until the hearing is completed, at which time the officer~~ shall tender the check to the witness when the hearing is completed. The fiscal officer shall attempt to resolve any payment controversies between the parties. The fiscal officer shall bring any unresolved controversies to the attention of the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ for resolution.

(G) If any person fails to obey a subpoena issued by the commission, a commissioner, the legal director, the deputy legal director, or an ~~attorney examiner~~ALJ, the commission may seek appropriate judicial relief against such person under section 4903.02 or 4903.04 of the Revised Code.

(H) A sample subpoena is provided in the appendix to this rule.

AMENDED

4901-1-26 Prehearing conferences.

(A) In any proceeding, the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may, upon motion of any party or upon their own motion, hold one or more prehearing conferences for the purpose of:

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(1) Resolving outstanding discovery matters, including:

(a) Ruling on pending motions to compel discovery or motions for protective orders.

(b) Establishing a schedule for the completion of discovery.

(2) Ruling on any other pending procedural motions.

(3) Identifying the witnesses to be presented in the proceeding and the subject matter of their testimony.

(4) Identifying and marking exhibits to be offered in the proceeding.

(5) Discussing possible admissions or stipulations regarding issues of fact or the authenticity of documents.

(6) Clarifying and/or settling the issues involved in the proceeding.

(7) Discussing or ruling on any other procedural matter ~~which~~ that the commission or the presiding hearing officer considers appropriate.

(B) Reasonable notice of any prehearing conference ~~shall~~will be provided to all parties when possible. Unless otherwise ordered for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at such conference.

(C) Prior to a prehearing conference, the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ assigned to the case may, upon motion of any party or upon their own motion, require that all parties to the proceeding file with the commission and serve upon all other parties a list of the issues the party intends to raise at the hearing. Issues must be specifically identified and described and the presiding hearing officer may, upon motion of any party or upon his or her own motion, strike issues which do not meet this requirement. In any proceeding in which lists of issues are required, no party ~~shall~~may be permitted to raise an issue at hearing that was not set forth in its list, except for good cause shown.

(D) Following the conclusion of a prehearing conference, the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ may issue an appropriate prehearing order, reciting or summarizing any agreements reached or rulings made at such conference. Unless otherwise ordered for good cause shown, such order ~~shall be~~is binding upon all persons who are or subsequently become parties, and ~~shall control~~controls the subsequent course of the proceeding.

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(E) Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a disputed matter in a commission proceeding is not admissible to prove liability for or invalidity of the dispute. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not ~~require the exclusion~~exclude ~~of~~ any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not ~~require exclusion when the~~ exclude evidence ~~is~~if offered for another valid purpose.

~~(F)~~ (F) ~~If a conference is scheduled to discuss settlement of the issues in a complaint~~ case, the representatives ~~of the public utility~~ shall investigate prior to the settlement conference the issues raised in the ~~complaint~~ and all parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues.

AMENDED

4901-1-27 Hearings.

(A) The commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ ~~shall~~will assign the time and place for each hearing. Unless otherwise ordered, all hearings ~~shall be~~ are held at the offices of the commission in Columbus, Ohio. Reasonable notice of each hearing ~~shall~~will be provided to all parties.

(B) The presiding hearing officer ~~shall regulate~~regulates the course of the hearing and the conduct of the participants. Unless otherwise provided by law, the presiding hearing officer may, without limitation:

(1) Administer oaths and affirmations.

(2) Determine the order in which the parties ~~shall~~ present testimony and the order in which witnesses ~~shall be~~ are examined.

(3) Issue subpoenas.

(4) Rule on objections, procedural motions, and other procedural matters.

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(5) Examine witnesses.

(6) Grant continuances.

(7) Take such actions as are necessary to:

(a) Avoid unnecessary delay.

(b) Prevent the presentation of irrelevant or cumulative evidence.

(c) Prevent argumentative, repetitious, cumulative, or irrelevant cross-examination.

(d) Assure that the hearing proceeds in an orderly and expeditious manner.

(e) Prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The presiding hearing officer may, upon motion of any party, direct that a portion of the hearing be conducted in camera and that the corresponding portion of the record be sealed to prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The party requesting such protection shall have the burden of establishing that such protection is required. The commission or the presiding hearing officer ~~shall~~will issue a ruling prior to the closing of the case regarding the amount of time that any sealed portion of the hearing record ~~shall remain~~remains sealed.

(C) The presiding hearing officer ~~shall~~will permit members of the public that are not parties to the proceeding, the opportunity to offer testimony at the portion or session of the hearing designated for the taking of public testimony.

(D) Formal exceptions to rulings or orders of the presiding hearing officer are unnecessary if, at the time the ruling or order is made, the party makes known the action which he or she desires the presiding hearing officer to take, or his or her objection to action which has been taken and the basis for that objection.

AMENDED

4901-1-28 Reports of investigation and objections thereto.

(A) In all rate proceedings in which the commission is required by section 4909.19 of the Revised Code to conduct an investigation, a written report of such investigation ~~shall~~will be filed with the commission and ~~shall be~~ served upon all parties. The report ~~shall~~is ~~be~~ deemed to be admitted into evidence as of the time it is filed with the commission, but all or part of such

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report may subsequently be stricken, upon motion of the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ assigned to the case, or upon motion of any party for good cause shown. Any person making or contributing to the report may be subpoenaed to testify at the hearing in accordance with rule 4901-1-25 of the Administrative Code, but the unavailability of such persons ~~shall~~does not affect the admissibility of the report.

(B) Any party may file objections to a report of investigation described in paragraph (A) of this rule, within thirty days after such report is filed with the commission. Such objections may relate to the findings, conclusions, or recommendations contained in the report, or to the failure of the report to address one or more specific items. All objections must be specific. Any objections that fail to meet this requirement may be stricken upon motion of any party or the commission staff or upon motion of the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ALJ. Except for rate proceedings, if the commission staff modifies any portion of the report after objections are filed, then any party may raise new objections in response to such modification within 15 days after such modification is filed with the commission.

(C) The objections to the report described in paragraph (A) of this rule, shall frame the issues in the proceeding, although the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ may designate additional issues or areas of inquiry. Unless otherwise ordered by the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ALJ, all material findings and conclusions set forth in the report to which no objection has been filed ~~shall be~~are deemed admitted for purposes of the proceeding. At the hearing, any party who has filed objections may present evidence in support of those objections. The commission or the presiding hearing officer may, in their discretion, permit the parties to present evidence or conduct cross-examination concerning additional issues. Any party may present rebuttal testimony in response to direct testimony or other evidence presented by any other party or by the commission staff,~~.~~ unless otherwise ordered by the commission, the legal director, the deputy legal director, or the ALJ.

(D) In a rate case proceeding, an objection to a staff report will be deemed withdrawn if a party fails to address the objection in its initial brief.

(E) Unless otherwise ordered by the commission, in all other cases in which the commission orders an investigation to be performed by staff and the filing of a report, the report ~~shall be~~is deemed admitted into evidence at the time it is filed with the commission, but all or part of such report may subsequently be stricken upon motion of the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ALJ, or upon motion of any party for good cause shown. If a staff report described in this paragraph is admitted into evidence, interested

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persons ~~shall~~will have some opportunity, to be determined by the commission, to submit testimony, file comments, or file objections to the report. If a hearing is scheduled in the case in which the report is filed, any person making or contributing to the report may be subpoenaed to testify at the hearing in accordance with paragraph (A) of rule 4901-1-25 of the Administrative Code, but the unavailability of such persons ~~shall~~does not affect the admissibility of the report. Objections or comments to a report described in this paragraph ~~shall~~should not be filed unless directed by the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ALJ.

AMENDED

4901-1-29 Expert testimony.

(A) Except as otherwise provided in this rule, all expert testimony to be offered in commission proceedings, except testimony to be offered by the commission staff, shall be reduced to writing, filed with the commission, and served upon all parties prior to the time such testimony is to be offered. The commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may establish a schedule in any proceeding for the filing of testimony to be presented by staff.

(1) Unless otherwise ordered by the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ALJ:

(a) All direct expert testimony to be offered by the applicant, complainant, or petitioner in a general rate proceeding shall be filed and served no later than ten days prior to the commencement of the hearing or the deadline for filing objections to the staff report of investigation, whichever occurs earlier.

(b) All direct expert testimony to be offered by any other party in a general rate proceeding shall be filed and served no later than the deadline for filing objections to the staff report of investigation.

(c) All direct expert testimony to be offered by the applicant in an emergency rate proceeding shall be filed and served no later than sixteen days prior to the commencement of the hearing.

(d) All direct expert testimony to be offered by any other party in an emergency rate proceeding shall be filed and served no later than seven days prior to the commencement of the hearing.

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(e) All direct expert testimony to be offered by the gas utility in a purchased gas adjustment proceeding shall be filed and served no later than sixteen days prior to the commencement of the hearing.

(f) All direct expert testimony to be offered by any other party in a purchased gas adjustment proceeding shall be filed and served no later than seven days prior to the commencement of the hearing.

(g) All direct expert testimony to be offered by any party in a long-term forecast report proceeding shall be filed and served no later than sixteen days prior to the commencement of the hearing.

(h) All direct expert testimony to be offered in any other commission proceeding shall be filed and served no later than seven days prior to the commencement of the hearing.

(2) All expert testimony to be offered in rebuttal shall be filed and served within the time limits established by the commission or the presiding hearing officer, unless the commission or the presiding hearing officer determines that such testimony need not be reduced to writing.

(B) For purposes of this rule, "commencement of the hearing" means the scheduled date for beginning the hearing at which expert testimony is to be offered.

(C) Notwithstanding paragraph (A) of this rule, the presiding hearing officer may, in his or her discretion, permit an expert witness to present additional oral testimony at the hearing, provided that such testimony could not, with reasonable diligence, have been filed and served within the time limits established by the commission or the presiding hearing officer or the presentation of such testimony will not unduly delay the proceeding or unjustly prejudice any other party.

AMENDED

4901-1-30 Stipulations.

(A) Any two or more parties may enter into a written or oral stipulation concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding.

(B) A written stipulation must be signed by all of the parties joining therein, and must be filed with the commission and served upon all parties to the proceeding.

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(C) An oral stipulation may be made only during a public hearing or ~~record~~ prehearing conference conducted on the record, and all parties joining in such a stipulation must acknowledge their agreement thereto on the record. The commission or the presiding hearing officer may require that an oral stipulation be reduced to writing and filed and served in accordance with paragraph (B) of this rule.

(D) Unless otherwise ordered, parties who file a full or partial written stipulation or make an oral stipulation must file or provide the testimony of at least one signatory party that supports the stipulation. Parties that do not join the stipulation may offer evidence and/or argument in opposition.

(E) No stipulation ~~shall~~may be considered binding upon the commission.

AMENDED

4901-1-31 Briefs and memoranda.

(A) In addition to those instances in which this chapter specifically allows the filing of memoranda, the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may, upon motion of any party or upon their own motion, permit or ~~require~~order the filing of briefs or memoranda at any time during a proceeding. Such briefs or memoranda may, in the discretion of the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ALJ, be limited to one or more specific issues.

(B) All briefs and memoranda which are greater than ten pages and which address more than one proposition or issue shall contain a table of contents which ~~shall~~should include the propositions or issues discussed within the brief or memorandum. If requested by the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ALJ, all parties shall include within their initial brief a section entitled "statement of issues." This section shall list all issues that the party requests that the commission address in its opinion and order. The commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ may impose other requirements or limitations concerning the length or form of briefs or memoranda.

(C) If unreported decisions, other than decisions of the commission, are cited, copies of such decisions shall be attached to the brief or memorandum and shall be furnished to all parties. Failure to comply with this requirement may be grounds for striking the brief or memorandum.

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(D) In long-term forecast report proceedings, the record ~~shall be~~is considered closed for purposes of division (F) of section 4935.04 of the Revised Code upon the filing of the final round of briefs.

AMENDED

4901-1-32 Oral arguments.

The commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may, upon motion of any party or upon their own motion, hear oral arguments at any time during a proceeding. Such arguments may, in the discretion of the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ALJ, be limited to one or more specific issues, and are subject to such time limitations and other conditions as the commission, the legal director, the deputy legal director, or the ~~attorney examiner~~ ALJ may prescribe.

AMENDED

4901-1-33 ~~Attorney examiner's~~ Administrative law judge's reports and exceptions thereto.

(A) If ordered by the commission, the ~~attorney examiner~~ ALJ ~~shall~~will prepare a written report of his or her findings, conclusions, and recommendations, following the conclusion of a hearing. Such report ~~shall be~~is filed with the commission and served upon all parties.

(B) Any party may file exceptions to an ~~attorney examiner's~~ ALJ's report within twenty days after such report is filed with the commission. Exceptions shall be stated and numbered separately, and shall be accompanied by a memorandum in support, setting forth the basis of the exceptions and citations of any authorities relied upon. If an exception relates to one or more findings of fact, the memorandum in support should, where practicable, include specific citations to any portions of the record relied upon in support of the exception.

(C) Any party may file a reply to another party's exceptions within fifteen days after the service of those exceptions.

AMENDED

4901-1-34 Reopening of proceedings.

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(A) The commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ ALJ may, upon their own motion or upon motion of any person for good cause shown, reopen a proceeding at any time prior to the issuance of a final order.

(B) A motion to reopen a proceeding shall specifically set forth the purpose of the requested reopening. If the purpose is to permit the presentation of additional evidence, the motion shall specifically describe the nature and purpose of such evidence, and shall set forth facts showing why such evidence could not, with reasonable diligence, have been presented earlier in the proceeding.

AMENDED

4901-1-35 Applications for rehearing.

(A) Any party or any affected person, firm, or corporation may file an application for rehearing, within thirty days after the issuance of a commission order, in the form and manner and under the circumstances set forth in section 4903.10 of the Revised Code. An application for rehearing must set forth, in numbered or lettered paragraphs, the specific ground or grounds upon which the applicant considers the commission order to be unreasonable or unlawful. An application for rehearing must be accompanied by a memorandum in support, which sets forth an explanation of the basis for each ground for rehearing identified in the application for rehearing and which shall be filed no later than the application for rehearing.

(B) Any party may file a memorandum contra within ten days after the filing of an application for rehearing.

(C) As provided in section 4903.10 of the Revised Code, all applications for rehearing must be ~~submitted~~ filed within thirty days after an order has been journalized by the secretary of the commission, or, in the case of an application that is subject to automatic approval under the commission's procedures, an application for rehearing must be ~~submitted~~ filed within thirty days after the date on which the automatic timeframe has expired, unless the application has been suspended by the commission.

(D) A party or any affected person, firm, or corporation may only file one application for rehearing to a commission order within thirty days following the entry of the order upon the journal of the commission.

AMENDED

4901-1-36 Supreme court appeals.

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Consistent with the requirements of section 4903.13 of the Revised Code, a notice of appeal of a commission order to the Ohio supreme court must be filed with the commission's docketing division within the time period prescribed by the court and served, unless waived, upon the ~~chairman~~ chairpersonof the commission, or, in his or her absence, upon any public utilities commissioner, or by leaving a copy at the offices of the commission at Columbus. Service of the notice of appeal of a commission order to the Ohio supreme court may not be delivered via fax or e-filing upon the ~~chairman~~ chairperson or a commissioner.

AMENDED

4901-1-37 Commission workshops.

The commission may, from time to time, schedule informational workshops for the purpose of receiving information and exchanging ideas regarding relevant topics. Such workshops ~~shall be~~are listed on the commission's regular meeting agenda or on the weekly hearing calendar and ~~shall be~~ open to all interested persons. The workshops ~~shall~~ need not be transcribed and participants need not be represented by counsel. Certain individuals may be designated by the commission as spokespersons or chairpersons for purposes of presenting information or conducting such workshops. Requests by persons interested in scheduling a workshop shall be made in writing to the director of the relevant staff department, with a copy of the request submitted to the ~~chairman~~ chairperson of the commission. The commission, in its discretion, reserves the right to postpone or reject requests for workshops.

NO CHANGE

4901-1-38 General provisions.

(A) This chapter sets forth the procedural standards that apply to all entities participating in cases before the commission.

(B) The commission may, upon its own motion or upon a motion filed by a party, waive any requirement of this chapter for good cause shown, other than a requirement mandated by statute from which no waiver is permitted.

APPENDIX TO RULE 4901-1-25

BEFORE

THE PUBLIC UTILITIES COMMISSION OF

OHIO SUBPOENA

TO: _____

_____

_____

_____

Upon application of _____ you are hereby required to appear before the Public Utilities Commission of Ohio as a witness for _____ in the following proceeding:

Case No. _____

Case Title _____

_____

_____

You are to appear at the offices of the Commission, 180 East Broad Street, Columbus, Ohio, on the _____ day of _____, 20 _____, at _____.m. in hearing room _____.

You shall bring with you the following: _____

_____

_____

Dated at Columbus, Ohio, this _____ day of _____, 20_____.

_____

Attorney Examiner

Notice: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

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AMENDED

4901:1-1-01 Consumer information.

Upon a consumer's request, a public utility shall provide a copy of the consumer's contract or of the company's applicable tariffed rules and regulations in the format requested by the consumer, i.e., via ~~e-mail~~email, internet website, fax, or first class mail. Unless the consumer agrees to another date, the public utility shall provide the information within five business days. Paper copies of any items requested ~~shall~~ may be provided at cost. This rule does not apply to any industry for which the commission has prescribed a more specific rule regarding the requirement to make available a company's tariff.

AMENDED

4901:1-1-02 Underground utility protection service registration.

~~Each underground utility protection service, as defined by division (A)(4) of section 153.64 of the Revised Code, shall register with the public utilities commission by supplying the information in the form set forth in "Appendix A" to this rule and filing such form with the docketing division of the public utilities commission.~~ Public authorities, as defined by division (A)(2) of section 153.64 of the Revised Code, desiring information about a registered underground utility protection service, can obtain such information by contacting the docketing division of the public utilities commission.

AMENDED

4901:1-1-03 Duty to disclose tariffs.

(A) Definitions. For purposes of this rule, and this rule only, the following ~~shall apply~~applies:

(1) "A utility" is:

(a) An electric light company as defined by division (~~A)(3~~C) of section 4905.03 of the Revised Code;

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(b) A gas company or a natural gas company, as defined by divisions (D~~A)(4~~) and (~~A)(5~~E) of section 4905.03 of the Revised Code, having more than five thousand customers; or

(c) A water-works company or sewage disposal system, as defined by divisions (~~A)(7~~G) and (~~A)(13~~M) of section 4905.03 of the Revised Code, having more than five thousand customers.

(2) "An applicant" is a person, partnership, corporation, association, or organization ~~which~~ that makes an application or requests electric, gas, water, or sewage service from a utility. An applicant includes those persons or entities who are currently a customer and are seeking to receive service at another or a new location and those persons or entities who already receive one type of utility service (e.g., electric or water) and want to receive another type of utility service (e.g., gas or sewer) at the same or a different location.

(3) "An eligible customer" is a customer who, based on the information available to the utility, may meet or may become able to meet the criteria or terms and conditions of service of a particular tariff offering or rate schedule. For example, if an electrical residential load management schedule were open to electric residential customers with a monthly minimum demand of four kilowatt hours, an eligible customer would be any residential customer regardless of his or her historical monthly level of demand. Likewise, if a rate schedule were available to any residential electric customer with an electric water heater, all residential customers would be eligible customers. In these two examples, all residential customers are eligible customers (although many of these eligible customers may not actually qualify to receive service under these tariffs) because they may meet or may become able to meet the criteria or terms and conditions of service. However, if an industrial or commercial rate schedule were changed or modified, residential customers would not be considered as eligible customers.

(4) "Disclose" means to inform by use of a brief, one-to-four-sentence (more if necessary) message contained on a bill, on a bill insert, or in a special mailing. A utility may supplement the disclosure by a notice published in a newspaper or newspapers of general circulation in the service territory of the utility. The disclosure must state:

(a) That a new rate is available or that the criteria or terms and conditions of an existing rate schedule have been modified;

(b) The nature of the new rate schedule or the modification of the existing rate schedule;

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(c) That further information can be obtained by calling or writing a specific telephone number or address.

(5) "Changes in the criteria or terms and conditions of service" includes all authorized modifications in a particular tariff schedule or offering except for increases and decreases in the base rate, emergency or excise tax surcharge, or the gas cost recovery ~~("GCR")~~ rate.

(6) "Explanation of the rates, charges, and provisions applicable to the service furnished or available" means a brief summary of the effective rates and the distinctive character of service which distinguish this rate schedule from an alternative one. The explanation may:

(a) Include a typical bill summary and a brief listing of the characteristics of the service or criteria which must be met in order to qualify to receive service under this schedule;

(b) Be oral or written~~,~~; however, if the customer or applicant specifically requests a written explanation, the utility must provide a written explanation.

(B) Duty to disclose.

(1) Within ninety days after a new rate schedule becomes effective, or within ninety days after modifications or changes in the criteria or terms and conditions of service of an existing tariff schedule or offering become effective, the utility shall disclose to the eligible customers the availability of the new tariff schedule or the fact that the criteria or terms and conditions of service of such an existing tariff have changed. A copy of such notice shall be filed with the public utilities commission prior to its distribution to customers.

(2) Upon the request of any customer or applicant, the utility shall provide an explanation of the rates, charges, and provisions applicable to the service furnished or available to such customers or applicant, and shall provide any information and assistance, such as the availability of alternative tariff schedules, necessary to enable the customer to obtain the most economical utility service conforming to his or her stated needs. Nothing in this rule ~~shall~~ may be construed so as to delay the prompt initiation of service if requested by an applicant.

Appendix to 4901:1-1-02

Underground Utility Protection Service Registration

Name of Service:_____

Address:_____

_____

Telephone Number:_____

Membership List:

_____	_____
_____	_____
_____	_____
_____	_____

(Attach additional sheets if necessary)

_____

Signature

_____

Name

_____

Title

_____

Date

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AMENDED

4901-3-01 Commission meetings.

(A) Open meetings.

(1) All meetings of the public utilities commission at which official action is taken and formal deliberation upon official business is conducted shall be opened to the public. All resolutions, rules, or formal action of any kind shall be adopted in an open meeting of the public utilities commission. A majority of the public utilities commission ~~shall constitute~~ constitutes a quorum for the purpose of conducting business.

(2) The public utilities commission may hold an executive session ~~for the purpose of the consideration of a~~ to consider any matter contained in division (G) of section 121.22 of the Revised Code. An executive session may be held only at a meeting for which notice has been given in accordance with paragraph (C) of this rule and only after a majority of a quorum of the public utilities commission determines, by a roll call vote, to hold such a session.

(B) Types of meetings.

(1) Regular meetings. The public utilities commission regularly meets on Wednesday to discuss issues in individual cases and to vote on orders and entries to be issued in cases. The commission may, in its discretion, schedule meetings on other days to discuss and vote on entries and orders in pending cases. Unless otherwise noticed by the commission, meetings are held at the offices of the public utilities commission, 180 East Broad ~~street~~Street, Columbus, Ohio. The time of the meetings will be shown on the agenda issued for the meetings.

(2) Emergency meetings. An emergency meeting is one that is noticed to the public less than twenty-four hours prior to the start of the meeting. In the event of an emergency meeting, the representatives of the news media who have requested notification of emergency meetings will be notified immediately of the time, place, and purpose of the meeting.

(C) Notice of meetings.

(1) Any person may determine the time, place, and matters on the agenda for a ~~commission~~ regular meeting scheduled to consider cases or a specific or general topic by calling the commission's legal department at 614-466-6843 during normal business hours or by visiting the commission's docketing division. The meeting agendas are also available on

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the commission's web-site (http://www.puco.ohio.gov). The commission will distribute agendas, as they become available, via email~~e-mail~~. Any person wishing to receive notices or agendas of commission meetings via ~~e-mail~~email may subscribe to the "agendas list" at http://www.puco.ohio.gov/~~PUCO/Legal~~news/sign-up-for-email-updates, or by calling the commission's legal department at 614-466-6843, or by sending a request to legal department, public utilities commission of Ohio, 180 East Broad ~~street~~Street, Columbus, Ohio 43215. The agendas for the regular ~~weekly~~ biweekly meetings are generally available by close of business on the preceding Thursday. ~~Notice of agenda~~ Agenda updates are posted to the web-site and distributed by ~~e-mail~~email as early as possible prior to the meeting.

(2) Copies of the agenda for a special meeting can be obtained in the same manner as prescribed for regular meetings in paragraph (C)(1) of this rule.

~~(2)~~ (3) Copies of the agenda for an emergency meeting, if time permits for the preparation of an agenda, will be available on the commission's web-site and distributed by ~~e-mail~~email as early as possible prior to the meeting. Upon scheduling an emergency meeting, the commission will immediately notify all media outlets that have specifically requested notice of the time, place, and purpose of the emergency meeting.

~~(3)~~ (3) ~~The agenda for commission meetings in which specific cases are to be considered shall include the case number and a brief description of the case name. If a meeting is scheduled to consider a specific or general topic or subject matter, the agenda will only give the topic or subject matter to be discussed.~~

(D) Minutes.

(1) Minutes of ~~the~~ commission meetings shall be ~~considered and~~ adopted at the next regularly scheduled meeting at which the commission votes on orders and entries to be issued in cases.

(2) ~~Upon adoption, the~~The secretary of the commission ~~shall~~ is~~be~~ responsible for maintaining the minutes.

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AMENDED

4901-3-02 Photographing, filming, and recording.

Persons may videotape, photograph, film, or record commission meetings and public hearings in accordance with the following procedures, which are promulgated to assure decorum and fairness to all parties, consistent with the goal that the public be fully informed.

(A) Any person may videotape, film, record, or photograph commission meetings and public hearings.

(B) The person in charge of a meeting or hearing may, if deemed necessary, designate an area for the location of stationary cameras, lighting, or other auxiliary equipment.

(C) A person operating a portable or hand-held camera shall remain seated while filming or stand in the back or along the sides of the room. ~~The person shall not block the view of those seated in the room.~~

(D) Unless preauthorized approval is obtained from the person in charge of the meeting or hearing, ~~tape recorders and other~~ audio equipment (e.g., microphones) shall be located at the operator's seat during the meeting or hearing. A mult box is available in the commission meeting room for use in recording events that occur in that room.

(E) During a hearing or meeting, ~~reporters or~~ commentators orally describing the events shall not be located within the room where the meeting or hearing is being conducted.

~~(F)~~ (F) ~~The use of cellular phones or other voice-related devices in a room where a meeting or hearing is being conducted is prohibited. Cellular phones and pagers shall not transmit an audio notification after the start of a meeting or hearing.~~

~~(G)~~ (F) A commissioner, hearing examiner, or the commission employee responsible for conducting a meeting or hearing has the authority to enforce, waive, or modify any of the above procedures when deemed necessary to preserve the decorum or fairness of a commission proceeding and to exclude from the meeting or hearing any person who violates any of the procedures set forth in this rule or fails to follow a directive.

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AMENDED

4901-9-01 Complaint proceedings.

(A) Except in unusual circumstances, any customer or consumer with a service or billing problem should first contact the public utility to attempt to resolve the problem. If that attempt is unsuccessful, the customer or consumer is encouraged to contact the commission's call center prior to the filing of a formal complaint. If a customer or consumer bypasses the commission's call center and files a formal complaint, the commission's legal department may refer the complaint to the commission's call center for an opportunity to resolve the issue before formally proceeding with the complaint.

(B) All complaints filed ~~under section 4905.26 and section 4927.21 of the Revised Code~~before the commission, except complaints filed by a public utility concerning a matter affecting its own product or service, shall be in writing and shall contain the name of the public utility complained against, a statement which clearly explains the facts which constitute the basis of the complaint, and a statement of the relief sought. Sample complaint forms may be obtained by contacting the commission's service monitoring and enforcement department. ~~If discrimination is alleged, the facts that allegedly constitute discrimination must be stated with particularity.~~ Upon receipt of such a complaint, the docketing division shall serve a copy of the complaint upon the public utility complained against, together with instructions to file an answer with the commission in accordance with the provisions of this rule. Whether or not a public utility files a motion to dismiss, ~~The~~the public utility complained against shall file ~~its~~ an answer with the commission within twenty days after the mailing of the complaint, or such period of time as directed by the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ALJ~~, and shall serve a copy upon all parties in accordance with rule 4901-1-05 of the Administrative Code. An answer must be filed in accordance with this paragraph, whether or not the public utility files a motion to dismiss the complaint or any other motion in response to the complaint~~.

(C) Each defense to a complaint shall be asserted in an answer. In addition, the following defenses or assertions may, at the option of the public utility complained against, also be raised by motion:

(1) Lack of jurisdiction over the subject matter.

(2) Lack of jurisdiction over the person.

(3) Failure to set forth reasonable grounds for complaint.

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(4) Satisfaction of the complaint or settlement of the case.

(D) In its answer, ~~The~~the public utility ~~shall state in its answer, in short and plain terms, its defenses to each claim asserted, and~~ shall admit or deny the allegations upon which the complainant relies. If the public utility is without sufficient knowledge or information to form a belief as to the truth of an allegation, it shall so state and this has the effect of a denial. If the public utility intends in good faith to deny all of the allegations in the complaint, it may do so by general denial. If it does not intend to deny all of the allegations in the complaint, it ~~shall~~ may do so by either ~~make~~ making specific denials of designated allegations or paragraphs, or generally ~~deny~~ denying all allegations except those allegations or paragraphs that it expressly admits. Unless otherwise ordered by the commission, the legal director, the deputy legal director, or an ~~attorney examiner~~ALJ, all material allegations in the complaint which are not denied in the answer shall be deemed admitted for purposes of the proceeding.

(E) If a person filing a complaint against a public utility is facing termination of service by the public utility, the person may request, in writing, that the commission provide assistance to prevent the termination of service during the pendency of the complaint. The person must explain why he or she believes that service is about to be terminated and why the person believes that the service should not be terminated. A person making a request for assistance must agree to pay during the pendency of the complaint all amounts to the utility that are not in dispute. The commission, legal director, deputy legal director, or an ~~attorney examiner~~ALJ will issue a ruling on the request.

(F) If the public utility complained against files an answer or motion which asserts that the complaint has been satisfied or that the case has been settled, the complainant shall file a written response within twenty days after the service of the answer or motion, indicating whether the complainant agrees or disagrees with the utility's assertions~~, and whether he or she wishes to pursue the complaint~~. If no response is filed within the prescribed period of time, the commission may presume that satisfaction or settlement has occurred and dismiss the complaint. Any filing by a utility that asserts that a complaint has been satisfied or that the case has been settled shall include a statement or be accompanied by another document that states that, pursuant to a commission rule, the complainant has twenty days to file a written response agreeing or disagreeing with the utility's assertions and that, if no response is filed, the commission may presume that satisfaction or settlement has occurred and dismiss the complaint.

(G) ~~The legal director, deputy legal director, or an attorney examiner assigned to a complaint case shall schedule a~~ A settlement conference may be scheduled to attempt to resolve the issues in the case prior to hearing. The settlement conference will be conducted pursuant to the Uniform Mediation Act found in Chapter 2710~~.~~ of the Revised Code. The settlement

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conference may be waived at the request or agreement of all the parties or if the ~~attorney examiner~~ALJ is informed that prior formal attempts to resolve the dispute were made and were unsuccessful. Unless ~~good cause is shown~~otherwise ordered, settlement conferences shall be held at the offices of the commission.

(H) If a conference is scheduled to discuss settlement of the issues in a complaint case, ~~the representatives of the public utility shall investigate prior to the settlement conference the issues raised in the complaint and~~ all parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues.

Summary: Finding & Order adopting certain amendments to the rules in Ohio Adm.Code Chapters 4901-1, 4901:1-1, 4901-3, and 4901-9. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.