BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Chapters 4901-1, Rules of Practice and Procedure; 4901-3, Commission Meetings; 4901-9, Complaint Proceedings; and 4901:1-1, Utility Tariffs and Underground Protection, of the Ohio Administrative Code.	)))))))	Case No. 11-776-AU-ORD

JOINT REPLY COMMENTS
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, ADVOCATES FOR BASIC LEGAL EQUALITY, INC., CITIZEN POWER, AND THE OHIO POVERTY LAW CENTER

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Melissa R. Yost, Counsel of Record
David C. Bergmann
Kyle L. Verrett
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
yost@occ.state.oh.us
bergmann@occ.state.oh.us
verrett@occ.state.oh.us

Ted Robinson
Staff Attorney
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
Telephone: (412) 421-7029
robinson@citizenpower.com

Michael R. Smalz, Counsel of Record
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, OH 43215
Telephone: (614) 221-7201
msmalz@ohiopovertylaw.org

Ellis Jacobs
Advocates for Basic Legal Equality, Inc.
333 West First Street, Suite 500B
Dayton, OH 45402
Telephone: (937) 228-8104
ejacobs@ablelaw.org

May 2, 2011

TABLE OF CONTENTS

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Chapters 4901-1, Rules of Practice and Procedure; 4901-3, Commission Meetings; 4901-9, Complaint Proceedings; and 4901:1-1, Utility Tariffs and Underground Protection, of the Ohio Administrative Code.	)))))))	Case No. 11-776-AU-ORD

JOINT REPLY COMMENTS
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, ADVOCATES FOR BASIC LEGAL EQUALITY, INC., CITIZEN POWER, AND THE OHIO POVERTY LAW CENTER

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC"), Ohio Poverty Law Center, Citizen Power and Advocates for Basic Legal Equality (collectively, "Customer Parties") file these reply comments regarding the Public Utilities Commission of Ohio's ("PUCO" or "Commission") rules of practice and procedure, toward promoting fairness in the PUCO's processes for all—including customers and their advocates, public utilities and others—to have a reasonable opportunity to be heard. On March 2, 2011, the PUCO issued an Entry containing the PUCO Staff's evaluation of the rules contained in Ohio Adm. Code Chapters 4901-1, 4901-3, 4901-9 and 4901:1-1 and proposals for changes in those rules. The Commission provided an opportunity for all interested parties to file comments on the proposed rule changes by April 1, 2011, and to file reply comments by April 30, 2011.

The Customer Parties filed initial comments on the proposed changes and recommended additional changes to the Commission's procedural rules. Additionally, eight other sets of initial comments were filed by interested parties.[1] These reply comments of the Customer Parties will address some of the initial comments filed by other interested parties.[2] The Customer Parties' reply comments are directed, *inter alia*, at bringing the rules into conformance with the rules of civil procedure and applicable provisions of the Ohio Revised Code.

II. COMMENTS

"E-Filing" and "e-Service"

The issues surrounding electronic filing ("e-filing") of documents and electronic service ("e-service") of both filed and unfiled documents (such as discovery) overlap a number of the procedural rules. The Customer Parties will address these issues all together here, rather than under the individual rules.

The Customer Parties understand the benefits and efficiencies that e-filing and e-service can bring to Commission proceedings. But the Commission must understand that, in this as in other areas, not all participants in those proceedings are linked in to the electronic age. Thus the rules must not prejudice those parties and participants.

[1] Comments were filed by the AT&T Entities ("AT&T"); Columbia Gas of Ohio, Inc., the East Ohio Gas Company d/b/a Dominion East Ohio, and Vectren Energy Delivery of Ohio, Inc. (collectively, "the Large Gas LDCs"); Columbus Southern Power Company and Ohio Power Company (collectively, "AEP"); Duke Energy Ohio, Inc. ("Duke"); Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company (collectively, "FirstEnergy"); Ohio Partners for Affordable Energy ("OPAE"); the OMA Energy Group; and Norfolk Southern Railway Company.

[2] The Customer Parties do not concede any issues in comments filed by other interested parties that are not specifically addressed in these reply comments.

With regard to e-filing, the Large Gas LDCs argue that it should be required of all parties represented by counsel.[3] Although most counsel will appreciate the efficiency of e-filing, there may be attorneys who are not able to perform e-filing, and may have to file by facsimile or paper copy. The Commission's rules should provide for this possibility.

Just as important from outside parties' perspective is the issue of service. The Customer Parties agree that e-service is quicker and cost-effective, but the Commission's rules must allow for more traditional forms of service for parties that are not online.

FirstEnergy and the Large Gas LDCs propose that e-service should be the rule,[4] instead of PUCO Staff's essentially "opt-in" process. Indeed, AT&T would totally eliminate hard-copy service.[5] This impacts Rule 3; Rule 5(A), (B), and (D); Rule 12(E); and the various discovery rules. If a rule making e-service the norm is adopted, it must contain an "opt-out" provision for parties that have limited access to on-line facilities.[6]

AEP, AT&T and OPAE all point out the problems with determining which parties are subscribed to the DIS e-service list.[7] A more conspicuous listing of such parties on DIS would certainly be helpful.

4901-1-02 Filing of pleadings and other documents

In Rule 2(A)(5), the PUCO Staff proposed that the Commission reserve the right to redact any material prior to posting on DIS. As discussed in the Customer Parties'

[3] Large Gas LDC Comments at 4.

[4] FirstEnergy Comments at 6; Large Gas LDC Comments at 7.

[5] AT&T Comments at 4.

[6] AT&T asserts that e-service should suffice for all parties, because even customers who lack Internet access at home can usually go to a public library for access. Id. at 5. As one of the largest corporations in the state, AT&T's disdain for ordinary customers is unfortunate, to say the least.

[7] AEP Comments at [2]; AT&T Comments at 3; OPAE Comments at 5.

comments, this proposal should not be adopted.[8] The Large Gas LDCs assert that if such a rule is adopted, there should be notice to the party whose filing is to be redacted.[9] If the PUCO Staff's proposal on *sua sponte* redaction is adopted, the Large Gas LDC's recommendation is absolutely necessary, and the Customer Parties support the Large Gas LDC's recommendation.

Under Rule 2(A)(6), Duke proposes that a motion not be required for consolidation;[10] FirstEnergy states that a motion to consolidate should only be required if the applications are not filed at the same time.[11] If an applicant's intention is to have its applications treated together, the applicant should be required to give notice of that intention through a motion. The Customer Parties oppose Duke's and FirstEnergy's proposals.

FirstEnergy and OPAE object to the PUCO Staff's proposal to change Rule 2(B) such that there will be a penalty for failure to file the required number of copies, specifically that "[f]ailure to submit the required copies may result in the document being stricken from the case file."[12] The Customer Parties agree; there has been no showing that the current rule has caused problems sufficient to justify this change, especially given the possible severity of the penalty.

[8] See Customer Parties Comments at 3.

[9] Large Gas LDC Comments at 3.

[10] Duke Energy Ohio Comments at 1-2

[11] FirstEnergy Comments at 2-3.

[12] Id. at 3-4; OPAE Comments at 1-2.

4901-1-05 Service of pleadings

The Customer Parties' primary reply comments on this rule were stated above. Separate comments are required, however, on Duke's and FirstEnergy's proposals that service no longer be required if intervention is denied.[13] In the first place, if the denial of intervention results from an Attorney Examiner's Entry, service should still be required until the time for filing an interlocutory appeal has passed; if an interlocutory appeal is filed, service should continue until and unless the appeal is denied. Similarly, if the denial of intervention comes in a Commission Entry, service should at least continue until the time for filing an application for rehearing has passed; if an application for rehearing has been filed, service should continue until and unless the application for rehearing has been denied.

In any event, to the extent that e-service is the rule (or even common practice), it should be noted that e-service – even on a party whose intervention has been initially denied – imposes little if any burden on the serving party. Therefore, the Duke and FirstEnergy proposals should be rejected.

4901-1-06 Amendments

Duke recommends that the rule be amended to provide that, "where an applicant files an amendment or modifications to a prior filing without a motion asking for authorization, such amendment or modification shall be deemed accepted for filing unless the legal director, the deputy legal director, or an attorney examiner rules otherwise

[13] Duke Energy Ohio Comments at 6; FirstEnergy Comments at 9.

within three days after filing."[14] The Customer Parties oppose this recommendation by Duke because it will cause confusion.

The Customer Parties' experience is that applications in Commission proceedings are frequently amended. Occasionally, the amendment is minor; but often, it is substantial. Therefore, it could be problematic for a modification to be deemed accepted for filing without a motion.

In addition, a motion notifies the parties to a proceeding that an applicant has filed an amendment or modifications to a prior filing. As such, the motion serves the purpose of notifying the parties that a change has been made, but also explains the nature of the modification. As a result of an amendment, an existing case time line can be rendered inadequate for parties' discovery and the Staff's investigation, among other issues involving the participants' case preparation. Therefore, a motion to amend also presents an opportunity for comment to the PUCO on related procedural issues.

4901-1-07 Computation of Time

The Customer Parties generally support the recommendations proposed by FirstEnergy and Duke for this rule, which are consistent with the Customer Parties' comments.[15] FirstEnergy opposes the proposal to eliminate the three-day response extension on documents served via mail.[16] FirstEnergy also opposes the elimination of Rule 7(C), which grants an additional response day when service is by fax after 5:30 p.m..[17]

[14] Duke Comments at 7.

[15] See Customer Parties Comments at 5-7.

[16] FirstEnergy Comments at 10.

[17] Id. at 9-11.

Duke also opposes the elimination of both Rules 7(B) and 7(C). Duke believes that service through mail or after hours can delete a substantial portion of the allowed response time.[18] Additionally, Duke believes that the proposed changes to Rule 7(A) are unnecessary and overcomplicate the provision without changing the result.[19]

Again, the Customer Parties recommend that the Staff's proposed deletion be denied, and the rule should continue for allowing three additional days for filing when the initiating document is served by regular mail. Similarly, the Customer Parties recommend denial of the PUCO Staff's proposed deletion of 4901-1-07(C), which grants a party one additional day to take a prescribed action when a pleading is personally served, or served by facsimile, or electronic message served, after five-thirty p.m.[20] The three-day rule is consistent with Ohio Civ. R. 6(E) and should be kept as is.

In addition, allowing an additional day to take a prescribed action with respect to service of a pleading after five-thirty p.m. is reasonable, and this provision should be kept in Rule 7(C). The typical close of business at many offices is five-thirty p.m., and accordingly, a party will not receive a pleading that is served after five-thirty p.m. until the following business day.

4901-1-8 Practice Before the Commission, Representation of Corporations, and Designation of Counsel of Record

Duke proposes that subpart (E) of this rule be amended to make discretionary the requirement that a party of record be designated.[21] Duke believes that, since most service

[18] Duke Comments at 6.

[19] Id. at 7-8.

[20] Customer Parties Comments at 5-6.

[21] Duke Comments at 8.

is conducted electronically, the designation of a party of record is not needed.[22] The Customer Parties disagree. Among other things, other parties (and the Commission) should be informed as to the identity of a party's lead counsel (or, as previously designated, the "trial attorney"), especially when a party is represented by numerous counsel.

In initial comments, the Customer Parties suggested that the Commission specifically address in its rules the instances where a party is represented by more than one attorney and the counsel of record is not identified. The Customer Parties recommended that the Commission adopt language similar to the applicable rule contained in the Rules of Practice for the Supreme Court of Ohio, where failure to designate a counsel of record allows service on the first-listed attorney. It is important that the counsel of record be identified either by the party or by operation of rule. The Customer Parties respectfully request that the Commission reject Duke's proposal and adopt language consistent with the rule adopted by the Supreme Court of Ohio.

4901-1-13 Continuances and extensions of time

Duke proposes that if a request for extension of time is made and no ruling denying the request is made within 48 hours of the filing, the request will be deemed granted.[23] Duke provides no reason why there is a need for parties to rely on such inaction. Duke's proposal should be rejected.[24]

[22] Duke Energy Ohio Comments at 8.

[23] Id. at 9.

[24] It should also be noted that contacts with the Commission regarding procedural matters do not constitute ex parte communications under Rule 9; thus a party is not prohibited from contacting the Commission's Legal Department to determine the status of a request for an extension.

Duke also proposes the adoption of "standardized" expedited schedules for Commission schedules.[25] The expedition required for various cases is dependent on the needs of each case; a "standard" procedure would likely be subject to substantial variation. This Duke proposal should also be rejected.

4901-1-16 General Discovery

AEP believes that Rule 16(B), in its current form, permits "extensive discovery and essentially facilitates fishing expeditions even in cases where only a notice-and-comment process is used to decide the case."[26] At the outset it should be noted that the Supreme Court of Ohio has ruled that such "fishing expeditions" are not per se objectionable. To this end, the Court stated:

> Any discovery proceeding -- and it must be conceded that pretrial depositions are in many instances fishing expeditions -- has inherent in it the possibility of revealing information or data helpful to one side or another even though such information or data would be inadmissible in a subsequent trial.
>
> Any disadvantage to one party from another's gaining such information is offset, however, by the possible advantage therefrom of arriving at the truth of the situation, which is, and must remain, the ultimate goal in determining the rights of parties in litigation.[27]

AEP proposes that the rule be amended to "limit discovery to those proceedings in which a hearing has been scheduled, or, in the alternative, require that a party obtain

[25] Duke Energy Ohio Comments at 9-10.

[26] AEP Ohio Comments at 4-5.

[27] *Ex Parte Oliver* (1962), 173 Ohio St. 125, 129; 180 N.E.2d 599, 602; 18 Ohio Op. 2d 388.

approval from the Commission, the legal director, the deputy legal director or an attorney examiner to conduct discovery in those proceeding(s) in which there is no hearing."[28]

The Customer Parties strongly oppose AEP's comments in this regard. AEP's proposed recommendation would contravene the **ample discovery rights** guaranteed to parties under R.C. 4903.082.

R.C. 4903.082 states:

> All parties and intervenors **shall be granted ample rights of discovery.** The present rules of the public utilities commission should be reviewed regularly by the commission to aid full and reasonable discovery by all parties. Without limiting the commission's discretion the Rules of Civil Procedure should be used wherever practicable.

(Emphasis added). In addition, the Commission generally errs when it limits discovery.[29]

In addition, there are many proceedings before the Commission that do not have hearings, but where discovery is necessary. The Supreme Court of Ohio has held that "whether or not a hearing is held, intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO."[30] Similarly, discovery should be allowed regardless of whether a hearing is held so that parties who have been determined to have a real and substantial interest in the case may fully participate. AEP's recommendation does not allow for these types of proceedings, and that is wrong under the law.

The Large Gas LDCs indicate that parties are often subject to numerous and sporadic discovery requests and that such an ad-hoc fashion of discovery often frustrates

[28] AEP Ohio Comments at 4.

[29] *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, ¶82; 2006-Ohio-5789.

[30] *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, ¶20; 2006-Ohio-5853.

parties.[31] To remedy this situation, the Large Gas LDCs propose that Rule 16(B) be amended to add the following: "In the prehearing conference(s) pursuant to rule 4901-1-26, the parties may agree upon discovery limits."[32] The Large Gas LDCs proposal is unnecessary because it is unlikely that a party would agree to restrictions on their discovery. In addition, the Large LDC's proposal would create the potential for more regulatory delay for parties trying to process their cases. Further, 4901-1-23 provides that "efforts which have been made to resolve any differences with the party or person from whom discovery is sought," must be included in the form of an affidavit when a party files a motion to compel. Accordingly, the rules already provide for the manner in which parties are to resolve perceived discovery limits.

R.C. 4903.082 very clearly guarantees ample discovery rights. The Customer Parties strongly oppose the Large Gas LDCs' comment in this regard for essentially the same reasons articulated above. As such, "discovery limits" that trample upon the ample rights protected by law should not be imposed.

Additionally, the Large Gas LDCs assert that Rule 16(H) contains a "loophole" that is being "exploited" by intervenors.[33] The Large Gas LDCs propose that the rule be amended so that if a party's motion to intervene is being opposed by another party, any discovery served by the intervening party will be stayed pending resolution of the motion to intervene.[34]

[31] Large Gas LDCs Comments at 15.

[32] Id.

[33] Id. at 15-16.

[34] Id. at 17.

This rule is not a loophole. In fact, what the Large Gas LDCs propose would create a loophole in the PUCO's discovery rules to prevent the use of discovery under the rules until later in the timeline of cases. If the Large Gas LDCs' recommendation were adopted by the Commission, parties to a proceeding would constantly and consistently file memoranda in opposition to motions to intervene, simply in order to forestall discovery. Proceedings would then be unduly delayed because discovery would be stayed. This recommendation is therefore contrary to R.C. 4903.082, and goes against the principle of judicial efficiency.

4901-1-17 Time Periods

As with Rule 16(B), AEP recommends that Rule 17(A) be "modified to prohibit discovery in those proceedings in which no hearing will be held, unless the party seeking discovery demonstrates a need for the discovery and obtains the approval of the Commission, the legal director, the deputy legal director or an attorney examiner.[35] The Customer Parties strongly oppose AEP's comment for the same reasons articulated in response to 4901-1-16. This recommendation is contrary to R.C. 4903.082, which provides intervenors with ample discovery rights.

4901-1-18 Filing and Service

FirstEnergy proposes that this rule be amended to require parties to serve discovery requests and responses via e-mail.[36] The Joint Customer Parties recommend that service of discovery requests and responses be served by e-mail, **unless** the parties

[35] AEP Ohio Comments at 5.

[36] First Energy Comments at 14.

are instructed otherwise by the Commission, a party does not have an e-mail account, or the parties agree otherwise.

4901-1-19 Interrogatories

The Large Gas LDCs state that "[t]he Commission should change this rule to make clear that responses to interrogatories served to a corporation must be verified by someone on behalf of the corporation, and not in an individual capacity."[37] The Large Gas LDCs believe that 4901-1-19 "simply requires that the corporation designate an employee to certify that, to the best of the affiant's knowledge, the answers given are accurate and those of the corporation. The designated representative does not need to actually have personal knowledge of that particular question."[38] The Customer Parties oppose this proposal.

It is counterintuitive for the Large Gas LDCs to argue that a designated representative does not need to actually have personal knowledge of the particular question. 4901-1-19 mandates that "[e]ach 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." Thus a corporation's responses must be under oath, and a corporate representative should not be permitted to swear to that which the individual does not have personal knowledge.

[37] Large Gas LDCs Comments at 18.

[38] Id.

If the "designated representative" of a corporation has no personal knowledge of a particular question, then that person should not sign that response, and an individual who does have personal knowledge regarding the response should sign. It is important that the appropriate individual sign the response(s) for which an answer is provided, so the other parties to the proceeding know who has knowledge of the requested information, which is the purpose of this provision of the rule in the first place. This rule has promoted, among other things, administrative efficiency in the discovery process and at hearings, for respectively knowing who to depose and who to cross-examine (or subpoena to hearings) on issues.

4901-1-20 Production of Documents

FirstEnergy proposed clarifying this rule to make it clear that the party responding to a request for the production of documents and things under the rule is required only to serve or make available the documents and things to the party that requested the information. The Customer Parties agree with FirstEnergy's comment because current Ohio Adm. Code 4901-1-20 mandates that the party responding to a request is required only to serve the documents on the requesting party. As such, FirstEnergy's comment is a proper reiteration of the rule.

4901-1-21 Depositions

Regarding the PUCO Staff's proposed amendment to Rule 21(B) concerning the timing of depositions, AEP believes that the phrase "absent unusual circumstances" is

vague and will likely generate debate among parties.[39] The Customer Parties agree that the phrase is vague and requires clarification.

The Large Gas LDCs believe that parties are abusing Rule 21(E) to get around the 21-day response time for producing documents found in Rule 20(C).[40] The Large Gas LDCs propose that the rule be amended to allow a request for production to accompany a notice to depose only if it is served at least 21 days before taking the deposition.[41] The Customer Parties strongly oppose this recommendation. It is often not known whether depositions will be taken, or when those depositions will take place. In addition, there are many instances where a party will request that a deponent bring documents to his/her deposition because the deponents will be asked about the documents during the deposition. If a party is not required to bring the requested documents because the deponent was not "served 21 days prior to the deposition," time will be wasted, and a second deposition will have to be scheduled. This is inefficient.

AT&T proposes that proposed Rule 21(N) be changed to read: "A deposition need not be prefiled if used solely to impeach the testimony of a witness at a hearing."[42] AT&T believes that without the word "solely," a party could avoid the prefiling requirement if the deposition is used for other purposes but is also used to impeach.[43] The Customer Parties support this recommendation, as there is no need to file a

[39] AEP Ohio Comments at 7.

[40] Large Gas LDCs Comments at 19-20.

[41] Id. at 20.

[42] AT&T Comments at 7.

[43] Id.

deposition used only for impeachment, and the Commission has previously said a deposition does not have to be filed for impeachment.[44]

4901-1-23 Motions to Compel

Duke believes that Rule 23(E) conflicts with the more appropriate provision of the interlocutory appeal rule that states that a party may choose to brief an issue rather than file an interlocutory appeal.[45] Duke believes that there is no reason why the granting of a motion to compel should not be treated in the same manner, with argument allowed on brief, such that if the Commission were ultimately to agree that a motion to compel should not have been granted, it could simply refuse to consider the evidence that was improperly obtained**.**[46] The Customer Parties oppose this recommendation.

Ohio Adm. Code 4901-1-23(E) currently states:

> Any order of the legal director, the deputy legal director, or an attorney examiner 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 becomes the order of the commission.

It would be nonsensical to allow a party to argue after the hearing – without having made an interlocutory appeal – which it should not have been required to produce the information that was the subject of the motion to compel. The party or parties that received the information most likely built their case presentation around the information that was produced. This is one instance where "the egg cannot be unscrambled."

---

[44] *See* In the Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code, Case No. 06-685-AU-ORD, Finding and Order (December 6, 2006) at 29-30.

[45] Duke Energy Ohio Comments at 11.

[46] Duke Energy Ohio Comments at 11.

4901-1-24 Motions for Protective Orders

The position of the Customer Parties is that the eighteen months provided in Rule 24(F) for maintaining protected status should remain, and is sufficient.[47] Eighteen months is more appropriate than the twenty-four months now proposed by the PUCO Staff.[48] In its comments, AT&T, citing trade secret law, proposes that protective orders granted under O.A.C. 4901-1-24 should not be limited to a specific term of protection, but rather should be permanent.[49] This proposal is echoed in the comments filed by FirstEnergy.[50] Similarly, Duke "strongly opposes" the Staff proposal to add subpart (F), which would allow the Commission to reexamine the need for continued confidentiality.[51]

However, the position that AT&T, FirstEnergy and Duke advocate regarding the permanent nature of protected material is contrary to Ohio law. R.C. 1331.61(D) defines a trade secret as:

> [I]nformation, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:
>
> 1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

[47] See Customer Parties Comments at 13.

[48] Id., citing 06-685 Finding and Order at 38-40.

[49] AT&T Comments at 8-10.

[50] FirstEnergy Comments at 16-17.

[51] Duke Energy Ohio Comments at 12.

> (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Under R.C. 1331.61(D), a trade secret must qualify under Section (D) as one of the forms of information listed and must then satisfy both of the following criteria: the information must have "independent economic value" and must have been kept under circumstances that maintain its secrecy. Furthermore, the Ohio Supreme Court has had several occasions to address what constitutes a "trade secret." The Ohio Supreme Court has adopted, and this Commission has recognized,[52] the following factors in analyzing a trade secret claim:

> (1) the extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, *i.e*., by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.[53]

The issue before the Commission when deciding whether a protective order should be issued is whether the movant has met the burden of proof necessary to establish an exception to Ohio's public records law.[54] Ohio Adm. Code 4901-1-27(B)(7)(e) requires that "[t]he party requesting such protection shall have the burden of establishing that such protection is required." Under R.C. 4901.12, all proceedings of the Commission and all documents and records in its possession are public records. Additionally, under R.C. 4905.07, "all facts and information in the possession of the

[52] See *In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation*, Case No 93-487-TP-ALT, *Entry* at 8-9 (November 25, 2003) (citations omitted).

[53] See *Plain Dealer v. Department of Insurance*, 80 Ohio St. 3d 513, 524-524 (1998) (citations omitted).

[54] See R.C. 149.43 and Ohio Adm. Code 4901-1-27(B)(7)(e).

public utilities commission shall be public, and all reports, records, files, books, accounts, papers, and memorandums of every nature in its possession shall be open to inspection by interested parties or their attorneys." These public records statutes, that are specifically applicable to the Commission, "provide a strong presumption in favor of disclosure."[55] These statutes also recognize that there are exceptions to the Commission's open records policy that are established under another section of the Revised Code, R.C. 149.43. [56]

Thus, while information may at one time satisfy both criteria of a trade secret, at a future time the information may no longer be maintained as secret and/or no longer derive an independent economic value. This is shown by the Commission's frequent release of information into the public record without any protest from the party that originally sought protected status.[57]

Therefore, it would be a violation of Ohio's Public Records Law (R.C. 149.43), and R.C. 4901.12 and R.C. 4905.07, to prevent public disclosure of information that is no longer a trade secret under Ohio law. Accordingly, protective orders issued regarding information that is trade secret cannot be permanent under Ohio law. Therefore, the Customer Parties request that the Commission reject the position that AT&T and FirstEnergy advocate, and maintain that the eighteen-month time-period for protection currently provided in Rule 24(F) should remain because it is more consistent with the

[55] See for example, *In the Matter of the Joint Application of the Ohio Bell Telephone Company and Ameritech Mobile Services, Inc. for Approval of the Transfer of Certain Assets*, Case No. 89-365-RC-ATR, Opinion and Order at 5-6 (October 18, 1990).

[56] See also Ohio Admin. Code Sec. 4901-1-24(D) and 4901-1-27-(B)(7)(e).

[57] See, e.g., http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=f5f192f5-beb0-42e8-9bd7-0e513b9d35ef (documents filed on February 23, 1998, released April 25, 2011).

public records statutes applicable to the Commission (R.C. 4901.12 and R.C. 4905.07) which provide a strong presumption in favor of disclosure.[58]

Moreover, Ohio Administrative Code 4901-1-24 already provides a proper framework to protect information such as trade secrets. It allows a party that has been granted a protective order to file to request a renewal before the protective order expires. This rule guarantees that information protected as a trade secret does not gain permanent Commission protection if the trade secret qualification is lost. Additionally, the rule allows the Commission to maintain its discretion in determining the trade secret status of information. Altering this rule to allow permanent protective orders and reduce Commission discretion would be inconsistent with the basis of trade secret law, as it would provide an opportunity for a company to maintain trade secret status of information filed at the Commission even if the Company has lost trade secret protection of the information pursuant to Ohio law.

Furthermore, AT&T urges the Commission to adopt a policy or rule where there is "a presumption that if a party is seeking to protect a trade secret (as Ohio law defines it), their motion for a protective order will be granted."[59] The Commission should reject this presumption advocated by AT&T because it is in conflict with Ohio's Public Records Law, R.C. 4901.12, R.C. 4905.07, Commission precedent, and Ohio Supreme Court case law.

In reality, AT&T's proposal is the opposite of the PUCO's precedent on the meaning of Ohio's public records statutes. Far from the presumption of secrecy that AT&T advocates for PUCO proceedings, the PUCO has found that R.C. 4901.12 and

[58] See footnote 53.

[59] Initial Comments of the AT&T Entities at p. 9.

R.C. 4905.07 "provide a strong presumption in favor of disclosure, which the party claiming protective status must overcome."[60]

Moreover, the Commission has made it clear that a movant who seeks to protect information from the public must raise "specific arguments as to how public disclosure of the specific items could cause them harm, or how disclosure of the information would permit the companies' competitors to use the information to their advantage."[61] This is consistent with Ohio Adm. Code 4901-1-24(D)(3), which requires movants for confidentiality to file a pleading "setting forth the specific basis of the motion, including a detailed discussion of the need for protection from disclosure…."[62] Ohio Adm. Code 4901-1-27(B)(7)(e) requires that "[t]he party requesting such protection shall have the burden of establishing that such protection is required."

This Commission has emphasized the importance of the public records laws and has noted that "Ohio public records law is intended to be liberally construed to 'ensure that governmental records be open and made available to the public … subject to only a very few limited exceptions.'"[63] Furthermore, this Commission has established a policy

---

[60] *In the Matter of the Joint Application of the Ohio Bell Telephone Company and Ameritech Mobile Services, Inc. for Approval of the Transfer of Certain Assets,* Case No. 89-365-RC-ATR, *Opinion and Order* at 5 (October 18, 1990).

[61] *In the Matter of the Joint Application of the Ohio Bell Telephone Company and Ameritech Mobile Services, Inc. for Approval of the Transfer of Certain Assets,* Case No. 89-365-RC-ATR, *Opinion and Order* at 5-6 (October 18, 1990).

[62] The Commission has recognized that this rule is intended to strike a reasonable balance between the legitimate interests of a company in keeping a trade secret confidential and the obligations of the Commission relative to the full disclosure requirements mandated by Ohio law and public policy. See *In the Matter of the Amendment of Chapters 4901-1 et al. of the Ohio Administrative Code,* Case No. 95-985-AU-ORD *Entry* at 11 (March 21, 1998).

[63] See for example, *In the Matter of the Applications of Vectren Retail, LLC et al. for Renewal of Certification as a Competitive Retail Natural Gas Supplier and for Approval to Transfer that Certification,* Case No. 02-1668-GA-CRS Attorney Examiner *Entry* at 3, citing the Commission's *Order* in *In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation,* Case No. 93-487-TP-ALT *Entry* (November 23, 2003) (relying on *State ex rel Williams v. Cleveland,* 64 Ohio St. 3d 544 (1992)).

that confidential treatment is to be given only under extraordinary circumstances.[64]

As stated, the Commission has held that R.C. 4901.12 and R.C. 4905.07 "provide a strong presumption in favor of disclosure, which the party claiming protective status must overcome."[65] This is consistent with the Supreme Court of Ohio holding that "[a]n entity claiming trade secret status bears the burden to identify and demonstrate that the material is included in categories of protected information under the statute and additionally must take some active steps to maintain its secrecy."[66]

AT&T's recommendation places the burden on the person opposing the issuance of the protective order to show that information contained is not trade secret. As discussed above, this is contrary to Ohio law.

Furthermore, the Commission has often used a balancing approach in its review of motions for protective orders. For instance, the Commission has noted that

> it is necessary to strike a balance between competing interests. On the one hand, there is the applicant's interest in keeping certain business information from the eyes and ears of its competitors. On the other hand, there is the Commission's own interest in deciding this case through a fair and open process, being careful to establish a record

[64] See *In the Matter of the Application of The Cleveland Electric Illumination Company for Approval of an Electric Service Agreement With American Steel & Wire Corp.*, Case No. 95-77-EL-AEC, *Supplemental Entry on Rehearing* at 3 (September 6, 1995).

[65] *In the Matter of the Joint Application of the Ohio Bell Telephone Company and Ameritech Mobile Services, Inc. for Approval of the Transfer of Certain Assets*, Case No. 89-365-RC-ATR, *Opinion and Order* at 5 (October 18, 1990).

[66] *State ex rel. Besser et al. v. Ohio State University et al*. (2000), 89 Ohio St. 3d 396, 400, 732 N.E. 2d 373, 378 citing *Fred Siegel Co., L.P.A. v. Arter & Hadden* (1999), 85 Ohio St. 3d 171, 181, 707 N.E.2d 853, 862.

> which allows for public scrutiny of the basis for the Commission's decision.[67]

AT&T's recommendation establishes an automatic determination that the information that a movant seeks to protect from disclosure is a trade secret, without any factual and/or legal analysis and/or application of a balancing test as previously utilized. Ohio law clearly mandates that a movant claiming trade secret status bears the burden to identify and demonstrate that the material is included in categories of protected information under R.C. 1331.61(D), and the movant must also take some active steps to maintain its secrecy. Accordingly, the Commission must reject AT&T's recommendation because it violates Ohio law and is directly in conflict with Ohio Supreme Court precedent.

In essence, trade secret protection is not perpetual or permanent; it is possible for information protected at one time as a trade secret, through some form of disclosure, or the passage of time, to lose that protection. Accordingly, the proposals by AT&T and FirstEnergy to change Ohio Admin. Code 4901-1-24 in ways that would limit the Commission's ability to assess whether protection of protected information is still necessary must be rejected by the Commission.

4901-1-25 Subpoenas

AT&T proposes that the rule on subpoenas include a provision creating an obligation for the party requesting subpoena to work with the subpoenaed party to find

[67] *In the Matter of the Application of Rapid Transmit Technology Inc. for Certificate of Public Convenience and Necessity to Provide Local Telecommunications Service in the State of Ohio*, Case No. 99-890-TP-ACE, *Entry* at 2-3 (October l, 1999); see also *In the Matter of the Joint Application of the Ohio Bell Telephone Company and Ameritech Mobile Services, Inc. for Approval of the Transfer of Certain Assets*, Case No. 89-365-RC-ATR at 7 (October 18, 1990) (holding that "any interest which the joint applicants might have in maintaining the confidentiality of this information [fair market value and net book value of assets proposed to be transferred] is outweighed by the public's interest in disclosure").

workable dates for appearances at depositions or hearings.[68] Such a provision is already implicated by the "unreasonable or oppressive" standard in the rule, and no revision to the Commission's rules is needed to add it.

Rule 25 currently allows parties to move to quash a subpoena under part (C) if it is "unreasonable or oppressive." The Ohio and Federal Rules of Civil Procedure formerly followed this standard, but it has since been replaced by the "undue burden" standard, which provides more detail about the application of the rule for motions to quash. Even under this standard, however, the Ohio Rules contain a provision inverse to that requested by AT&T.

In essence, the Ohio Rules of Civil Procedure place the burden squarely on the party resisting discovery to approach the other party with claims of undue burden. Specifically, the first sentence of Ohio Civ. R. 45(C)(4) reads: "Before filing a motion [to quash or modify a subpoena] pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney." Ohio Civ. R. 45(C)(1) requires the party or attorney issuing a subpoena to "take reasonable steps to avoid imposing undue burden" on the other party, but once that threshold is met it falls to the resisting party to try to resolve the situation. If these issues are unresolved, then the resisting party may move to quash or modify the subpoena under Ohio Civ. R. 45(C)(4). To impose a duty on the issuing party to "work with" the resisting party goes against the Ohio Rule, and the Federal Rule is likewise devoid of such requirements. These rules place the burden on the resisting party to show why the subpoena should be quashed, and AT&T gives no

[68] See AT&T Comments at 10.

legitimate reasons for the PUCO rules to shift that burden in such a way as to contravene the policy of both the Ohio and Federal rules.

AEP Ohio seeks to limit subpoenas to be used only to compel factual testimony, and prevent them being used for discovering opinion or policy.[69] This request contravenes the relevant provisions of the Ohio and Federal rules.

Ohio Civ. R. 45(C)(3)(c) explicitly addresses this question in the context of motions to quash. The rule allows a subpoena to be quashed if it:

> Requires disclosure of a *fact known or opinion held* by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)(4), if the *fact or opinion* does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party.

(Emphasis added.) By addressing contexts in which opinions are not discoverable through subpoena, the rule contemplates their discovery otherwise. Opinions are discoverable by subpoena if they are made by an expert retained or specially employed in anticipation of litigation or preparation for trial, the opinion describes specific events or occurrences in dispute, or results from a study made at the request of any party.

The Federal Rule has the same requirement, allowing a subpoena to be quashed if it requires "disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party." Fed. R. Civ. P. 45(c)(3)(B)(ii). The rule exists as an exception,

[69] See AEP Ohio Comments at 7-8.

designed to protect the work of unretained experts whose work is not specific to the dispute and not requested by a party.[70]

The Federal and Ohio rules explicitly sanction the subpoena of opinion testimony under certain circumstances. These circumstances are designed to protect unretained experts, and to respect privileged material. Both sets of rules include an appropriate weighing of the type of positions advanced by AEP Ohio, and AEP Ohio presents no compelling reasons in its comments to go against the respective state and federal determinations.

The Large Gas LDCs seek to change the timing provisions of the PUCO subpoena rule to give more time for parties to file a motion to quash. They want to add a provision allowing the resisting party to file a motion to quash a subpoena that is issued "10 days or less prior to a hearing at least 5 days before a hearing. Any party may file a memorandum contra at least 3 days before the hearing."[71] They also propose the addition of a provision allowing a motion to quash any subpoena compelling the appearance of a witness issued 10 days or less prior to a hearing.[72]

The federal rules have no such specific timing provision, simply allowing a motion to quash if a subpoena "fails to allow a reasonable time to comply." Fed. R. Civ. P. 45(c)(3)(A)(i). Ohio has the exact same provision. Ohio Civ. R. 45(C)(3)(a).

These rules provide adequate protection to parties resisting subpoenas. PUCO Rule 25(E) currently forbids subpoenas requiring the attendance of witnesses being filed no later than five days prior to a hearing. Five days is a sufficient time period for

[70] *Statutory Comm. of Unsecured Creditors v. Motorola* (2003), 218 F.R.D. 325, 326.

[71] Gas Parties Comments at 22.

[72] See Id.

response. Fairness for parties' presentation of evidence to the Commission warrants the retention of the PUCO's longstanding process—a process that is commonplace in court cases—for obtaining the testimony of witnesses, through subpoena, in PUCO proceedings.

4901-1-27 Hearings

FirstEnergy raises a number of issues regarding the PUCO Staff's proposal to delete the provision of paragraph (C) that allows unsworn testimony by members of the public at public hearings.[73] The Customer Parties had strenuously objected to this PUCO Staff proposal. Likewise, the Customer Parties object to the Large Gas LDCs' proposal that local hearings be limited to "comments."[74]

FirstEnergy's complaints essentially boil down to the difficulty of dealing with this spontaneous testimony, without having the opportunity to do discovery, and "without any meaningful opportunity to conduct cross-examination."[75] As the Commission knows, such testimony does not inevitably go against the utility,[76] so the difficulties claimed by FirstEnergy are not unique to it.

Moreover, FirstEnergy's assertions say nothing of the difficulties faced by Ohioans who testify before the PUCO in proceedings affecting the rates they pay and the

[73] FirstEnergy Comments at 17-19.

[74] Large Gas LDC Comments at 25. This would eliminate the opportunity for "members of the public … to provide testimony at evidentiary hearings…" supposedly sought to be retained by the Large Gas LDCs. Id. at 24-25. (That is, unless one presumes that the only "evidentiary" hearings are those held at the Commission's offices in Columbus.)

[75] FirstEnergy Comments at 17.

[76] See, e.g., *In the Matter of the Joint Application of Frontier Communications Corporation, New Communications Holdings, Inc. and Verizon Communications Inc. for Consent and Approval of a Change in Control*, Case No. 09-454-TP-AMT, Transcript of Hearing (Norwalk, Ohio, October 8, 2009), Testimony of Fritz Wenzel (Tr. at 22-24); id., Testimony of Stephanie Rodgers (Tr. At 24-25).

quality of utility services they receive. Ohio customers who testify in PUCO cases have the challenge of laypersons participating in a legal proceeding where, among other things, they may be cross-examined by experienced counsel for public utilities. Ohioans' difficulties for testifying also include the potential that they may have to drive far from home or business to testify, may need to arrange for childcare during their testimony and may miss paid time at work to testify. So, while some utilities are proposing to increase the obstacles for Ohioans to testify before their state government in utilities cases, the PUCO should be preserving if not improving the opportunity for such testimony.

FirstEnergy's statement is that "[s]uch public hearings have been a part of the Commission's quasi-legislative role as an administrative agency, which is separate and distinct from the Commission's quasi-judicial role that is fulfilled through the conduct of an evidentiary hearing….."[77] That is mistaken. The sworn testimony at local public hearings is evidence that the Commission must consider;[78] similarly, the unsworn testimony is entirely appropriate for consideration in the Commission's quasi-legislative role.

To the extent that a party is actually denied the opportunity – after making the attempt – to conduct the lengthy and rigorous cross-examination that typically occurs with regard to examination of experts in the Commission's hearing rooms, there might be some concern. But that party would be able to point such problems out in briefing, and later to challenge the Commission's reliance on such testimony if such reliance occurs. Thus no change in the rule is needed.

---

[77] FirstEnergy Comments at 17-18. FirstEnergy's description of the full panoply of "quasi-judicial" procedures (id. at 18) includes many procedural protections that are often missing from Commission determination.

[78] Contrary to FirstEnergy's assertion. Id. at 19.

The circumstances related to local public hearings have been part of the Ohio regulatory scene for many years now without the need for the "guidance" in the rules sought by FirstEnergy.[79] FirstEnergy's comments should be rejected in adopting these rules.

4901-1-30 Stipulations

Duke energy believes that the proposed change to this rule requiring "parties who file" a stipulation to file testimony is unclear as to whether all parties must file testimony. Duke proposes that the rule be changed to require that at least one party to the stipulation provide testimony.[80] The Customer Parties do not oppose this recommendation.

4901-9-01 Complaint proceedings

The Large Gas LDCs request that the Commission add language to this rule to address what they assert to be "a growing trend among the consumer complaint cases filed pursuant to R.C. 4905.26. In quite a few of these cases, prehearing settlement conferences or hearings are scheduled at the Commission's offices and the Complainant fails to attend without giving the Commission or the public utility notice."[81] The Large Gas LDCs would make a complainant's non-attendance grounds for immediate dismissal of the complaint.

In the first place, this alleged trend is contradicted by the facts. A review of the Commission's complaint cases filed by customers against gas companies shows that in

[79] Id.

[80] Duke Energy Ohio Comments at 12.

[81] Large Gas LDC Comments at 26.

two 2008 cases, there was no notice from the complainant;[82] in one 2009 case, there was no such notice;[83] and in three 2010 cases the complainant did not give notice.[84] More importantly, the Large Gas LDCs – all of whom have counsel in Columbus – do not seem to appreciate the burden that attending a conference in Columbus places upon a customer. A better way to address this issue would be to make the option of a telephonic conference more widely available.

On a similar note, FirstEnergy proposes the adoption of a "summary judgment" rule, to "greatly eliminate the need for unnecessary hearings in complaint proceedings."[85] The Customer Parties also oppose this proposal. This additional layer of legal process – in addition to, inter alia, the frequent utility motions to dismiss – would likely delay the processing of complaints, and prejudice the customers who file them.[86] If anything, there should be opportunities for expediting the resolution of complaints, with expedited discovery upon request and time lines for a PUCO ruling.

4901:1-1-01 Consumer information

AT&T states:

> The Commission should revisit the requirement that tariff provisions (or even a complete tariff) must be provided to a customer in the format they request and that paper copies be provided at no cost. Tariff provisions are now readily available on-line and can even be found on the Commission's own website. And as noted above in the discussion of Rule 5(B), the

[82] Case Nos. 08-40-GA-CSS, 08-332-GA-CSS.

[83] Case No. 09-1841-GA-CSS.

[84] Case Nos. 10-1438-GA-CSS, 10-3004-GA-CSS, 10-1389-GA-CSS. In one case, 10-461-GA-CSS, DIS does not indicate any further action after the settlement conference was set.

[85] FirstEnergy Comments at 21.

[86] It must also be recalled that these customers, very seldom represented by counsel, must confront the typically vastly greater resources of the utilities, which includes counsel who are paid through the customers' utility bills.

> Commission can rest assured that all Ohioans have reasonable access to the internet, either in an office, at home, or at a nearby public library.[87]

As discussed by the Customer Parties above under "E-service and e-filing," despite AT&T's account of the ubiquity of Internet access, it should not be necessary for a customer to visit a library to gain access to the rules and regulations that govern the customer's relationship with a utility. Equally importantly, despite AT&T's complaint about the burdensomeness of this requirement,[88] it provides no information on the actual burden it may have suffered under the "previously applicable, telephone industry-specific MTSS provision…."[89]

III. CONCLUSION

The Customer Parties present these Reply Comments in the interest of due process for Ohioans whose utility service providers are regulated by the Public Utilities Commission of Ohio. These Reply Comments and the Customer Parties' Initial Comments are submitted in order to assist the Commission in the review of its rules of practice and procedure. The Customer Parties' comments are directed at, *inter alia,* bringing the rules in conformance with the Revised Code and in conformance with the rules of civil procedure, to promote fairness in the PUCO's processes for all to have a reasonable opportunity to be heard.

[87] AT&T Comments at 11.

[88] Id.

[89] Id. AT&T provides no basis for its assertion that "[t]he rescission of [the MTSS], though, was not intended to subject telephone companies to the more general provision under review here." Id.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Melissa R. Yost
Melissa R. Yost, Counsel of Record
David C. Bergmann
Kyle L. Verrett
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
yost@occ.state.oh.us
bergmann@occ.state.oh.us
verrett@occ.state.oh.us

/s/ Ted Robinson
Ted Robinson
Staff Attorney
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
robinson@citizenpower.com

/s/ Michael R. Smalz
Michael R. Smalz, Counsel of Record
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, OH 43215
msmalz@ohiopovertylaw.org

/s/ Ellis Jacobs
Ellis Jacobs
Advocates for Basic Legal Equality, Inc.
333 West First Street, Suite 500B
Dayton, OH 45402
ejacobs@ablelaw.org

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Joint Reply Comments have been served via electronic mail to the persons on the service list below this 2nd day of May, 2011.

/s/ Melissa R. Yost
Melissa R. Yost
Assistant Consumers' Counsel

Amy B. Spiller
Deputy General Counsel
Elizabeth H. Watts
Duke Energy Business Services, Inc.
139 Fourth Street, 1303-Main
P.O. Box 960
Cincinnati, Ohio 45202-0960
amy.spiller@duke-energy.com
elizabeth.watts@duke-energy.com

James W. Burk
Carrie M. Dunn
FirstEnergy Corporation
76 South Main Street
Akron, Ohio 44308
burkj@firstenergycorp.com
cdunn@firstenergycorp.com

Mark A. Whitt
Melissa L. Thompson
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
whitt@carpenterlips.com
thompson@carpenterlipps.com

Stephen B. Seiple
Brooke E. Leslie
NiSource Corporate Services Company
200 Civic Center Drive, P.O. Box 117
Columbus, Ohio 43216
sseiple@nisource.com
bleslie@nisource.com

D. Casey Talbott
Mark W. Sandretto
Eastman & Smith Ltd.
One SeaGate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699-0032

Lisa G. McAlister
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
lmcalister@bricker.com
mwarnock@bricker.com

Steven T. Nourse
Yazen Alami
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
stnourse@aep.com
yalami@aep.com

Colleen L. Mooney
David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45840
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org

Jon F. Kelly
Mary Ryan Fenlon
AT&T Services, Inc.
150 East Gay Street, Room 4-A
Columbus, Ohio 43215
Jk2961@sbc.com
mf1842@sbc.com

Judi L. Sobecki
Randall V. Griffin
The Dayton Power & Light Company
1065 Woodman Drive
Dayton, Ohio 45432
judi.sobecki@dplinc.com
randall.griffin@dplinc.com

Summary: Reply Joint Reply Comments of the Office of the Ohio Consumers' Counsel, Advocates for Basic Legal Equality, Inc., Citizen Power, and the Ohio Poverty Law Center electronically filed by Mrs. Mary V. Edwards on behalf of Melissa R. Yost and Office of the Ohio Consumers' Counsel