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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Chapter 4901:1-13 of the Ohio Administrative Code.	)))	Case No. 09-326-GA-ORD

JOINT APPLICATION FOR REHEARING BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL THE NEIGHBORHOOD ENVIRONMENTAL COALITION, THE EMPOWERMENT CENTER OF GREATER CLEVELAND, CLEVELAND HOUSING NETWORK, THE CONSUMERS FOR FAIR UTILITY RATES AND OHIO POVERTY LAW CENTER

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August 30, 2010

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JOINT APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
THE NEIGHBORHOOD ENVIRONMENTAL COALITION, THE EMPOWERMENT CENTER OF GREATER CLEVELAND, CLEVELAND HOUSING NETWORK, THE CONSUMERS FOR FAIR UTILITY RATES AND OHIO POVERT LAW CENTER

The Office of the Ohio Consumers' Counsel ("OCC"), the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, the Cleveland Housing Network, and the Consumers for Fair Utility Rates ("Citizens Coalition") and the Ohio Poverty Law Center ("OPLC") (collectively "Joint Consumer Advocates") on behalf of the residential natural gas consumers of Ohio, applies for rehearing of the July 29, 2010 Finding and Order ("Order") issued by the Public Utilities Commission of Ohio ("PUCO" or "the Commission") in this docket, pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35(A). The Joint Consumer Advocates submits that the Order addressing the Commission's review of its rules pertaining to Minimum Gas Service Standards ("MGSS"), was unreasonable, unlawful and inadequate in the following particulars:

A. The Commission erred by failing to protect consumer benefits that should be derived from a natural gas utility's adherence to the minimum gas service standards rules pertaining to metering.

B. The Commission erred by unreasonably increasing the charge for payments made to authorized agents from $.88 to $2.00 without making a

determination that the increase is just and reasonable or analyzing the impact the increase will have on residential consumers.

C. The Commission erred by failing to approve modifications to the minimum gas service standards rules pertaining to customer billing and payments that would benefit consumers.

D. The Commission erred by failing to modify the requirements of the minimum gas service standards rules that would necessitate the natural gas company to provide its residential consumers additional information pertaining to the provision of customer rights and obligations for the benefit of consumers.

The reasons that the Commission should grant rehearing are explained in further detail in the accompanying memorandum in support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On April 15, 2009, the Commission initiated this proceeding. Through the April 22, 2009 Entry ("Entry"), the Commission issued Staff proposed revisions and suggested changes to the MGSS rules, Ohio Adm. Code Chapter 4901:1-13.

On May 22, 2009, Initial Comments were filed by: jointly by OCC and Ohio State Legal Services Association ("OSLSA") ("Joint Advocates"), jointly by the East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion") and Vectren Energy Delivery of Ohio, Inc. ("Vectren") ("Dominion/Vectren"), Ohio Home Builders Association, Inc. ("OHBA"), and Columbia Gas of Ohio, Inc. ("Columbia").

On June 8, 2009, Reply Comments were filed jointly by Joint Advocates, Duke Energy Ohio, Inc. ("Duke"), Ohio Gas Marketers Group ("OGMG") and jointly by Dominion/Vectren.

On July 29, 2010, the Commission issued its Order ("Order"), and from the Order, Joint Consumer Advocates submits this Application for Rehearing.

II. ARGUMENT

A. The Commission Erred By Failing To Protect Consumer Benefits That Should Be Derived From A Natural Gas Utility's Adherence To The Minimum Gas Service Standards Rules Pertaining To Metering.

Metering is an important function that establishes the basis used by the natural gas utility for determining what a consumer owes the natural gas utility for the service rendered. The importance of metering is demonstrated clearly by the MGSS rules that pertain specifically to metering. The Ohio Adm. Code 4901:1-13-04 states:

> (A) Service provided by a gas or natural gas company **shall** be metered, except where it is impractical to meter the gas usage, such as in street lighting and temporary or special installations. The usage in such exceptions may be calculated or billed in accordance with an approved tariff on file with the commission.
>
> (B) A customer's usage **shall** be metered by commercially acceptable measuring devices. Meter accuracy shall also comply with the standards found in section 4933.09 of the Revised Code. No metering device shall be placed in service or knowingly allowed to remain in service if it violates these standards.
>
> (C) Gas or natural gas company employees or authorized agents of the gas or natural gas company **shall** have the right of access to the metering equipment for the purpose of reading, replacing, repairing, or testing the meter, or determining that the installation of the metering equipment is in compliance with the company's requirements.
>
> (D) Meter test at customer's request. Metering accuracy **shall** be the responsibility of the gas or natural gas company.[1]

Through the MGSS rules, the Commission establishes the company's obligation to meter the service being provided, and to use commercially acceptable measuring devices in compliance with Ohio law. The company is also given authorization to access the measuring devices, and to ensure the accuracy of the measuring devices. In light of the

[1] Ohio Adm. Code 4901:1-13-04 (emphasis added).

responsibilities, obligations and control that the utility company has pursuant to the MGSS rules, if an error or problem with metering arises, the consumer should be protected. Certain Commission approved amendments to the minimum gas service standards fail to protect consumers and the intended consumer benefits that should be derived from adherence to the MGSS rules are eroded.

1. The Commission abused its discretion by failing to require gas companies to periodically notify customers of their right to have their gas meters tested.

Ohio Adm. Code 4901:1-13-04(D) includes requirements that establish consumer rights related to having their natural gas meter tested,[2] the right to be present during the test,[3] a right to be informed about the meter test results,[4] the meter test charges,[5] and a right to prescribe how any over charges are returned.[6] But having these rights is only meaningful if the customer actually knows they have such rights. The Joint Advocates requested that the gas companies be required to periodically notify consumers about the existence of these rights.[7]

The gas companies unreasonably argue against the Joint Advocates recommendation because of an unsubstantiated allegation of associated costs. Duke asserts that the request for additional notification "would impose unnecessary costs upon the natural gas utility companies,"[8] and "does not justify the costs".[9] Ohio Gas claims

[2] Ohio Adm. Code 4901:1-13-04(D)(1).

[3] Ohio Adm. Code 4901:1-13-04(D)(2).

[4] Ohio Adm. Code 4901:1-13-04(D)(3).

[5] Ohio Adm. Code 4901:1-13-04(D)(4).

[6] Ohio Adm. Code 4901:1-13-04(D)(5).

[7] Joint Advocates Initial Comments at 7.

[8] Duke Reply Comments at 4.

[9] Duke Reply Comments at 4.

that "[they do] not necessarily oppose this request" for additional notification, but claim that "the [Joint Advocates] failed to address the costs associated with adding language to bills and working another insert into the already full bill insert schedule."[10] Despite these claims there is no substantiation or supporting data in the record. Neither Duke nor Ohio Gas provided any cost data whatsoever to support their allegation that the Joint Advocates recommendation was not cost effective.

The Commission denied Joint Advocates recommendation by stating "given the potential costs to notify customers without any showing of the necessity for additional notification."[11] However, the Commission made its decision absent any showing by the gas companies regarding notification costs. The Commission abused its discretion by relying on the companies arguments regarding costs associated with the Joint Advocates recommendation without requiring the gas companies to provide any cost projections pertaining to the impact of providing notification to their consumers.

In making this decision, the PUCO seems to be creating a fundamentally unfair double standard. The PUCO seems to be willing to accept any gas company concern or complaint regarding potential costs without the need for any supporting data whatsoever.[12] Yet if customers or their representative -- OCC -- raise concerns the PUCO routinely rejects the concern due to a lack of substantiation.[13]

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[10] Ohio Gas Reply Comments at 6.

[11] Order at 15.

[12] Order at 15 (Ohio Adm. Code 4901:1-13-04(D)); Order at 40 (Ohio Adm. Code 4901:1-13-06(A)); Order at 49 (Ohio Adm. Code 4901:1-13-11(B)); Order at 53 (Ohio Adm. Code 4901:1-13(B)(25)); Order at 64 (Ohio Adm. Code 4901:1-13-12((E)).

[13] Order at 4 (General Comments); Order at 17 (Ohio Adm. Code 4901:1-13-04(D)(5)(c)(i)); Order at 19 (Ohio Adm. Code 4901:1-13-04(G)(1)(a)); Order at 25 (Ohio Adm. Code 4901:1-13-04(G)(4)); Order at 26 (Ohio Adm. Code 4901:1-13-04(G)(8)); Order at 27 (Ohio Adm. Code 4901:1-13-05(A)(1)(a)); Order at 31 (Ohio Adm. Code 4901:1-13-05(A)(4)); Order at 35 (Ohio Adm. Code 4901:1-13-05(C)(3)); Order at 45 (Ohio Adm. Code 4901:1-13-09(C)(2)(b)).

In addition, the Commission **speculates** that customers concerned about the accuracy of the bill would likely contact the gas companies, and in that situation, the Commission assumes the gas companies are "obligated to inform the customer of the rights to have the meter tested and of the requirements associated with such testing."[14] However, the Joint Advocates urge the Commission not to assume that gas companies will automatically inform customers about their right to have a meter tests because they contact the company expressing concern about the gas bill. Speculation and conjecture should not be the basis of establishing or modifying the MGSS. Rather, the Commission should place the onus on the gas the gas companies to periodically notify their customers of the right to have their gas meter tested pursuant to the Minimum Gas Service Standards.

Therefore, the Commission should grant rehearing on this important consumer issue pertaining to the MGSS rules.

2. The Commission's Order is unjust and unreasonable by failing to require gas companies to pay interest on overcharges that occur as a result of error on behalf of the Company.

The Joint Advocates recommended that the MGSS rules require gas companies to pay interest on residential accounts that due to a gas company error resulted in a customer being overcharged.[15] Duke opposed the recommendation claiming that calculation and payment of interest would be burdensome and require costly computer changes.[16] Again, Duke provided no actual data to support its assertion that the Joint Advocates

[14] Order at 15.

[15] Joint Advocates Initial Comments at 8.

[16] Duke Reply Comments at 7.

recommendation is burdensome, nor did Duke provide any estimation of the costs associated with the alleged computer changes.

Joint Advocates recommended a 1.5% per month interest rate equal to the 1.5% interest rate that companies charge customers if payments are late.[17] Again, customers are only asking for equal protection under the law. It is also noteworthy that when the gas companies sought the opportunity to collect interest from consumers on late payments there was no mention or discussion of burdensome or costly computer changes required to implement such a change.[18]

The Commission unreasonably decided that it is not appropriate to impose rules requiring gas companies to pay interest on overcharges given that the utilities do not charge interest on under charges.[19] The Commission's finding is unjust and unreasonable because the Commission does not have the statutory authority to establish rules that would permit collection of interest on **under charges.** Ohio law is abundantly clear that gas companies cannot collect interest charges on bills that are being rendered for previously un-metered or inaccurately meter charges. R.C. 4933.28(A) and (B) states:

> (A) Whenever a gas, natural gas, or electric light company operated for profit or not for profit has **undercharged** any residential customer as the result of a meter or metering inaccuracy or other continuing problem under its control, the company may only bill the customer for the amount of the unmetered gas or electricity rendered in the three hundred sixty-five days immediately prior to the date the company remedies the meter inaccuracy. The maximum portion of the **undercharge** for unmetered gas or electricity rendered that may be recovered from the customer in any billing month shall be determined by dividing

[17] Joint Advocates Initial Comments at 8.

[18] *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in its Rates for Gas Service to All Jurisdictional Customers,* Case No. 95-656-GA-AIR, Staff Report at 100 (July 12, 1996).

[19] Order at 16.

> the amount of the **undercharge** by twelve and the quotient is the maximum portion of the **undercharge** that the company may, subject to division (C) of this section, recover from the customer in any billing month, in addition to either regular monthly charges of any type or regular level payment amounts billed in accordance with an agreement between the customer and the company. Subject to division (C) of this section, the time period over which the **undercharge** may be collected shall be twelve consecutive months.
>
> (B) No company shall recover any interest charge, service charge, or fee, whether or not a percentage is utilized for its computation, for billings made pursuant to this section.[20]

The Commission should grant rehearing and adopt the Joint Advocates recommendation that gas companies pay interest on accounts that were over charged for extended periods of time.[21]

3. The Commission abused its discretion by failing to require gas companies to accept a customer's verifiable documentation of certain factors that could impact the gas company's back-billing calculation for natural gas service.

Ohio law enables gas companies to charge customers for gas that was previously not billed as a result of a meter, metering inaccuracy or other continuing problem under the gas companies control for the three-hundred and sixty five days prior to the date the company corrects the metering inaccuracy.[22] Ohio Adm. Code 4901:1-13-04(D)(5)(c)(i) and (ii) establish the process for calculating the amount of usage that should be billed the consumer. Joint Advocates raised a concern that the metering inaccuracy may pre-date the period of time the gas companies may rely upon to assess the amount of un-metered usage. To address this issue, the Joint Advocates recommended that several factors

[20] R.C. 4933.28 (emphasis added).

[21] The Joint Advocates recommend that an extended period of time be defined as a period more than three months. This period of time is considered reasonable given the vast majority of the gas companies attempt to read the meter every other month.

[22] R.C.4933.28(A).

including weather, change in household size, changes in major appliances, weatherization, and any other factors affecting a customers usage pattern should be taken into consideration by the gas companies in calculating the undercharges.[23]

Duke claimed that "these factors are undeniably subjective and would be very difficult to consistently manage and implement."[24] However, Duke provided no data to support their assertion that the factors proposed by the Joint Advocates would be difficult to manage.

The Commission accepted Duke's arguments and rejected Joint Advocates recommendation stating "there is no showing that the factors proposed by [Joint Advocates] are quantifiable for purposes of determining the meter usage in a given household."[25] The PUCO rejected this suggestion due to a perceived lack of quantifiability, yet the PUCO accepted numerous claims made by the gas companies that were similarly unquantified, without explaining the apparent double standard. The Joint Advocates contend that while the law enables gas companies to bill for previously un-metered usage, customers should have the opportunity to challenge the gas companies' calculation through establishing their individual circumstances that could impact the estimation of un-metered usage. The Commission should order the gas companies to accept a customer's documentation of any of the factors identified by the Joint Advocates and revise the un-metered usage calculation accordingly based upon the customer's documentation. For example, contrary to the gas companies' claims, changes in major appliances like furnaces are verifiable and manufacturer efficiency ratings can be readily

[23] Joint Advocates Initial Comments at 9.

[24] Duke Reply Comments at 4.

[25] Order at 17.

obtained. Energy efficiency changes made in the home such as new windows, insulation, weatherization techniques and the like can be documented and supports modifying the gas company's un-metered consumption estimate based upon historical usage prior to the consumer's changed circumstance(s). The Commission should grant rehearing and require the gas companies to take into consideration any other factors impacting a consumer's usage pattern as recommended by the Joint Advocates when calculating un-metered usage.

4. The Commission's Order unreasonably fails to require gas companies that are installing Automatic Meter Reading (AMR) equipment to provide implementation plans outlining when monthly meter reads will begin.

Consumers have expressed long-standing opposition to being rendered bills for natural gas services based on estimated or calculated meter reads by the utilities. Over the last several years, more emphasis has been placed on the large scale implementation of AMR programs and most of the gas companies in the state are installing AMR equipment to help address this issue. The Joint Advocates recommended that the public receive the benefits of actual meter reads using AMR as soon as the number of meters changed to AMR would allow.[26] The Joint Advocates recommended that an implementation plan be developed by each of the gas companies that are deploying AMR capabilities outlining a date certain when actual monthly meter reads will be available in each of the geographic areas served by the gas utilities.

Dominion/ Vectren unreasonably opposed the Joint Advocates recommendation by alleging "Joint Advocates proposal ignores the role of [Staff] in meter reading activities, and fails to address circumstances in which monthly reads are impossible

[26] Joint Advocates Initial Comments at 10.

because of equipment failures."[27] Columbia opposed the Joint Advocates recommendation on the basis that AMR requirements should be addressed in tariffs and not rulemaking cases.[28] Ohio Gas opposed the recommendation stating "[the Joint Advocates] requests that LDCs installing AMR equipment be required to divert resources from that process in order to develop implementation plans to establish when the AMR goals will be met".[29]

The Commission agreed in part with Joint Advocates' proposal and has added language in Ohio Adm. Code 4901:1-13-04(G)(1) that "once operationally feasible" the gas companies that are installing AMR are "required to read meters on a monthly basis".[30] The Joint Advocates appreciate that the Commission required gas companies installing AMR devices to perform monthly meter reads; however, the Commission failed to impose requirements on the gas companies through implementation plans that would document when actual monthly meter reads will begin in each geographic area of the gas company's service territory. Without such a requirement, the gas companies are able to arbitrarily decide for themselves when the actual monthly meter reads will begin, and such decisions may not be in the public interest.

As an example of how arbitrary this issue can be, in the most recent Dominion AMR Case, Dominion showed that it has spent millions of dollars to install 58% of the total AMR devices. However, Dominion had implemented monthly meter readings in fewer than 20 of 253 -- or less than 7.9% -- of the Company's communities. The

[27] Dominion/ Vectren Joint Reply Comments at 8.

[28] Columbia Reply Comments at 6.

[29] Ohio Gas Reply Comments at 3.

[30] Order at 19.

Commission ruled that "**Dominion should be installing AMR devices such that *** rerouting [in order to accommodate monthly meter readings] will be made possible in all communities at the earliest possible time,**"[31] Accordingly, the Commission should grant rehearing and require the gas companies installing AMR devices to develop implementation plans demonstrating that actual meter reads will be provided in the communities served by the gas companies with installed AMR devices at the earliest possible time.

5. The Commission abused its discretion by failing to require gas companies to publicly file plans related to ensuring that meters are actually read every 12 months.

Ohio Adm. Code 490-1:1-13-04(G) requires gas companies to submit a plan to the director of the commission service monitoring and enforcement department that addresses how all meters will be read every 12 months. The gas companies are required to update or resubmit the plan every three years. The Joint Advocates recommended that the meter reading plans should be publicly filed so that all interested stakeholders and the public would be kept informed about the companies' meter reading plans.[32]

Duke opposed the recommendation and unreasonably argued that a formal case would have to be opened.[33] Duke's argument rings hollow. Gas companies routinely file applications in furtherance of their own initiatives. There is no additional expertise or costs associated with the filing of a document that they currently submit to the Staff. Duke's argument is not a legitimate impediment to accomplishing a goal of furthering the

[31] *In re Dominion AMR Case,* Case No. 09-1875-GA-RDR, Order at 7 (emphasis added).

[32] Joint Advocates Initial Comments at 11.

[33] Duke Reply Comments at 4.

transparency of governmental regulation. Therefore, the Commission should require the gas companies to file their meter reading plans with the Commission.

Columbia opposed the recommendation on the basis that the Commission has the sole statutory authority to regulate the utilities,[34] and Ohio Gas opposed the recommendation on the basis the current process protects consumers.[35] Columbia's argument fails to explain how filing a meter reading plan rather than submitting the same plan to the Staff translates into Joint Advocates usurping the Commission's role as the regulator. Joint Advocates merely want the process to be open and transparent. Ohio Gas' argument is self-serving at best and without any basis in fact. If indeed the current process protected consumers every customer would have their meter read at least once every 12 months, if not more frequently. That is not the case.

For example, in the UEX 5-year review docket, Case No. 08-1229-GA-ORD, the Commission retained a consultant to review the collection policies and procedures of Columbia, Dominion, Duke and Vectren. As part of the consultant's report the status of these four gas companies meter reading was reviewed. The consultant reported the following:

> [For Columbia:] only 3,000 accounts had not had an actual read in over eighteen months.[36]
>
> [Dominion] has reduced the backlog of meters not read within the required twelve-month period. At the end of 2008, [Dominion] had almost 10,000 meters that it had not read in more than ten months, as opposed to only 3,400 meters not read at the end of 2009. The number of meters that had not been read in more than 36

[34] Columbia Reply Comments at 6.

[35] Ohio Gas Reply Comments at 8.

[36] *In re UEX 5-Year Review,* Case No. 08-1229-GA-COI, NorthStar Consultant Report at VII-5 (May 7, 2010).

> months was reduced from 265 to 65 between the end of 2008 and the end of 2009.[37]
>
> As of August 2009, Duke meter readers had read 99.8 percent of its active meters within the past twelve months (less than 800 of Duke's 420,000 active meters were not read), as required by the OAC.[38]
>
> [For Vectren], three hundred-twenty-four meters have not had an actual read within the last twelve months as required by the OAC.[39]

In light of the above information, there is room to improve the gas companies' meter reading plans, and this should start with an open and transparent process by requiring the gas companies to file their plans.

The Commission found that copies of the plans are available upon request, and there is no reason for the plans to be publicly filed.[40] The Commission's decision is an abuse of discretion because the Commission's decision presumes that Joint Consumer Advocates have the knowledge that the plans have been submitted to Staff and are thus available. There is no requirement for the gas companies to notify OCC or any other interested party that the plans had been submitted in order to know to request the plan. The Commission decision should not enable the gas companies to shield these plans from the public, but should instead require that they be filed so their existence and availability is made known to all interested parties. Therefore, the Commission should grant rehearing on this issue.

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[37] *In re UEX 5-Year Review*, Case No. 08-1229-GA-COI, NorthStar Consultant Report at VII-9 (May 7, 2010).

[38] *In re UEX 5-Year Review*, Case No. 08-1229-GA-COI, NorthStar Consultant Report at VII-13 (May 7, 2010).

[39] *In re UEX 5-Year Review*, Case No. 08-1229-GA-COI, NorthStar Consultant Report at VII-16 (May 7, 2010).

[40] Order at 19.

6. The Commission's Order unreasonably results in tenants being held responsible for the costs of providing the gas companies access to metering equipment even though the tenant can not provide access.

Ohio Adm. Code 4901:1-13-04(G)(9) requires gas companies to provide notice to landlords **and** tenants when it is unable to obtain access to the meter.[41] The Joint Advocates recommended that the rule be modified to enable the costs that were incurred to obtain access be billed to the landlord in those circumstances in which the landlord denied access.[42] This recommendation is reasonable considering the landlord is likely denying access in an effort to escape responsibility for paying the gas bill.

Duke and Columbia opposed the Joint Advocates recommendation because the responsibilities pursuant to tariff are between the company and the tenant (as the customers of the company).[43] Ohio Gas opposed the recommendation on the basis that the Commission does not have the authority to enforce collections between gas companies and persons who are not customers of the gas companies.[44]

Dominion/ Vectren claim that there may be lease provisions that prevent the landlord from entering the property.[45] They also correctly cite to R.C. 5321.04(A)(8) as a potential "limitation" on the landlord's right to enter the property.[46] Curiously, Dominion/Vectren manage to recite the limiting language that a landlord must first provide notice and enter only at reasonable times, but they omit the next sentence that

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[41] Emphasis added.

[42] Joint Advocates Initial Comments at 13.

[43] Duke Reply Comments at 5; Columbia Reply Comments at 11.

[44] Ohio Gas Reply Comments at 26.

[45] Dominion/ Vectren Reply Comments at 11.

[46] Dominion/ Vectren Reply Comments at 11.

states, "Twenty-four hours is presumed to be reasonable notice..."[47]. Dominion/Vectren also omit that there is an exception to the notice requirement in cases of emergency. Consequently, at most, a landlord could be barred from entering for only 24 hours. No lease language may limit or trump any statute. Statutes always control if there is a conflict between law and the lease. Finally, reinforcing the landlord's right of entry is the concomitant tenant duty to "not unreasonably withhold consent for the landlord to enter into the dwelling..."[48] Essentially, the landlord is in the position of power when it comes to the question of authority to enter, except for the de minimis and reasonable restraints of providing notice and waiting 24 hours. Of course, if the tenant has already vacated, there is no limit on the right of entry, since the tenancy has been terminated between the tenant and the landlord.

The Commission denied the Joint Advocates recommendation in that the recommendation was not workable given that the companies' contracts are with the customer, and that the customer may not be the landlord.[49] However, the Commission is not considering how unworkable and unreasonable the current access requirements can be for some tenants. The Dominion East Ohio tariff includes the following general requirement concerning the access that the tenant (as a customer of Dominion) is responsible for providing the company:

> *The authorized agents and employees of East Ohio shall at all reasonable times have access to any premises supplied with gas by East Ohio. East Ohio may discontinue gas service to any premise where access is denied. Upon the customer's request, the employee or agent seeking access to the customer's premise shall identify*

[47] R.C. 5321.04(A)(8).

[48] R.C.5321.05(B).

[49] Order at 26.

himself, and provide Company photo identification and state the reason for the visit.[50]

Columbia,[51] Vectren,[52] and Duke[53] have similar tariff provisions. However, if the metering equipment is behind a closed and locked door that the landlord and not the tenant controls, the Company should not have a unilateral right to discontinue natural gas service. Nor should the tenant be responsible indefinitely for payment of bills after the date in which they request service be discontinued because an unscrupulous landlord will not provide access to the meter. However, the Dominion East Ohio Gas tariff provides just such an unreasonable provision:

> *The customers must notify East Ohio before vacating the premises where gas is used or before discontinuing the use of gas. The customer shall be liable for all charges for gas consumed on such premises until the earlier of East Ohio's completion of the service order or up to five business days after such notice has been received provided that access to the premises shall have been given East Ohio within that period; and if access has not been given within such period then for all charges until such access has been given.*[54]

Many of the gas companies currently have reversion agreements where accounts automatically transfer to the landlord rather than being shut-off. In those situations, the gas companies could adapt the reversion agreements to require landlords to be responsible for the costs of obtaining access, if the landlord denies access. The Commission has an important role in protecting consumers from landlords who are denying access to the meter. The Commission should grant rehearing and require the gas

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[50] East Ohio Gas Company, Second Revised Sheet, No. K2, issued October 16, 2008, at Paragraph 7.

[51] Columbia Gas of Ohio, Inc., Third Revised Sheet No. 4, issued December 3, 2008, at Section 15

[52] Vectren Energy Delivery of Ohio, Inc., Sheet No. 62, P.U.C.O. No.3, Original Page 3 of 3, issued February 22, 2009, at Section 3(B)(8)

[53] Duke Energy Ohio, P.U.C.O. Gas No. 18, Sheet No. 21.6, issued June 4, 2008, at Section 9

[54] East Ohio Gas Company, Second Revised Sheet, No. K2, October 16, 2008, Paragraph 8.

companies to update their meter reading plan identified in Ohio Adm. Code 4901:1-13-04(G)(1)(a) to reflect how the gas companies will protect their customers from landlords who are denying the gas companies' access to the meters.

B. The Commission Erred By Unreasonably Increasing The Charge For Payments Made To Authorized Agents From $.88 To $2.00 Without Making A Determination That The Increase Is Just And Reasonable Or Analyzing The Impact The Increase Will Have On Residential Consumers.

The Commission in its review of Ohio Adm. Code 4901:1-13-11(E)(2) approved an increase to the charge that authorized agents can collect from customers who make payments at their locations. The Commission stated:

> (2) Each gas or natural gas company shall not charge more than two ~~times the cost of a first class postage stamp~~ dollars for processing their payments by cash, check, or money order at authorized agent locations. Customers may not be charged for processing their payments by check or money order through the mail. Customers may be charged for processing their payments by check over the telephone, by credit card, or electronic money transfers and such charges will be evaluated by the commission.[55]

The concern with the increase is that the Commission approved the rate increase without any evidence demonstrating the increase was necessary or just and reasonable.[56]

The authorized agents are established by the natural gas companies throughout their service territories. The costs incurred by the natural gas companies to establish the network of authorized agents are currently recovered -- or will ultimately be recovered -- by the natural gas companies through their base rates. The fee that is the subject of this rule is collected by the authorized agent and retained by the authorized agent as a transaction fee. There was absolutely no evidence presented in the record that the

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[55] Entry at 29 (April 22, 2009).

[56] R.C. 4909.15, See also R.C. 4909.18.

authorized agents had asked the Commission for this increase, or that the natural gas companies were experiencing difficulty arranging authorized agents under the current fee structure. Therefore, there is no explanation why the increase was recommended by the Staff and approved by the Commission.

A review of the history of this issue is appropriate. In years past, customers could pay in person without being charged a fee. Utility companies maintained local offices that would provide these services. Now there are no local utility company offices where customers can go to pay their bill. The closing of these local utility offices has made it more difficult for customers to talk directly to a utility representative thereby removing/insulating the utility from its customers -- the people they are supposed to be serving. The utilities want customers to pay their bills; however, requiring customers to pay a fee in order to pay their bill is unjust and unreasonable. In reality, the onerous fee harms the most vulnerable customers -- those who have no checking account and can least afford to pay the fee. Instead of allowing authorized agents working for the gas utility companies to charge onerous fees to pay a bill, the utility should be looking for ways to make it easier for these customers to pay their monthly bills in a timely manner.

The Commission has relied on unsubstantiated comments made by the natural gas companies to support its decision on this issue. First Dominion/Vectren jointly stated that "the [two dollar] increase is reasonable."[57] The statement is purely self-serving and absent of any evidentiary support. In addition, Dominion/Vectren jointly stated that "there is a cost associated with accepting payments at authorized payment centers, and

[57] Dominion/Vectren Joint Initial Comments at 11.

that cost is most appropriately borne by the customers who impose these costs."[58] These customers are merely trying to pay their bill, and they are not leaning on the system to "impose" a cost as these utilities have the temerity to suggest. Moreover, Dominion/Vectren fail to demonstrate that the existing charge -- two times the cost of a first class postage stamp -- does not cover the authorized agent transaction costs. Further, Columbia states that, "contrary to the belief of [Joint Advocates], even at two dollars, Columbia is not recovering its cost of providing an authorized agent to collect gas utility service payments * * *."[59] However, this transaction fee is retained by the authorized agent not Columbia. Once again, Columbia has not provided any evidence pertaining to the actual cost to engage an authorized agent. If this is really an issue of concern for the gas companies, then they should provide the contracts for interested parties to review and help determine what the actual costs that Columbia is incurring. While the benefit derived from the transaction fee paid to an authorized agent is understood; however, it could be argued that the real reason that they want to be an authorized agent -- is that it draws people into their establishment, so that while there, the customer might purchase other items.

Finally, the Commission relies on a circular argument to support its decision in this case. The Commission states that it finds that the two dollar fee is consistent with other industries regulated by the Commission and it is, therefore, appropriate to implement this fee for the gas and natural gas companies. However, there was no evidence presented that the $2.00 transaction fee the Commission approved in other industries was just and reasonable. Taken as a whole, when each industry fee is added,

[58] Dominion/Vectren Joint Reply Comments at 21.

[59] Columbia Reply Comments at 26.

the cost of paying becomes increasingly burdensome. At a time when arrearages and uncollectible expense is increasing, the Commission should be approving policies that make it easier -- and not harder -- for customers to pay their bills.

The Commission's approval of a 122 percent[60] increase was decided without evidence to support that such an increase was just and reasonable. Nor was there any analysis of the impact that such an increase might have on the residential customers that pay their natural gas bills at authorized agent locations. Many low-income Ohioans do not have access to checking accounts and therefore, must rely on making payment of natural gas bills at authorized agents. With poverty[61] and unemployment[62] at near record levels in Ohio, now is not the time for increasing the charges for customers to pay their bills. Such Commission action was an abuse of discretion, against the manifest weight of the evidence, and not in the public interest. Therefore, the Commission should grant rehearing on this issue.

C. The Commission Erred By Failing To Approve Modifications To The Minimum Gas Service Standards Rules Pertaining To Customer Billing And Payments That Would Benefit Consumers.

1. The Commission abused its discretion by failing to require gas companies to provide gas choice information on the bill.

Ohio Adm. Code 4901:1-13-11 contains the requirements for customer billing and payment of natural gas services. The Joint Advocates proposed that additional rate and pricing information should be provided on the bill that would enable a consumer to readily review the consumer's natural gas commodity costs under their Choice offering

[60] $2.00 - $0.90 = $1.10 / $0.90 x 100 = 122 percent.

[61] http://www.development.ohio.gov/Research/files/p700000000.pdf, at 3. ("13.1 % poverty rate in Ohio.").

[62] http://jfs.ohio.gov/RELEASES/unemp/201008/unemppressrelease.asp. ("10.3% unemployment level July 2010.").

compared to their gas company's commodity costs.[63] The Joint Advocates recommended that the billing statement should include a rate to compare that reflects the natural gas commodity charge for the billing period. In addition, the Joint Advocates recommended that bills rendered by natural gas companies to choice customers should include a chart that also compares over a 12 month period the Choice supplier's charges on a monthly basis compared with what the natural gas commodity charges would have been with the gas company. Joint Advocates were concerned that many residential consumers do not have a readily available means to determine whether or not the consumer had achieved savings or losses resulting from being a choice customer.

Dominion / Vectren and Columbia opposed the recommendation on the basis that such a comparison chart would require costly billing system changes and that the cost would outweigh any benefit.[64] However, again the gas companies failed to provide any cost data associated with necessary billing system changes. Nor did the gas companies provide a cost benefit analysis to support their assertion that these billing system costs outweighed any consumer benefits.

The Commission abused its discretion by denying the Joint Advocate recommendation by finding "it would not be appropriate to require the companies to provide this information on the bill, especially in light of the costs that would potentially incur and that would potentially be passed on to their customers."[65] The Commission made its decision in a vacuum without any evidence to support its decision such as costs associated with billing system changes or a cost benefit study.

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[63] Joint Advocates Initial Comments at 31.

[64] Dominion/Vectren Joint Reply Comments at 18-19; See also Columbia Reply Comments at 24-25.

[65] Order at 49.

Furthermore, the Commission disregarded its statutory responsibility to customers. R.C. 4929.02(A)(2) establishes a state policy related to the promotion of adequate, reliable, and reasonably priced natural gas goods and services in the state. However, customers do not have access to readily available and comparable pricing information on the billing statement that enables a consumer to quickly, readily and conveniently determine from month–to-month or over a historically relevant (e.g. twelve month period) how the natural gas commodity rate they are paying compares to the natural gas company commodity rate. Absent such a presentation on the billing statement, choice customers have no readily available method to determine the savings and/or losses that occurred as a result of being with a choice supplier. Without this comparison information, customers are unable to determine the reasonableness of the rate and pricing they are paying for commodity service through a supplier and if they are on average, getting a good deal.

The Commission has previously recognized the importance of pricing information on the bill, as demonstrated in the electric service and safety standards, which require electric utilities to provide a monthly price to compare on the electric bill.[66] Natural gas customers need the same comparable rate information as electric customers when they are considering choice providers. The Commission should grant rehearing and require the gas companies to provide consumers a monthly rate to compare on the gas bill. In addition, the Commission should grant rehearing and order the gas companies to further provide a summary on choice customer bills comparing the charges customers paid their

[66] Ohio Adm. Code 4901:1-10-22(B)(24).

Choice supplier to the charges the consumer would have been charged by the gas company over the previous twelve month period.

2. The Commission's Order unreasonably fails to require that natural gas utilities provide adequate information on natural gas PIPP bills to enable PIPP customers to adequately understand their PIPP account.

Ohio Adm. Code 4901:1-13-11(B)(21) currently contains limited provisions regarding the information that natural gas companies must include on their percentage of income payment plan ("PIPP") customers' bills:

If applicable, all the PIPP billing information:

(a) Current PIPP payment.

(b) PIPP payments defaulted (i.e., past due).

(c) Total PIPP amount due.

(d) Total account arrearage.

The Joint Advocates have expressed concern both in the instant case, as well as, in Case No. 08-723-AU-ORD that the information provided on PIPP bills is inadequate for enabling PIPP customers to properly manage their PIPP account.[67]

PIPP billing statements are extremely complicated to interpret. The PIPP customer billing is further complicated by the Commission's requirements that PIPP payments must be made by the due date in order for arrearage credits to be received. The Joint Advocates proposed a rolling 12 month summary that reflects on a monthly basis the relationship between the gas companies' billing, the PIPP customer's payments, and

[67] Joint Advocates, Initial Comments at 27; See also *In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18 and Rules 4901:1-5-07, 4901:1-21-14 and 4901:1-29-12 of the Ohio Administrative Code*, Case No. 08-723-AU-ORD, OCC Application for Rehearing at 9-12 (July 6, 2009).

the arrearage credits received for timely payments. As was evidenced with the DP&L proposed bill format, viewing only an individual month of PIPP data can be confusing and it can be difficult to ascertain when and how credits are being applied.[68] The current rulemaking is the appropriate proceeding to amend the rules to provide clear and adequate information to PIPP customers regarding their account status because the PIPP rules have been dramatically altered since the MGSS were last amended.

Given the significant negative impacts that customers can experience from not making timely PIPP payments -- including being removed from the PIPP program and losing access to natural gas service -- the Commission needs to ensure that sufficient data is on the bill to enable customers to be able to see the results of their payments. The Commission previously implied that much of the summary information being requested by Joint Advocates was already on the PIPP bill or part of the materials available during the re-verification process. In the Entry on Rehearing in Case No. 08-723-AU-ORD, the Commission made the following statement regarding the account summary.

> Upon reconsideration of the issue, the Commission will leave open this issue for further consideration as we work through implementation issues.[69]

The Commission left the issue open as an implementation detail for how customers would receive PIPP account summary information.[70] The Joint Advocates urge the

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[68] *In the Matter of the Compliance of The Dayton Power and Light Company with the Rule Amendments adopted in Case No. 08-723-AU-ORD*, Case No. 10-1006-EL-UNC, Application July 22, 2010. The arrearage crediting requirements in the PIPP rules are complex and involve coordination of rules promulgated by both the Ohio Department of Development and the PUCO. Without summary information on the bill that reflects the relationship between payments and credits, and a historical perspective of the beginning and ending PIPP arrearage balances throughout a year, there is not a monthly visible reminder of the incentives that exist for PIPP customers make timely payments in order to have debt forgiven.

[69] In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18, and Rules 4901:1-5-07, 4901:1-10-22,4901:1-13-11,4901:1-15-17, 4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code, Case No. 08-723-AU-ORD, Entry on Rehearing at 36 (April 1, 2009).

[70] Id.

Commission to now grant rehearing and require natural gas companies to include a rolling 12-month summary on PIPP bills. Information on the rolling 12-month summary would includes the PIPP payment level per month; months in which payments were made by the due date and, therefore, qualified for credits; months in which payments were not received by the due date; credits that were made to the accruing arrearages, as well as the credit made towards the historic arrearages. The 12-month summary would be comprehensive in nature and enables customers to more fully understand their PIPP account and the direct relationship with payments. Given that the Commission delayed the PIPP Rules implementation from November, 2009 until November 2010 in order to allow time for the gas companies to program their billing systems to accommodate the new PIPP rules, the bill format should be a more useful tool to help customers better understand and manage their PIPP account.[71]

3. The Commission abused its discretion by failing to require gas companies to include on its billing statements a reference to comparative choice information that is produced by the OCC.

Ohio Adm. Code 4901:1-13(B)(26) requires the natural gas companies to have a notice on bills informing customers about the availability of the "apples to apples" comparison chart prepared by the PUCO. The Joint Advocates recommended that this requirement be expanded for natural gas bills being sent to residential consumers to refer customers to the *Comparing Your Energy Choices* fact sheet on the OCC website.[72]

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[71] *In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18, and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11,4901:1-15-17,4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code,* Case No. 08-723-AU-ORD, Entry, June 3, 2009, at 2.

[72] Joint Advocates Initial Comments at 29.

Dominion/ Vectren claim there are limited amounts of information that can be placed in an information field on the bill and that adjustments can be costly.[73] Dominion/ Vectren further provide another argument that simply states "the need for the inclusion of the additional reference is not readily apparent".[74]

The Joint Advocates note that Dominion/ Vectren provided no factual evidence to support their arguments. For example, the gas companies provided no cost data pertaining to billing system adjustments, or about any actual limitation in the number of characters that can be within an informational memo field on the bill. Without such objective evidence to support the gas companies' allegations, the Joint Advocates presume that any costs associated with the billing system adjustments are negligible and that there is plenty of room on the bill to include the reference to OCC resources. Finally, the comment by Dominion/ Vectren that alleges customers do not need to have a reference to OCC resources is quite simply self-serving, and provides no evidentiary support for this unreasonable allegation.

The Commission decided against Joint Advocates recommendation and "agreed" with the gas companies' unsubstantiated arguments.[75] Absent a demonstration by the gas companies that billing system adjustment costs are significant or that billing system space is unavailable, the Commission abused its discretion by relying on such arguments. The fact of the matter is that thousands of natural gas customers routinely depend upon the accurate and timely information that is contained in the *Comparing Your Energy Choices* fact sheet. Providing a reference to the availability of the facts sheet on residential

[73] Dominion/ Vectren Joint Reply Comments at 19.

[74] Dominion/ Vectren Joint Reply Comments at 24-25.

[75] Order at 54.

natural gas bills is appropriate in light of the limited impediments raised by the gas companies. The Commission should grant rehearing and require natural gas companies to include a reference on gas companies billing statement that *Comparing Your Energy Choices* fact sheet is available on the OCC website.

4. The Commission's Order unreasonably fails to limit the level of charges that can be imposed on residential consumers for payments made to third-party providers that are agents of the gas companies.

Ohio Adm. Code 4901:1-13(E)(2) states that customers can be charged for processing certain payments that are made electronically or via credit card and that the charges will be evaluated by the Commission. The Joint Advocates had recommended that the Commission go further than just evaluate the charges and instead require the charges to be in the tariff.[76] The Commission found that these charges are unregulated and claimed that it would not be appropriate to have the charges in the tariff.[77]

However, the Commission acknowledges that while the providers may be unregulated, they are agents accepting payment on behalf of the gas companies. The Commission stated:

> However, the Commission notes that, if the Commission finds that an agent authorized to collect on behalf of a utility is charging more than the permitted two dollars, the Commission will take appropriate action to ensure that the maximum permitted two dollars is adhered to.[78]

While the Commission was unwilling to tariff these charges, the Commission did recognize that as agents for the gas companies they should be required to adhere to the Commission's rules. Therefore, the amount of the charge is limited to $2.00 (or a lesser

[76] Joint Advocates Initial Comments at 34.

[77] Order at 58.

[78] Id. at 58.

amount if Joint Consumer Advocates prevail on rehearing) which is the charge for payments made to authorized agents. To avoid any confusion in the future concerning the limitation in the charge for paying bills electronically or via credit card, the Commission should grant rehearing and explicitly require the gas companies to limit the charge for processing payments by check over the telephone, credit card, or electronic money transfer to an amount that is no more than the charge for payments made to authorized agents of the gas companies.

5. Commission abused its discretion by unreasonably failing to require gas companies to provide 36 months of usage and payment history upon request.

Ohio Adm. Code 4901:1-13-12(E) provides customers with the right to request twelve months of usage history and twenty-four months of payment history from the gas companies. The Joint advocates recommended that the period of time in which both payment and usage information should be available for request be 36 months, consistent with the retention of records requirements in Ohio Adm. Code 4901:1-13(C).[79] The Joint Advocates reasoned that customers would likely need at least 36 months of billing and usage data to reasonably compare household energy profiles and costs. Dominion/ Vectren argue against the Joint Advocates proposal by relying on the "costly computer reprogramming" argument to oppose the recommendation by the Joint Advocates.[80] As was evident in their reply, the gas companies provided no cost data to support their allegation. Even more incredibly, the Commission agreed with Dominion/ Vectren's

[79] Joint Advocates Initial Comments at 63.

[80] Dominion/ Vectren Joint Reply Comments at 22.

unsupported cost argument and went further to claim the provision of 36 months of usage and billing data would be "burdensome."[81]

If there are legitimate costs or process issues that are supported by the record, a Commission Order rejecting the Joint Advocates recommendation may be appropriate. However, given that no such record exists in this case, the Commission abused its discretion in reaching its decision on this issue and should; therefore, grant rehearing and require the gas companies to provide up to 36 months of usage and payment data upon request by the customer.

D. The Commission Erred By Failing To Modify The Requirements Of The Minimum Gas Service Standards Rules That Would Necessitate The Natural Gas Company To Provide Its Residential Consumers Additional Information Pertaining To The Provision Of Customer Rights And Obligations For The Benefit Of Consumers.

The Commission has included as part of the MGSS rules a provision of customer rights and obligations. Ohio Adm. Code 4901:1-13-06 states:

> Each gas or natural gas company **shall** provide new customers, upon application for service, and existing customers upon request, written summary information detailing who to contact concerning different rights and responsibilities under this chapter. This summary information **shall** be in clear and understandable language and delivered to customers. Each gas or natural gas company **shall** submit the initial version of the summary information and notice of each subsequent amendment thereafter to the director of the commission's service monitoring and enforcement department or the director's designee in writing for review prior to the first mailing of that version of the summary information to its customers. For purposes of this rule, "new customer" means a customer who opens a new account and has not received such summary information within the preceding year.[82]

[81] Order at 64.

[82] Ohio Adm. Code 4901:1-13-06 (emphasis added).

It was Joint Advocate's contention that the written summary of the customer rights and obligations document is an important consumer protection and is essential for customers to understand rights that they have with respect to their natural gas service. Joint Advocate's Initial Comments were focused on putting the onus on the natural gas companies to periodically advise existing customers of the existence of this important consumer resource.[83]

Specifically, Joint Advocates made a recommendation to modify Ohio Adm. Code 4901:1-13-06 (A) that would result in customers being better informed about the availability of the customer rights and obligations summary by requiring that the existence of the customer rights and obligations document be communicated periodically through a bill insert or through a statement on the bill that a customer rights and obligations summary can be obtained upon request.

Duke argued against this recommendation by stating that "the cost of such notification is significant and difficult to justify when the message is not predicated on safety."[84] However, Duke failed to quantify such costs or present a cost benefit analysis that demonstrates the costs are not justified. Ohio Gas made similar arguments against this recommendation representing that "the associated costs of adding the language to the bill must be addressed."[85] Similarly, Ohio Gas failed to quantify the associated costs that they are raising concerns.

[83] Joint Advocates Initial Comments at 21-23.

[84] Duke Reply Comments at 8.

[85] Ohio Gas Reply Comments at 11-12.

The Commission addresses one aspect of the recommendation only, and relies on the companies' mere reference to cost concerns as reason enough to dismiss Joint Advocate's recommendation. The Commission stated:

> The Commission finds that the request by [Joint Advocates] that the companies provide the written summary of the customer rights and obligations annually to customers does not take into consideration the costs that would be incurred by the companies and ultimately passed on to all ratepayers and, therefore, the request is not reasonable and should be denied.[86]

The Order fails to consider the recommendation of periodically advising customers of the availability of the customer rights and obligations through a bill insert -- a recommendation that would involve significantly less cost than annually mailing a summary document to each of the companies' customers. Furthermore, the companies have failed to advise the Commission of exactly what costs would be involved in the implementation of this recommendation; therefore, it was an abuse of discretion for the Commission to find the recommendation unreasonable based upon unsubstantiated costs.

III. CONCLUSION

The Commission should grant rehearing on all the above arguments relative to the MGSS rules that pertain to metering, billing and payments, and customer rights and obligations.

[86] Order at 40.

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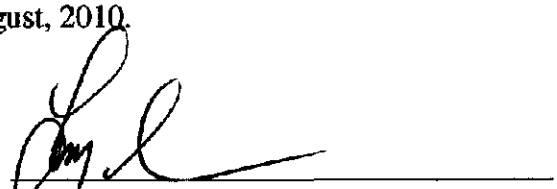
CERTIFICATE OF SERVICE

I hereby certify that copies of the *Joint Application for Rehearing of the Office of the Joint Consumer Advocates,* was served by first class mail, postage prepaid, on the parties identified below this 30th day of August, 2010.



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