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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

JOINT MEMORANDUM CONTRA OCC'S MOTION FOR WAIVER OR SUSPENSION OF DISCONNECTION RULES FOR PIPP CUSTOMERS OF VECTREN ENERGY DELIVERY OF OHIO, INC., DOMINION EAST OHIO, INC., DUKE ENERGY OHIO, INC., AND OHIO GAS COMPANY

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THE PUBLIC UTILITIES COMMISSION OF OHIO

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

JOINT MEMORANDUM CONTRA MOTION FOR WAIVER

I. INTRODUCTION

On June 25, 2008, the Public Utilities Commission of Ohio ("Commission") issued an Entry requesting comments on Commission Staff's proposed revisions to the Commission's rules and appendices related to credit and collections, extended payment programs and low-income payment programs, namely the Percentage of Income Payment Plan ("PIPP") program. Additionally, Staff conducted a workshop on July 8, 2008 to allow interested stakeholders to ask questions to clarify the proposed rule amendments and appendices. Vectren Energy Delivery of Ohio, Inc. ("VEDO"), East Ohio Gas Company, d/b/a/ Dominion East Ohio ("DEO"), Duke Energy Ohio, Inc. ("Duke") and Ohio Gas Company ("Ohio Gas", collectively "Companies") each participated in the workshop and filed Initial and Reply Comments on September 10, 2008 and October 14, 2008, respectively. The Commission issued its Finding and Order in this proceeding on December 17, 2008. On January 16, 2009, each of the Companies filed an Application for Rehearing of the December 17, 2008 Order, specifically addressing the fact that the Commission failed to provide adequate time to make and test the system modifications required to implement the fundamental changes to payment plans in the adopted rules. On April 1, 2009, the Commission issued an Entry on Rehearing that stated it would delay the effective date of the rules to allow the Commission to collaborate with the Ohio Department of Development ("ODOD"), the utilities, and other stakeholders to address implementation issues such as coordination with the new electric PIPP program, technology issues, education and training among other things. On June 3, 2009, the Commission issued an Entry setting the effective date of the rules for November 1, 2010.

On July 6, 2009, an Application for Rehearing was filed by a consumer group including the Office of the Ohio Consumers' Counsel ("OCC"), collectively referred to as "Consumer Groups"),[1] opposing the delay in rule implementation. The Companies filed a Memorandum Contra Consumer Groups' Application for Rehearing on July 16, 2009. The Commission did not grant or deny Consumer Group's Application for Rehearing within thirty days from the date of filing thereof. Accordingly, pursuant to Section 4903.10, Revised Code, Consumer Groups' Application for Rehearing was denied by operation of law.

Notwithstanding its earlier position urging the Commission to accelerate the implementation of the new rules, on August 27, 2010, OCC filed a Motion for Waiver or Suspension of Disconnection Rules for PIPP Customers Required to Make a Minimum Payment During Winter Emergency ("Motion for Waiver").

For the reasons discussed below, OCC's Motion for Waiver should be denied.

[1] Consumer Groups includes OCC, Consumers for Fair Utility Rates, the Neighborhood Environmental Coalition, Cleveland Housing Network, Empowerment Center of Greater Cleveland, Community Action Partnership, May Dugan Multi-Purpose Center, United Clevelanders Against Poverty, Citizens United for Action, Cleveland Tenants' Association, Harcatus Tri-County Community Action Agency, Organize Ohio, Pro Seniors, Inc., the Ohio Farm Bureau Federation, the Ohio Poverty Law Center, and the Edgemont Neighborhood Coalition.

II. ARGUMENT

A. The Commission has already considered and rejected OCC's concerns.

OCC has already raised and the Commission has already fully addressed OCC's concerns regarding the minimum payment requirements. Specifically, the Commission succinctly stated:

> The Commission acknowledges that the adopted rules require a $10 minimum PIPP payment even if it is greater than 6 percent of the qualified gas PIPP customer's household income. The Commission balanced the need to require a $10 minimum payment against the proposed reductions from 10 percent to 6 percent for the PIPP payment, with the need to help meet the goal of improving payment patterns. In addition, insofar as it is the rest of the gas customers that pay the bulk of the burden of the PIPP program, it is appropriate to require PIPP participants to share the burden of the PIPP program by requiring the PIPP customer to contribute at least a minimum amount for the value of the gas service the customer receives. The Commission believes that even a zero-income PIPP customer has some level of responsibility to the community of ratepayers to contribute to the cost of his/her gas utility service. In addition, by having the customer pay a minimum $10 charge, the customer is able to participate in the arrearage crediting program, thereby providing the customer the opportunity to remain debt free with respect to their gas utility bill. While a zero-income PIPP customer today does not have to make a payment, that customer also accumulates significant arrearages thereby increasing the customer's chances of never getting out from under their debt. In these trying economic times, we believe that the minimum payment with arrearage crediting has far more value for that customer than the current zero-income PIPP program. The Commission also continues to see value in having a program that encourages customer payment responsibility. By having a customer make a payment every month, the customer remains cognizant of the value of the services received and gets in the habit of making monthly gas bill payments.

Entry on Rehearing at 28 (April 1, 2009).

Given that the Commission has already considered and rejected OCC's arguments, OCC's Motion for Waiver appears to be a collateral attack on the

Commission's rules. For this and the other reasons below, the Commission should deny OCC's Motion for Waiver.

B. OCC's proposal would frustrate the goals intended to be achieved by the revised rules.

At the outset of this case, Staff indicated that its goals in modifying the PIPP program were, among others, to:

1) Contain the escalating costs of the low-income energy program;
2) Improve payment patterns and encourage responsible behavior;
3) Interrupt the seasonal cycle of disconnection;
4) Create incentives for energy conservation through reduced consumption of energy;
5) Improve self-sufficiency for customers who declare zero income; and,
6) Improve credit records and break the cycle of poverty by awarding good payment history with arrearage crediting.

In order to achieve its stated goals, the Commission had to balance the needs of low- and zero-income customers with the bill impacts on non-PIPP customers. The Commission struck that balance by requiring a minimum payment even for zero-income PIPP customers but by also forgiving the balance of PIPP customers' bills and giving PIPP customers a credit toward their accrued arrearages for on-time payments of the minimum amount. The Commission stated:

> Due to the need to balance low-income customer needs with the impact of PIPP recovery on non-PIPP customer bills, the Commission believes that some minimum payment is necessary. Furthermore, the Commission believes that ten dollars, in exchange for as much gas as a customer needs, is a very reasonable balance between ensuring the very lowest income customers are provided for, while ensuring that there is some sense that service is not free. Moreover, because these customers will have arrearage crediting, so long as they pay the ten dollars by the due date, the level of their debt is lowered, which is another stated concern of commenting low-income advocates. The Commission, therefore, finds it appropriate to adopt a minimum PIPP payment applicable immediately upon enrollment in PIPP. The Commission will continually monitor the PIPP program to determine if further adjustments are necessary.

Finding and Order at 59 (December 17, 2008). Similarly, the Commission stated in its Entry on Rehearing that the Commission's intent in modifying its rules is to "treat PIPP customers in such a manner to encourage and incent responsible payment behavior." Entry on Rehearing at 21 (April 1, 2009).

Waiving the rule giving utilities the ability to disconnect customers for failure to make payments works against the Commission's stated goals and intent. In fact, in their reply comments, AARP-Ohio, Coalition on Housing and Homelessness in Ohio, Ohio Association of Second Harvest Foodbanks, and, Ohio Partners for Affordable Energy (collectively "Ohio Consumer Advocates" or "OCA"), "based on its collective experience in helping low-income Ohioans survive in turbulent economic times" stated:

> Frankly, encouraging flexibility by the utilities is preferable to implementing a winter moratorium which encourages customers not to pay at all. Our agencies saw a significant drop in applicants when the moratorium was declared last year because the word was on the street that households would not be disconnected. If you want to discourage payment by customers, a moratorium will do it, but ratepayers - including those who take advantage of the moratorium - are ill served by that approach.

Reply Comments of AARP-Ohio, Coalition on Housing and Homelessness in Ohio, Ohio Association of Second Harvest Foodbanks, and, Ohio Partners for Affordable Energy at 6 (October 14, 2008).

A moratorium on disconnection for zero-income PIPP customers at this point in time is particularly problematic given that no one has any actual experience with the rules as they have not yet taken effect. Thus, the Commission cannot determine at this time whether the rules, once implemented, will have the intended positive impact on customers rather than the negative impact OCC alleges.

Additionally, waiving the rules now may actually have the unintended negative consequence of harming zero-income PIPP customers. The rules are crafted to reward PIPP customers who make the minimum payments on time by forgiving the balance of their bills and crediting the past arrearage accrued. Removing the incentive to make the minimum payment also removes the customers' ability to avoid accumulating arrearages and to wipe out the accrued arrearage that consumer advocates have indicated appear as an insurmountable hurdle to getting customers back on track.

In short, the new rules provide significant benefits for PIPP customers and all PIPP customers, including zero-income PIPP customers, should be responsible for meeting the requirements of the PIPP program in order to continue to receive the significant benefits of the program. As it indicated that it would, the Commission should continually monitor the revised PIPP program to ensure that it is benefitting customers and, if actual experience indicates otherwise, take appropriate action at that time.

C. OCC's proposal will result in additional programming costs.

As noted above, the effective date of the rules was delayed, in part, to allow the utilities to make the necessary programming changes and testing required to implement the new rules. Each of the Companies has been engaged in modifying its systems to prepare for the changes beginning in less than sixty days now. OCC's request would result in a modification from a programming standpoint that would require additional time and cost to effectuate. Utility billing systems are extremely complex and OCC's proposal would require further changes to billing and credit coding already being modified to comply with a number of other Chapter 17 and Chapter 18 rule revisions ordered by the Commission. Given the short time to implement OCC's proposal and the

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need to divert resources from other activities, in the unlikely event that the Commission adopts it, the Companies may not be able to complete all of the testing required to ensure that there are not unintended consequences to other elements of required programming changes.

OCC has not demonstrated any harm resulting from the implementation of the new rules (as it cannot at this point since the rules have not been implemented yet), but there are real timing and cost issues associated with the programming changes resulting from OCC's proposal.

D. OCC understates the impact of its proposal on other customers.

In anticipation of counter-arguments, OCC argues that it "could be contended that this minimum payment is necessary to raise additional funds for the PIPP program and to ease the burden on other customers currently paying the PIPP riders." OCC Motion for Waiver at 8-9. However, (and perhaps to minimize the conflict arising from its proposal towards the other residential customers OCC represents), OCC asserts that based upon its calculation, "it is hard to see how the dollars that would be achieved by receiving the minimum payment would have any significant effect on the program." *Id.* at 9. OCC then indicates that a $10 minimum payment for zero-PIPP customers "would raise only $100,000 statewide…." *Id.* OCC's calculation of the impact on other customers is misleading at best.

OCC's calculation represents only one month of zero-income PIPP payments. Also, OCC's calculation is based upon ODOD's estimate of the number of zero-income gas PIPP customers in 2006. OCC's Motion for Waiver at 9. OCC estimates that today there are around 35,800 zero-income PIPP customers. *Id.* at 8. Thus, perhaps a more accurate estimate of the amount of the minimum zero-income PIPP customer payments for the winter heating season (October 15 through April 15) would be over $2 million (35,800 x $10 x 6 months = $2,148,000.00).

The Companies are sensitive to all customers struggling during this difficult economic time. An additional $2 million that other customers must subsidize if not paid by the zero-income PIPP customers is significant. As the Commission stated, "In recognizing the current economic conditions, we must be conscious of passing costs on to... other customers, those that are not eligible for PIPP, but are also struggling to meet their financial responsibilities, including paying the gas utility bill, and not unreasonably increase the cost of service for such customers." Entry on Rehearing at 6 (October 14, 2009). The impact on other customers should not be minimized or disregarded. The Commission should not grant OCC's proposal to shift costs from zero-income PIPP customers to other customers, particularly without any demonstration that the rules have or will harm the zero-income PIPP customers.

III. CONCLUSION

There is no lack of sympathy for customers struggling to pay utility bills in these difficult economic times. In fact, it was this concern that brought so many stakeholders together to try to improve the options available and that culminated in the rules that will take effect on November 1, 2010. The Companies urge the Commission to move forward with its rule implementation and monitor the results. For the reasons stated herein, the Commission should deny OCC's Motion for Waiver.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Memorandum Contra OCC's Motion for Waiver or Suspension of Disconnection Rules for PIPP Customers of Vectren Energy Delivery of Ohio, Inc., Dominion East Ohio, Inc., Duke Energy Ohio, Inc., and Ohio Gas Company* was served upon the following parties of record this 13th day of September, 2010, via electronic transmission, hand-delivery or first class mail, postage prepaid.

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