

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

NANCY S. TOLIVER,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 12-3234-GA-CSS
	)	
VECTREN ENERGY DELIVERY OF	)	
OHIO, INC.,	)	
	)	
Respondent.	)	

**VECTREN ENERGY DELIVERY OF OHIO'S  
MEMORANDUM IN RESPONSE TO COMPLAINANT'S JULY 26 FILING**

**I. INTRODUCTION**

In its July 17, 2013 Opinion and Order in this case (“Order”), the Commission dismissed the complaint filed by Nancy Toliver. The Order required Vectren Energy Delivery of Ohio, Inc. (“VEDO”) to file by July 24 certain information regarding Ms. Toliver’s account and status under the PIPP Plus program. *Id.* at 19. In turn, Ms. Toliver was to “notify the Commission by letter to be filed in this docket clearly stating whether she wishes to continue her participation in the PIPP Plus program or not.” *Id.*

On July 24, VEDO filed the required statement. Two days later, Ms. Toliver filed a document entitled “Complainant Answer and Reply Requested by the PUCO in the Opinion and Order Journalized on July 13 [sic], 2013.” VEDO hereby files a response to Ms. Toliver’s filing, which VEDO will refer to as “the July 26 filing.”

**II. ARGUMENT**

The July 26 filing does *not* do what the Commission required: “clearly stat[e]” by July 31 whether Ms. Toliver wished to remain on the PIPP Plus program. *See* Order at 19. Instead, her latest filing for the most part rehashes numerous arguments already considered and rejected by

the Commission; it is not necessary to respond again to her position. VEDO will respond, however, to her objections to the Order itself.

The Commission should reject Ms. Toliver's filing. And VEDO respectfully requests that the Commission clarify what action VEDO should take with respect to Ms. Toliver's account in the event Ms. Toliver continues to refuse to explain her intentions.

**A. Ms. Toliver's new arguments lack merit.**

Ms. Toliver begins her filing by mischaracterizing the Order. She “object[s] to the Commission request for [her] to voluntarily end participation in the PIPP Plus program in violation of statutory law.” (July 26 Filing at 2; *see also id.* at 4 (repeating this description); *id.* (describing Order as requiring Ms. Toliver to “voluntarily get off the PIPP PLUS program”).) But the Order did not ask her or tell her to leave PIPP. It confirmed to her how the rules of the program work, and it gave her an opportunity to make an informed decision whether or not to continue participating in the program. Order at 19. But the Order did not suggest one way or the other *how* Ms. Toliver should exercise her discretion.

Ms. Toliver also asserts that the requirement to “file . . . a letter clearly stating whether or not she wishes to continue her participation in PIPP Plus program is unreasonable, unlawful, unjust, arbitrary, and unconscionable.” (July 26 Filing at 4.) She offers no explanation of why this is. Given that Ms. Toliver has already made eight filings in this case, she cannot assert that this requirement posed any logistical problem. And the content of the requested filing is reasonable, too. The Order essentially confirmed to Ms. Toliver how the PIPP rules work; required VEDO to explain the consequences of a choice to remain on or depart from PIPP; and allowed her to make an informed decision based on that information. It is far from clear what is unreasonable about that, and Ms. Toliver offers no explanation to that end.

Ms. Toliver then continues with the surprising claim that “the Examiner in the hearing on March 21, 2013 ruled that Ms. Bell could not act as an expert witness on behalf of [VEDO].” (*Id.* at 7.) This assertion is directly refuted by the transcript. Faced with Ms. Toliver’s assertion that Ms. Bell should not be allowed to testify, the examiner stated as follows: “As the Attorney Examiner assigned to this case, I will be looking at this motion [to strike Ms. Bell’s testimony], but at this time it will be held in abeyance, so we can proceed today.” (Tr. 8.) And Ms. Bell, of course, was allowed to testify at the hearing, and the motion to strike was ultimately denied. *See* Order at 21.

Finally, Ms. Toliver claims that the Order that VEDO “shall not disconnect [Ms. Toliver’s] gas utility service unless and until the Commission or the assigned Attorney Examiner orders otherwise supports that Complainant met her burden.” (July 26 Filing at 9.) It is obvious that the intent of this requirement was to preserve the status quo while the final details of the case were resolved and to allow Ms. Toliver time to make an informed decision whether to stay on the PIPP Program. Had the Commission found that Ms. Toliver met her burden, the Order would not have included four separate conclusions of law that “Ms. Toliver failed to sustain her burden of proof” to support any of her various claims. *See* Order at 20 (conclusions (7) through (10)).

Whether old or new, none of the claims in the July 26 filing has merit. The Commission rightly dismissed the complaint.

**B. VEDO requests clarification from the Commission regarding how to proceed if Ms. Toliver does not elect whether to remain on or depart from the PIPP Plus program.**

VEDO also requests clarification from the Commission regarding how to proceed going forward. The Order contemplated that Ms. Toliver would clearly state her election to either continue or terminate participation in the PIPP Plus program. VEDO cannot discern from the July 26 filing whether Ms. Toliver has made such an election. Given the need to resolve her

account, VEDO respectfully requests that the Commission clarify how VEDO should proceed based on Ms. Toliver's response (or lack thereof) to date.

Ms. Toliver's last affirmative decision was to join the PIPP Plus program. Accordingly, VEDO proposes that if she does not disclose a choice (by some date selected by the Commission), she should be presumed to have elected to continue participating in the PIPP Plus program. The remaining consequences would then follow as set forth in the Order. If the Commission takes this approach, VEDO would also request that any subsequent entry or order state that, if it proves necessary, the Company is authorized to disconnect Ms. Toliver's gas utility service in accordance with any applicable rules and tariffs.

### **III. CONCLUSION**

For the reasons set forth above, VEDO respectfully requests that the Commission reject Ms. Toliver's July 26 filing and that it provide the clarification requested above.

Dated: August 7, 2013

Respectfully submitted,

/s/ Andrew J. Campbell  
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ATTORNEYS FOR  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum in Response to Complainant's July 26 Filing was served to the following person by U.S. mail on this 7th day of August, 2013:

Nancy S. Toliver  
614 Kenilworth Ave.  
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/s/ Andrew J. Campbell  
One of the Attorneys for  
Vectren Energy Delivery of Ohio, Inc.

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Summary: Response to Complainant's July 26, 2013 Filing electronically filed by Mr. Andrew J Campbell on behalf of Vectren Energy Delivery of Ohio