

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Nancy S. Toliver,)	
)	
Complainant,)	
)	
v.)	Case No. 12-3234-GA-CSS
)	
Vectren Energy Delivery of Ohio, Inc.,)	
)	
Respondent.)	

ENTRY ON REHEARING

The Commission finds:

- (1) On December 17, 2012, Nancy Toliver (complainant) filed a complaint with the Commission against Vectren Energy Delivery of Ohio, Inc. (Vectren or respondent) asserting, among other things, that she had been overcharged, was being forced to get off of the Percentage of Income Payment Plan (PIPP) Plus program, although she was income eligible, and that she was being discriminated against as a low-income customer. On January 7, 2013, Vectren filed its answer, denying the substantive allegations in the complaint.
- (2) A hearing was held on March 21, 2013. Ms. Toliver and Vectren filed their briefs on May 6, 2013 and May 10, 2013, respectively.
- (3) On July 17, 2013, the Commission issued its Opinion and Order (Order) concluding that Ms. Toliver had failed to sustain her burden of proof to demonstrate that Vectren's administration of the PIPP program was discriminatory to her as a participant, that Vectren's administration of the PIPP program was unreasonable, unlawful or arbitrarily administered as to the complainant, or that Vectren violated its tariff, any Commission rule or provision or Title 49, Revised Code. Accordingly, the Commission dismissed the complaint.
- (4) Further, recognizing that Ms. Toliver's gas service would be subject to disconnection as a result of the Commission's

conclusions in the Order, the Commission directed Vectren to file a statement, including monthly details, with the total amount due to bring the complainant's PIPP account current and the PIPP benefits received by Ms. Toliver since her reenrollment. The Order also directed Ms. Toliver to file a letter by July 31, 2013, clearly stating whether she wishes to continue her participation in the PIPP Plus program or not. The Order also informed Ms. Toliver of her payment plan options and the consequences of terminating her participation in PIPP.

- (5) As directed, on July 24, 2013, Vectren filed a statement and copies of Ms. Toliver's bills for April through June 2013. According to Vectren, Ms. Toliver's account has accrued \$594.73 in PIPP installment payments due since terminating her participation in PIPP in April 2012, and reenrolling in September 2012. Since reenrolling in the PIPP program, Ms. Toliver has received PIPP benefits of \$130.74.
- (6) On July 26, 2013, Ms. Toliver filed an "answer and reply" to the Order. In the filing, Ms. Toliver contends that by filing her objection and reply to the Order, she preserves her right to be on PIPP. However, she does not clearly state, as requested, whether she wishes to continue her participation in the PIPP Plus program or not. Further, in the filing, Ms. Toliver reasserts many of the allegations made in her complaint and argues that the Order is unreasonable, unlawful, without merit and in violation of Ohio law in numerous respects. Each argument is addressed in more detail below.
- (7) On August 7, 2013, Vectren filed a response to Ms. Toliver's reply. Vectren contends that Ms. Toliver's filing fails to comply with the Order, as it does not clearly state whether she wishes to continue to participate in the PIPP program. Vectren requests that the Commission clarify what actions Vectren should take in the event that Ms. Toliver refuses to clarify her intentions.
- (8) On August 20, 2013, Ms. Toliver filed a reply to Vectren's response essentially reiterating the allegations she made in the complaint, her brief, and in her July 26, 2013, filing.

- (9) In accordance with Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code (O.A.C), any party to a Commission proceeding may apply for rehearing with respect to any matter determined, within 30 days of the entry upon the Commission's journal.
- (10) The Commission finds that, in light of the fact that the complainant's July 26, 2013, filing includes arguments addressing our Order, as opposed to merely stating whether she wishes to continue her participation in the PIPP program, the filing must be considered an application for rehearing of the Order and will be addressed accordingly.
- (11) Ms. Toliver's arguments on rehearing regarding the status of her PIPP account are as follows:
 - (a) Ms. Toliver argues that her PIPP installments due in April 2012, her anniversary date, were set to zero and claims the PIPP installments the Order directs be paid by September 20, 2013, "ended at the beginning of the new reverification year starting May 2012 thru April 2013."
 - (b) Ms. Toliver asserts she only received incentive credits for timely payment for February 2013, for \$72.00; April 2013, for \$41.24; and May 2013, for \$16.64. Thus, she received total PIPP benefits in the amount of \$129.88, since her reenrollment in September 2012. Ms. Toliver reasons that on-time incentive credits were not accrued in the months her account balance was less than the minimum PIPP payment.
- (12) In regards to the complainant's argument as to the effect of reverification on PIPP installments due and incentive credits on her account, the Commission finds these arguments should be rejected. Contrary to Ms. Toliver's assertions, the past due PIPP installments were not forgiven as a result of the passing of her annual reverification date; thus, Ms. Toliver's interpretation of reverification and the implications thereof are incorrect.

Thus, we find the complainant's assertion regarding the new reverification year does not support the complainant's request for rehearing of the Order.

Further, the record reflects that Ms. Toliver made her PIPP installment payment on time in February, April, and May 2012. Therefore, the total delta and arrearage incentive credits received on Ms. Toliver's account equals \$130.74. Accordingly, the Commission finds that Ms. Toliver's arguments on rehearing as to her PIPP account status should be denied.

- (13) Ms. Toliver's raised two issues on rehearing regarding the procedural rulings in the Order. The arguments are as follows:
 - (a) Ms. Toliver states that the Order is harmful, unreasonable, and unlawful to the extent that the Order grants Vectren's motion to strike the documents attached to the complainant's brief and the related portions of the brief.
 - (b) Ms. Toliver reiterates the arguments she made in her motion to strike the testimony of Vectren's witness stating that: the Attorney Examiner ruled that Vectren's witness, Sherri Bell, could not act as an expert witness because Vectren stated at the settlement conference that it would not be calling any witnesses; a prehearing conference was not scheduled; the denial of the motion to strike Vectren's written testimony, violates Rules 4901-1-16(D)(1), and 4901-1-21(G), O.A.C., and is inconsistent with the Attorney Examiner's ruling at the hearing; and she requested to have witnesses testify at the March 21, 2013, hearing.
- (14) Vectren submits that Ms. Toliver's claim that the Attorney Examiner ruled that Ms. Bell could not act as an expert witness is refuted by the hearing transcript. Vectren notes that the transcript specifically provides that the Attorney Examiner stated as follows: "As the Attorney Examiner assigned to this case, I will be looking at this motion [complainant's motion to strike], but at this time it will be held in abeyance, so we can proceed today." (Tr. at 8.) Where upon, Vectren states, Ms. Bell was allowed to testify and the merit of the motion to strike was addressed in the Order.
- (15) In the Order, the Commission thoroughly considered the arguments of the parties regarding Vectren's motion to strike.

On rehearing, none of the arguments presented by the complainant persuades the Commission that reconsideration of this aspect of the Order is justified. Accordingly, the request for rehearing should be denied.

Likewise, the Commission thoroughly considered and rejected Ms. Toliver's arguments to strike Vectren's written testimony. At the hearing, the Attorney Examiner ruled that the complainant's motion to strike would be held in abeyance for consideration by the Commission, and the hearing allowed to proceed (Tr. at 8). Furthermore, it is well within the purview of the Commission to reconsider and reverse or affirm the procedural ruling of the Attorney Examiner. Accordingly, the complainant's request for rehearing of this aspect of the Order should be denied.

In the reply, Ms. Toliver asserts, for the first time, that she requested to have witnesses testify at the hearing. The Commission notes that nothing in the transcript indicates that Ms. Toliver had any witness, other than her self, present at the hearing who wished to offer testimony and was denied an opportunity to do so. Accordingly, the Commission finds Ms. Toliver's application for rehearing as to the procedural rulings should be denied.

(16) Ms. Toliver's remaining arguments on rehearing and Vectren's responses thereto may be summarized as follows:

- (a) Ms. Toliver submits that the Order is unreasonable, unlawful, unjust, arbitrary, unconscionable, in violation of Rules 4901:1-18-12, 4901:1-18-17, and 4901:1-18-05(B), O.A.C., and against public policy, where the Order directs Ms. Toliver to clearly state whether or not she wishes to continue her participation in the PIPP program. Ms. Toliver asserts that the Order is inconsistent with Rules 4901:1-18-12(D)(2)(b), O.A.C., the Uniform Commercial Code (UCC) and Vectren's rules and policies under the bill message.

Vectren replies that Ms. Toliver mischaracterizes the Order. The respondent reasons that the Order did not direct or suggests that the complainant

get off of PIPP but rather gave Ms. Toliver the opportunity to make an informed decision regarding her continued participation in PIPP. Nor did the Order, according to Vectren, suggest how Ms. Toliver should exercise her discretion. Further, Vectren continues, the complainant has failed to offer any explanation why filing a letter with the Commission indicating whether or not she wishes to continue her participation in PIPP is unreasonable, unlawful, unjust, arbitrary or unconscionable. As Vectren contends the directive is logistically feasible, given that Ms. Toliver has made eight filings in this case, and the content reasonable.

- (b) Ms. Toliver argues the Order fails to recognize that she qualifies for PIPP Plus under the income guidelines and fails to acknowledge that, as a PIPP customer, she is required to apply for the Home Energy Assistance Program (HEAP) and Home Weatherization Assistance Program as noted in the Energy Assistance Resource Guide (Resource Guide). Further, Ms. Toliver contends that she has no arrears and pursuant to the Resource Guide, she can only be required to pay her PIPP Plus default amount up to the amount of the arrears.
- (c) Ms. Toliver reiterates her arguments made in the brief, that certain provisions of the Resource Guide are contradictory. Ms. Toliver also argues that, as a PIPP participant, she is required to apply for PIPP and the public energy assistance and weatherization for which she is eligible.
- (d) Ms. Toliver claims that Vectren violated Section 4905.37, Revised Code, to the extent the bill issued June 24, 2013, states a PIPP amount due of \$624.29 where the actual account balance due is zero.
- (e) Ms. Toliver argues that, because the Order directs Vectren not to disconnect her gas utility service

unless and until the Commission or the assigned Attorney Examiner orders otherwise, it supports that the complainant met her burden of proof that Vectren discriminated against her as a low-income customer as a result of her participation in the PIPP program. Ms. Toliver reasons that Vectren discriminated against her by continuously threatening disconnection of her utility service.

Vectren retorts that the purpose of the section of the Order referenced by Ms. Toliver is to preserve the status quo while the final details of the case are resolved and to allow Ms. Toliver time to make an informed decision whether to stay on PIPP. Vectren notes that, had Ms. Toliver sustained her burden of proof to support the claims in her complaint, the Order would not have stated otherwise in four separate conclusions of law.

- (f) Ms. Toliver argues that the Order is unreasonable, unlawful, without merit, and in violation of Section 4905.26, Revised Code, in numerous respects, and asserts that, by filing her objection and reply to the Order, she preserves her right to be on PIPP.
- (17) On rehearing, Ms. Toliver has not presented any new arguments for the Commission's consideration in regards to the UCC, Resource Guide, Vectren's alleged violation of Section 4905.37, Revised Code, or Vectren's alleged discrimination against her in its administration of the PIPP program. The complainant also fails to develop any argument for the Commission's consideration in regards to Vectren's rules and policies under the bill message. For these reasons, the Commission finds the related requests for rehearing should be denied.

The Commission, likewise, finds that Ms. Toliver's remaining arguments on rehearing should be denied. A PIPP customer is obligated to comply with the requirements of the program, including, but not limited to, making the monthly PIPP

installment payment and to pay any missed PIPP payments by the participant's reverification date. As to HEAP, we note that when Ms. Toliver applied for HEAP, she was not a PIPP participant and HEAP assistance is not contingent upon PIPP participation. Therefore, in accordance with the rules governing PIPP, since Ms. Toliver failed to make up her monthly PIPP installments due as a result of reenrollment, her participation in PIPP may be terminated and her gas utility service disconnected.

- (18) For all of the reasons presented above, the Commission finds that Ms. Toliver's application for rehearing fails to persuade the Commission that the Order is unjust, unreasonable, or in violation of Ohio law. Accordingly, we find that the complainant's request for reconsideration of the Order, in any respect should be denied.
- (19) On a final matter, Vectren notes in its August 7, 2013, reply that it can not discern from Ms. Toliver's July 26, 2013, filing whether or not she wishes to terminate her participation in PIPP and, therefore, requests clarification how to address the complainant's account. Vectren proposes that, since Ms. Toliver's last affirmative decision was to join PIPP, if she fails to state or fails to timely notify the Commission whether she wishes to continue on PIPP or not, the Commission should presume her continued participation in PIPP, and the consequences thereof be as set forth in the Order.
- (20) Based on Ms. Toliver's July 26, 2013, filing, the Commission agrees that it is unclear whether Ms. Toliver wishes to continue her participation in PIPP. While the complainant's filing indicates her disagreement with the Commission's authority to request that she state whether she wishes to continue her participation in PIPP, the filing does not clearly indicate her choice. We recognize that, if Ms. Toliver continues as a PIPP participant, she will be obligated to pay \$594.73 in outstanding PIPP installments. If Ms. Toliver discontinues her participation in PIPP, the PIPP benefits received of \$130.74 will be reversed on Ms. Toliver's account.

While the Commission recognizes that Ms. Toliver's last affirmative election was to rejoin PIPP in the summer of 2012, she has not met her obligation to remain on PIPP. Should the

Commission presume her continued enrollment in PIPP, the complainant would be subject to immediate disconnection based on the outstanding PIPP installments due of \$594.73. Therefore, we find it best to reverse the PIPP benefits received since Ms. Toliver's reenrollment, which will result in \$130.74 being added to the complainant's account balance. As a non-PIPP customer, Ms. Toliver can use the other payment options available in accordance with Rule 4901:1-18-05, O.A.C., to cure the account balance. Since PIPP is a payment plan based on household income, no other payment plan options are available to PIPP participants. Given, the lack of clarity regarding the complainant's wishes, terminating the complainant's participation in PIPP results in a payment due that is substantially less than would be due if she continues as a PIPP participant.

Accordingly, consistent with the Commission's findings in the Order, we find that, effective with the next bill issued, Vectren should terminate Ms. Toliver's participation in the PIPP program and reverse the PIPP benefits received on Ms. Toliver's account since her reenrollment in September 2012, which is \$130.74.

It is, therefore,

ORDERED, That the complainant's application for rehearing is denied, as discussed above. It is, further,

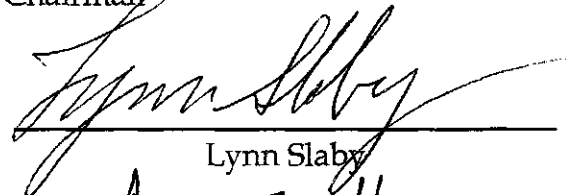
ORDERED, That Vectren terminate Ms. Toliver's participation in the PIPP program and reverse the PIPP benefits received on Ms. Toliver's account in the amount of \$130.74, effective with the next bill issued. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all persons of record in this case.

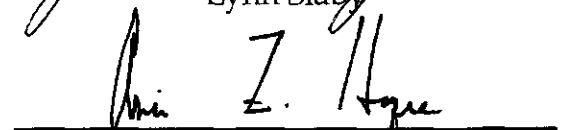
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Lynn Slaby

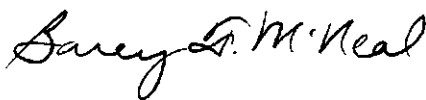

M. Beth Trombold


Asim Z. Haque

GNS/vrm

Entered in the Journal

AUG 21 2013



Barcy F. McNeal
Secretary