

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.)

SECOND ENTRY ON REHEARING

The Commission finds:

- (1) 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 Percentage of Income Payment Plan (PIPP) Plus 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.
- (2) 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, by July 24, 2013, including monthly details, with the total amount due to bring the complainant's PIPP Plus account current, and the PIPP Plus benefits received by Ms. Toliver since her reenrollment. In the Order, the Commission also directed that Vectren not disconnect Ms. Toliver's service until the Commission or the assigned Attorney Examiner directed otherwise. 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.
- (3) As directed, on July 24, 2013, Vectren filed a statement and copies of Ms. Toliver's bills for April through June 2013.

- (4) 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.
- (5) On July 26, 2013, Ms. Toliver filed an "answer and reply" to the Order; however, the filing did not clearly state, as requested, whether she wished to continue her participation in the PIPP Plus program. In the filing, Ms. Toliver reasserted many of the allegations made in her complaint and argued that the Order was unreasonable, unlawful, without merit, and in violation of Ohio law in numerous respects. Accordingly, the Commission determined that the filing must be considered an application for rehearing of the Order and addressed the claims accordingly.
- (6) On August 21, 2013, the Commission issued its Entry on Rehearing (EOR) denying each of the arguments raised by the complainant. Further, the EOR, in light of Ms. Toliver's failure to timely inform the Commission regarding her PIPP participation, directed Vectren to reverse the PIPP benefits received in the amount of \$130.74, with the next bill issued on Ms. Toliver's account.
- (7) On September 6, 2013, Ms. Toliver filed objections to the EOR and an application for rehearing. In the complainant's September 6, 2013, application for rehearing, Ms. Toliver restates many of the arguments previously raised regarding discovery and evidentiary issues, PIPP participation rights, participation requirements, and the PIPP benefits received on her account September 2012 through July 2013. In our EOR, the Commission thoroughly considered and rejected each of these arguments raised by Ms. Toliver. Therefore, further rehearing and consideration of those issues is not appropriate and those issues will not be addressed in this entry. However, in her September 6, 2013, application for rehearing, Ms. Toliver also raises issues regarding new determinations made by the Commission in our EOR, that warrant review in accordance with Section 4903.10, Revised Code.

- (8) On September 16, 2013, Vectren filed a memorandum contra to the issues raised by the complainant in the September 6, 2013 filing regarding the new determinations in the EOR.
- (9) Ms. Toliver objects to the Commission's directive in the EOR instructing Vectren to terminate the complainant's participation in the PIPP program and to reverse the PIPP benefits received in the amount of \$130.74. The complainant asserts that the directive violates her statutory right to participate in PIPP Plus. Further, Ms. Toliver contends that Vectren immediately complied with the Commission's EOR and failed to wait the 30 days required by law. The complainant contends that the EOR violated her substantive rights, statutory law, public policy, and is an abuse of the Commission's discretion.
- (10) In its reply, Vectren notes that the Supreme Court has previously determined that the Commission's statutory authority for the PIPP program is well established. In *Montgomery County Bd. of Comm'rs v. Pub. Util. Comm.*, 28 Ohio St. 3d 171, 174, 503 N.E.2d 167 (1986), the Supreme Court found "... it is clearly within the [Commission's] emergency powers under [Section] 4909.16 [Revised Code] to fashion such relief as that provided by the PIP plan and we find the plan of the commission to be manifestly fair and reasonable...." Thus, Vectren contends that, where the Commission has the authority to create PIPP Plus, implies the authority to regulate the PIPP Plus program. Without the authority to regulate the gas PIPP program, including the authority to reverse PIPP Plus incentive credits, Vectren reasons that the Commission would not be able to effectively enforce the PIPP Plus rules. On that basis, Vectren contends that the Commission has the authority to reverse the PIPP incentive credits received on Ms. Toliver's account.

Vectren submits that the Commission's decision to terminate Ms. Toliver's participation in PIPP and the reversal of the PIPP benefits was not unreasonable, arbitrary or unconscionable. Vectren notes that, after deciding the primary issues in the complaint, the Order gave Ms. Toliver an opportunity to make an informed decision regarding her continued participation in PIPP Plus. Respondent notes that the Order specifically stated the consequences if Ms. Toliver failed to notify the

Commission, "Vectren shall, with the next bill issued, reverse the PIPP Plus benefits received on Ms. Toliver's account." Further, Vectren argues that the decision in the EOR to terminate PIPP participation and reverse the PIPP benefits was made in an effort to protect Ms. Toliver financially. For these reasons, Vectren submits that the EOR was not an abuse of the Commission's discretion.

Vectren states that, pursuant to Sections 4903.10 and 4903.15, Revised Code, the EOR was effective immediately. Further, Vectren submits that, pursuant to Section 4903.25, Revised Code, Vectren, its officers, agents, and employees were under a duty to comply with the directives of the EOR. Vectren explains that Ms. Toliver's ability to file an application for rehearing has no effect on Vectren's duty and obligations to comply the Order and EOR.

- (11) Initially, the Commission points out that, in her September 6, 2013, application for rehearing, Ms. Toliver again fails to indicate, as required by our Order, whether she wishes to continue her participation in the PIPP Plus program. Instead, it appears that the complainant ignores the fact that she was given a deadline by which to file her preference and argues that, absent her input, the Commission does not have the authority to make the determination on how the utility should proceed with collecting the debt owed. After thoroughly considering the issues raised in the complaint and the Commission's conclusion in the Order and the EOR, nothing raised by Ms. Toliver persuades the Commission to reconsider its decision to terminate the complainant's participation in PIPP Plus and reverse the PIPP Plus benefits received. Vectren's arguments opposing the complainant's request for rehearing are on point on this issue and, for the reasons stated, the Commission finds that Ms. Toliver's application for rehearing should be denied.
- (12) The complainant also argues that the EOR is inconsistent with the Order which directed Ms. Toliver to pay \$594.74 by September 20, 2013.
- (13) The Commission believes that Ms. Toliver misinterprets the Order. The Order states, "[I]f Ms. Toliver elects to continue participation in the PIPP Plus program, she shall submit the

missed PIPP payments to Vectren by September 20, 2013.” As discussed above, Ms. Toliver filed a document objecting to the request to notify the Commission but failed to clearly state, as requested by the Commission, whether she wished to continue her participation in the PIPP program. Therefore, it was left to the Commission to direct Vectren on how to proceed with its collection of the debt owed. Accordingly, the EOR is consistent with the Order and the complainant’s request for rehearing of this matter should be denied.

- (14) On September 4, 2013, Vectren filed a motion for clarification of the Order and EOR, on two issues. Ms. Toliver filed a reply to the motion for clarification on September 18, 2013, to which Vectren filed a reply on September 26, 2013.
- (15) First, Vectren requests clarification whether it is authorized to disconnect Ms. Toliver’s utility service, if necessary. In regards to the disconnection of service, Vectren submits that the Order specifically directed that Vectren not disconnect Ms. Toliver’s gas utility service, unless and until the Commission or the assigned Attorney Examiner orders otherwise (Order at 19). However, Vectren contends that the EOR ruled that Ms. Toliver failed to make up her missed PIPP payments and, therefore, her participation in PIPP may be terminated and her gas service disconnected (EOR at 8).
- (16) The Commission clarifies that, with the issuance of the EOR, the Commission intended that Vectren be permitted to pursue the disconnection of Ms. Toliver’s gas utility service, without any further action from the Commission, consistent with the applicable provisions of the O.A.C., including Rules 4901:1-18-04, 4901:1-18-05, and 4901:1-18-06, O.A.C.
- (17) Vectren also requests clarification regarding the payment required of Ms. Toliver in order to participate in PIPP Plus. Vectren submits that, despite Ms. Toliver’s failure to clearly state to the Commission whether she wished to continue her participation in PIPP, on or about July 23, 2013, Ms. Toliver applied for Home Energy Assistance Program (HEAP) assistance and expressed her intent to reverify her income to continue participation in the PIPP Plus program. Vectren contends that, by failing to disclose her intentions to continue on PIPP Plus to the Commission in this docket, Ms. Toliver

effectively ensured her termination in the PIPP Plus program and, as she was warned in the Order, if she elects to terminate her participation in PIPP Plus and subsequently reenrolls in PIPP Plus on or before July 17, 2014, she will be required to pay the difference between any missed PIPP installments and the customer payments made during the same period. Vectren cited the portion of the Order that referred to July 17, 2014, as the date by which Ms. Toliver may reenroll in PIPP (Order at 19-20).

- (18) The Commission agrees that, absent a reversal of the PIPP benefits, if Ms. Toliver reenrolled in PIPP Plus before 12 months from the date of the Order had passed, she would be required to pay the difference between any missed PIPP installments and the customer payments made during the same period. However, the PIPP benefits received on Ms. Toliver's account since her reenrollment in September 2012, have been reversed consistent with the EOR. On that basis, the July 17, 2014, date set forth in the Order is no longer the relevant date to consider in calculating the 12-month PIPP Plus stay-out period. Rather, the Commission finds that, with the reversal ordered in the EOR, Ms. Toliver was last effectively enrolled in PIPP as of April 2012, and may reenroll in PIPP Plus.

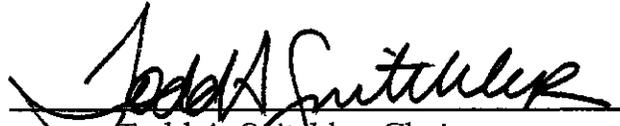
It is, therefore,

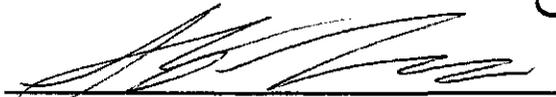
ORDERED, That Ms. Toliver's application for rehearing is denied. It is, further,

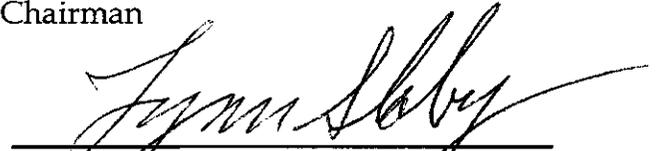
ORDERED, That the Order and EOR are clarified as set forth in findings (16) and (18). It is, further,

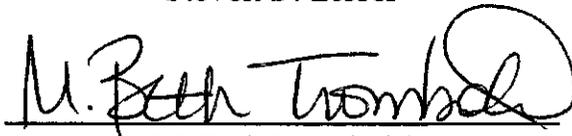
ORDERED, That a copy of this Second Entry on Rehearing be served upon all persons of record in this case and the Ohio Development Services Agency.

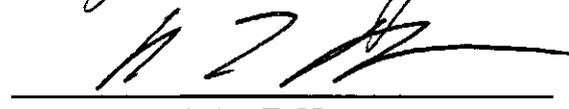
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitdhler, Chairman


Steven D. Lesser


Lynn Slaby

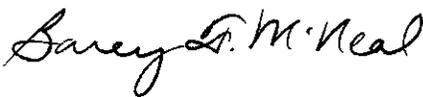

M. Beth Trombold


Asim Z. Haque

GNS/vrm

Entered in the Journal

OCT 02 2013



Barcy F. McNeal
Secretary