**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission's Review of Its Rules for the Establishment of Credit For Residential Utility Services and the Disconnection of Gas, Natural Gas, or Electric Services to Residential Customers Contained in Chapters 4901:1-17 and 4901:1-18 of the Ohio Administrative Code. | )<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 13-274-AU-ORD |

**APPLICATION FOR REHEARING OF**
**THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

In accordance with R.C. 4903.10 and Rule 4901-1-35, Ohio Administrative Code, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) hereby files its Application for Rehearing of the June 4, 2014 Entry issued in the above-captioned case (the Entry). The Entry is unreasonable and unlawful because it adopts rules with which compliance will be either unreasonably difficult or unjustifiably expensive. For these reasons, as explained in detail in the attached Memorandum in Support, the Commission should grant this Application for Rehearing and modify or remove the proposed rules accordingly.

Dated: July 7, 2014

Respectfully submitted,

/s/ Andrew J. Campbell

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## MEMORANDUM IN SUPPORT

For the reasons explained in its earlier comments, DEO disagrees with a number of changes adopted by the Commission. But DEO is limiting its application for rehearing to certain rules with which compliance will be either unreasonably difficult or unjustifiably expensive.

## I. INTRODUCTION

Over the last several years, the PIPP program has been in a state of flux. Five years ago, the Commission decided to "restructur[e]" the PIPP program, undertaking "a major overhaul to a program that ha[d] existed, with little change, for 25 years." *In re Review of Chapter 4901:1-17, etc., of the Ohio Adm. Code*, Case No. 08-723-AU-ORD, Entry on Rehg., 2009 Ohio PUC LEXIS 243, at *100 (Apr. 1, 2009). In overhauling the program, the Commission recognized the challenges that "face[d] the industry with the magnitude of the changes being adopted in this proceeding, not only with respect to the PIPP rules, but also in other areas of Chapters 17 and 18." *Id*. And it "acknowledge[d] the time it will take to train industry employees, call center employees, and community action agency representatives on the new gas PIPP program, as well as the time necessary to educate the public regarding the new program." *Id*. at *100–01. Based on the magnitude of the changes and time needed for all parties to absorb and implement them, the Commission substantially delayed the effective date of the rules. *See* 08-723 Entry at 2 (June 3, 2009) (establishing November 1, 2010 effective date).

These sensible delays in implementation reflect the size (both in customers and dollars) and complexity of the PIPP program. With numerous overlapping rules addressing variations on a number of common situations and problems, the program itself is not easy to understand, even for professionals. And if the rules are hard to understand, they are even harder to implement with the kind of automated programming that is essential to providing reasonable and affordable service. As the long lead-times necessary to implement the last round of changes show, maneuvering the PIPP program is like maneuvering an ocean liner.

Unfortunately, although well intended, several of the rules adopted by the Commission either present impossible compliance burdens or will require exorbitant costs to program and implement. Particularly when the last round of revisions has so recently been implemented—and when they appear to be working—DEO respectfully requests that the Commission reconsider adoption of the rules described below.

## II. ARGUMENT

DEO will focus on three rules. The problem with the first rule is that it combines poor policy and near-impossible compliance. The problem with the second and third is that they will be unjustifiably expensive to implement.

### A. Rule 4901:18-06(F)(3) combines a highly questionable policy with virtually impossible compliance burdens.

Section (F)(3) states, "Under the circumstance where the new resident becomes a consumer of the electric, gas, or natural gas service that was left on by virtue of the landlord/reversion agreement, the consumer will be financially responsible for the utility service consumed from the date of move-in, as indicated in the terms of the lease agreement."

This was the rare rule that made all sides unhappy: almost every utility specifically opposed the proposal, as did the Consumer Groups. Concerns largely pointed to the fact that the rule requires the utility to make a tenant responsible for service, not in response to the tenant's affirmative request, but based on "the terms of the lease agreement." The problems with this rule are many and insurmountable.

### 1. Compliance with this rule is likely impossible, and there is no cost-effective way to do so.

To begin with, DEO fails to see any cost-effective way to assure compliance with this rule. Contrary to the rule's unspoken assumption that "the terms of the lease agreement" are easily known, utilities are not parties to the tens of thousands of leases that apply to properties served on their system. These records are not required or maintained in the ordinary course of business, and there is no reasonable or cost-effective way to do so.

Indeed, the rule assumes that landlords and tenants cannot even be troubled to call the utility to establish service. If they cannot be expected to pick up the phone (when there are clear incentives to do so), can they really be expected to locate, make a copy of, and mail the lease to the utility? That is an even more burdensome act than a phone call, and (for landlords) one backed by even less incentive, since the landlord who fails to take proper actions will be able to rely on this rule and essentially require the backbilling of tenants. Utilities will need to obtain leases to comply with this rule, and how they will cost-effectively do so is an important question, but one entirely unaddressed by the Entry.

Somewhat confusingly, the Commission seemed to deny that this rule would create *any* compliance obligations, stating that "nothing in this rule should be interpreted as imposing any responsibilities or obligations upon the utilities as it relates to the landlord tenant relationship." Entry at 41–42. The rule certainly *seems* to impose obligations regarding "the landlord tenant relationship": it requires the utility to apportion financial responsibility for service among the two parties. And unless someone informs the utility in advance that a new lessee will be arriving (*and* provides a lease), the wrong party will *always* be billed when service changes over. And when this happens, the utility will be exposed to formal complaints that it violated the

Commission's rules. Defending complaints is costly, and rule violations can expose a utility to potentially harsh penalties.

**2. The rule fails to make the proper party responsible.**

This, in turn, points to the severe policy problem of the rule: it makes no one responsible for *establishing* service. The parties who actually know what is going on, who have incentive to deal with the situation, and who may avoid any problems at least cost (*i.e.*, landlords and tenants) are given no responsibility under the rule. Instead, the rule obliges the party furthest from the situation (*i.e.*, the utility) to obtain a copy of the lease, interpret it, and figure out who owes what.

The incentives are already aligned. The landlord should be responsible for ensuring that the tenant contacts the utility. If the landlord fails to do so, the landlord is rightly responsible for the bills. And if the tenant fails to contact the utility, the landlord's recourse is to terminate service. There is no reason that the customer should not be responsible for establishing service in his or her name.

Rules should create incentives for the proper parties to act and thereby eliminate needless disputes. This rule will do the opposite. It will eliminate incentives for the proper parties to act and will create needless new disputes.

**3. Given the flaws in the rule, the necessary cost increases are not justified.**

The rule is not good policy, which makes the cost increases it will require even less palatable. To obtain and interpret leases; to manually create and backbill new accounts and to rebill old ones; to adjudicate the inevitable he-said-she-said disputes between landlords and tenants over who should be paying the bills; to respond to the inevitable Staff inquiries regarding same—for all these, DEO will incur numerous incremental costs, including additional phone calls, back-office paperwork, and management and legal review. Moreover, the rule divorces responsibility for service from the customer's request, and DEO expects that bad-debt expense will likely increase due to disputes between the landlord and tenant as to who owed what and when. Customers who neither requested nor budgeted for service will come to find—months later in many cases—that they had been responsible for service all along.

It is not often that the Consumer Groups and the utilities unanimously agree that a rule is bad policy and should be rejected. But for good reason, they agree on that here. The Commission should remove (F)(3) from the rules.

## B. Rule 4901:1-18-13(D) and Rule 4901:1-18-15(G) will be unjustifiably expensive to implement.

While DEO strongly opposes the policy decision of the landlord-tenant rule, it also has policy objections, as described in its initial and reply comments, to the next two rules: one permitting PIPP prepayment; the other establishing a new post-PIPP payment plan. Aside from debating the wisdom of these rules, DEO's major issue with them is expense.

Substantial reprogramming of PIPP rules in the billing system is like building a new interstate highway through an already built-out and congested urban area. The new road itself may be a substantial project, but the real challenge is weaving it into the infrastructure already in place. Reprogramming PIPP rules reflects the same problem: the programming is extremely complex at numerous levels, and changes that might seem fairly straightforward can require major modifications to the existing architecture. Thus, a new highway is not built on a whim: it must clearly go a desirable direction and clearly be needed for more than a few travelers.

This highlights the problem with a pair of the new rules. Both will require hundreds of hours of attention from IT for reprogramming, plus time spent by system users to test and validate changes, which not only incurs incremental direct costs but also opportunity costs for these already-constrained resources. Yet neither rule change has a strong policy justification or may be expected to impact many customers. For these reasons, the rules should not be adopted.

### 1. The prepayment rule, Rule 4901:1-18-13(D), will be unjustifiably complex and costly to implement.

This rule requires, "Any overpayment of PIPP plus or Graduate PIPP plus payments shall be applied to future PIPP plus or Graduate PIPP plus payments once any default balance has been paid." This rule effectively permits PIPP customers to prepay their monthly obligations. It is not clear to DEO that this is a good policy decision. Customers appear to be adjusting to the 2008 rules—which took until 2010 to implement—and encouragement of monthly payment patterns has seemed to succeed. It seems unwise to veer in a different direction so soon.

#### a. This rule will require major costs and reprogramming to implement.

But while one may debate the policy, what cannot be debated is that this rule change is complicated and will require substantial costs and effort to implement. Major programming efforts would be required, both to unwind parts of the current system just implemented in 2010 and to ensure that the new system appropriately applies one month's payment across multiple months of service and multiple months of crediting, particularly in situations where only partial months are prepaid. DEO expects that at least 900 hours of programming would be required.

The newly added prepayment requirements must combine with and account for the other rules of the program, such as: when and how to apply incentive credits and delta credits; what happens if a customer with a credit balance in the PIPP receivables is dropped from PIPP for reverification; what will happen to such payments if a customer is dropped from the program and subsequently rejoins PIPP; and so forth. Further complications arise regarding how bills should display the amount that must be paid by the due date, and how they should explain why that amount differs from the required income-based payment amount. These situations (and many others) must be mapped out in concept and then programmed in detail. Not only operations of the PIPP program and related bill printing, but the accounting and financial reporting of PIPP dollars, arrearage credits, and delta credits for rider filings and monthly receivables are extremely complex and will need extensive review, programming, and testing to assure that PIPP account activity is accurately calculated and classified, and that the resulting account balances are properly stated.

Had this change been adopted in 2008, when a great deal of reprogramming was already necessary, these prepayment issues could have been much more economically accounted for. Weaving in such extensive changes, when renovations were only just completed, only makes justifying the outlay even more difficult.

**b. DEO questions whether the volume of prepaying customers justifies the fixed cost of reprogramming.**

These programming costs will be necessary regardless of how many customers actually prepay their PIPP obligations. DEO finds it doubtful that many customers will.

DEO has approximately 1.1 million residential customers. As of May 2014, 91,531 customers (or 8%) were on PIPP plus or Graduate PIPP plus. By definition, customers on PIPP do not have great financial wherewithal, and relatively few customers will have the ability to pay ahead. On average, only about three quarters of DEO's PIPP customers even make a payment on their account each month. This means that the total percentage of DEO's customer base that could potentially be able to avail itself of this rule is less than 6%. And DEO's experience suggests that PIPP customers do not generally have room in the budget to prepay their natural gas bill.

The costs of this reprogramming will affect all ratepayers regardless of whether they participate in PIPP and regardless of whether they prepay. Requiring DEO to reprogram its billing system for these PIPP rule changes to advance a policy of unclear merit and to benefit very few customers is not a wise use of resources. DEO respectfully requests that the Commission reconsider adding this provision.

**2. Rule 4901:1-18-15(G) will also be unjustifiably expensive to implement.**

This newly adopted rule would, for post-PIPP-plus customers who close their account, require utilities to offer a monthly payment that "shall be no more than the total accumulated arrearage divided by sixty." *Id*. "Each time the former PIPP plus customer makes his or her required payment by the due date, the company shall reduce the account arrearage by one-twelfth. This payment agreement is available to the former PIPP plus customer for twelve months from the time the account finals." *Id*.

This is another rule with doubtful policy merit. As DEO pointed out before, this rule does not seem to make the customer fairly responsible for their consumption and would seem to make good-paying customers make up the difference. It is unclear why this group of customers should receive such favorable treatment. And whatever its merits, the new plan rule will not come easily or cheap: DEO expects that implementing the new payment arrangement will require over 1,300 hours of IT resources for reprogramming, plus time spent by system users to test and validate changes, which again will incur not only incremental direct costs but also opportunity costs for already-constrained resources. The new post-PIPP plan is very different than any plan DEO has in its system today. It is unique from the existing PIPP plus and Graduate PIPP plus plans, by requiring a new method of calculating monthly payments, and it is unique from non-PIPP payment plans, by applying disproportionate incentive credits solely in response to timely plan payments. In addition, this rule change will impact the bill print programming of final bills for these customers. And as noted above, because it must interface with PIPP-related programming, it must be woven into an already complex system and do so without impacting accounting, financial reporting, and consequent ratemaking.

DEO proposes that the customers covered under Section (G) should continue to make payments in accordance with their last verified PIPP-payment amount in order to receive the one-twelfth crediting each month.

### C. These rule revisions, and some for which DEO has not sought rehearing, will require waivers to allow to time for reprogramming.

Finally, DEO would note that it will likely need to seek waivers to give it time to reprogram its systems to comply with many of these revisions, including revisions for which DEO is not seeking rehearing. With respect to the second and third rules challenged above (Rule 4901:1-18-13(D) and Rule 4901:1-18-15(G)), DEO expects that it will not be until the 2015–16 heating season (at the earliest) that it will have had time to unwind existing programming and complete the reprogramming necessary to implement them.

Several other new rules adopted by the Commission do not present the same level of programming headaches, but it is also not clear that DEO will be able to implement them by this heating season. It may be necessary to seek a waiver of some of the other rules as well, to give time for implementation and compliance.

## III. CONCLUSION

For these reasons, the Companies respectfully request that the Commission grant rehearing and revise the rules as requested above.

Dated: July 7, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of DEO's Application for Rehearing was served by electronic mail this 7th day of July 2014 to the following:

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