BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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 Ohio Adm. Code Chapters 4901:1-17 and 4901:1-18	**Case No. 13-274-AU-ORD**

OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY'S MEMORANDUM CONTRA APPLICATIONS FOR REHEARING

I. INTRODUCTION

On June 11, 2013, the Commission issued an Entry ("June 11 Entry") requesting comments on proposed amendments to the rules contained in Chapters 4901:1-17 and 4901:1-18, Ohio Administrative Code ("O.A.C."). Comments were filed by several parties on July 12, 2013 and reply comments on August 2, 2013. On June 4, 2014, the Commission issued its Finding and Order adopting several amendments to Chapters 4901:1-17 and 4901:1-18, O.A.C. ("Order"). On July 7, 2014, several stakeholders filed applications for rehearing ("AFRs"): Advocates for Basic Legal Equality, Citizens Coalition, Legal Aid Society of Cleveland, Legal Aid Society of Columbus, Legal Aid Society of Southwest Ohio, the Office of the Ohio Consumers' Counsel, Ohio Partners for Affordable Energy, Ohio Poverty Law Center, Pro Seniors, Inc. and Southeastern Ohio Legal Services (collectively, "Joint Applicants"); The East Ohio Gas Company D/B/A/ Dominion East Ohio ("DEO"); and Duke Energy Ohio, Inc. ("Duke").

As discussed below, the Commission should grant rehearing on one of the issues raised in DEO's AFR. As for the Joint Applicants' AFR, the Commission should not grant rehearing because they have not demonstrated that the Order is unreasonable or unlawful as required by Section 4903.10, Ohio Revised Code ("O.R.C."). For those reasons, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "Companies") hereby file their Memorandum Contra to the various AFRs in this proceeding.

II. THE COMMISSION SHOULD GRANT DEO'S REHEARING AND DELETE OR AMEND SUBSECTION (F)(3) OF RULE 4901:1-18-03, O.A.C..

Staff proposed, and the Commission approved, a new Subsection (F) in Rule 4901:1-18-03 to address the circumstances of a landlord/property owner who elects to leave the utility service on at a particular service location under the provisions of a landlord reversion agreement. However, as DEO correctly argues in its AFR, Subsection (F)(3) is unreasonable and unlawful because of the burden it imposes on the utility to identify terms of a private lease agreement between a landlord and a tenant.

Specifically, Subsection (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.

AS DEO pointed out, almost every utility and the consumer groups opposed this rule. Nevertheless, the Commission adopted this new rule stating:

> The Commission recognizes that the responsibility for the provision of utility services is a negotiated term of the lease contract and the responsibility for enforcing this term should ultimately fall on the shoulders of the parties to the agreement. Thus, if a landlord/ property

> owner believes a tenant should pay for services obtained prior to the establishment of an account in the tenant's name, that should be his/her responsibility to pursue and the tenant's responsibility to oppose. As stated above, nothing in this rule should be interpreted as imposing any responsibilities or obligations upon the utilities as it relates to the landlord tenant relationship. Therefore, the Commission finds that the proposed language should be adopted.[1]

Contrary to the Commission's Order, the plain language of the rule does not place any burden on the landlord to pursue payment for utility service. Instead, the rule as written unreasonably places the burden on the utility to investigate and interpret the terms of a private lease agreement and also to proactively determine when the customer of record should change from the landlord to the tenant. This rule is also problematic because leases can be informal and not written. Finally, the landlord is in the best position to ensure that the tenant has placed utility service in the tenant's name, on the appropriate date. For all of those reasons, the Companies agree with DEO that the Commission should grant rehearing and either delete Subsection (F)(3) or amend it as follows:

> 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. <u>The landlord is financially responsible for utility service consumed at the premise until the tenant has placed utility service in his or her name.</u>

[1] Order at 41.

III. THE JOINT APPLICANTS' APPLICATION FOR REHEARING SHOULD BE DENIED.

A. The Commission's Order is not unreasonable and unlawful in allowing utilities to utilize social security numbers to establish creditworthiness and identify.

In their AFR, Joint Applicants argue that the Commission's Order unreasonably rejected their recommendation that the Commission prohibit utilities from using an applicant's social security number as the primary means for establishing identity.[2] Joint Applicants are mistaken as Rule 4901:1-17-03(A)(2), O.A.C. specifically provides that a utility "may not refuse to provide service if the applicant elects not to provide his/her social security number." In other words, the utility must have other options for an applicant to apply for service including establishing identity and credit worthiness. Moreover, the Commission has previously addressed this issue and denied rehearing in Case No. 08-723-AU-ORD finding that the "FTC's 'Red Flag' requirements for utility companies ensure that the customer's social security number is secure."[3] For those reasons, the Commission should deny rehearing on this issue.

B. The Order is not unreasonable and unlawful for rejecting proposed Rule 4901:1-18-04(C), O.A.C.

Joint Applicants argue that the Commission's Order rejecting proposed Rule 4901:1-18-04(C) is faulty.[4] As background, Staff proposed the following definition of "like account":

> "Like account" means any accounts in the same customer's name providing the same tariffed service rate class. PIPP Plus accounts may not be considered like accounts.

[2] Joint Applicants' AFR at 4-5.
[3] Case No. 08-723-AU-ORD, Entry on Rehearing at p. 5.
[4] Joint Applicants' AFR at 7.

Staff then proposed the inclusion of a new subsection 4901:1-18-04(C) to codify the existing practice of transferring the balance of a delinquent account to any like account. The Commission rejected both of the proposed rules citing Rule 4901:1-10-22(I), O.A.C. that fully addresses the situation of transferring balances.[5] The Order was not unreasonable and unlawful in that regard. However, should the Commission wish to accept proposed Rule 4901:1-18-04(C), O.A.C., the Commission should adopt the same rule adopted in Case No. 12-2050-EL-ORD, Rule 4901:1-10-22(I), O.A.C.[6]

As discussed in the Companies' comments, the Commission should not prohibit the transfer of balances to or from PIPP Plus accounts as previously contemplated by Staff's proposed rule. Currently, the Companies transfer any delinquent balances from the former PIPP and PIPP Plus accounts to a like account (residential to residential) including a PIPP Plus account. The Companies then work with the customer in paying off that arrearage. Any recovery from these efforts will credit back to the USF Rider or PIPP uncollectible riders that the Companies currently have in place, thereby reducing costs for other customers. Also, a customer may have had a PIPP account, but then is dropped from PIPP and opens a subsequent account that is not PIPP. The Companies should be permitted to transfer those balances. Allowing the Companies to pursue those balances will lower the rider charges for customers and also require PIPP customers to be held accountable for delinquent balances. This is good public policy. For those reasons,

[5] Order at 24; 28.

[6] "The utility may transfer the unpaid balances of a customer's previously rendered final bills to a subsequent bill for a like service account in the name of that same customer. The transfer of bills is limited to like service, for example, residential to residential, commercial to commercial, gas to gas, and electric to electric. Such transferred final bills, if unpaid will be part of the past due balance of the transferee account and subject to the Company's collection and disconnection procedures which are governed by Chapters 4901:1-10 and 4901:1-18 of the Ohio Administrative Code. Any transfer of accounts shall not affect the residential customer's right to elect and maintain an extended payment plan for service under Rule 4901:1-18-10 of the Ohio Administrative Code."

the Commission should deny Joint Applicants' AFR or amend the rule to conform with Rule 4901:1-10-22(I), O.A.C.

C. The Order Is Not Unreasonable or Unlawful In Rejecting The Joint Applicants' Proposed One-Twelfth Payment Plan.

In their AFR, Joint Applicants argue that the Commission's Order was unreasonable and unlawful because it rejected their suggestion of a one-twelfth payment plan.[7] Joint Applicants fail to demonstrate how the Commission's Order was unreasonable and unlawful in this regard. Indeed, the Commission appropriately found that a while it would not obligate a utility to offer this type of plan, a utility may offer this type of plan if it chooses.[8]

In Case No. 08-723-AU-ORD, on rehearing, the Commission reconsidered its original decision to require a one-twelfth plan and decided to not adopt the one-twelfth plan as a required option.[9] As the Companies argued in that case, the one-twelfth plan presupposes that the customer has accumulated a substantial outstanding balance which the utility companies will now be required to carry on their books for an entire year. There are also no guidelines or parameters on the one-twelfth plan to distinguish between customers who need additional time and customers who would rather save the money and pay their utility bill later.

Columbia noted that Rule 4901:1-18-05(D), O.A.C. requires the utility company to offer customers without an arrearage a budget or uniform payment plan. Also, offering a one-twelfth plan: first, eliminates one of the incentives for customers to avoid accumulating an arrearage; and, second, may well lead to increased customer arrearage

[7] Joint Applicants' AFR at 8-10.
[8] Order at 30.
[9] *In the Matter of the Commission Review of Chapters 4901:1-17 and 4901:1-18,* Case No. 08-723-AU-ORD, Entry on Rehearing at 6-9 (April 1, 2009).

totals. The Commission previously considered and rejected a one-twelfth payment plan in this proceeding as well.[10]

Duke argued in Case No. 08-723-AU-ORD that the extended payment plans adopted by the Commission creates an unreasonable imposition on the utility companies as the companies are required to offer mutually acceptable payment arrangements to any customer that seeks to avoid a delinquency and to offer a modified one-sixth and a one-twelfth payment plan. Thus, Duke reasoned that the one-twelfth payment plan will be ineffective in promoting customer payments and, depending on when the one-twelfth plan is initiated, will extend payment into the next winter heating season.

Concerned with arrearages balances continuing to increase, with little hope for full repayment, the Commission granted rehearing to the utility companies and instead adopted a one-ninth payment plan that also requires the customer to make nine equal payments on the arrearage and to be placed on budget billing. For those same reasons expressed by parties and relied upon by the Commission in previous proceedings, the Commission should deny Joint Applicants' AFR.

Finally, Joint Applicants' argument that Section 4928.33(C), O.R.C. serves as a statutory basis for the Commission to require this plan likewise fails. Section 4928.33(C), O.R.C. clearly only applies to recovering amounts from a customer where the utility was in control of the undercharge for unmetered gas or electricity. That is not the issue contemplated by the payment plans contained in Rule 4901:1-18-05(B), O.A.C. where it is the customer who has failed to timely pay for utility service. Joint Applicants' AFR on this issue is without merit and should be denied.

[10] *See In the Matter of the Investigation into Long-Term Solutions Concerning Disconnection of Gas and Electric Service in Winter Emergencies*, Case No. 83-303-GE-COI (83-303), Opinion and Order (November 23, 1983) at 9.

D. The Order Is Not Unreasonable and Unlawful in Allowing Utilities to Deny Medical Certification to Customers who Have an Outstanding Balance for a Returned Check.

In their AFR, Joint Applicants argue that the Commission's addition of Rule 4901:1-18-06(C)(5), O.A.C. is unreasonable and unlawful because it assumes that returned check charges are somehow related to fraudulent acts.[11] Rule 4901:1-18-06(C)(5) states:

> If there is an outstanding balance for a returned check on the customer's account, the utility company may refuse the medical certification, so long as notice has been given to the customer in accordance with rules 4901:1-10-20 and 4901:1-13-09 of the Administrative Code. Such notice shall also advise the customer that there is a returned check balance on the account and that the utility may deny the customer's use of medical certificates if that balance is not paid.

The Commission, in its discretion, adopted this new rule in response to various stakeholders concerns related to the abuse of the medical certification process especially when a customer has an outstanding balance.[12] Joint Applicants are mistaken where they assert that the rule punishes individuals who mistakenly or without intent accrue outstanding balances for returned checks. The rule clearly states that medical certification can only be denied for outstanding balances. And, if a customer simply made an error, then it is not unreasonable for him or her to correct the error prior to receiving a medical certification. For all of those reasons, the Commission should deny rehearing on this issue.

[11] Joint Applicants' AFR at 11-13.

[12] Order at 36.

E. The Order Is Not Unreasonable and Unlawful In Denying Joint Applicants' Recommendation that the Ten-Day Shut Off Notice Contained in Rule 4901:1-18-08(K), O.A.C. Be Extended to Thirty Days.

In their AFR, Joint Applicants argue that the Commission's Order is unreasonable and unlawful because it fails to extend the ten-day shut off notice contained in Rule 4901:1-18-08(K), O.A.C. from ten days to thirty days.[13] Joint Applicants argue, based on one comment by one utility, that all of the utilities subject to Rule 4901:1-18-08(K), O.A.C. are not complying with the rule. There is simply no evidence substantiating this claim.

Rule 4901:1-18-08(H), O.A.C. requires the landlord/owner to provide to the utility an accurate list specifying the individual mailing addresses served at the master-metered premises. Under Rule 4901:1-18-08(K), O.A.C. the utility must provide notice of disconnection at the request of the landlord via mail or posting of a notice. It is not appropriate for a utility company to hold a landlord responsible for electric service when the landlord has requested a turn off of services. Other than speculation and conjecture, Joint Applicants have not presented any evidence that extending this time is necessary or that the Commission's Order was unreasonable or unlawful. If a tenant requires additional time to vacate a premise then he or she can pay the current charges to maintain service. For those reasons, the Commission should deny Joint Applicants' AFR on this issue.

[13] Joint Applicants' AFR at 13-14.

IV. CONCLUSION

For all of the foregoing reasons, the Commission should grant DEO's AFR as indicated herein and deny the Joint Applicants' AFR.

Respectfully submitted,

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Summary: Memorandum Contra Applications for Rehearing electronically filed by Ms. Carrie M Dunn on behalf of Ohio Edison Company and The Toledo Edison Company and The Cleveland Electric Illuminating Company