

**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	)	Case No. 13-274-AU-ORD
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.	)	

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**JOINT MEMORANDUM CONTRA TO THE APPLICATIONS FOR  
REHEARING OF THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST  
OHIO; DUKE ENERGY OHIO, INC.; AND, OHIO EDISON COMPANY, THE  
CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO  
EDISON COMPANY**

**BY  
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**I. INTRODUCTION**

To help ensure that consumer protections are not diminished, Advocates for Basic Legal Equality, Citizens Coalition, Legal Aid Society of Cleveland, Legal Aid Society of Columbus, Legal Aid Society of Southwest Ohio, Office of the Ohio Consumers' Counsel, Ohio Partners for Affordable Energy, Ohio Poverty Law Center, Pro Seniors, and Southeastern Ohio Legal Services (collectively, "Consumer Groups") jointly file this Memorandum Contra the applications for rehearing docketed by three utilities in this proceeding on July 7, 2014. The Consumer Groups file this Memorandum Contra pursuant to Ohio Adm. Code 4901-1-35(B).

By a Finding and Order (“Order”) issued on June 4, 2014, the Public Utilities Commission of Ohio (“PUCO”) adopted new rules regarding the establishment of credit for residential utility services and the disconnection of residential gas, natural gas or electric service. The new rules also address the Percentage of Income Payment Plan (“PIPP Plus”) program. On July 7, 2014, the Consumer Groups jointly filed an application for rehearing of the PUCO’s Order, and asked the PUCO to include additional consumer protections in the rules.

Three utilities also filed applications for rehearing: The East Ohio Gas Company d/b/a Dominion East Ohio (“DEO”); Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (“FirstEnergy”); and Duke Energy Ohio, Inc. (“Duke”). The Consumer Groups hereby collectively respond to the applications for rehearing filed by the utilities.<sup>1</sup>

## **II. ARGUMENT**

### **A. The East Ohio Gas Company d/b/a Dominion East Ohio.**

DEO requests rehearing on three different rules, citing compliance difficulties and expense. The Consumer Groups will address DEO’s arguments regarding two of the rules: Ohio Adm. Code 4901:1-18-13(D) and 4901:1-18-15(G). The Consumer Groups support the rules as issued by the PUCO.

Rule 4901:1-18-13(D) covers the situation when a PIPP Plus customer has overpaid and has a bill credit. This situation does occur. For example, a customer may have his or her required PIPP Plus payment lowered as a result of reverification, leaving a credit on the account. In this instance, or in any number of other scenarios, customers

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<sup>1</sup> If the Consumer Groups do not address an issue raised in a utility’s application for rehearing, this should not be construed as the Consumer Groups’ acquiescence to the position taken by the utility.

who consistently pay their PIPP Plus payment may wind up with a credit on their account. Customers should be encouraged to make payments, and should not see dollars of their limited incomes disappear because an overpayment occurs. Consumer Groups support the current rule.

Rule 4901:1-18-15(G) is designed to allow customers who are closing their account, for any number of reasons, an opportunity to clear the arrearage that remains from participation in PIPP Plus. Having such a plan is good for both those customers who are on PIPP Plus as well as those customers who are not. The PIPP Plus customers are able to eliminate all arrearages so they do not owe the utility any money. This is important if they ever return to the service territory and seek to reestablish service. If a utility reports the arrearage to a credit bureau, the PIPP Plus customer can also be harmed. It is important to provide a mechanism to eliminate the arrearages.

Customers who are not on PIPP Plus also benefit from the rule because additional payments are made into the program, which reduces the cost. Consumer Groups support the rule as approved by the PUCO.

In both cases, DEO complains about the time and expense to implement the programming required to comply with the rules.<sup>2</sup> However, DEO provides no cost estimates for implementation, nor does it provide any timeline for compliance that might justify a waiver.<sup>3</sup> These rules are designed to implement changes that have been identified as necessary based on the first several years of experience with the new rules and to provide consistency between the natural gas and electric rules. Absent proof that the programming cannot be accomplished within a reasonable timeframe, and balanced

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<sup>2</sup> DEO Application for Rehearing at 6-9.

<sup>3</sup> See id. at 9.

against the benefits of the rule changes to ratepayers and participants in PIPP Plus, DEO's request to reconsider these rules should be denied.

In addition, the PUCO should not change a rule simply because one company has asserted that it would need a waiver of the rule in order to have time to implement it for the upcoming heating season.<sup>4</sup> In Ohio Adm. Code 4901:1-18-02(B)(3), the PUCO has established a waiver process for these rules. The rule allows for waivers, for good cause shown, of all or part of a rule that is identified with specificity, so long as the utility seeking the waiver provides sufficient explanation to justify the waiver. DEO's discussion regarding the need for waivers provides no reason for the PUCO to change Ohio Adm. Code 4901:1-18-13(D) and 4901:1-18-15(G), as DEO has requested.

**B. Duke Energy Ohio, Inc.**

Duke requests rehearing on different rules, but like DEO cites compliance difficulties and expense. The Consumer Groups address each in turn.

**1. Rule 4901:1-18-01**

In its Order, the PUCO adopted Ohio Adm. Code 4901:1-18-01(O), which defines "on-time payment" as "for the purpose of applying incentive credits, a PIPP Plus installment received by the gas or natural gas company prior to the date that the next bill is issued."<sup>5</sup> Duke takes issue with this definition. Duke mistakenly alleges that the definition is not consistent with current practices, will create customer confusion, will be costly for Duke to program with no benefit to customers, and does not strike a proper balance between the objectives of the regulation and the cost of compliance, as required

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<sup>4</sup> Id.

<sup>5</sup> See Order, Attachment C, page 2 of 34.

by Executive Order 2011-01K.<sup>6</sup> Duke offers no support for these bald assertions. None of these arguments hold up to scrutiny.

PIPP Plus customers are poor. Their incomes are often erratic and variable. Budgeting to meet obligations, including utility bills can be difficult. On the other hand, the definition of on-time payments the PUCO adopted in its Order will provide great benefits to customers and the PIPP Plus program. Customers benefit from receiving the arrearage credit, and the program benefits because a timely payment was made. The rule recognizes and captures these benefits.

As the PUCO noted in its Order, the definition of “on-time payment” adopted in the Order is consistent with the longstanding definition approved by the Ohio Development Services Agency (“ODSA”). The ODSA definition has worked well for other Ohio electric utilities and their PIPP Plus customers. Customers are not confused, because they understand that paying before the next bill is rendered is necessary to receive the credit. Customers are encouraged to pay by the due date, but when that is not possible providing extra time is helpful to keep payment habits on track.

Utilities tend to complain about programming difficulties and costs. The PUCO should not accept the mere assertion that compliance with the rules will be cost-prohibitive. Customers pay for these billing systems in base rates. The possibility that Duke’s billing system may not be easily adaptable should not excuse compliance with rules that provide more benefit for customers.

One of the purposes of this rulemaking was to better harmonize electric and gas PIPP. The definition of “on-time payment” is one of those rules that require consistency

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<sup>6</sup> Duke Application for Rehearing at 4.

across the programs. This rulemaking provides the opportunity to resolve difficulties identified after implementation of a thorough rewrite of the original program rules. Rule 4901:1-18-01(O) needs to be implemented as adopted by the PUCO.

## **2. Rule 4901:1-18-06(C)(5)**

The Consumer Groups applied for rehearing of this rule and suggested that it be deleted.<sup>7</sup> The arguments made by Duke buttress those made in the Application for Rehearing filed by the Consumer Groups.

Nevertheless, the Consumer Groups disagree with Duke's assertion that customers are aware that they have issued a bad check.<sup>8</sup> As the Consumer Groups noted, there are reasons beyond the customer's control that would cause a check to be returned.<sup>9</sup> Duke's erroneous statement regarding customer intent highlights the inherent flaw in the rule, i.e., that it assumes that all returned checks are the result of customer fraud.<sup>10</sup>

## **3. Rule 4901:1-18-12(D)(2)**

Duke alleges that this rule requires utilities to automatically drop customers thirty days after the anniversary date if past due payments are outstanding.<sup>11</sup> Duke argues that dropping customers has in the past been the province of ODSA.<sup>12</sup> Duke also asserts that the rule places an undue burden on it "to monitor the use of these social service programs."<sup>13</sup> Duke contends that ODSA and the agencies supporting the programs

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<sup>7</sup> See Consumer Groups Application for Rehearing at 11-13.

<sup>8</sup> Duke Application for Rehearing at 4.

<sup>9</sup> See Consumer Groups Application for Rehearing at 12.

<sup>10</sup> See *id.*

<sup>11</sup> Duke Application for Rehearing at 4.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

should be responsible for monitoring the programs.<sup>14</sup> Finally, Duke argues that programming its billing system to comply with the rule will be costly and difficult.<sup>15</sup>

Duke provides no support for its assertions. Nevertheless, it may be more beneficial for customers to retain the current provisions in which ODSA – rather than the utility – monitors PIPP Plus customers’ payments and determines when service should be terminated. In any event, PIPP Plus customers should have ninety days after the anniversary date to cure any defaults, as the Consumer Groups recommended in their Application for Rehearing.<sup>16</sup>

#### **4. Rule 4901:1-18-12(D)(3)**

This rule requires that a PIPP Plus customer who has been disconnected and no longer receives service from the utility cannot have service restored until the customer makes up all PIPP Plus payments that were due during the time the customer was receiving service. As with other rules, Duke argues that this rule should be changed because Duke’s billing system cannot be programmed to implement the new rule.<sup>17</sup> Duke overstates its case.

Duke certainly tracks whether it is owed money by a previous customer, and requires the debt to be paid off before new service can be established. This situation is no different, except that it is the PIPP Plus payment that must be made up in order to obtain service. If it is too difficult to modify a billing system to comply with the rule, the requirement can be met by having a person process the payment manually.

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<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> See Consumer Groups Application for Rehearing at 14-16.

<sup>17</sup> Duke Application for Rehearing at 5.

**5. Rule 4901:1-18-13(C)(2)**

The rule establishes a payment priority for payments other than those from the Home Energy Assistance Program (HEAP). Duke again alleges that its billing system cannot be easily modified to meet these requirements.<sup>18</sup> Again, Duke's assertions lack support, and the PUCO should deny Duke rehearing on this issue.

**6. Rule 4901:1-18-14(A)**

This provision deals with the "on-time" payment issue discussed above.

**7. Rule 4901:1-18-14(B)**

The rule requires a sequence of actions in the event a PIPP Plus customer has a credit on his or her bill. Duke claims that the rule unlawfully and unreasonably requires a refund of any PIPP Plus credit balance and removal of the customer from PIPP Plus.<sup>19</sup> But Duke cites to no law that prohibits the refund and removal. Instead, Duke once again claims that its "current process does not permit a refund check to be issued when a customer's account is active and on PIPP Plus."<sup>20</sup> Duke's argument is without support, and its application for rehearing should be denied.

**C. Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company**

**1. Application of Ohio Adm. Code Chapter 4901:1-17 to electric distribution utilities.**

As it did in comments, FirstEnergy argues that Ohio Adm. Code Chapter 4901:1-17 is duplicative of the credit and disconnection provisions of Ohio Adm. Code Chapter

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<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id. at 5-6.

4901:1-10.<sup>21</sup> FirstEnergy asserts that Chapter 4901:1-17 should not apply to electric distribution utilities.<sup>22</sup> The PUCO, however, has already dismissed this argument:

The Commission notes that the rules being proposed in this Chapter are consistent with the current electric service and safety standards rules (ESSS Rules) applicable to electric companies, which are contained in Ohio Adm. Code Chapter 4901:1-10, as well as those rules adopted in In re Review of Chapter 4901:1-10, Ohio Administrative Code, Case No. 12-2050-EL-ORD, Finding and Order (Jan. 15, 2014), which is the case wherein the Commission is reviewing the ESSS Rules (ESSS Rule Review Case). Given that the rules set forth in both chapters are consistent, the Commission sees no reason why the FE Companies should be concerned about a potential conflict in the rules. The Commission believes that it is appropriate to include the electric utilities in Ohio Adm. Code Chapter 4901:1-17, so there is one consolidated chapter that addresses all regulated utilities. In fact, we believe it would be more confusing to not address the credit for residential service for electric utilities in this Chapter. Moreover, the Commission believes there should be no new costs associated with this rule change, as no new processes are being required. In our next review of the ESSS Rules, we will consider whether changes are needed in order to clarify the applicability of the rules. However, at this time, the Commission finds that the electric utilities should be included in Ohio Adm. Code Chapter 4901:1-17 and the request by the FE Companies should be denied.<sup>23</sup>

Having a single set of rules apply to customers makes sense. Variations between natural gas and electricity when it comes to establishing service should not be different and customers should be able to find these rules at a central repository.

## **2. Rule 4901:1-17-03(A)(5)(b)**

This rule addresses part of the process for customers to obtain a guarantor as a means of establishing financial responsibility. As it did in its comments, FirstEnergy opposes the requirement in this rule that a utility “shall provide the guarantor with a copy

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<sup>21</sup> FirstEnergy Application for Rehearing at 3.

<sup>22</sup> Id. at 3-4.

<sup>23</sup> Order at 4-5.

of the signed agreement and shall keep the original on file during the term of the guaranty.” FirstEnergy claims that it is too burdensome on the utility to maintain a hard copy of the agreement “given that modern business practices often allow documents to be scanned and electronically stored.”<sup>24</sup> FirstEnergy also contends that the guarantor should already have a copy of the agreement because the guarantor sends it to the utility and the utility does not countersign the agreement.<sup>25</sup> FirstEnergy argues that it should be required to provide a copy of the agreement only at the guarantor’s request.<sup>26</sup>

The PUCO has already considered these arguments and rejected them. FirstEnergy has given the PUCO nothing additional to reverse its original decision, and FirstEnergy’s application for rehearing on this issue should be denied.

The Consumer Groups, however, agree that there should be no prohibition against utilities retaining guarantor agreements in an electronic format. What is important is that the guarantor understands his or her obligations and that the utility retains a copy of the standardized agreement.

### **III. CONCLUSION**

The utilities have not provided justification for their arguments for amending the rules because of any alleged difficulties and programming costs associated with implementing the rules. Alleging that the cost of compliance is excessive is not a valid argument without factual support. And utilities consistently argue that changes to billing systems are an insurmountable obstacle, unless perhaps when the changes are to the utilities’ advantage.

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<sup>24</sup> FirstEnergy Application for Rehearing at 5 (citation omitted).

<sup>25</sup> Id.

<sup>26</sup> See id. at 6.

The PUCO should deny the utilities' applications for rehearing, as discussed above. But the PUCO should grant rehearing as recommended in the Consumer Groups' Application for Rehearing.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Applications for Rehearing was served by electronic transmission to the persons listed below, on this 17<sup>th</sup> day of July 2014.

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Summary: Memorandum Joint Memorandum Contra to the Applications For Rehearing of the East Ohio Gas Company D/B/A Dominion East Ohio; Duke Energy Ohio, Inc.; and, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company by Advocates For Basic Legal Equality, Citizens Coalition, Legal Aid Society Of Cleveland, Legal Aid Society of Columbus, Legal Aid Society of Southwest Ohio, Office of the Ohio Consumers' Counsel, Ohio Partners For Affordable Energy, Ohio Poverty Law Center, Pro Seniors, Southeastern Ohio Legal Services electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.