

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review    )  
of Chapter 4901:1-9, Ohio Administrative    ) Case No. 12-2049-EL-ORD  
Code, Regarding Metering Options.         )

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**APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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In order to protect residential electric service consumers who seek non-premium line extensions that cost more than \$5,000, the Office of the Ohio Consumers' Counsel ("OCC") files this Application for Rehearing.<sup>1</sup> In a Finding and Order ("Order") issued on August 27, 2014, the Public Utilities Commission of Ohio ("PUCO") adopted rules that impact utility customers by addressing, inter alia, payment arrangements for electric line extensions.<sup>2</sup> In the Order, the PUCO changed rule 4901:1-9-07(D)(1)(c).

While the PUCO's rejection of a utility's overly broad proposed rule is to be appreciated, the rule adopted by the PUCO contains similar flaws. Because it does not limit the types of unpaid debt for which residential customers could be denied payment arrangements, the new rule gives electric utilities almost unfettered discretion to deny payment arrangements for line extensions requested by residential customers who owe "an unpaid debt to the electric utility."

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<sup>1</sup> OCC files this Application for Rehearing pursuant to Ohio Adm. Code 4901-1-35.

<sup>2</sup> Ohio Adm. Code Chapter 4901:1-9.

The PUCO's Order is unjust and unreasonable because:

1. For the purposes of residential customers' non-premium line extensions that cost more than \$5,000, the Order unreasonably leaves adopted rule 4901:1-9-07(D)(1)(c) open for overly broad interpretation of the phrase "unpaid debt" by electric utilities that would unjustly limit residential consumers' access to line extensions. The PUCO should remedy this by replacing the phrase "unpaid debt" with the term "delinquent bills," as defined in Ohio Adm. Code 4901:1-18-04(A).

The adopted rule is detrimental to residential customers because it will allow utilities to deny customers payment arrangement options for a wide category of "unpaid debt," including charges that are unpaid but not past due. Additionally, unpaid debt could include unpaid charges that are being disputed, outstanding balances that customers are repaying under a payment plan, or charges unrelated to providing electric services. The PUCO should modify the Order and make the rule more appropriately limit "unpaid debt" only to "delinquent bills," as defined in Ohio Adm. Code 4901:1-18-04(A).

The grounds for this Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

Under R.C. 119.032, the PUCO must review rules every five years to determine whether to continue the rules without change, to amend the rules or to rescind the rules.<sup>3</sup> In setting the rules in Chapter 4901:1-9 out for comment, the PUCO noted that the PUCO Staff had evaluated the rules and proposed no changes to them.<sup>4</sup>

After receiving comments and reply comments on the rules in Chapter 4901:1-9, the PUCO, on August 27, 2014, issued the Order in this proceeding. The Order left the rules largely intact. OCC supports the PUCO's decision to reject many of the revisions to the rules proposed by utilities.

The Order, however, modified the rules pertaining to cost estimates for line extensions (Ohio Adm. Code 4901:1-9-07(C)(1) and (C)(2)) and to charges for line extensions for residential single family homes (Ohio Adm. Code 4901:1-9-07(D)(1)(c)). OCC's Application for Rehearing addresses the PUCO's modification of Ohio Adm. Code 4901:1-9-07(D)(1)(c).

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<sup>3</sup> See R.C. 119.032(C).

<sup>4</sup> Entry (December 11, 2013) at 3.

Adopted rule 4901:1-9-07(D)(1)(c) allows electric utilities to deny payment arrangements for line extensions requested by residential customers who owe “an unpaid debt to the electric utility.” But the term “unpaid debt” is not defined in the rules, and thus the rule does not limit the types of unpaid debt for which residential customers could be denied payment arrangements. With no limitation on the term “unpaid debt,” electric utilities could broadly interpret the phrase and could preclude customers from entering into payment arrangements which assist customers in paying their utility bills. The PUCO’s Order is unreasonable in this respect.

The PUCO should modify its Order. In order to protect consumers, the PUCO should specify in Ohio Adm. Code 4901:1-9-07(D)(1)(c) that an electric utility cannot deny a residential customer payment arrangements for non-premium line extension costs that exceed \$5,000 unless the customer’s account is delinquent, as defined in Ohio Adm. Code 4901:1-18-04(A).

## **II. STANDARD OF REVIEW**

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.” OCC filed Reply Comments in this proceeding.<sup>5</sup>

R.C. 4903.10 requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the

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<sup>5</sup> On the day comments were due, OCC filed a letter agreeing with the PUCO Staff that no changes to the rule were necessary.

order to be unreasonable or unlawful.” In addition, Ohio Adm. Code 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” As shown herein, the statutory standard to modify the Order is met here.

**III. FOR THE PURPOSES OF RESIDENTIAL CUSTOMERS’ NON-PREMIUM LINE EXTENSIONS THAT COST MORE THAN \$5,000, THE ORDER UNREASONABLY LEAVES ADOPTED RULE 4901:1-9-07(D)(1)(C) OPEN FOR OVERLY BROAD INTERPRETATION OF THE PHRASE “UNPAID DEBT” BY ELECTRIC UTILITIES THAT WOULD UNJUSTLY LIMIT RESIDENTIAL CONSUMERS’ ACCESS TO LINE EXTENSIONS. THE PUCO SHOULD REMEDY THIS BY REPLACING THE PHRASE “UNPAID DEBT” WITH THE TERM “DELINQUENT BILLS,” AS DEFINED IN OHIO ADM. CODE 4901:1-18-04(A).**

Ohio Adm. Code 4901:1-9-07(D)(1)(c) requires electric utilities to offer payment plans to residential customers whose line extensions will cost more than \$5,000. The current rule, to which the PUCO Staff recommended no changes,<sup>6</sup> provides:

The customer shall make arrangements with the electric utility for the payment of the non-premium line extension costs that exceed five thousand dollars. The electric utility shall afford the nondeveloper, individual homeowner the option of paying those costs, plus carrying costs, on a prorated monthly basis for up to fifty months.

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<sup>6</sup> See Entry (December 11, 2013) at 3.

In its comments, Ohio Power Company (“AEP Ohio”) asked the PUCO to revise Ohio Adm. Code 4901:1-9-07(D)(1)(c) so that electric utilities would not be required to extend credit to customers for non-premium line extension charges exceeding \$5,000.<sup>7</sup> Instead, AEP Ohio asserted, whether to offer customers payment arrangements for the non-premium line extension costs should be at the sole discretion of the utility.<sup>8</sup> AEP Ohio argued that the rule required it to extend financing to customers who have a poor credit history or who have unpaid debt with the utility even though the debt may never be repaid.<sup>9</sup>

In reply comments, OCC opposed AEP Ohio’s proposal as being anti-consumer.<sup>10</sup> OCC noted that AEP Ohio’s proposed changes are too broad, and could result in very few, if any, individual homeowners being able to enter into payment arrangements.<sup>11</sup> Further, if eligibility for payment arrangements were at an electric utility’s apparently unfettered discretion, the utility may refuse to offer a customer payment arrangements for any reason, or for no reason at all.<sup>12</sup> OCC pointed out that the potential for abuse of customers under AEP Ohio’s proposal is enormous, and urged the PUCO to reject the proposal.<sup>13</sup>

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<sup>7</sup> AEP Ohio Comments (January 7, 2014) at 2-3.

<sup>8</sup> Id. at 3.

<sup>9</sup> Id.

<sup>10</sup> OCC Reply Comments (January 21, 2014) at 9.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

In its Order, the PUCO adopted Ohio Power’s proposal in part. The PUCO recognized that the proposal was too broad,<sup>14</sup> but adopted the proposal “to the extent that financing should be offered only to those customers who have no existing unpaid debt with the Company.”<sup>15</sup> The PUCO stated that “this is a reasonable constraint on the customers that may receive financing without granting the electric utility unfettered discretion in determining who may be offered financing.”<sup>16</sup>

Under the revised rule, electric utilities must extend payment arrangements to a homeowner “so long as the homeowner does not owe an unpaid debt to the utility.”<sup>17</sup> As for residential customers who have an unpaid debt with an electric utility, the utility apparently may, but is not required to, extend financing to such customers for non-premium line extension costs that exceed \$5,000. Whether to allow such customers to make payment arrangements for line extension costs is solely at the utility’s discretion.

But in revising Ohio Adm. Code 4901:1-9-07(D)(1)(c), the PUCO did not define the term “unpaid debt.” Nothing in the Order or in AEP Ohio’s comments explains what is meant by “unpaid debt.” The term is not used elsewhere in the PUCO’s electric rules.

The absence of a definition for “unpaid debt” in the rule would give electric utilities nearly unfettered discretion in determining who may be offered financing for line extensions, despite the PUCO’s opposite intent in adopting the rule. Under the revised rule, an electric utility could deny financing for a line extension to a residential customer who has any unpaid debt with the utility, such as unpaid current monthly charges that are

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<sup>14</sup> Order at 6.

<sup>15</sup> Id.

<sup>16</sup> Id. at 7.

<sup>17</sup> Id., Attachment A, page 4 of 7.



not past due, or an unpaid amount from a previous bill that is in bona fide dispute, or an uncollected amount from a payment plan (for which the customer is not in default) for other purposes that the customer has arranged with the utility.<sup>18</sup> It is unreasonable that electric utilities should be allowed to use such “unpaid debts” to disqualify residential customers from making payment arrangements for non-premium line extension costs that exceed \$5,000.<sup>19</sup>

In addition, under revised Ohio Adm. Code 4901:1-9-07(D)(1)(c), an electric utility could deny a residential customer financing for such line extensions if the customer has unpaid debts that have nothing to do with electric service. Some residential customers may have signed up for services that are unrelated to electric service but that nevertheless appear on their electric bills. Such services include, among others, services for the care and trimming of trees,<sup>20</sup> protection plans for exterior water and sewer lines,<sup>21</sup> and repair plans for water heaters, furnaces and cooling systems.<sup>22</sup> If a utility construes unpaid charges for these services as an “unpaid debt,” the utility could deny a customer financing for non-premium line extension costs that exceed \$5,000. It is unreasonable for the PUCO to allow this to happen.<sup>23</sup>

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<sup>18</sup> Even more egregious under the revised rule, any current utility customer with electric consumption, regardless as to whether a bill for that usage has been rendered, could be considered by the utility to have an unpaid debt for service.

<sup>19</sup> See, e.g., Ohio Adm. Code 4901:1-18-06(A), which allows for disconnection of residential electric service only if the customer’s bill is delinquent. See also Ohio Adm. Code 4901:1-10-19(C), which prohibits disconnection of electric service if the customer does not pay any amount in bona fide dispute.

<sup>20</sup> See [www.firstenergycorp.com/products/improve\\_your\\_home/professional\\_treeservices.html](http://www.firstenergycorp.com/products/improve_your_home/professional_treeservices.html).

<sup>21</sup> See [www.homeserveusa.com/mail/firstenergy](http://www.homeserveusa.com/mail/firstenergy).

<sup>22</sup> See *id.* Although FirstEnergy seems to be the only electric utility that presently includes charges for such services on customers’ electric bills, other electric utilities may decide to do so in the future.

<sup>23</sup> See, e.g., Ohio Adm. Code 4901:1-10-19(A), which prohibits disconnection of service if a customer “fails to pay any charge for a nontariffed service, including competitive retail electric service (CRES).”

To avoid these unjust and unreasonable results, and to protect consumers, the PUCO should not allow utilities to deny a residential customer financing for non-premium line extension costs that exceed \$5,000 unless the customer has a delinquent bill with the utility, as defined in Ohio Adm. Code 4901:1-18-04(A). That rule states that a customer's bill is considered delinquent if any one of the following three circumstances occurs:

- (1) The customer has not made full payment or arrangements for payment by the due date, for any given bill containing a previous balance for regulated services provided by the utility company.
- (2) The customer is in default on an extended payment plan.
- (3) The customer fails to make the initial payment on an extended payment plan.

The PUCO should modify its Order so that Ohio Adm. Code 4901:1-9-07(D)(1)(c) reads as follows:

The customer shall make arrangements with the electric utility for the payment of the non-premium line extension costs that exceed five thousand dollars. The electric utility shall afford the nondeveloper, individual homeowner the option of paying those costs, plus carrying costs, on a prorated monthly basis for up to fifty months, so long as the homeowner does not have a delinquent bill, as defined in Ohio Adm. Code 4901:1-18-04(A), with the utility.

By referencing Ohio Adm. Code 4901:1-18-04(A), the PUCO would limit the denial of financing for expensive line extensions to those instances where the residential customer is in arrears for regulated service or for previous payment arrangements. This would be reasonable and would provide greater consumer protections than rule 4901:1-9-07(D)(1)(c) as adopted in the Order.

#### IV. CONCLUSION

OCC appreciates the PUCO's efforts to protect consumers in the metering rules. The PUCO, however, should modify its Order to improve consumer protections. The PUCO should remove the phrase "so long as the homeowner does not owe an unpaid debt to the utility" from adopted rule 4901:1-9-07(D)(1)(c). In its place, the PUCO should insert the phrase "so long as the homeowner does not have a delinquent bill, as defined in Ohio Adm. Code 4901:1-18-04(A), with the utility."

This action would protect consumers by restoring the PUCO's intent, in revising the rule, to avoid granting the electric utility unfettered discretion in determining who may be offered financing. The PUCO should grant the rehearing OCC seeks in this Application.

Respectfully submitted,

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/s/ Terry L. Etter

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Application for Rehearing was served via electronic transmission upon the persons listed below, on this 26<sup>th</sup> day of September 2014.

/s/ Terry L. Etter

Terry L. Etter

Assistant Consumers' Counsel

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Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.