BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation into Long-Term Solution Concerning Disconnection of Gas and Electric Service in Winter Emergencies.	))))	Case No. 83-303-GE-COI

OPINION AND ORDER

The Commission, pursuant to Sections 4909.16 and 4933.122 Revised Code, coming now to consider the above-entitled matter and having reviewed the proposals of our Staff and the comments of the parties thereon, the proposals of the parties, the testimony of our Staff, the parties, and public witnesses, the briefs and reply briefs tendered herein, and being otherwise fully advised in the premises issues this our Opinion and Order.

HISTORY OF THE PROCEEDING:

This proceeding is an outgrowth of Case No. 82-1304-GA-COI. In that case, Columbia Gas of Ohio, Inc. presented a plan providing that those whose service had been disconnected for nonpayment could have their service reconnected upon payment of one-half of the past due amount. The customer would then pay off the arrearage in monthly installments. On October 27, 1982, this Commission initiated an investigation into the plans of each of the gas and natural gas companies under our jurisdiction to provide for reconnection of service to those who had had their service disconnected for nonpayment of their bills. By Entry on Rehearing in Case No. 82-1304-GA-COI dated November 24, 1982, we expanded the scope of our investigation to include the plans the electric light companies under our jurisdiction had for reconnecting the service of their customers who had been disconnected for nonpayment.

Also on November 24, 1982, the Commission, concerned about the number of residential gas or electric customers unable to obtain service as a result of disconnection for nonpayment of bills because of the economic recession, increases in the cost of gas and electric service, and a decrease in the level of governmental assistance, found that an emergency existed within the meaning of Section 4909.16 Revised Code and took the following action:

A. Prohibited each gas, natural gas, or electric light company subject to the jurisdiction of the Commission from disconnecting residential gas or electric service for nonpayment of bills from December 1, 1982 through March 31, 1983; and

B. Ordered each gas, natural gas, or electric light company subject to the jurisdiction of the Commission to reconnect service to residential gas or electric customers who had been disconnected for nonpayment, provided that the customer paid:

1. One-third of the outstanding balance, or

2. $200.00, whichever was less.

Ohio Power Company (December 22, 1982) and Columbus & Southern Ohio Electric Company (December 23, 1982) filed applications for rehearing of this Commission's November 24, 1982 Entry imposing a moratorium on the disconnection of gas or electric service during

the winter of 1982-1983. Inter alia, the companies cited the Commission's failure to take into consideration a customer's ability to pay before imposing the moratorium as the reason for their requests for rehearing. By Entry dated January 19, 1983, we scheduled a hearing in Case No. 82-1304-GE-COI to reconsider this issue. After hearings on February 9, 10, and 11, 1983, this Commission issued on March 2, 1983, an Order on Rehearing in which we found that the prohibition on disconnection should not be modified. In the same Order we noted that because of the rising costs of gas and electricity and the current economic conditions some people are unable to adequately provide for themselves and their families. This included the inability of some to pay their utility bills. Consequently in the same Order on Rehearing, we initiated the instant proceeding to investigate long-term solutions to the problems arising from winter emergency situations and tentatively set the matter for hearing for June 14, 1983.

By an Entry in this case dated March 30, 1983, at the request of the Governor of the State of Ohio, we moved these proceedings forward to May 4, 1983. In the same Entry, we scheduled this matter for public hearings in Columbus, Cleveland, Toledo, Cincinnati, and Akron on May 4, May 5, May 9, May 11, and May 12, 1983, respectively. Pursuant to a consensus of the parties, our Attorney Examiner divided the proceeding into two litigation committees or "task forces" by Entry dated May 6, 1983. The committees were denominated "jurisdictional" and "non-jurisdictional". Both met several times. Meetings of the non-jurisdictional committee have been continued indefinitely pending the termination of the hearings regarding those issues in controversy involving matters within the Commission's jurisdiction. The jurisdictional committee agreed to a stipulation on a number of issues (see discussion below); the remaining issues were the subject of a hearing in Columbus, Ohio, which began on July 25, 1983, and concluded on August 5, 1983. Briefs were filed by the parties on August 30, 1983, and reply briefs on September 8, 1983.

By Entry dated September 21, 1983, the Commission set proposals concerning weatherization and residential energy conservation for hearing beginning in Columbus, Ohio, on October 24, 1983.

APPEARANCES:

Anthony J. Celebrezze, Jr., Attorney General of Ohio, by Steven H. Feldman, Assistant Attorney General, 375 South High Street, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

William A. Spratley, Ohio Consumers' Counsel, by David Bergmann and Richard Ganulin, Associates Consumers' Counsel, 137 East State Street, Columbus, Ohio 43215, on behalf of Residential Customers of Ohio Investor-owned Utilities.

Richard A. Castellini, City Solicitor, City of Cincinnati, by James P. McCarthy, III, Assistant City Solicitor, and Nancy Simmons, Assistant City Solicitor, Room 214 City Hall, 801 Plum Street, Cincinnati, Ohio 45202, on behalf of the city of Cincinnati.

Joseph P. Meissner, Legal Aid Society of Cleveland, 1233 West Sixth Street, Cleveland, Ohio 44113, on behalf of Greater Cleveland Welfare Rights Organization, Western Reserve Alliance, Low Income People Together, and Cleveland Tenants Organization.

Frank J. Wassermann and Drew Diehl, Legal Aid Society of Cincinnati, 901 Elm Street, Cincinnati, Ohio 45202, on behalf of Citywide Coalition for Utility Reform.

Handelman & Kilroy, by Mary J. Kilroy, 186 East 11th Avenue, Columbus, Ohio 43201, on behalf of Fight Don't Freeze.

Bell & Randazzo Co., L.P.A., by John W. Bentine and Langdon D. Bell, 21 West State Street, Columbus, Ohio 43215, on behalf of Industrial Energy Consumers.

Muldoon, Pemberton, Ferris & Hill, by David L. Pemberton, 50 West Broad Street, Columbus, Ohio 43215, on behalf of The Arlington Natural Gas Company, Consumers Natural Gas Company, Oxford Natural Gas Company, Pike Natural Gas Company, Sheldon Gas Company, The Suburban Fuel Gas, Inc., and The Waterville Gas & Oil Company.

Rosemary Grieme and James J. McGraw, 139 East Fourth Street, Cincinnati, Ohio 45202, on behalf of The Cincinnati Gas & Electric Company.

Teri L. Whittaker and Linnea R. Grooms, Courthouse Plaza Southwest, P.O. Box 1247, Dayton, Ohio 45401, on behalf of The Dayton Power and Light Company.

Thomas P. Croskey, Edison Plaza, 300 Madison Avenue, Toledo, Ohio 43652, on behalf of The Toledo Edison Company.

Stephen B. Seiple, 200 Civic Center Drive, P.O. Box 117, Columbus, Ohio 43216-0117, on behalf of Columbia Gas of Ohio, Inc.

Jones, Day, Reavis & Poque, by David A. Kutik and Paul T. Ruxin, 1700 Union Commerce Building, Cleveland, Ohio 44115, on behalf of The East Ohio Gas Company, West Ohio Gas Company, and Ohio River Gas Company.

Bell & Randazzo Co., L.P.A., by Samuel C. Randazzo, 21 East State Street, Columbus, 43215, on behalf of Ohio Gas Company.

David W. Whitehead, Illuminating Building, 55 Public Square, Cleveland, Ohio 44101, on behalf of The Cleveland Electric Illuminating Company.

James L. Reeves, 215 North Front Street, Columbus, Ohio 43215, on behalf of Columbus and Southern Ohio Electric Company.

Edward G. Kennedy, 1310 Fairmont Avenue, Fairmont, West Virginia 26554, on behalf of Monongahela Power Company.

Michael A. Gribler and Thomas A. Kayuha, 76 South Main Street, Akron, Ohio 44308, on behalf of Ohio Edison Company.

Alan Kessler, 301 Cleveland Avenue Southwest, P.O. Box 400, Canton, Ohio 44701, on behalf of Ohio Power Company.

DISCUSSION:

As noted in our Entry of July 6, 1983 in this case, the scope of this proceeding includes those matters, even if implemented on a year around basis, which will have a tendency to reduce the number of disconnections during the winter. These matters include, as set out in that Entry: year-round payment plans, percentage of income payment plans, this Commission's disconnect, reconnect, and deposit rules, weatherization and conservation, and the definition of "winter heating season".

A. UTILITY POSITION:

1. Legislation Required

From the testimony and argument in this case there appears to be a consensus as to the problem being addressed in this proceeding, i.e., how best to protect economically disadvantaged customers from the termination of their utility service during the winter months and to do this in the fairest and most effective manner. The utilities argue that the problem is basically a social problem outside of the area of expertise and authority of this Commission. The problem according to the utilities is essentially one of economics: poverty, unemployment, utility costs, and insufficient governmental assistance. The utilities contend that this problem should be dealt with by the legislature.

The Commission agrees that the problem can best be addressed by the legislature. But, adequate aid for welfare assistance generally and energy assistance specifically has not been enacted. Testimony on the record indicates that amounts in grants to those receiving Aid to Families with Dependent Children has increased only slightly since 1979 and that the Home Energy Assistance Program (HEAP) aid has decreased on a per household basis. Since the hearing in this case, the General Assembly has, in fact, voted to reduce funding for the Ohio Energy Assistance Program. It is clear that the trend is not towards the funding of these programs at the level necessary to avoid the disconnection of utility service during the winter. The increased tax funding of energy assistance and weatherization and conservation programs is the best long-term solution to the problems of the poor who are unable to pay their gas and electric bills during the winter. We are constrained to find, however, such a solution does not exist for the problem this winter. We therefore intend to take those actions within our jurisdiction which we believe will best address the problem, keeping in mind the impact upon all rate payers.

2. Proposals Not Long-Term Solutions

The utilities further argue that the proposals put forward by Commission Staff and the various consumer groups are not long-term solutions to the problem defined above. The utility position in this proceeding is that the only long-term solution to the problem is economic assistance and that all other proposals, falling short of being long-term solutions, are outside of the scope of this proceeding. As stated above, the Commission agrees that the legislature needs to adequately fund energy assistance and weatherization and conservation programs for low income consumers. That does not mean that such aid is the only ingredient of a comprehensive solution to the problem, only that it is a necessary ingredient. The Commission, in reviewing the proposals of our Staff, the parties, and those of the public who testified at hearings conducted across the state, is looking to assure itself that its rules are not barriers to those who need utility service during the winter months. Taking a positive view, we also want to assure ourselves that we are doing everything within our jurisdiction to solve the problem. From our perspective the true long-term solution to the problem is threefold: adequately tax funded energy assistance programs, adequately tax funded weatherization and conservation programs, and adequate Commission rules. Of these, only the first, energy assistance, is totally outside of this Commission's jurisdiction.

3. Present Rules Adequate

The utility parties to this proceeding contend that the Commission's present rules governing disconnection, reconnection, payment plans, and security deposits are adequate as they are presently written and are not in need of amendment. It is the

utilities' position generally that the rules as promulgated in Case No. 79-632-GE-UNC and amended in Case No. 82-376-GE-ORD have not been given an opportunity to operate due to the imposition of the moratorium during the winter of 1982-1983 [Columbia Gas of Ohio, Inc. (Columbia) Brief, pp. 5-7; Cleveland Electric Illuminating Company (CEI) Brief, p. 4; Columbus & Southern Ohio Electric Company/Ohio Power Company (C&SOE/Ohio Power) Brief, p. 3, The Cincinnati Gas & Electric Company (CG&E) Brief, p. 2; Ohio Gas Company (Ohio Gas) Brief, p. 1; Ohio Edison Company (Ohio Edison) Brief, p. 3; and Small Gas Companies (SGC) Brief, pp. 5-7]. To buttress the point Columbia points to the rules themselves which provide special payment plans to protect the poor during the winter, Rule 4901:1-18-05(C)(3) Administrative Code, and which prohibit the utility from disconnecting the service of any customer with a serious medical problem for up to 90 days if that customer obtains a medical certificate, Rule 4901:1-18-05(F) Administrative Code (Brief, p. 6).

The Office of Consumers' Counsel (OCC) and others dispute the statement "that the present Commission rules as they apply to disconnection and reconnection of service, payment plans, and security deposits are adequate". Specifically, OCC notes that the number of disconnections of utility service, 229,000 between June 1982 and May 1983, serve to indicate the inadequacy of Commission rules. OCC acknowledges that there is no direct correspondence between the number of people unable to pay for service and the number of disconnections, but argues that to deny any relationship is to fly in the face of logic and the public testimony in the case. OCC further argues that while it is impossible to derive the number of persons currently without service by subtracting the number of reconnections from the number of disconnections the argument over those currently without service "is mere semantic quibbling". The important fact, according to OCC, is that the statistics show the number without service at some point in time. OCC discounts the importance of the fact that the statistics also include those disconnected more than once (OCC Brief, pp. 5, 6).

Citywide Coalition for Utility Reform (CCUR) disagrees with the contention of some companies that the present rules should be left alone because significant changes promulgated in 1982 have not been given a chance to work. CCUR argues that there were only two changes in the rules in 1982 and both of these were minor. CCUR submits that the rules have in fact been tested and found wanting (CCUR Brief, p. 4).

While the Commission agrees with the utilities that not much valid information can be drawn from the number of disconnections, the points raised by OCC are important. The disconnect numbers represent households who have been without service (perhaps both gas and electric service, perhaps more than once during the twelve month period) for some period whether one day or whether thirty or more days. How many of those households would have been without service during the past winter absent the moratorium we do not know. But it was our belief and our fear that some significant number of our fellow citizens, normally those with the fewest options, would be without service that prompted the moratorium of the winter of 1982-1983 and the review of our rules in this proceeding. We agree with CCUR that the changes made in 1982 though important were relatively minor as to the effects they have in regard to winter disconnections.

The rules adopted in Case No. 79-632-GE-UNC and amended in Case No. 82-376-GE-ORD were the result of stipulations of the parties to those proceedings. In this proceeding we have had a chance to hear the arguments of the public, our Staff and the opposing parties. We have found, on balance, that our rules do provide adequate safeguards, but we have found weaknesses in the rules which we believe must be eliminated. The remainder of this

Opinion and Order will discuss the proposals the public, our Staff and the parties put forth in this proceeding. It is our opinion that our responses to these proposals will strengthen our rules and thus benefit not only those who are having difficulty paying for their gas or electric service but the companies we regulate and the vast majority of their customers who pay their bills in full and on time.

B. WINTER RULE 4901:1-18-05(C)

1. Winter Period

Rule 4901:1-18-05(C) Administrative Code provides special procedures for termination of service for nonpayment during the period from December 1 through March 15. During this period an electric or gas utility must provide additional notice; but, more importantly customers are able to maintain service during the coldest months by taking advantage of more liberalized payment plans.

A number of public witnesses, the Commission Staff (Staff), OCC, and the city of Cincinnati (Cincinnati) would like to extend this period. Staff would increase the period from December 1 to April 15 while OCC and Cincinnati would extend the period from November 15 through April 15.

The Staff argues that by extending the winter period more customers who are delinquent will be able to avail themselves of the more liberal payment plans available during the winter period thus avoiding disconnection (Staff Brief, p. 4).

OCC states in support of its position that the winter period should begin at the point where heating becomes a significant and common necessity and should end only when the need for heating falls below that settled degree of necessity (OCC Brief, p. 26). Cincinnati argues that the winter period is not a moratorium but a period during which customers can be assured of essential services by making minimal payments (Cincinnati Brief, p. 7). Both OCC and Cincinnati, using data supplied by The East Ohio Gas Company (EOG) witness Darrell Dunlap (EOG Exh. 2, Sch. 8), submit that the November 15-April 15 period meets their respective criteria.

The utility parties to this proceeding oppose the extension of the winter period beyond its current bounds. In support of their position the utilities argue that none of the data relied upon by OCC and Cincinnati is probative of the conditions in Ohio during the winter. This has apparently been recognized by both OCC and Cincinnati who have supported their positions on brief, as noted above, by relying on EOG supplied data. The utilities contend that the studies the Staff relied upon to support its proposal were shown to be faulty and should be ignored. The utilities also point to the fact that the Staff chose the states it used to compare to Ohio only because the winter periods used by those states support Staff's position. In choosing the states which it did Staff ignored three of the five states contiguous to Ohio; did not look at the totality of the winter rules of the states it chose; and failed to make any temperature comparisons (EOG Brief, pp. 34-37; Columbia Brief, pp. 18-21; DP&L Brief, p. 7; SGC Brief, p. 74).

In addition to attacking the evidentiary support for these proposals to extend the winter period, a number of utilities argue that the increased cost to the company and ultimately to its paying customers does not warrant the extension (EOG Brief, p. 38; SGC Brief, p. 75). The Toledo Edison Company (Toledo Edison) believes the extension is not needed because it as well as other gas and electric utilities have self-imposed, voluntary plans whereby the utility will not disconnect service for

nonpayment where there is a weather forecast for temperatures below 20° fahrenheit [Toledo Edison Brief, p. 14; see also The Cincinnati Gas and Electric Company (CG&E) Exh. 1, p. 12)].

The Commission agrees with the observation made by EOG witness Dunlap when he testified:

> The question of when the winter period should start (November 1, November 15, or December 1) and thus how long the winter period should last is essentially a decision as to under what conditions the Commission feels the customer should have the extra protection of the winter rules. But when viewed practically, this question presents an exercise in line drawing (EOG Exh. 1, p. 19).

While the Commission has twice before approved stipulations which provided for winter periods agreed to by the parties (Case Nos. 79-632-GE-UNC and 82-376-GE-ORD), this is the first time we have been called upon to consider this matter in detail.

The Commission is not impressed by the cost estimates provided by the companies to determine the cost of extending the winter period. The companies did not place into evidence the basis for these estimates nor in developing the estimates could they have determined the impact of extending the winter period as that impact will be affected by other Commission actions in this case. The utilities' threshold of 20° Fahrenheit is inadequate.

The arguments made by the utilities in regard to the data relied upon by the Staff and that initially relied on by OCC and Cincinnati are valid. If that were the only data on the record, the proposals would fail for lack of evidence to support them. However, we have reviewed the weather data provided by EOG (EOG Exh. 2, Sch. 8) in making our determination of the winter period. The source of the data is the National Oceanic and Atmospheric Administration, Climatography of the United States No. 84, Cleveland, Ohio. The data represents a 30 year average of the maximum, minimum, and average temperatures for various days of the year beginning with November 1 and ending May 15 for Cleveland, Ohio.

The Commission is establishing a winter period of November 1 through April 15. There are a number of practical reasons for choosing these dates. First the average minimum and average temperature for this date, as shown on EOG Exh. 2, Sch. 8, are above freezing. The average minimum temperature for November 1 in Cleveland is 39° fahrenheit while the average temperature is 47° fahrenheit. The average minimum for Cleveland on April 15 is 38° fahrenheit while the average temperature is 48° fahrenheit. Disconnection of utility service at these temperatures may be uncomfortable but it should not be injurious to the healthy person or to property. If one is sick, the rules provide a certification process by which the occupant of a residential unit containing a sick person may temporarily forestall the termination of the gas or electric service, Rule 4901:1-18-05(F) Administrative Code. Secondly, we picked these dates in conjunction with our adoption of the percentage of income payment plan (see discussion below). As a provision of that plan, we require the delinquent customer to pay an amount during the non-winter period equal to a specified percentage of the household income or the current monthly bill, whichever is greater. Our reason for doing this is to put a cap on non-winter usage, some of which is discretionary.

The Commission is aware that Cleveland is one of the colder areas in the state. Similar data for central and southern Ohio,

using the same criteria, might produce a different winter period. We choose not to develop different "winter periods" for different areas of the state. We believe that the use of data for the northern area of Ohio will build in a margin of safety unavailable if instead we chose similar information from central or southern Ohio on which to base our decision.

2. Calculation of One-Third Plan

Rule 4901:1-18-05(C)(3) Administrative Code describes the calculation of the one-third winter plan as "one-third of the amount remaining due after deduction of all available governmental assistance for utility bills from such amount . . .." Commission Staff has proposed a procedure whereby the arrearage is divided by three and the governmental assistance is subtracted from the amount due on the first payment. During cross-examination counsel for Ohio Edison and EOG propounded a hypothetical to Staff witness James Ross in which it is assumed that a customer had an arrearage of $200, had monthly bills of $100 for three successive months, and received a one-time energy assistance payment of $70 for the first month. Below is a comparison of the out of pocket costs to the customer under the Staff proposed method and the current method required by Rule 4901:1-18-05(C)(3) Administrative Code:

Month	Staff Proposal	Current Method
1	$ 30	$ 77
2	100	84
3	100	89

As a general proposition it appears likely that a customer who is delinquent would be better off with bills of a somewhat equal amount rather than with one relatively low bill and subsequent bills which are significantly higher. Additionally, our adoption of the percentage of income payment plan herein (see below), makes it unlikely that those who qualify for governmental energy assistance will opt for the one-third of the bill plan, making this question moot in most cases. Therefore, we find it unnecessary to change the current method of calculating the one-third winter plan.

C. EXTENDED PAYMENT PLANS - Rule 4901:1-18-04

A number of the parties as well as many of the public witnesses in this proceeding have proposed new standard payment plans or amendments to current standard plans. The term standard plan as used in this discussion means a plan a gas, natural gas, or electric light company is required to offer to those of its customers who meet the qualifications set out in the Commission rules. These plans which are set forth in Rule 4901:1-18-04(A)(1) and (2) Administrative Code require that a company offer:

> A plan that requires either six equal monthly payments on the arrearages in addition to full payment of current bills, or monthly payments equal to fifteen percent of total monthly household income, whichever is greater; or
>
> A plan that requires payment of one-third of the balance due each month (arrearages plus current bill).

The proposals to change these "standard" plans will be discussed below.

1. Twelve Month Plan

OCC, CCUR and Cincinnati have proposed that the Commission eliminate the six month and three month standard plans set forth in Rule 4901:1-18-04(A)(1) and (2) Administrative Code and replace these plans with the twelve month plan as the standard. They do not advocate that the plan replace the one-third or 15 percent of income, whichever is less, plan now available to those who qualify during the winter.

Under the twelve month plan a delinquent customer of a gas or electric utility would be permitted to enter a payment plan whereby he/she would be required to pay the current bill plus one-twelfth of the arrearages.

The parties presenting this proposal argue that since the implementation of the present standard payment plans in 1979, utility rates have increased at a much faster rate than the incomes of those who must pay these bills, especially the incomes of the poor (OCC Brief, p. 19; CCUR Brief, p. 7). The parties sponsoring the proposed twelve month plan submit that because utility rates have approximately doubled since 1979, when the current plans were devised, it is appropriate to double the length of time over which a customer may pay an arrearage (OCC Brief, p. 20; CCUR Brief, p. 7; Cincinnati Brief, p. 6). According to the proponents of the twelve month plan, if the payment period is not lengthened in the face of higher costs, especially utility costs, customers will be even less able to make timely payments on extended payment plans than they are now (OCC Brief, p. 20; CCUR Brief, p. 7).

The CCUR proposal differs somewhat from that of OCC and Cincinnati in that a delinquent utility customer under the CCUR plan would be required to pay both one-twelfth of the accumulated arrearages plus one-twelfth of his/her estimated billing for the next twelve months. CCUR contends that those customers entering such a plan in the spring or summer would be building a reserve for the winter (CCUR Brief, p. 8).

Fight Don't Freeze (Fight) opposes the twelve month payment plan, and indeed opposes any plan which spreads the arrearages over an extended number of months, as inadequate. Fight argues that while the plan may offer some relief to some customers it will fail to provide meaningful relief for thousands of low income customers. According to Fight this is especially true if the low income customer avails himself/herself of the percentage of income plan permitted under the Commission's rules during the winter, Rule 4901:1-18-05(C)(3) Administrative Code. In this latter case the customer would not be disconnected during the winter but his/her arrearages would mount and become part of a higher bill regardless of the extended payment plan used (Fight Brief, pp. 9, 10).

Eleanor Szekeley, witness for Low Income People Together (LIPT), testified that while the twelve month plan may help some, especially those on temporary layoffs or unemployment, it would not help the vast majority until such time as the economic situation improves (Tr. XI, p. 83). Even Noel Morgan, Cincinnati witness and Chief of the City's Consumer Protection Division, and Marsha Ryan, OCC's witness and the Deputy Director of Consumers Services for OCC, witnesses for the parties who proposed the plan, admit that standing alone, the twelve month plan is inadequate (Morgan prefiled testimony, p. 5, Tr. VIII, p. 46; Ryan, Tr. XI, pp. 12, 13).

The utilities opposed to twelve month plan for a variety of reasons including those posed by Fight and LIPT. FOG argues that the one-third plan, which it offers, is superior to the twelve month plan both for the customer and the company. The one-third plan is not based upon the calculation of the current bill plus a fraction of the arrearage but by taking one-third of the total

arrears and current bill, together (EOG Brief, p. 9). According to EOG witness Darrell Dunlap the one-third plan produces a lower bill to the low income customers in seven of twelve months according to one study (EOG Exh. 2, p. 11) and eight out of twelve months in another (EOG Exh. 3, Sch. 1). In addition to this benefit, Mr. Dunlap testified the one-third plan has the benefit of being easily understood and, because it is currently being offered and no changes are required, the plan is administratively less costly (Tr. X, pp. 6, 63).

Columbia and Ohio Edison note that there was no evidence presented in this proceeding that a twelve month plan would result in fewer disconnections than presently experienced (Columbia Brief, p. 16; Ohio Edison Brief, p. 25). They and Toledo Edison argue that the six month plan was implemented to allow delinquent customers to "catch up" on winter bills during the warmer weather when bills are lower. This purpose they submit is defeated by the twelve month plan since winter arrearages are not completely eliminated during the non-winter period. Instead, these parties point out, during the winter subsequent to the initiation of a twelve month payment plan a customer who is delinquent must pay not only the current winter month's bill but also one-twelfth of the accumulated arrearages carried over from the past winter through the extended payment plan (Columbia Brief, p. 17; Ohio Edison Brief, p. 24; Toledo Edison Brief, p. 13). A number of companies argue that increasing the period over which customers may make up delinquencies will increase their costs and eventually rates (Ohio Edison Brief, pp. 24, 25; SGC Brief, p. 21; Toledo Edison Brief, p. 13).

The Commission finds the arguments of those opposing the establishment of the twelve month extended payment plan as a standard plan to be compelling. Especially compelling is the fact that groups which specifically represent low income customers in this proceeding believe the twelve month plan will not benefit the poor. Evidence elicited on the record indicates that the twelve month plan not only would fail to provide long term relief, but would exacerbate the problems of those we seek to help while increasing costs which would ultimately be paid by the remainder of the utilities' rate payers. For these reasons the Commission must reject the proposal of OCC, CCUR, and Cincinnati to include the twelve month extended payment plan as a standard plan in this Commission's rules. The Commission encourages the gas and electric utilities under our jurisdiction to provide plans longer than the six month extended payment plan provided in our rules when it appears that the plan is beneficial to the customer and the company. We view the circumstance described by LIPT witness Szekeley, where people who were laid off or unemployed return to work, as at least one instance in which a utility should exercise its discretion to grant the customer more time to make up the arrearages than is provided for in our rules.

2. Percentage of Income Plans

Public witnesses and parties representing low income consumers testified in favor of plans prohibiting the disconnection of gas and electric service as long as the customer pays at least some specified percentage of his/her income. These plans differ as to the actual percentage of income the customers would be required to pay. They also differ as to the manner in which arrearages would be treated.

Bishop John Burt of the Episcopal Diocese of Ohio, among others, argues in favor of a plan whereby to avoid having gas or electric service disconnected those who are eligible for home energy assistance and who are unable to pay their utility bills would be required to pay 15 percent of their monthly income toward those bills and to exhaust all sources of assistance, such

as assistance from the Home Energy Assistance Program, to pay those bills (Tr. II, pp. 41, 42).

Marlane Sedlacek representing the utility committee of Neighborhood People In Action testified in favor of a 5 percent plan which would apply to those whose income was just too high for HEAP. Ms. Sedlacek stated that the arrearages resulting from the plan she advocated should not be passed on to the Company's other consumers (Tr. II, pp. 63, 64).

The Reverend Bill Filbern speaking on behalf of the Energy Assistance Task Force of Franklin County advocated that income eligible families and individuals be permitted to pay a total of 15 percent of their income during the winter months (10 percent to the primary heating source and 5 percent to the secondary heating source) and to enter into a one-eighth plan outside the winter months. Critical to the Reverend Filbern's plan is that those eligible take advantage of all available energy assistance (Tr. I, pp. 81, 82).

Many of the witnesses who testified during the five evening hearings described the extremely difficult choices those with insufficient income must make such as whether to buy medicine or pay their utility bills, whether to buy clothes for their children or pay their utility bills, whether to buy food for their family or pay their utility bills.

Similar in tenor to the proposals made by Bishop Burt, Ms. Sedlacek, and Reverend Filbern are the proposals put forward by Fight, CCUR, and the Greater Cleveland Welfare Rights Organization et al. (GCWRO), parties to this proceeding.

Fight Don't Freeze argues that the only solution to the problem of utility disconnection in the winter is one based upon the income of the user. Fight proposes payments of 5 percent of income toward gas bills and 5 percent towards electric bills (Fight Proposal, p. 5). It is implicit in both Fight's proposal and its argument on brief that in Fight's view those who are paying at least these percentages of income for utility service should not be responsible for any arrearages which would result if the amount paid does not equal the cost of the utility service used (Fight Proposal, p. 8; Fight Brief, p. 8).

The Citywide Coalition For Utility Reform states on brief "that major long-term solutions to the gap between price and the ability to pay are called for, including significant increases in government energy assistance and increased energy conservation opportunities for public assistance recipients customers (sic) and the working poor" (at p. 6). Noting that there will be no significant increases in HEAP before the coming heating season and that energy conservation programs could easily require two years simply to begin implementation, CCUR proposes, inter alia, that the Commission adopt a percentage of income payment plan. CCUR proposes that only those customers eligible for energy assistance, i.e., those with household income of below 150 percent of the federal poverty level, be eligible for the plan. Instead of the 5 percent of income towards gas bills and 5 percent of income towards electric bills proposed by Fight, CCUR urges the Commission to adopt a plan requiring 10 percent of income be paid for the primary space heating utility and 5 percent for the non-space heating utility or 15 percent for combination service or single (all electric service). Under the CCUR proposal the customer would be responsible for his/her arrearages. The customer would also be required to remain on the plan and pay the specified percentage of income as long as an arrearage remained on the bill regardless of the size of the current month's bill. CCUR would also limit the amount of arrearages a customer could accrue to the amount actually billed during the preceding twelve months or an estimated bill for such

period if the customer has not had twelve months of continuous service. CCUR recognizes that a percentage of income plan eliminates an important incentive to conserve. The limitation on arrearages is CCUR's answer to this problem (CCUR Brief, pp. 12-14).

Greater Cleveland Welfare Rights Organization, Inc. et al. proposes that customers who are HEAP eligible or otherwise economically unable to pay and have exhausted all state and local resources should be required to pay a maximum of 15 percent of their monthly income toward utility payments with no more than 5 percent being required for any one utility service (GCWRO Proposal, p. 2). On brief, counsel for GCWRO argues that, while from the perspective of the poor, the lower the percentage the better, at this point the group is recommending that the Commission adopt at least one of the two percentages of the income plans supported on the record (the 5%-5% plan or the 10%-5% plan) (GCWRO Brief, p. 19).

The Industrial Energy Consumers (IEC) and the utility parties to this proceeding oppose the percentage of income plans. These parties argue generally that the percentage of income plans proposed in this proceeding are unsupported by the evidence of record, constitute an income redistribution scheme already rejected by this Commission, will serve to increase rates without attendant benefits, or are unreasonable and unlawful (IEC Brief p. 2; Ohio Gas Brief, pp. 3, 6; C&SOE/Ohio Power Brief, p. 5; CEI, p. 6; DP&L, pp. 3-4; Small Gas Companies Brief, p. 72; EOG Brief, pp. 21-28; Columbia Brief, pp. 10-13). Both Columbia and Toledo Edison argue that the 15 percent plan already provided for in Rule 4901:1-18-05(C)(3) Administrative Code is properly limited to the winter season where, as Columbia phrases it "heat is a necessity of human life" (Columbia Brief, p. 10; Toledo Edison Brief, p. 9).

This Commission has given serious consideration to the subject of extended payment plans generally and percentage of income plans specifically since the hearings in this matter were concluded. We have come to the conclusion that we should adopt a year-round percentage of income plan as a standard plan that is to be offered by each gas, natural gas, and electric light company under our jurisdiction. Therefore, we are amending Rule 4901:1-18-04(A)(1) Administrative Code by adding a semicolon after "current bills" in line three of that subparagraph and deleting everything thereafter until the word "or" in line four. We are adding a new subparagraph (B) after present subparagraph (A) and redesignating the present subparagraphs (B) and (C) as (C) and (D) respectively. New subparagraph (B) shall read as follows:

(B) NO GAS, NATURAL GAS, OR ELECTRIC LIGHT COMPANY SHALL DISCONNECT THE SERVICE OF ANY RESIDENTIAL CUSTOMER FOR NONPAYMENT AS LONG AS THAT CUSTOMER MEETS EACH OF THE FOLLOWING QUALIFICATIONS.

(1) HAS AN ANNUAL HOUSEHOLD INCOME OF 150 PERCENT OF THE FEDERAL POVERTY LEVEL OR LESS OR, IF UNEMPLOYMENT COMPENSATION IS THE SOLE SOURCE OF HOUSEHOLD INCOME, THE CUSTOMER HAS A HOUSEHOLD INCOME FOR THE PRIOR THREE MONTHS WHICH IS ANNUALIZED WOULD EQUAL 150 PERCENT OF THE FEDERAL POVERTY LEVEL OR LESS.

(2) DURING THE WINTER PERIOD AS DEFINED BY RULE 4901:1-18-05(C) ADMINISTRATIVE CODE PAYS AT LEAST:

(a) TEN PERCENT OF HIS/HER MONTHLY HOUSEHOLD INCOME TO THE JURISDICTIONAL UTILITY WHICH PROVIDES THE CUSTOMER WITH HIS/HER PRIMARY SOURCE OF HEAT; AND, FIVE PERCENT OF HIS/HER MONTHLY HOUSEHOLD INCOME TO THE JURISDICTIONAL UTILITY WHICH PROVIDES THE CUSTOMER A SECONDARY SOURCE OF HEAT.

OR

(b) FIFTEEN PERCENT OF HIS/HER MONTHLY HOUSEHOLD INCOME TO THE JURISDICTIONAL UTILITY THAT PROVIDES BOTH THE PRIMARY AND SECONDARY SOURCE OF HEAT.

OR

(c) FIFTEEN PERCENT OF HIS/HER MONTHLY HOUSEHOLD INCOME TO THE JURISDICTIONAL ELECTRIC UTILITY THAT PROVIDES THE TOTALITY OF ENERGY USED FOR HEATING PURPOSES TO HIS/HER RESIDENCE.

OR

(d) TEN PERCENT OF HIS/HER MONTHLY HOUSEHOLD INCOME TO THE JURISDICTIONAL UTILITY THAT PROVIDES THE PRIMARY SOURCE OF HEAT WHEN A NON-JURISDICTIONAL UTILITY COMPANY OR OTHER PERSON PROVIDES THE SECONDARY SOURCE OF HEAT;

OR

e) FIVE PERCENT OF HIS/HER MONTHLY HOUSEHOLD INCOME TO THE JURISDICTIONAL UTILITY THAT PROVIDES THE SECONDARY SOURCE OF HEAT WHEN A NON-JURISDICTIONAL UTILITY COMPANY OR OTHER PERSON PROVIDES THE PRIMARY SOURCE OF HEAT.

(3) DURING THE PERIOD OTHER THAN THE WINTER PERIOD AS DEFINED BY RULE 4901:1-18-05(C) ADMINISTRATIVE CODE PAY THAT PERCENTAGE OF HIS/HER INCOME REQUIRED BY SUBPARAGRAPH (B)(2) OF THIS RULE OR THE CURRENT BILL FOR NON-WINTER USAGE WHICHEVER IS GREATER.

(4) APPLIES FOR ALL PUBLIC ENERGY ASSISTANCE FOR WHICH HE/SHE IS ELIGIBLE.

(5) APPLIES FOR ALL WEATHERIZATION PROGRAMS FOR WHICH HE/SHE IS ELIGIBLE.

(6) PROVIDES PROOF TO THE JURISDICTIONAL UTILITY NO LESS OFTEN THAN ONCE IN EVERY SIX MONTHS THAT HE/SHE QUALIFIES FOR THIS PLAN.

(7) SIGNS A WAIVER PERMITTING THE AFFECTED JURISDICTIONAL UTILITY TO RECEIVE INCOME INFORMATION FROM ANY PUBLIC OR PRIVATE AGENCY PROVIDING INCOME OR ENERGY

ASSISTANCE AND FROM ANY EMPLOYER WHETHER PUBLIC OR PRIVATE.

FOR THE PURPOSES OF SUBPARAGRAPHS (B)(1) AND (B)(2) OF THIS RULE ANY MONEY PROVIDED TO THE JURISDICTIONAL UTILITY ON BEHALF OF THE CUSTOMER BY A PUBLIC OR PRIVATE AGENCY AS ENERGY ASSISTANCE SHALL NOT BE CONSIDERED AS HOUSEHOLD INCOME NOR SHALL IT BE COUNTED AS PART OF THE MONIES PAID BY THE CUSTOMER TO MEET THE PERCENTAGE OF INCOME REQUIREMENT.

Pursuant to subparagraph (B)(6) of Rule 4901:1-18-04 the applicant for the "15 percent of income plan" will be required to furnish proof to the jurisdictional utility no less often than once in every six months that he/she qualifies for the plan. Initially the utility may accept HEAP approval and/or an affidavit as income verification. Within 120 days of the journalization of this Opinion and Order, each gas, natural gas, and electric light company under our jurisdiction shall file for Commission approval a plan for the continuing verification of incomes of those applying for the percentage of income plan.

The Commission has adopted this year-round percentage of income payment plan for very practical reasons. We are not willing to stand by while others, too poor to pay for utility service during the winter, freeze. At the same time, we are ever mindful of protecting the vast majority of customers of utilities under our jurisdiction who pay their bills in full from responsibility for greatly increasing uncollectibles. We have in this proceeding looked at such alternatives to the percentage of income plan as maintaining the status quo, extending payment plans from six months to twelve or more months, and having another moratorium. All things considered, the percentage of income plan adopted by the Commission today will do the most to assist those in need to maintain utility service while protecting the companies' remaining rate payers.

Contrary to the argument of those who oppose the percentage of income payment plan, the plan adopted by the Commission is supported by the evidence of record, does not constitute income redistribution, and is reasonable and lawful. This plan does not constitute income redistribution because those customers who qualify for the plan are still liable for any arrearages on their bills. There is no debt forgiveness. The Commission is just foreclosing one method by which a utility may exercise its rights to collect for the debt. The utility still has available to it all of its other remedies at law. Because the customer is still liable for his/her arrearages, the Commission's percent of income payment plan does not constitute free service or a rebate as charged by opponents to the plan. The plan is not confiscatory. After the plan is in effect the utility will be able, as it has always been able, to recoup its bad debts through a rate case as provided in Chapter 4909 Revised Code. Nor does the plan adopted by the Commission unlawfully discriminate. All residential consumers similarly situated can take advantage of this plan. The policy of this Commission to prevent those without the present ability to pay their utility bills from freezing is a valid state purpose and is the basis upon which the Commission has established this plan. We believe it to be a rational basis.

As we state above, we have examined a number of alternatives to the plan adopted herein. For a discussion of the "12 month" extended payment plan see above. The frailities inherent in that plan are similar to those existing in plans which would extend payments over periods longer than twelve months. The status quo argued for by IEC and the utility parties to this proceeding has proven unworkable. At least since the winter heating season of 1976-77, the Commission has taken special care so that the poor

of this state do not freeze solely because they are unable to meet their winter utility bills. We have twice ordered moratoriums and we have ordered reconnection of service to those whose service has been disconnected for nonpayment on the payment of some portion of the bill or $200.00 whichever is less. We have taken these actions, as we have promulgated special winter payment plans, because we found existing payment plans to be wanting.

Many of those whose service was reconnected under the order of the Commission prior to the winter heating season of 1982-83 had their service disconnected again after the end of the heating season because they could not meet the payment requirements of any of the standard payment plans. Therefore, the poor were receiving service during the period of greatest consumption, the winter, and were building high arrearages; during the summer, when these customers could begin paying down some of the arrearages, they had no service because they were not able to pay the amounts required by the standard plans. The plan adopted by the Commission today will remedy this problem. The customer so situated will be required to pay a stated percentage of his/her income as long as an arrearage exists, thereby reducing the amount of uncollectibles faced by the other ratepayers. In the summer the customer will pay a stated percentage of his/her income or the amount of the current bill whichever is greater (Failure to pay the required percentage of income or the current bill whichever is greater will place the customer in default). This means that in all likelihood the customer will pay off at least part of the accumulated arrearage. This plan solves another problem, that of having service to residences disconnected during the summer. Though not having service during the summer doesn't entail the life or death emergency of the winter, it does constitute an emergency nevertheless. Those whose residences lack electric and gas utility service in the summer lack one of the basic requirements for health in our society.

The cost of this program is to some extent a matter of debate. From evidence adduced on the record the exact costs are unclear because of varying assumptions. It appears that this plan will cost less in monetary terms than the moratorium of 1982-83. It is manifestly clear that it will cost less in human terms than did the disconnections following that moratorium.

Optimally, everyone in our state would have the resources to pay all of his/her utility bills in full all the time. The fact is that they do not. Absent legislation providing energy assistance funds to make up the difference between what those with very limited resources can pay for utility service and the costs of the service they use, we have no choice but to act.

3. Extended Payment Plans - Written Copies

The Staff of the Commission has proposed that Rule 4901:1-18-04 Administrative Code be amended to add language requiring gas, natural gas, and electric light companies under our jurisdiction to give copies of extended payment arrangements including the identity of the company representative who made those arrangements to the customer entering into an extended payment plan if the duration of the extended payment period exceeds 30 days. OCC supports this proposal.

The Staff argues that the additional language will minimize disputes as to the terms of the extended payment plans (Staff Brief, p. 6). OCC seems to argue that there is a fundamental consumer right to having a copy of the terms of an extended payment plan (OCC Brief, p. 7; OCC Exh. 1, p. 9).

The Commission finds notably missing in the arguments of Staff and of OCC two important factors:

A) That there have been or are disputes between consumers and gas, natural gas, and electric companies which would be solved by the mere fact that the customer had a written copy of the agreement; and

B) Consumers are unable to obtain copies of the arrangements upon request.

Because of the difference in operations among companies and the difference in the wishes and expectations of the customers which they serve, we do not believe it to be appropriate to require each company to supply a copy of the plan in all cases. Nevertheless, the Commission believes that customers seeking a written copy of the extended payment plan which they have entered into with a company should be supplied a copy of the plan and, to the extent such a plan was arranged personally by company personnel, the identity of the company employee arranging the plan. Therefore, we will amend the language of Rule 4901:1-18-04 Administrative Code to add subparagraph (E) which will read as follows:

(E) The company shall furnish upon the request of the customer entering into an extended payment plan a written, typed, printed, or computer generated copy of the plan and, if the extended payment plan was arranged by a company employee, the name of that employee.

4. Elimination of "Bidding Game"

As OCC states in its brief at page 10, when a customer of a gas and electric company telephones the utility to make payment arrangements the company need not orally inform the customer of the standard payment plan unless the customer fails to propose terms which are acceptable to the company. OCC terms this procedure a "Bidding Game" and argues that it should be eliminated. It is OCC's concern that requiring the customer to first propose a payment plan unacceptable to the company before he/she is informed of the standard plans places a severe burden on those customers who may not have read, or may not have understood, the explanation in the written notice. In an attempt to avert disconnection, such customers may well propose payment plans which they cannot meet (OCC Brief, p. 14).

Columbia contends that there is no good reason to inform a customer of all the alternative extended payment plans, if the customer, on his/her own, proposes payment terms acceptable to the company (Columbia Brief, pp. 15, 16). Columbia argues that for reasons of cash flow and fairness to those customers who pay in full and on time, it is important that the company get the best terms the customer can afford (Columbia Brief, p. 15).

The Commission believes that the term "Bidding Game" is an unfair characterization of the process OCC is presuming to describe. First, Rule 4901:1-18-05(A)(7)(b) Administrative Code provides, inter alia, that the notice of termination be in writing and include an explanation of the payment alternatives available to a customer whose account is delinquent. Second, Rule 4901:1-18-04 Administrative Code provides that a customer who is in default on an extended payment plan other than one of the standard plans provided in Rule 4901:1-18-04(A)(1) and (2) Administrative Code must be advised by the company of the availability of one of these plans if he/she has not already been so advised.

A customer who is making payment arrangements after receiving a notice of termination will have in his/her possession an explanation of the available payment alternatives in writing.

The Commission must presume that in the great majority of cases the customer will read this notice and at least be aware that various alternatives exist. Armed with this information, the customer calling the utility to make arrangement is likely to propose an amount which he/she thinks may be affordable. If the customer's estimation of what he/she can afford to pay is in error and he/she is again faced with service termination, he/she is still eligible for one of the standard extended payment plans if he/she was not on a standard plan. It appears to the Commission that the present procedure provides protection to the billpayer who is current, to the billpayer who is delinquent, and to the company. Therefore, OCC's proposal that the Commission alter its procedure as it relates to Rule 4901:1-18-04(A) Administrative Code as discussed herein is rejected.

5. Renegotiation of Payment Plans

The Office of Consumers' Counsel has proposed an amendment of Rule 4901:1-18-04 Administrative Code to require gas, natural gas, and electric companies to renegotiate any extended payment plan upon demonstration by the customer of changed economic circumstances. In support of its proposal OCC argues that the companies should be required to take into account a customer's individual circumstances such as the amount of the delinquent account, the length of time the balance has been outstanding, the customer's recent payment history, the reasons payment has not been made, the customer's ability to pay, and such other factors as the customer's health, age, and number of dependents (OCC Proposal, p. 12). OCC notes that companies do in fact renegotiate payment plans but that such renegotiations are exceptions to the rule. OCC submits that it is better for everyone concerned to adjust the payment required and to continue service than to allow the customer to default and to disconnect the service (OCC Brief, pp. 22-25).

In opposition, EOG argues that the proposal is vague as to the meaning of "changed economic circumstances" and is unnecessary in light of current utility practices of entering into more generous payment plans than required under the rules when circumstances dictate (EOG Brief, pp. 28-31). Columbia submits that such an amendment would not only require public utilities to monitor the economic condition of every customer on an extended payment plan, but would require utilities to renegotiate payment plans upon the slightest asserted change (Columbia Brief, pp. 17, 18). The SGC argues that OCC's proposal "constitutes a serious impairment of contracts problem as presented in this case and could not be lawfully imposed upon the companies" (SGC Brief, p. 81).

The record in this case does not support the adoption of OCC's proposal. The essential question the Commission must concern itself with in relation to this proposal is the definition of "changed circumstances". We each may know what constitutes "changed circumstances" in an individual case but in establishing a rule we are not given the luxury of looking at the individual case. Absent sufficient criteria the utility would be faced with renegotiations in every case in which it threatens termination of service. Clearly, this can't be what OCC has in mind. Presently, as demonstrated by the record, many utilities do renegotiate payment plans based upon the individual circumstances of the customer. We encourage all utilities to renegotiate extended payment plans when under the circumstances of the case it appears that renegotiation will assist the customer in paying off his/her bill. Because renegotiation depends heavily upon the facts of the individual case and because the record is insufficient for the Commission to develop a formula to determine when renegotiation should be mandatory, we must reject OCC's proposal.

D. RECONNECTION - RULE 4901:1-18-06

1. Partial Payment

Commission Staff, OCC, and Cincinnati have made slightly different proposals which, if adopted, would allow a customer to have his/her gas or electric service restored upon payment of something less than one hundred percent of the amount due and owing.

Staff proposes that a customer be reconnected if he/she pays the amount in which he/she is in default on a payment plan within fourteen days of the disconnection of service. If the customer fails to make the required payment within the fourteen days, he/she would be required to pay the full amount of the delinquency (Staff Exh. 1, p. 8).

OCC proposes that the Commission amend its rules to permit reconnection upon payment of the missed payment and the reconnection charge. OCC would further permit those who failed to enter into an extended payment plan prior to disconnection to have their service reconnected upon entering into an extended payment plan and paying the first installment plus a reconnection charge (OCC Brief, pp. 32, 33).

Cincinnati argues that restoration of service should be facilitated by application of standards which would permit the customer to make those payments necessary to restore him/her to the status quo. If the customer had been eligible for an extended payment plan prior to disconnection of service he/she should still be eligible after disconnection of service. If the customer had defaulted on an extended payment plan he/she should have his/her service reconnected after curing the default (Cincinnati Brief, p. 9).

In opposition to these proposals, the utilities argue that if customers are reconnected upon less than full payment of arrears, many will eventually have their service disconnected for nonpayment again (EOG Brief, pp. 46, 47; Columbia Brief, p. 26; SGC Brief, p. 78). CEI states in its brief that it is imperative that the companies retain the right to require 100 percent payment upon reconnection of service when past payment history dictates such a policy in order to protect the paying customers (at p. 8). Toledo Edison argues that under the current rules those customers who have been disconnected have been provided more than adequate notice of extended payment plans and for whatever reason have chosen not to avail themselves of these options. In the meantime they have had the continuing benefit of utility service for which they have not paid (Toledo Edison Brief, p. 15).

There are two competing considerations presented here: first, the right of the utility to be paid for service rendered and second, the desire of the Commission that those who are honestly trying to pay their bills continue to receive service. Generally those who enter into payment plans are trying to pay their bills even though they may be having difficulty in doing so. These customers, we believe, should be encouraged to continue to try rather than being penalized for failure. It is to the interest of the utility and to its other customers as well that the customer who has defaulted upon a payment plan be reconnected upon curing the default and paying applicable reconnection charges (including a security deposit if necessary).

For those who have entered into payment plans and for some reason have defaulted we are amending Rule 4901:1-18-06(A) Administrative Code to require reconnection upon payment or proof of payment, including any reconnection charge, of the amount owed

for the service that was previously disconnected or of an amount sufficient to cure the default on an extended payment plan, such as those described in Rule 4901:1-18-04 of the Administrative Code, including any reconnection charge. However, we see no reason to place those who ignore their responsibility to pay for the utility service they have used on the same level with those who try to meet their obligations. Prior to disconnection these customers receive notice of the standard payment plans available from the company. If they choose not to pursue these payment options then they do so at their own peril. The proposals as to those customers are rejected.

2. Security Deposits

a. Installment Payments

The Commission Staff and a number of the parties to this proceeding have proposed that the Commission alter the present manner in which utilities collect security deposits. These are monies collected by utilities from specific customers who because of their payment histories are considered "credit risks". Section 4933.17 Revised Code and Rule 4901:1-17 Administrative Code authorize gas, natural gas, and electric light companies to collect security deposits. Both the statute and the rule provide limits within which the utility must operate in order to collect such deposits.

The Staff has adopted the position that the Commission's present rule is adequate as written. Staff argues, though, that the rule should be interpreted to mean that the payment of a deposit should not be required prior to service being reconnected, but should be carried as an obligation of the delinquent account (Supplemental testimony of James Ross, p. 3).

The Office of Consumers' Counsel argues that nothing in the Commission rules or Section 4933.17 Revised Code dictates that the security deposit be paid in one lump sum prior to reconnection. OCC supports a plan whereby the customer from whom a security deposit is required could pay in three installments, the first prior to reconnection and the other two in the two succeeding months (OCC Brief, p. 35 et seq.). Cincinnati, advocating a variation on the same theme, would require one-third of the deposit prior to reconnection and the balance over six months (Cincinnati Brief, p. 10).

The utility parties oppose any proposal that would prohibit them from collecting a security deposit before providing service. First, the companies argue, security deposits are important in reducing uncollectibles; second, Section 4933.17 Revised Code authorizes gas and electric utilities to collect security deposits. Preventing a utility from collecting such a deposit before service is provided and requiring the utility to collect the deposit, if one is required, on an installment basis contravenes the utility's rights under the statute. Such requirements are, it is argued, tantamount to outlawing security deposits since absent having the money before service is rendered the utility has no security that the customer will pay his/her bill as it comes due (Columbia Brief, p. 36; EOG Brief, pp. 48-51; Toledo Edison Brief, p. 16; CEI Brief, p. 8).

Gas and electric utilities have a right under Section 4933.17 Revised Code to collect security deposits under prescribed conditions. Security deposits by their very nature must be paid prior to service being rendered or else there is no security: there is only a promise to pay. As this Commission recognizes in Rule 4901:1-17-02 Administrative Code, the fair and non-discriminatory administration of written company policies concerning security deposits are in the public interest. Security deposits avoid, to the extent practicable, the creation of a

burden arising from uncollectible bills which would have to be borne ultimately by all the utility's ratepayers. For these reasons we reject our Staff's interpretation of Rule 4901:1-17 Administrative Code and the proposals of OCC and Cincinnati that gas and electric utilities under our jurisdiction be required to collect at least part of any security deposit on an installment basis.

b. Interest

Staff witness Robert P. Crossin offered testimony regarding the proposal of the Commission's Staff that utilities requiring a security deposit pay at least 5 percent interest on the money so deposited. Mr. Crossin noted that most companies pay interest at a rate of 5 percent to 6 percent but that a number pay at a lower rate. Staff chose 5 percent because it approximates the rates available on passbook savings accounts. Staff argues that such rates will assure customers a fair return on their deposits.

The Commission finds the proposal of its Staff in regard to prescribing an interest rate on security deposits to be reasonable and will, therefore, adopt it.

E. REPORTING REQUIREMENTS, RULE 4901:1-18-09

In its proposals filed with this Commission on May 17, 1983, OCC notes that "the most difficult thing to understand in these proceedings has been the dearth of information complied (sic) by the companies on matters pertinent to disconnection and reconnection" (OCC Proposals, p. 48). In fact the record of this case is replete with examples of the inability of the consumer groups who are parties to this proceeding to get hard data reflecting information such as the number of customers on specific payment plans, the number of customers who have defaulted on specific plans, even the number of customers currently without service. OCC proposes that the Commission amend Rule 4901:1-18-09 Administrative Code to require the companies to maintain monthly records of and file annual reports containing the following additional information:

a) The number of customers on each of the standard payment plans and any other payment plans.

b) The number of customers defaulting on each such plan;

c) The number of customers renegotiating plans;

d) The number of customers receiving a final notice whose account is then paid in full;

e) Of the number of customers disconnected, the number reconnected:

1) the same day;

2) within two days;

3) within four days;

4) within one week;

5) within two weeks;

6) within four weeks; and

7) after more than four weeks.

f) Of the number of customers disconnected for nonpayment, the number of accounts classified as inactive;

g) The amount in dollars of residential sales;

h) The amount in dollars of residential uncollectibles; and

i) The number of accounts represented by that uncollectible amount.

The utility companies argue that the proposal should be rejected because, they contend, that there has been no showing that such information will be relevant and that there is evidence to show that the information sought will be "extremely burdensome" on the companies (EOG Brief, p. 53). The Commission has little doubt that collecting and reporting the information sought will entail some expense and cause some burden to the gas, natural gas, and electric light companies under our jurisdiction. But, as OCC, we have been amazed in this proceeding as to the lack of information available by which to gauge the efficacy of our rules and the utilities' practices as they relate to disconnection, reconnection, and payment plans. Raw disconnection and reconnection data do not reflect the number of payment plans in effect, the number of defaults or even the number of customers currently without service. As the Attorney Examiner hearing this case was constantly reminded during the hearing by counsel for Ohio Gas Company, one can draw few conclusions from the disconnection and reconnection data supplied by the companies in this proceeding. That does not mean that the Commission is traveling blindly in this matter. There is substantial circumstantial evidence requiring a finding that a significant problem exists in the winter heating season requiring both legislation and a change in Commission rules. However, circumstantial evidence is insufficient to monitor the efficacy of the Commission rules. We will adopt, with modifications, exceptions, and additions, OCC's proposal regarding additional reporting requirements and amend Rule 4901:1-18-09 Administrative Code to require the following:

1) Total number of service disconnections for nonpayment.

2) Total dollar amount of unpaid bills represented by such disconnections.

3) Total number of service disconnections for nonpayment of customers qualifying for an extended payment plan under paragraph (B) of Rule 4901:1-18-04 of the Administrative Code.

4) Total dollar amount of unpaid bills represented by such disconnections.

5) Total number of final notices of disconnection issued for service disconnection for nonpayment.

6) Total dollar amount of unpaid bills represented by such notices.

7) Total number of residential customer accounts in arrears by more than sixty days.

8) Total dollar amount of such arrearages.

9) Total number of residential customers qualifying for an extended payment plan under paragraph (B) of Rule 4901:1-18-04 of the Administrative Code.

10) Total dollar amount of arrearages of customers on such plans.

11) Total number of residential customers qualifying for an extended payment plan under paragraph (A) of Rule 4901:1-18-04 of the Administrative Code.

12) Total dollar amount of arrearages of customers on such plans.

13) Total number of commercial customer accounts in arrears by more than sixty days.

14) Total dollar amount of such arrearages.

15) Total number of industrial customer accounts in arrears by more than sixty days.

16) Total dollar amount of such arrearages.

17) Total number of security deposits received from residential customers.

18) Total dollar amount of such deposits.

19) Total number of nonpayment disconnect reconnections.

20) Of the number of customers disconnected, the number reconnected within two days.

21) Of the number of customers disconnected, the number reconnected after two days but within one week.

22) Of the number of customers disconnected, the number reconnected after one week but within four weeks.

23) Of the number of customers disconnected, the number reconnected after four weeks.

24) Of the number of customers disconnected, the number of accounts classified as inactive.

25) Total dollar amount of uncollectible accounts for all customer classes.

26) Total number of residential accounts classified as uncollectible.

27) Total dollar amount of residential uncollectible accounts.

28) Of the residential uncollectibles, the total number of uncollectible accounts which had qualified for an extended payment plan under paragraph (A) Rule 4901:1-18-04 of the Administrative Code.

29) Total dollar amount of such uncollectible accounts.

30) Total number of residential customers.

31) Number of commercial accounts classified as uncollectible.

32) Total dollar amount of commercial uncollectibles.

33) Total number of commercial customers.

34) Number of industrial accounts classified as uncollectible.

35) Total dollar amount of industrial uncollectibles.

36) Total number of industrial customers.

In addition, we are requiring that each company shall provide to the Commission, upon request, the monthly energy consumption data by account number of a selected sample of eligible home energy assistance program customers for the period between April first and March thirty-first. The Commission will provide each company with the sample accounts for which energy consumption data is required. This data shall be filed with the Commission within ninety days of its request. We intend to closely monitor the data filed pursuant to the newly amended Rule 4901:1-18-09 Administrative Code. It is our firm opinion that this data will permit us to determine the efficacy of the disconnection and reconnection procedures, payment plans, and security deposits required by our rules.

The Commission is concerned that in the case of small utilities, defined for purposes of this proceeding as gas, natural gas, and electric light companies with 5,000 or fewer customers, the costs and burden of collecting and reporting this data outweighs any possible benefits. Therefore, those gas, natural gas, and electric light companies under our jurisdiction with 5,000 or fewer total customers are exempted from the requirement of supplying the additional data required by the amendment of Rule 4901:1-18-09 Administrative Code.

F. STIPULATIONS

As we noted above, the Staff and a number of the parties to this proceeding have entered into a stipulation. It is true that all of the parties or groups of parties represented in this case have not signed the stipulation itself. Of these, the Industrial Energy Consumers has expressed no interest in the subject matter of the stipulation either at the hearing or on brief. Counsel for the others, Fight and GCWRO et al., were present at the hearing where the fact of the agreement of the parties to the stipulation was discussed and though they have not entered into the stipulation they did not express opposition to it.

Stipulations are permitted pursuant to Rule 4901-1-30 Administrative Code. While stipulations are not binding upon the Commission we give them careful consideration. Some of the stipulations are agreements of the parties and Staff to refrain

from advancing certain positions in this proceeding. These agreements are now moot and for the purposes of this discussion will be ignored. The stipulations germane to this discussion are:

1. O.A.C. 4901:1-18-05(A)(3)

The language of this rule should read as follows:

> On the day of termination of service, the company will provide the customer with personal notice, or if no one is at home, written notice to the premises SECURELY ATTACHED IN A CONSPICUOUS LOCATION, prior to termination.

2. O.A.C. 4901:1-18-05(A)(6)

The language of this rule should read as follows:

> In conjunction with service to the customer of the termination notice provided for herein, the Company shall advise the customer of the business address and the telephone number of a company representative to be contacted in the event the customer desires to dispute the reasons for such termination and of the customer's right to complain or appeal to the public utilities commission of Ohio should he or she be dissatisfied with the company's reasons for terminating service. Upon request of the customer, the company shall provide an opportunity for review of the initial decision concerning such dispute. UPON THE REQUEST OF THE PUBLIC INTEREST CENTER, THE COMPANY SHALL RESPOND TO ANY CUSTOMER REFERRED TO IT. THE COMPANY SHALL PROVIDE TO THE PUBLIC INTEREST CENTER A RESPONSE TO THE INQUIRY WITHIN FOURTEEN DAYS. ~~If such request is in writing and sets forth the customer's dispute, and~~ IF a response in writing is requested BY THE CUSTOMER OR THE PUBLIC INTEREST CENTER, the company shall so respond stating its position.

3. O.A.C. 4901:1-18-05(F)(3)(C)

The language of this rule should read as follows:

> In the event service has been disconnected within ~~fourteen~~ TWENTY-ONE days prior to certification of special danger to health for a qualifying resident, service shall be restored to that residence if proper certification is made in accordance with the foregoing provisions and the customer enters into an extended payment plan.

4. O.A.C. 4901:18-07

Section (E) shall be added as follows:

IF SERVICE HAS BEEN TERMINATED TO CONSUMERS WHOSE UTILITY SERVICES ARE INCLUDED IN RENTAL PAYMENTS OR WHO ARE RESIDING IN MASTER METERED PREMISES, UPON INQUIRY BY ANY SUCH CONSUMER THE COMPANY SHALL INFORM THE CONSUMER THAT SERVICE WILL BE RECONNECTED UPON PAYMENT OF THE AMOUNT DUE FOR THE CURRENT MONTH'S SERVICE PLUS ANY RECONNECTION CHARGE IF SUCH PAYMENT IS MADE WITHIN FOURTEEN DAYS OF TERMINATION, AND THAT SERVICE WILL CONTINUE SO LONG AS PAYMENT FOR EACH MONTH'S SERVICE (BASED UPON ACTUAL OR ESTIMATED CONSUMPTION) IS MADE BY THE TENANTS' REPRESENTATIVE BY THE DUE DATE OF THE BILL THEREOF. IN THE EVENT PAYMENT IS NOT MADE BY THE DUE DATE EACH MONTH, THE COMPANY MAY TERMINATE SERVICE UPON FIVE DAYS NOTICE. SUCH NOTICE SHALL BE POSTED IN A CONSPICUOUS LOCATION ON THE PREMISES. THE COMPANY SHALL NOT BE REQUIRED TO RECONNECT SERVICE PURSUANT TO THIS PARAGRAPH WHERE THE LANDLORD RESIDES IN THE PREMISES.

The Commission is dissatisfied with the parties' stipulation as to Rule 4901:1-18-07 Administrative Code, the landlord-tenant provisions. While we recognize that the utility will not always be able to notify each and every tenant who may be subject to termination when the service to a master metered premises is disconnected, we do believe at least a good faith effort is required. Therefore, we are modifying the language of the proposed stipulation to delete after "THE COMPANY MAY TERMINATE SERVICE AFTER FIVE DAYS NOTICE." the language "SUCH NOTICE SHALL BE POSTED IN A CONSPICUOUS LOCATION ON THE PREMISES" and inserting "THE COMPANY SHALL POST THE NOTICE IN A CONSPICUOUS LOCATION ON THE PREMISES AND MAKE A GOOD FAITH EFFORT TO NOTIFY EACH HOUSEHOLD IN THE MASTER METERED PREMISES OF THE IMPENDING SERVICE TERMINATION".

In addition to the above modification, we are opening a docket under the Case No. 83-1485-GE-COI to investigate utility disconnect policies relating to master metered residential premises. We believe the testimony in this proceeding from witnesses testifying at the public sessions demonstrates that problems exist in this area. We are concerned that our present rules do not adequately address these problems.

The stipulations set forth herein as modified will if adopted tend to reduce the likelihood of the disconnection or increase the likelihood of the reconnection of utility service. We believe the stipulations are, as modified, reasonable and in the public interest. We will therefore adopt the stipulations as modified and amend our rules accordingly.

G. MISCELLANEOUS

1. Small Gas Company Exemption

Counsel for the Small Gas Companies which are parties to this case has requested that those gas companies with fewer than 5,000 customers be exempted from any orders emanating from this proceeding. SGC's arguments are:

a) Five of the seven small gas companies participating in this case experienced losses in 1982 and two of the five suffered losses in each of the last two years.

b) Six of the seven small gas companies participating in this case have rates which have been almost exclusively been determined by contract with municipalities pursuant to Article XVIII, Section 4 of the Ohio Constitution and consequently will be unable to recover any increased expenses connected with the implementation and administration of any new rules until such time as those contracts can be modified.

c) The disconnection rules are a response to the increasingly depersonalized environment in which the large utilities are required to operate. These rules actually hinder the good customer relations which the small gas companies participating in this proceeding have traditionally enjoyed in the small rural villages and town which they serve.

The Commission is sympathetic with the arguments made by SGC in support of their requests to be exempted from the operation of new rules resulting from this case. We must, however, deny SGC's request except, as discussed above, as to the additional reporting requirements ordered by the Commission today. We endeavor to ensure that the availability of the protections provided by our rules reach all affected customers regardless of the size of the utility by which they are served. This is especially true of the rule changes we are ordering today. The customer of a small gas company who does not have the economic resources to meet his/her utility bills needs the same protection as a customer similarly situated but whose service is provided by the largest utility in the state. Saying this does not mean we are not cognizant that some small utilities may have difficulty coping with specific regulations because of their size. For this reason we will accept joint applications for waivers from companies similarly situated who can show on the record that provisions of this Commission's rules present them with an undue economic burden. No such showing was made on the record of this case.

2. Cleveland Tenants Organization - Motion To Intervene

On July 22, 1983, the Cleveland Tenants Organization (CTO) filed a motion for leave to intervene in this proceeding. During the course of the hearings the Attorney Examiner ruled affirmatively on the motion. Through inadvertence the ruling did not appear in the transcript. On August 30, 1983, counsel for GCWRO who also represents CTO moved for a ruling on the motion. Our Examiner recommends that the motion be granted.

On September 8, 1983, C&SOE filed a motion to strike the testimony of Philip D. Star, a representative of CTO who testified at the hearing in Cleveland, Ohio, a hearing restricted to non-party testimony, or in the alternative to deny intervention status to CTO.

We have reviewed the arguments and accept the recommendation of our Attorney Examiner that the motion of CTO for leave to intervene be granted. At the Cleveland, Ohio hearing Mr. Star consented to make himself available in Columbus, Ohio, if any of the parties wanted to cross-examine him further. C&SOE failed to exercise its option to call Mr. Star to the stand in Columbus and cannot now reasonably be heard to object to Mr. Star's testimony.

3. Disconnection Appeals Board

As one of its proposals in this case, OCC advocates the creation of a Disconnection Appeals Board. The Board would be comprised of representatives of the Commission, OCC, the public and a utility and would be the final arbiter for those facing disconnection due to the inability to pay a utility bill (OCC Brief, p. 37).

The Commission must reject this proposal for two reasons. First the General Assembly has vested jurisdiction over the Rules and Regulations of Public Utilities as well as the authority to review the operation of these rules and regulations in the Public Utilities Commission of Ohio. Neither this Commission nor any party except for the General Assembly can add to or subtract from the Commission's jurisdiction or delegate the responsibilities placed upon the Commission to others. Secondly, the creation of a Disconnection Appeals Board would create an administrative morass. Presently, as recognized by OCC, a customer with a grievance has a number of steps which he/she may take in order to redress the grievance whether that grievance concerns payment plans or other matters. The customer will first negotiate with the utility. He/she may then use an intermediary such as this Commission's Public Interest Center or OCC to try to resolve the matter. If this fails, the customer may file a formal complaint with the Commission. A Disconnection Appeals Board would only add one more step to an already lengthy process.

4. Limited Debt Write-Off

Cincinnati has proposed in this proceeding that the Commission order the gas and electric utilities under our jurisdiction to forgive the arrearages owed by customers meeting certain income and other qualifications. Cincinnati contends that under current extended payment plans, as well as the twelve month plan proposed by the city, low income customers with high current bills and high arrearages have no realistic hope of meeting the required payments. Given this reality, Cincinnati argues there are few alternatives to some form of debt forgiveness or debt write-off (Cincinnati Brief, p. 3).

While the Commission expresses no opinion as to the wisdom or desirability of Cincinnati's proposal, we are constrained to find that the forgiveness of the debt to a customer or class of customers of a utility would constitute a rebate or free service in violation of Section 4905.33 Revised Code. For this reason alone we must reject Cincinnati's proposal.

5. Voluntary Donation Check-Off Program

The initial proposal of Commission Staff contains a provision pursuant to which, if the proposal were adopted, the Commission would require each gas, natural gas, and electric light company under our jurisdiction to establish programs which would permit its customers to voluntarily donate money to a social welfare agency by authorizing the utility to add a specified amount of money to that customer's bill [Commission Entry in Case No. 83-303-GE-COI dated April 20, 1983, Appendix A, p. 1, item 1(b)]. This proposal was further refined by Staff witness James Ross in his prepared testimony wherein he states:

> This program would allow customers to make voluntary donations through a bill donation check-off on each customer's utility bill. The program would authorize the utility company to add an amount, specified by the customer, to the bill. The collected funds would be transferred to a non-profit agency

> of the utility companies' own choosing, which funds would be distributed as low income assistance. Every utility company would present their program to the Commission and the Commission must authorize their program before implementation (Staff Exh. 1, p. 5).

Staff's proposal is supported by GCWRO which argues that deficits that might result from the percentage of income plan could be made up by the use of a voluntary contribution plan. GCWRO et al. suggests that the utility companies themselves should be required to aid such contribution efforts by matching the donations (GCWRO et al. Brief, p. 20).

A number of the utility parties to this proceeding object to Staff's proposal of a voluntary check-off program. Primary among the objections is the sketchiness of the Staff's proposal. As noted by these opponents, Staff's proposal lacks all detail as to the manner in which the program would be administered. Any estimation of benefits or costs; consideration of the tax implications to both the utility (would it increase the company's excess tax liability?) as well as to the contributing customer (would the customer receive a tax deduction for his/her contribution?); or any criteria as to what would constitute an acceptable plan (Ohio Edison Brief, p. 11; EOG Brief, pp. 60, 61; Columbia Gas Brief, p. 23; and DP&L Brief, p. 6).

Columbia submits that the State's public utilities lack the expertise in providing assistance to economically disadvantaged citizens and that if a voluntary donation program is required it should be coordinated and administered by an existing social service agency with the required expertise (Brief, p. 24).

The arguments of the opponents to the proposal that we require utilities under our jurisdiction to establish voluntary donation programs are valid and compelling. Especially noteworthy is the fact that proponents of the proposal have failed to establish that such a fund would tend to reduce the problem of disconnections during the winter period. Indeed, as pointed out by Ohio Edison, the administrative expenses of such a program may exceed the contributions and no one would be helped (Brief, p. 11).

We are not going to order each of the utilities under our jurisdiction to develop and institute a voluntary donation program at this time. However, we do not want to discourage utilities under our jurisdiction from establishing such programs if the costs of the programs are less than the benefits to be derived.

H. Tariffs

On or before December 1, 1983, each gas, natural gas, or electric light company shall file three copies of that part of its tariffs setting forth the company's rules and regulations regarding disconnection and reconnection of service, payment plans, and security deposits. Each such company's tariff shall incorporate by reference Chapters 4901:1-17 and 4901:1-18 Administrative Code as each are from time to time amended. Additionally, each gas, natural gas, and electric light company shall have a copy of Chapters 4901:1-17 and 4901:1-18 Administrative Code available for public inspection at each office where it is presently required to have copies of its tariffs available to the public.

I. Effective Date and Implementation

The rule changes adopted herein are being adopted on an emergency basis to become effective December 1, 1983. The

purpose of the delayed effective date is to permit the reasoned implementation of these rules. We believe that by delaying the effective date by approximately a week our Staff and the parties to the proceeding will have a chance to become familiar with them and that because of this familiarity the transition will be smoother. Our hope is that potential problems can be resolved or avoided. We are concerned, however, that by delaying the effective date of the Order some customers who have delinquent bills may be exposed to having their service disconnected who would otherwise have continued to have service under the new rules. For this reason, we are ordering gas, natural gas, and electric light companies under our jurisdiction not to disconnect those customers who, but for the delayed effective date, qualify for the protection of the "fifteen percent of income plan", or of the other amendments to our rules adopted herein, prior to the December 1, 1983 effective date.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1) This Commission has jurisdiction over those public utilities defined by Section 4905.02 Revised Code which are gas, natural gas, and electric light companies as defined by Section 4905.03 Revised Code.

2) Pursuant to an Order on Rehearing in Case No. 82-1304-GE-COI dated March 2, 1983, this Commission initiated the instant proceeding to investigate long-term solutions to the problems arising from the disconnection of gas, natural gas, or electric service to residential customers during the winter.

3) Pursuant to an Entry in this case dated March 30, 1983, we conducted non-party public hearings in Columbus, Cleveland, Toledo, Cincinnati, and Akron on May 4, May 5, May 9, May 11, and May 12, 1983, respectively.

4) Pursuant to the same Entry, we began public hearings for the parties to this proceeding on July 25, 1983 in Columbus, Ohio. We concluded these hearings on August 5, 1983.

5) Section 4909.16 Revised Code empowers this Commission "to alter or amend . . . any existing schedules or order relating to or affecting any public utility or part of any public utility in this state" when we deem, "it necessary to prevent injury to the business or interests of the public . . .."

6) As evidenced by our discussion herein, the disconnection of utility service for nonpayment by those who are financially unable to pay constitutes an emergency as described by Section 4909.16 Revised Code.

7) Section 4933.122 Revised Code requires this Commission to hold hearings and adopt rules, which contain procedures to be followed by gas, natural gas, and electric light companies before they terminate service to a residential consumer and that provide for reasonable prior notice, an opportunity to dispute the reason for the service termination, and extended payment plans.

8) Contrary to the position of the industrial energy consumers and of the utility parties to this proceeding, as discussed herein, the current Commission rules relating to disconnection and reconnection of service, payment plans, and security deposits are inadequate to deal with the emergency faced by customers who are financially unable to pay their utility bills in a timely fashion.

9) This Commission is of the opinion that the attached proposed amendments to Rules 4901:1-17-05, 4901:1-18-04, 4901:1-18-05, 4901:1-18-06, 4901:1-18-07, and 4901:1-18-09 Administrative Code are reasonable and should be adopted for the reasons discussed at length herein.

10) In order to protect the public health and safety during the current winter heating season the proposed amendments to Rules 4901:1-17-05, 4901:1-18-04, 4901:1-18-05, 4901:1-18-06, 4901:1-18-07, and 4901:1-18-09 Administrative Code should be adopted on an emergency basis to become effective at 12:01 a.m., on December 1, 1983, consistent with the requirements of Section 111.15(B) Revised Code.

11) Pursuant to Section 111.15 Revised Code two copies of each of the proposed amended Rules 4901:1-17-05, 4901:1-18-04, 4901:1-18-05, 4901:1-18-06, 4901:1-18-97, and 4901:1-18-09 Administrative Code should be filed with both the Secretary of State and the Director of the Legislative Service Commission.

12) Each gas, natural gas, and electric light company under our jurisdiction should revise its tariffs as they apply to disconnection, reconnection, payment plans, and security deposits to incorporate by reference Chapters 4901:1-17 and 4901:1-18 Administrative Code as each is from time to time amended.

13) Each gas, natural gas, and electric light company under our jurisdiction should file with the Commission three copies of its revised tariffs on or before December 1, 1983.

14) Each gas, natural gas, and electric light company under our jurisdiction should have a copy of Chapters 4901:1-17 and 4901:1-18 Administrative Code available for public inspection at each office where it is presently required to have copies of its tariffs available to the public.

15) No gas, natural gas, or electric light company under our jurisdiction should be permitted to disconnect the service of any customer who but for the delayed effective date of these rules would have qualified for the "fifteen percent of income" plan or would have otherwise been protected by the amendments to the attached rule.

It is, therefore,

ORDERED, That two copies of each of the attached proposed amended Rules 4901:1-17-05, 4901:1-18-04, 4901:1-18-05, 4901:1-18-06, 4901:1-18-07, and 4901:1-18-09 Administrative Code be filed with both the Secretary of State and with the Director of the Legislative Service Commission to become effective on an emergency basis at 12:01 a.m., December 1, 1983, as provided in Section 111.15 Revised Code. It is, further,

ORDERED, That each gas, natural gas, and electric light under our jurisdiction revise its tariffs in accordance with Finding No. 12, herein. It is, further,

ORDERED, That each gas, natural gas, and electric light company under our jurisdiction file three copies of its revised tariffs with the Commission in accordance with Finding No. 13, herein. It is, further,

ORDERED, That each gas, natural gas, and electric light company under our jurisdiction should have a copy of amended Chapters 4901:1-17 and 4901:1-18 Administrative Code available for public inspection as set out in Finding No. 14, herein. It is, further,

ORDERED, That no gas, natural gas, or electric light company shall disconnect the service of any customer for nonpayment who but for the delayed effective date would have received protection form disconnection because of the amendments to our rules. It is, further,

ORDERED, That within 120 days of the journalization of this Opinion and Order, each gas, natural gas, and electric light company under our jurisdiction shall file for Commission approval a plan for the continuing verification of the income of those applying for the percentage of income payment plan. It is, further,

ORDERED, That the motion of the Cleveland Tenants Organization for leave to intervene be, and the same hereby is, granted. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon each gas, natural gas, and electric company as well as upon each other party to this proceeding.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Michael D. Barry
Chairman

William H. Bruce
Commissioners

Gloria L. Gaylord
Commissioners

I vote NO
a dissenting opinion
will be filed

See Attached
Separate
Concurring
Opinion

SJD/plg

Entered in the Journal

NOV 23 1983

A True Copy

Mary Ann Orlinski
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

(13)

SEPARATE CONCURRING OPINION

Commissioner Alan R. Schriber, coming now to consider the above-entitled matter, hereby issues the following Separate Concurring Opinion.

The Public Utilities Commission of Ohio alone has inherited the program of assuring heat-availability to low-income families this winter. Morally, I feel compelled to concur with the program to which this is attached. That the Commission has been thrust into this position of "provider of last resort", however, leaves society in my opinion - with a remedy that falls far short of an economic optimum.

1. Natural gas is expected to be the primary heat source for the vast majority of low-income Ohioans, yet jurisdictional constraints upon the Public Utilities Commission of Ohio in the area of gas means that many residents could possibly go uncovered by the program. Reliable data indicate that just 63 percent--perhaps as little as 49 percent--of Ohio households are customers of gas companies that are regulated by this Commission. Public Utilities Commission of Ohio jurisdiction extends to 92 percent of all household electric customers.

2. During the Winter heating season there are no economic disincentives to excessive energy consumption. This will likely result in an accumulation of arrearages that, <u>in practice</u>, will never be recovered from the cost causer.

3. One might strongly argue that the Public Utilities Commission of Ohio's mandate is to ensure the well-being of <u>all</u> ratepayers as a whole--without reference to class--without imposing onerous burdens upon the utilities. This premise, if acceptable, appears violated in several respects:

a. The "150 percent of poverty level" income qualifying requirement precludes from consideration a significant number of people who are burdened by high utility prices, i.e., the "working poor."

b. I believe that through this Opinion and Order the Commission has taken upon itself the task of redistributing income among customer classes (a review which contrasts with that taken by the Commission in this Order). Having done so, I am hopeful that we will accomplish a most compelling goal: The prevention of some citizens from freezing this winter. To achieve this outcome, however, I believe we have stepped outside our economic mission as regulators: my view (which some may argue is myopic) is that our mandate requires us to impose economically competitive constraints upon a naturally monopolistic environment. This does not include the creation and distribution of entitlements which is what we have been forced to do in the absence of any reasonable alternative.

c. The "Report Requirements" as well as other administrative demands placed upon the utilities will result in costly efforts that, in the past, have not generally fallen under the aegis of "normal" utility practice. The burden will ultimately be borne by ratepayers.

The foregoing comments are not to be construed as an indictment of the Commission's plan. To the contrary, I feel that we have done the best job possible given the statutory parameters within which we operate. In the universe of all possible plans, however, I believe that there are far more efficacious approaches from all points of view; coverage could be extended to all Ohioans in need, conservation could be induced, and the cost to remaining ratepayers could be lessened. Such programs must necessarily be within the purview of the state legislature. In the absence of such legislation, and given the compelling need of low-income families for subsistent heat this winter, I concur with the attached "Opinion and Order."

Alan R. Schriber

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Entered in the Journal

NOV 23 1983

A True Copy

Mary Ann Ortinski
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

DISSENTING OPINION

Commissioner Gaylord, coming now to consider the above-entitled matter, issues the following Dissenting Opinion.

There is agreement that the problem being addressed in this proceeding is how best to protect economically disadvantaged customers from termination of their utility service during the winter months and to do this in the fairest and most effective way.

I do not feel the directives listed within this Opinion and Order (Case No. 83-303-GE-COI) are the correct solutions to the problem and therefore I vote NO on the Opinion and Order. Following is a noninclusive list of reasons for my vote.

1.) At the present time Ohio has some assistance for low income residents including:
   a) Home Energy Assistance Payments (HEAP)
   b) Ohio Energy Credits and
   c) Emergency HEAP Funding.

In cases where these assistance plans are inadequate there are various extended payment plans offered by the utilities. The Ohio Administrative Code, in section 4901:1-18-05 paragraph C, provides for certain situations where customers may pay fifteen percent of their income towards their bill instead of the total bill. These are all ways that are available now to aid utility customers with the payment of their bills.

2.) I do not feel utilities should become social agencies and do not think we should create another administrative layer to handle these matters.

c.) This Opinion and Order provides very little incentive to conserve on utility usage during the winter months.

Gloria L. Gaylord
Commissioner

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Mary Ann Orlinski
Secretary