

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

NANCY S. TOLIVER
614 Kenilworth Ave.
Dayton, Ohio 45405

Complainant,

v.

THE DAYTON POWER AND LIGHT
COMPANY, INC.
1065 Woodman Dr.
Dayton, Ohio 45432

Respondent.

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Case No. 15-642-EL-CSS

**THE DAYTON POWER AND LIGHT COMPANY'S
MOTION TO DISMISS**

Pursuant to Ohio Admin. Code § 4901-1-12, The Dayton Power and Light Company moves to dismiss this matter for failure to state a claim upon which relief can be granted. The reasons for granting this motion are more fully explained in the attached Memorandum in Support.

Respectfully submitted,

/s/ Michael J. Schuler

Christine A. Hammer (0082394)

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MEMORANDUM IN SUPPORT

Nancy Toliver is a customer that receives electric service from The Dayton Power and Light Company (“DP&L”) at 614 Kenilworth Avenue in Dayton, Ohio. Ms. Toliver is a customer that was once a participant in the PIPP Plus program,¹ which is an energy program that allows “most customers [to] pay a fixed percentage of their monthly income rather than the actual cost of their energy consumption.”² Despite this assistance, Ms. Toliver has chosen not to pay her full PIPP installment on a number of occasions. While Ms. Toliver’s Complaint lacks any specific description of Ms. Toliver’s claim,³ according to DP&L records and her informal complaint that preceded this formal complaint, Ms. Toliver has chosen to pay the lesser of either her PIPP installment or the amount associated with her actual usage for each month.⁴ This resulted in her accruing an outstanding balance of \$158.46 for electric services rendered at the time of her Complaint.⁵ As a result, DP&L informed Ms. Toliver that her service will be terminated if she does not remit the past due balance.

Rather than pay the amount that is due and owed, Ms. Toliver filed a Complaint against DP&L on April 1, 2015 claiming that “DP&L is discriminating against me as a PIP [sic] customer. Threatening continuously with disconnection.”⁶ DP&L filed an Answer on April 20, 2015, denying all material allegations and further moving to dismiss the Complaint. Nevertheless, Ms. Toliver claims that “the actual and account balance and usage charges are zero.”⁷

¹ DP&L records indicate that Ms. Toliver failed to reverify her income and is no longer a PIPP Plus customer as of October 2015.

² *Toliver v. Vectren energy Delivery of Ohio, Inc.*, 2015-Ohio-5055 at ¶ 5 (December 8, 2015) (“*Toliver v. Vectren*”), citing Ohio Adm. Code 4901:1-18-13(A)(1).

³ DP&L requested that the Complaint be dismissed. *See*, Answer and Motion to Dismiss (April 20, 2015).

⁴ *See*, December 5, 2015 email RE: Initial Complaint (Exhibit A).

⁵ As of January 4, 2016, Ms. Toliver’s outstanding balance was \$154.42.

⁶ *See*, Complaint (April 1, 2015).

⁷ *See*, Complainant Objection to Respondent’s Motion to Dismiss and Answer (May 1, 2015).

To be eligible, “[a]ny customer who enrolls in the PIPP plus program **must** . . . pay[] a monthly PIPP plus installment calculated as provided in these rules, but not less than ten dollars.”⁸ For an electric baseload PIPP customer, “that is six per cent of such customer’s monthly household income,” and for a PIPP customer with an electrically heated residence, “that is ten per cent of such customer’s monthly household income.”⁹ “PIPP plus customers shall be **required** to remit their monthly PIPP plus installment amounts directly to electric distribution utilities each month.”¹⁰ Thus, the Ohio Administrative Code demands that PIPP customers must pay the default amount as calculated by the appropriate percentage of the customer’s income at the time of enrollment. “A customer’s failure to make any payment under . . . PIPP plus shall entitle the utility company to disconnection service in accordance with the procedures set forth in rule 4901:1-18-06 of the Administrative code.”¹¹

Ms. Toliver’s incorrect belief that she must only pay the lesser of the PIPP amount or the actual charges was also addressed in her complaint case against Vectren Energy Delivery of Ohio (“Vectren”). In an attempt to only avail herself of the PIPP benefits during the higher cost months, Ms. Toliver voluntarily left the PIPP program during the spring and then reapplied to join the PIPP program seven months later.¹² At that time Vectren informed Ms. Toliver that she would have to pay the difference between the charges she paid during the time she was not on the program and the monthly PIPP installment payments that would have been due had she remained in PIPP.”¹³ Ms. Toliver filed a Complaint against Vectren on December 17, 2012

⁸ Ohio Adm. Code 122:5-3-02(C) (emphasis added).

⁹ Ohio Adm. Code 122:5-3-04(A)(1).

¹⁰ Ohio Adm. Code 122:5-3-04(A)(2) (emphasis added).

¹¹ Ohio Adm. Code 4901:1-189-05(F),

¹² *Toliver v. Vectren*, at ¶ 2.

¹³ *Toliver v. Vectren*, at ¶ 2.

asserting that she was the subject of discrimination after Vectren was “threatening her with disconnection although she has an actual account balance of zero.”¹⁴

The record reflected that Ms. Toliver’s arrearages that gave rise to the threats of disconnection were due, in part, to “Ms. Toliver’s desire to pay the lesser of the actual account charges or her PIPP installment payment. . .”¹⁵ Ruling against Ms. Toliver, the Commission explained that:

[i]f a PIPP participant is only responsible for the PIPP installment during the months when actual monthly charges are more than the PIPP installment and responsible for the actual monthly current charges when the charges are less than the PIPP installment, the PIPP participant exploits the benefits of the PIPP program and avoids the full scope of the PIPP participant's obligations to the program.¹⁶

As a result, the PUCO found that Ms. Toliver failed to show that Vectren incorrectly applied the rules for administration of the PIPP program.¹⁷

The Supreme Court of Ohio recently affirmed the Commission’s decision in a December 8, 2015 ruling. In so holding, the Supreme Court found that “[n]o matter whether they pay more or less than the actual cost of service, **PIPP customers must make their full monthly PIPP payment to remain eligible for the program.**”¹⁸ The Supreme Court even acknowledged that the Energy Assistance Resource Guide published by the Ohio Development Services Agency explains that “when a PIPP customer’s account balance is less than the PIPP default balance, the

¹⁴ *In Re Nancy S. Toliver v. Vectren Energy Delivery of Ohio, Inc.*, PUCO Case No. 12-3234-GA-CSS, Opinion and Order at 7 (July 17, 2013); *See also*, *Nancy S. Toliver v. Dayton Power and Light Company*, PUCO Case No. 15-642-EL-CSS, Complaint (April 4, 2015).

¹⁵ *In Re Nancy S. Toliver v. Vectren Energy Delivery of Ohio, Inc.*, PUCO Case No. 12-3234-GA-CSS, Opinion and Order at 14 (In the hearing Ms. Toliver testified “that she is responsible for the lesser of the actual monthly current charges and the PIPP installment payment”).

¹⁶ *Id.* at 17.

¹⁷ *Id.*

¹⁸ *Toliver v. Vectren*, at ¶ 6 (citing Ohio Adm. Code 4901:1-18-12(D)(2) (emphasis added) (Ohio Adm. Code 4901:1-18-12(D)(2) as related to gas utilities is very similar to Ohio Adm. Code 122:5-03-02 for electric utilities).

customer is ‘required to pay the [PIPP] default amount’ in order to remain on PIPP and avoid disconnection.’”¹⁹

While the main focus of Ms. Toliver’s case against Vectren was on her choice to leave and then return to the PIPP Plus program, both the Commission and the Supreme Court of Ohio made clear that PIPP customers must pay their PIPP Plus default amount irrespective of whether their actual usage would have resulted in a lesser amount. As she attempted to do in the Vectren case, Ms. Toliver is exploiting the benefits of the PIPP Plus program by paying DP&L the lesser of her actual charges or her PIPP default amount. This is not how the PIPP Plus program was designed, and “circumvent[s] the PIPP participant’s responsibility to the PIPP program.”²⁰

Based upon this Commission’s recent decision in *Toliver v. Vectren*, and the Supreme Court’s affirmation of that ruling, DP&L respectfully requests that this matter be dismissed for failure to state a claim upon which relief can be granted.

Respectfully submitted,

/s/ Michael J. Schuler

Christine A. Hammer (0082394)

*Counsel of Record

Michael J. Schuler (0082390)

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¹⁹ *Toliver v. Vectren*, at ¶ 26.

²⁰ *In Re Nancy S. Toliver v. Vectren Energy Delivery of Ohio, Inc.*, PUCO Case No. 12-3234-GA-CSS, Opinion and Order at 16.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Motion to Dismiss, has been served via ordinary U.S. mail, postage prepaid, upon the following, this 12th day of January, 2016:

Nancy S. Toliver
614 Kenilworth Ave.
Dayton, Ohio 45405

/s/ Michael J. Schuler

Michael J. Schuler (0082390)

Exhibit A

From: ContactThePUCO@puc.state.oh.us [mailto:ContactThePUCO@puc.state.oh.us]
Sent: Friday, December 05, 2014 9:51 AM
To: DPL Consumer Services
Subject: Initial Complaint. Case: NTOL120414W0

PUBLIC UTILITIES COMMISSION OF OHIO

Initial Submission of a Consumer Complaint
Please respond within 10 business days

CUSTOMER: Nancy Toliver
COMPANY:
ADDRESS: 614 Kenilworth Ave

Dayton, OH 45405

SERVICE ADDRESS: 614 Kenilworth Ave, Dayton OH, 45405, Montgomery
CASE ID: NTOL120414W0
AIQ:

NIQ: (937) 278-4407
CBR:

DESCRIPTION OF ISSUE/CONCERN:

This customer is on PIPP Plus. She has a disconnect notice scheduled for 12/21/14. Her current installment amount is \$77.00. The customer challenges the PIPP Plus rules/program by paying her PIPP Plus installments when her usage is more than her installment amount and she pays the actual usage when its less than the installment amount. She is upset that DP&L has sent her a disconnection notice for the PIPP Plus default while her balance is current.

Please provide me with the customer's billing and payment history for the past 18-months.
Please place a hold on the pending disconnection until informal complaint is resolved.

Tonja Stewart
Compliance Investigator
Investigation and Audit Division

614-995-2008 Fax

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Case No(s). 15-0642-EL-CSS

Summary: Motion Pursuant to Ohio Admin. Code 4901-1-12, The Dayton Power and Light Company moves to dismiss this matter for failure to state a claim upon which relief can be granted. The reasons for granting this motion are more fully explained in the attached Memorandum in Support. electronically filed by Ms. Jenna C. Johnson on behalf of The Dayton Power and Light Company