

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's	)	
Review of the Minimum Gas Service	)	Case No. 19-1429-GA-ORD
Standards in Chapter 4901:1-13 of the	)	
Ohio Administrative Code	)	

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**REPLY COMMENTS OF HOMESERVE USA CORP.**

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**I. INTRODUCTION**

HomeServe USA Corp. and HomeServe USA Repair Management Corp. (collectively, “HomeServe”) submit Reply Comments pursuant to the December 18, 2019 Entry in the above-captioned proceeding, which concerns proposed modifications to Ohio Administrative Code Chapter 4901:1-13. HomeServe, along with nearly all other interested parties, filed Initial Comments on January 17, 2020 arguing for the rejection of the proposed new rule in Ohio Admin. Code 4901:1-13-11(K) disallowing third-party services to be billed via customers’ utility bills.<sup>1</sup> As further set forth below, because customers and HomeServe will be significantly negatively impacted if the proposed rule in Ohio Admin. Code 4901:1-13-11(K) were adopted, HomeServe respectfully requests that the Commission reject the proposed rule.

**II. REPLY COMMENTS**

**A. All but one party who commented on the proposed rule in Ohio Admin. Code 4901:1-13-11(K) agree that if adopted, it will result in significant negative impacts to customers.**

Several companies offering third-party services that are charged on gas utility bills submitted initial comments. Together these companies—which include HomeServe—have

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<sup>1</sup> See HomeServe Initial Comments p. 3–5; Pivotal Home Solutions (“Pivotal”) Initial Comments p. 3–6; Direct Energy Initial Comments p. 13; Duke Energy Ohio, Inc. (“Duke”) Initial Comments p. 2; Retail Energy Supply Association (“RESA”) Initial Comments p. 4–5; Joint Comments of Dominion and Vectren p. 7; Interstate Gas Supply, Inc. (“IGS”) Initial Comments p. 2–10.

hundreds of thousands of Ohio customers that will be adversely affected if the proposed rule is adopted. HomeServe itself, over the last several years, has covered tens of thousands of claims for Ohioans and saved homeowners millions in out-of-pocket repair expenses. Each potentially impacted HomeServe customer affirmatively enrolled in their home protection plan with the expectation that they would be billed through their utility bill. If the charge can no longer be included on the utility bill, while HomeServe would diligently attempt to transition customers to a new payment mechanism, it is likely that many of the coverage plans will lapse.

As others explained in their initial comments, it would be an immense—and largely unsuccessful—undertaking to communicate with all its residential customers in Ohio to set up a new billing arrangement to continue their warranty service. IGS explained that when they had to reach out to customers for new credit card information, they are only able to “effectively reach 56% of [] customers to obtain updated payment information” resulting in “approximately half of its . . . customers . . . los[ing] their warranty protection.”<sup>2</sup>

Unfortunately, this means that hundreds of thousands of Ohio customers will lose the coverage they have come to rely upon. As HomeServe explained in its Initial Comments, the proposed rule would result in “[c]onsumers [] end[ing] up with an uncovered breakdown that may cost hundreds, or even thousands, in out-of-pocket expenses to repair.”<sup>3</sup> This could then lead to “difficulties for other stakeholders, including HomeServe and its utility partners, since customers may voice their concerns and dissatisfaction via social media and/or other outlets.”<sup>4</sup>

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<sup>2</sup> IGS Initial Comments p. 6.

<sup>3</sup> HomeServe Initial Comments p. 4.

<sup>4</sup> HomeServe Initial Comments p. 4.

**B. The majority of the parties that filed initial comments argue that the proposed rule in Ohio Admin. Code 4901:1-13-11(K) should be rejected because billing on the utility bill offers a convenient and safer option for customers.**

Several parties—including HomeServe—note that many utilities include third-party services on their utility bills because it is beneficial to, and convenient for, customers. Parties noted the following in their respective comments:

- Dominion and Vectren stated that this practice reduces the “number of checks [customers] must write to pay for desired services.”<sup>5</sup>
- IGS specifically noted “two out of three Ohio customers select the convenience of receiving their monthly charges through their utility bill over a single direct bill.”<sup>6</sup>
- Duke noted that “most of its customer prefer to receive fewer bills, not more. Whether the charges being eliminated from a natural gas bill relate to electric utility services, competitive electric providers, commodity services, or other charges, the customer should have the ability to choose whether items are included on a single bill.”<sup>7</sup>
- Pivotal explained that they conducted “a survey . . . in 2019 [which] revealed that nearly 70% of Columbia Gas customers prefer the ability to add the warranty charges . . . to their utility bill.”<sup>8</sup>
- HomeServe noted in its Initial Comments that, with today’s heightened privacy concerns, customers “feel safer with fewer entities having access to their credit or debit card information.”<sup>9</sup>

**C. Only one party—the Ohio Consumers’ Counsel—filed comments in support of the proposed rule in Ohio Admin. Code 4901:1-13-11(K), but their comment is limited, is without support or explanation, and does not address the impact on consumers.**

Only one party supports the proposed rule change, the Ohio Consumers’ Counsel (“OCC”). The OCC merely states that the rule should be implemented to “prevent natural gas bills from being misused” and that the proposed rule is an “important consumer protection that helps limit

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<sup>5</sup> Joint Comments of Dominion and Vectren p. 7.

<sup>6</sup> IGS Initial Comments p. 5.

<sup>7</sup> Duke Initial Comments p. 2.

<sup>8</sup> Pivotal Initial Comments p. 5.

<sup>9</sup> HomeServe Initial Comments p. 3.

the types of charges that can be imposed on a natural gas bill.”<sup>10</sup> The OCC fails to explain why eliminating optional third-party charges is an “important consumer protection.” These changes are not being “imposed,” as the OCC contends. Instead, the consumer is electing to purchase a product and, as explained above, most utility customers believe the on-bill payment process is a useful convenience. It is unclear why the Commission would want to override the overwhelming customer preference to receive one convenient bill for multiple services. Finally, the OCC cites no data or research supporting its position and does not consider—or attempt to address—the impact of its recommendation on existing Ohio customers, who currently pay for these services conveniently on their utility bill.

If the Commission, as argued by OCC, is concerned that customers are unaware of their third-party product charges, the Commission can take comfort in its own disclosure requirements which require gas utilities to include in “clear and understandable” language “the name and toll-free telephone number” of the party offering the “nonregulated” services (such as home warranties) on their bills.<sup>11</sup> Further, customer protections also exist for third-party products outside of the Commission rules. The Ohio Consumer Sales Practices Act, R.C. Chapter 1345, protects individuals from unfair, deceptive, and unconscionable sales practices in connection with consumer transactions, such as the purchase of home warranty services.

Finally, as Dominion and Vectren note in their Initial Comments, “[i]f there have been any abuses (which the Companies are not aware of), those issues should be dealt with directly—addressing either the actor or the practice—not by universally removing an option that customers may find beneficial.”<sup>12</sup> HomeServe agrees.

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<sup>10</sup> OCC Initial Comments p. 19.

<sup>11</sup> Ohio Admin. Code 4901:1-13-11(B)(20).

<sup>12</sup> Joint Comments of Dominion and Vectren p. 7.

**D. The proposed rule goes against the status quo in Ohio and is contrary to prevailing law.**

Several parties—including HomeServe—believe the Commission should reject the proposed rule because it goes against the status quo in Ohio.

**1. Third-party charges for items such as home warranties have been included on utility bills for over a decade and there is no justification for the change.**

The inclusion of non-commodity goods and services on a consolidated bill has long been industry practice and permissible by the Commission’s rules.<sup>13</sup> Yet, despite the proposed rule’s impact on long-standing practices—and its potential negative repercussions for Ohio consumers—no justification has been provided for the change. Ohio courts have previously held that the Commission must explain why it is departing from a prior order and the new course must be substantively reasonable and lawful.<sup>14</sup> Further, “[w]ithout a compelling reason on the record or any statutory basis for the proposed change, the Commission may not abandon its [existing] policy.”<sup>15</sup> For these reasons alone, the proposed rule should be rejected.

**2. The proposed rule is counter to recent legislation meant to reduce the number of new regulations.**

IGS and Direct Energy both state that the proposed rule violates the recently enacted House Bill 166 of the 133rd General Assembly, which became effective October 17, 2019. The legislation explicitly states that “a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions.”<sup>16</sup> While the proposed rules create additional regulatory restrictions—including prohibiting third-party services

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<sup>13</sup> See Ohio Admin. Code 4901:1-13-11(B)(20).

<sup>14</sup> See *In re Application of Ohio Power Co.*, 144 Ohio St.3d 1, 10 (2015) (citing *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512 (2011)).

<sup>15</sup> RESA Initial Comments p.5 (citing *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 10 Ohio St.3d 49, 50–51 (1984) (“When the Commission has made a lawful order, it is bound by certain institutional constraints to justify that change before such order can be changed or modified.”)).

<sup>16</sup> R.C. 121.95(F).

from being included on a gas utility bill—it does not remove any existing rules, as required by R.C. 121.95(F). HomeServe reiterates Direct Energy’s request that the Commission decline to enact the proposed language “[t]o keep in line with the legislature’s directive to reduce unnecessary regulations.”

**3. The potential impact of the proposed rule was not fully captured in the Business Impact Analysis, which is required by R.C. 107.52.**

IGS takes issue with the adverse impact the proposed new rule will have on IGS and the small businesses which assist IGS with repairs due to the failure to include the impact on other businesses outside investor-owned gas and natural gas companies in the Business Impact Analysis (“BIA”).<sup>17</sup> HomeServe agrees. The potential impact of the proposed rule was not fully captured in the BIA—as required by R.C. 107.52—because, to HomeServe’s knowledge, no other companies were considered as part of the BIA. Like IGS, HomeServe works with small local businesses in Ohio, over 100 businesses in fact, who service the plans it administers. These businesses directly employ 548 individuals in Ohio, all of whom would be adversely affected by loss of work if the new proposed rule is adopted.

**4. HomeServe does not agree with RESA’s alternative proposed revisions to “provide the same access to non-commodity charges on the bill” since it is contrary to the best interest of consumers.**

RESA suggests “[t]he Commission should maintain the status quo,” but also raises possible revisions to Rule 4901:1-13-11(K) requiring gas utilities to “provide the same access to non-commodity charges on the bill . . .”<sup>18</sup> HomeServe concurs with RESA’s argument for the status quo, but does not agree with RESA’s alternative proposed revisions, which are contrary to the best interest of consumers.

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<sup>17</sup> IGS Initial Comments p. 7.

<sup>18</sup> RESA Initial Comments p. 6.

**5. HomeServe does not agree that the Commission should consider revisions to the bill format as suggested by IGS.**

Finally, IGS suggests that, in lieu of prohibiting non-commodity charges on the consolidated bill, “the Commission should implement consumer protections regarding these services” in the form of “revisions to [the] bill format.”<sup>19</sup> HomeServe does not believe this is necessary since consumer protections already exist under both Ohio law and the Commission’s rules.

**III. CONCLUSION**

If the Commission adopts the proposed rule in Ohio Admin. Code 4901:1-13-11(K), thereby disallowing existing Ohio gas customers to be conveniently billed via their utility bills, a majority of the 167,000 HomeServe gas customers currently being charged on their utility bill may inadvertently lose the coverage and protection they enrolled in, expect and rely upon. Consumers like the opportunity to pay for these services on their utility bill since it is a safer and convenient option and changing the status quo is not warranted and is working well for Ohio consumers. Accordingly, HomeServe requests that the Commission not adopt the proposed rule in Ohio Admin. Code 4901:1-13-11(K), and instead allow utilities to continue to provide customers with the option to be billed on their utility bill for non-commodity charges.

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Respectfully submitted,

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<sup>19</sup> IGS Initial Comments p. 9–10.

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