

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter of the Commission's Review of)	
Chapters 4901:1-17 and 4901:1-18 of the Ohio)	Case No. 19-52-AU-ORD
Administrative Code.)	
)	

DUKE ENERGY OHIO, INC.'S APPLICATION FOR REHEARING

Pursuant to Section 4903.10, Ohio Revised Code and Rule 4901-1-35, O.A.C., Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby seeks rehearing of the Finding and Order issued in this proceeding on November 4, 2020 (Order). As demonstrated in the attached Memorandum in Support, the Order is unreasonable and unlawful on the following grounds:

1. The Order is unreasonable and unlawful in that the revised Rule 4901:1-18-05(B) is ambiguous as to whether utilities must contact the Ohio Development Services Agency (ODSA) on behalf of a customer to identify the local energy assistance provider (EAP) in the customer's service area and/or to determine the services offered by the EAP.
2. The Order is unreasonable and unlawful in that the meaning of "missed PIPP plus payments" in revised Rule 4901:1-18-12(D)(2) is ambiguous.
3. The Order is unreasonable and unlawful in that it is ambiguous as to how the revised Rule 4901:1-18-13(A)(1) should be implemented.
4. The Order is unreasonable and unlawful in that the revised Rule 4901:1-18-12(D)(3) is ambiguous as to whether customers removed from PIPP before the revision takes effect should be charged "monthly charges" incurred when not enrolled (in addition to PIPP installments) for reinstatement.
5. The Order is unreasonable and unlawful in that the revised Rule 4901:1-18-12 (D)(3) should be simplified to be consistent with the revised Rule 4901:1-18-15(F) with regard to customers who have no outstanding arrearages at the time they are removed from the program and revised to be consistent with the proposed revisions to the electric PIPP rules.
6. The Order is unreasonable and unlawful in that the addition of a second billing period in the revised Rule 4901:1-18-16(D) adds unnecessary system

complications; however, this could be resolved by a further revision to Rule 4901:1-18-16(D).

As demonstrated in the attached Memorandum in Support, the Public Utilities Commission of Ohio (Commission) should grant Duke Energy Ohio's Application for Rehearing and modify and/or clarify the above-discussed rules in accordance with this Application.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Larisa M. Vaysman

Rocco D' Ascenzo (0077651)

Deputy General Counsel

Larisa M. Vaysman (0090290) (Counsel of Record)

Senior Counsel

Duke Energy Business Services LLC

139 East Fourth Street

1303-Main

Cincinnati Ohio 45202

513-287-4320 (telephone)

513-287-4385 (facsimile)

Rocco.dascenzo@duke-energy.com

Larisa.vaysman@duke-energy.com

Willing to accept service via email

Attorneys for Duke Energy Ohio, Inc.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Commission has been “coordinating [its] review of the PIPP rules” with the ODSA,¹ which manages the electric PIPP rules in Ohio Admin. Code Chapter 122:5-3, and such coordination is of especial importance to Duke Energy Ohio as the only combination gas and electric utility in Ohio. ODSA circulated its *proposed* changes to Chapter 122:5-3 only after the Commission issued the Order. Thus, this application for rehearing is made without knowing what the final revisions to the electric PIPP rules will look like.

Based on the revisions available in the Order, Duke Energy Ohio respectfully requests that the Commission reconsider the Order and make the modifications and/or clarifications suggested below to the final Chapter 17 and Chapter 18 rules.

II. DISCUSSION

- A. The Order is unreasonable and unlawful in that the revised Rule 4901:1-18-05(B) is ambiguous as to whether utilities must contact the ODSA on behalf of a customer to identify the local EAP in the customer’s service area and/or to determine the services offered by the EAP.**

The Order revised Rule 4901:1-18-05(B) to direct utilities to direct customers who fail to propose acceptable payment terms to the local “energy assistance provider or other community-based nonprofit organization designated by the Ohio development services agency.”² In response to commenters’ requests for clarification of this obligation, the Commission stated that “utility customers and the utilities may call ODSA’s toll free telephone number and, by utilizing its interactive system, input the customer’s zip code to learn the local energy assistance provider in

¹ Order, p. 7.

² Order, Attachment C, p. 6.

the customer's service area and contact the local energy assistance provider to determine the services offered.”³

Duke Energy Ohio suggests the following further revision:

... and direct the customer to the toll-free telephone number of the Ohio development services agency which the customer may call to identify the local energy assistance provider or other community-based nonprofit organization designated by the Ohio development services agency to offer services in the customer's service area.⁴

The Company believes that this revision will clarify that a utility need only direct the customer to the ODSA's toll-free line. Otherwise, it would be unreasonably burdensome to require a utility to call the ODSA toll-free line itself to identify an EAP for the customer and would negatively impact utilities' handling time for customer calls.

B. The Order is unreasonable and unlawful in that the meaning of “missed PIPP plus payments” in revised Rule 4901:1-18-12(D)(2) is ambiguous.

Rule 4901:1-18-12(D)(2) explains what a customer must do to “be current on his/her . . . payments at the customer's PIPP plus anniversary date to be eligible to remain on PIPP plus for the subsequent twelve months,” and specifies that this includes “pay[ing] any missed PIPP plus payments” within one billing cycle of the customer's anniversary date.⁵ The Order revised Rule 4901:1-18-12(D)(2)(b), one of two categories of “missed . . . PIPP plus payments,” to include “up to” 24 months of PIPP plus payments “which would have been due for the months the customer is disconnected from gas utility service.”⁶ The applicability of this definition is ambiguous.

³ Order, p. 21.

⁴ The provision is depicted as revised in the Order (*not* as in the current rules), with additional underlines and strikeouts reflecting only the Company's suggested revisions. Subsequent revisions proposed by the Company in this Application for Rehearing will be depicted using the same methodology.

⁵ Order, Attachment C, p. 25.

⁶ Order, Attachment C, p. 25.

The Commission should revise this portion of the rule to clarify that the revised requirement to pay missed payments up to 24 months applies to customers who have been dropped from PIPP plus and are being considered for reinstatement:

(b) For customers who have been removed from the PIPP plus program, ~~Any~~ missed payments, including PIPP plus payments which would have been due for the months the customer is disconnected from gas utility service up to a maximum of 24 months. The amount due also shall not exceed the amount of the customer's arrearage and shall be paid prior to the restoration of utility service.⁷

As the Company reads this requirement, it could not possibly apply to customers who are merely under annual consideration for a potential drop. Under the current rule 4901:1-18-12(D)(2), the main section of which remains unchanged, the Company considers customers for dropping annually. If a customer is not current on the last 12 months of income-based PIPP plus payments as of their anniversary date, after the 30-day grace period, the customer will be dropped. Thus, a customer who has not yet been dropped could never accumulate 24 months of missed payments. And, indeed, in the Order itself, the Commission states that this revision is “to limit the PIPP installment payments *due to reenroll* on the gas PIPP program.”⁸ Thus, the Company respectfully requests that the Commission make the above revision.

C. The Order is unreasonable and unlawful in that it is ambiguous as to how the revised Rule 4901:1-18-13(A)(1) should be implemented.

The Order revised Rule 4901:1-18-13(A)(1) to reduce the amount of a PIPP plus customer's gas bill from six percent to five percent of the customer's household income.⁹ However, the Order did not explain how this change should be implemented when the revised rules take effect.

⁷ The provision is depicted as revised in the Order, with additional underlines and strikeouts reflecting the Company's suggested revisions.

⁸ Order, p. 57 (emphasis added).

⁹ Order, Attachment C, p. 26.

First, Duke Energy Ohio determines the amount that a PIPP plus customer should be billed using a data file provided by the Ohio Community and Energy Assistance Network (OCEAN). The Commission should clarify whether the new installment amount should be calculated by reducing the current installment amount (*i.e.*, by multiplying the current installment amount by 5/6) or by using the most recent available household income data.

Second, the Commission should clarify whether the reduced percentage will apply for purposes of calculating the amount that customers who have been dropped from the program must pay to be reinstated to the program. This would include clarifying whether missed payments shall be calculated using the reduced percentage. Duke Energy Ohio recommends that the Commission use the new percentage (five percent) for purposes of both ongoing billing *and* reinstatement calculations, as this will be less burdensome to implement.

Third, the Commission should clarify that, consistent with the reduction from six percent to five percent, combination gas and electric customers will be paying a combined ten percent of their income, rather than the twelve percent that they currently pay.

D. The Order is unreasonable and unlawful in that the revised Rule 4901:1-18-12(D)(3) is ambiguous as to whether customers removed from PIPP before the revision takes effect should be charged “monthly charges” incurred when not enrolled (in addition to PIPP installments) as a precondition for reinstatement.

The Order revised Rule 4901:1-18-12(D)(3) to eliminate the requirement for involuntarily dropped customers to pay monthly charges.¹⁰ It is not clear from the Order whether this change will apply to customers who were involuntarily dropped *before* the revised rules take effect or if it will apply only to customers who are involuntarily dropped after the revised rules take effect. The Commission should clarify that this change will apply to *all* customers who attempt to be

¹⁰ See Order, Attachment C, p. 25.

reinstated after the effective date of the revised rules, regardless of whether the customer in question was dropped prior to the effective date or after the effective date.

- E. The Order is unreasonable and unlawful in that the revised Rule 4901:1-18-12(D)(3) should be simplified to be consistent with the revised Rule 4901:1-18-15(F) with regard to customers who have no outstanding arrearages at the time they are removed from the program and revised to be consistent with the proposed revisions to the electric PIPP rules.**

The revised Rule 4901:1-18-12(D)(3) contains an unnecessary disparity between involuntarily dropped and voluntarily departed customers that makes the rules more burdensome to implement. The Company believes that customers who have no outstanding arrearages at the time they are dropped from the PIPP plus program should be treated the same way, regardless of whether their drop was voluntary or involuntary. Indeed, the Commission itself appeared to recognize the similarities between these two categories of customers in the Order, noting that “[f]or low-income utility customers, there can be a variety of reasons and situations which may cause a customer *to be dropped from or to voluntarily leave* PIPP and not be able to pay accrued arrearages.”¹¹

Also, the revised Rule 4901:1-18-12(D)(3) is inconsistent with ODSA’s proposed revision to Rule 122:5-3-02(b) because the revised Rule 4901:1-18-12(D)(3) requires customers to make PIPP plus payments for months in which the customer was disconnected. ODSA, however, proposes to change Rule 122:5-3-02 such that “[i]f a dropped customer is disconnected, the same rule as above applies, they do not have to pay for the months they did not have service.”¹² Rule 4901:1-18-12(D)(3) should be consistent with this.

Accordingly, the Company believes that Rule 4901:1-18-12 (D)(3) should be revised as follows:

¹¹ Order, p. 60 (emphasis added).

¹² Business Impact Analysis, Chapter 122:5-3 Percentage of Income Payment Plan (PIPP) Program, p. 3 (November 25, 2020), available at <https://development.ohio.gov/files/rules/BIA-PIPP-Rule-Change-2020-2021.pdf>.

If a customer had no outstanding arrearages at the time he/she was involuntarily dropped from the PIPP plus program (e.g. for failure to re-verify) and is otherwise eligible for PIPP plus, and then rejoins PIPP plus after twelve months, the customer will be required to pay his or her first PIPP plus payment. If the customer re-joins PIPP plus after twelve months and had outstanding arrearages at the time he/she was involuntarily dropped from the PIPP plus program, PIPP plus customers who have been dropped from the PIPP plus program due to nonpayment or not meeting the terms of the program (e.g., failure to re-verify or to bring account current at the anniversary date) and who were otherwise eligible for PIPP plus, the customer may re-enroll in the program after all missed PIPP plus payments have been cured. This does not include PIPP plus payments for any months in which the customer's service was disconnected up to a maximum of 24 months. The dropped PIPP plus customer is not eligible for any incentives or credits in accordance with rule 4901:1-18-14 of the Administrative Code for payments made pursuant to this provision. The amount due shall not exceed the amount of the customer's arrearage.

The Company believes this revision will make the revised Rule 4901:1-18-12(D)(3) more consistent with Rule 4901:1-18-15(F) and fairer and more reasonable.

F. The Order is unreasonable and unlawful in that the addition of a second billing period in the revised Rule 4901:1-18-16(D) adds unnecessary system complications; however, this could be resolved by a further revision to Rule 4901:1-18-16(D).

The Order revised Rule 4901:1-18-16(D) to allow a former PIPP plus customer seeking to enroll in graduate PIPP plus to have *two* billing cycles (instead of one billing cycle) after graduate PIPP plus enrollment to come current on any income-based payments or to cure any missed PIPP plus payments.¹³ The Company is supportive of the goal of offering customers additional time to meet the conditions for graduate PIPP plus, but believes that this change introduces unanticipated system complications and an alternative proposal would better protect customers.

First, the revised Rule 4901:1-18-16(D) raises questions regarding how the customer should be treated during the second billing period. Currently, when Duke Energy Ohio receives a

¹³ Order, Attachment A, p. 30.

graduate PIPP enrollment record for a customer who is not yet current, Duke Energy Ohio drops the customer from PIPP plus and places the customer in the status of “Grad PIPP Pending.” If the customer does not become current by the time the next bill is generated, the customer is removed from graduate PIPP plus and is billed a consumption charge on his next invoice. If the customer has become current by the time the next bill is generated, the customer is moved to “Grad PIPP Enrolled” and is billed a graduate PIPP plus installment on his next invoice. The addition of a second pending period raises numerous questions regarding how to treat the customer in the second billing period.

If this revision is to be implemented as written, the Commission should clarify the following questions:

- What amount must a customer be billed for the first and second billing periods if he or she fails to come current by the end of the second billing period? A graduate PIPP plus installment, or a normal bill charge?
- If the customer is billed a normal bill charge during this period, would that bill charge be added to the customer’s PIPP plus arrearage?
- Does the customer’s obligation to be current on any “missed PIPP plus payments” by the end of the second billing period include the obligation to be current on the installment charged for the first billing period?

However, the Company believes an alternative approach would be simpler to implement and still achieve the goal of allowing customers more opportunity to enroll in graduate PIPP plus.

The Company proposes that customers be auto-enrolled in graduate PIPP plus, and any graduate PIPP plus installment would be billed the following bill period. If the customer does not become current on their past due PIPP plus installments within two billing periods of graduate PIPP Plus enrollment, the customer would be removed from graduate PIPP Plus. The customer would then have the opportunity to become current on any missed PIPP Plus and Graduate PIPP Plus installments within the extended 14 month period and be reinstated back onto Graduate PIPP Plus for the remaining 14 months after the original Graduate PIPP Plus enrollment date. This

would allow customers flexibility to become current during the program transition period but would prevent confusion on what amounts the utility should bill the customer.

In accordance with the above proposal, the Company proposes the following revisions to Rule 4901:1-18-16(D):

Upon enrollment To be enrolled in graduate PIPP plus, a former PIPP plus customer must be current with his/her income-based payments on the gas or natural gas utility company account or cure any missed PIPP plus payments within two billing cycles of the customer's enrollment in graduate PIPP plus. If the newly enrolled Graduate PIPP Plus customer does not become current with his/her missed PIPP Plus payments or cure any missed PIPP Plus payments within two billing cycles the gas or natural gas utility company shall remove the customer from the Graduate PIPP plus program.

III. CONCLUSION

In order to arrive at a fair and reasonable result, the Commission should reconsider its Order, and modify and/or clarify its revised rules as described above.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Larisa M. Vaysman

Rocco D' Ascenzo (0077651)

Deputy General Counsel

Larisa M. Vaysman (0090290) (Counsel of Record)

Senior Counsel

Duke Energy Business Services LLC

139 East Fourth Street

1303-Main

Cincinnati Ohio 45202

513-287-4320 (telephone)

513-287-4385 (facsimile)

Rocco.dascenzo@duke-energy.com(e-mail)

Larisa.vaysman@duke-energy.com

Willing to accept service via email

Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 4th day of December 2020, to the parties listed below.

/s/ Larisa M. Vaysman
Larisa M. Vaysman

EMAIL SERVICE LIST

John.jones@ohioattorneygeneral.gov
meissnerjoseph@yahoo.com
stnourse@aep.com
cblend@aep.com
sseiple@nisource.com
josephclark@nisource.com
andrew.j.campbell@dominionenergy.com
kennedy@whitt-sturtevant.com
edanford@firstenergycorp.com
ejacobs@ablelaw.org
merville@columbuslegalaid.org
amreese@lasclev.org
abutler@lascinti.org
smoes@lascinti.org
jdulman@communitylegalaid.org
amy.botschner.obrien@occ.ohio.gov
david.bergmann@occ.ohio.gov
mwalters@proseniors.org
sjagers@ohiopoveritylaw.org
plee@oslsa.org
drinebolt@opae.org
Michael.schuler@aes.com
Bethany.allen@igs.com
Joe.oliker@igs.com
pbryson@columbuslegalaid.org
colette.harrell@breathingassociation.org
fykes@whitt-sturtevant.com
rdove@keglerbrown.com

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Summary: Application Duke Energy Ohio's Application for Rehearing electronically filed by Mrs. Debbie L Gates on behalf of Duke Energy Ohio Inc. and Vaysman, Larisa and D'Ascenzo, Rocco O. Mr.