BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18 and Rules 4901:1-5-07,4901:1-10-22, 4901:1-13-11,4901:1-15-17,4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code.	))))))))	Case No. 08-723-AU-ORD **INITIAL COMMENTS BY COMMUNITIES UNITED FOR ACTION**

CUFA joins in all comments submitted by OCC and the Consumer Groups except those addressing the staff's proposed schedule for crediting PIPP arrearages. CUFA comments separately below on Arrearage Crediting as set out in the appendix to Rule 4901:1-18-14.

Summary of CUFA'S Arrearage Proposal

CUFA recommends that arrearages accrued to each PIPP account as of a specific date be removed entirely from the companies' books and that this be applied across the board to the accounts of active, inactive, and final customers alike. The arrearage would no longer appear on the monthly bills of active customers and would no longer pose a service obstacle to inactive and final customers. Going forward, PIPP customers would have the opportunity to "earn" monthly credits through timely bill payment, with no arrearage accruing in any month in which the customer pays his PIPP share before that month's bill is delinquent.

PIPP Arrearages Are Perversely Unique

The core concept of PIPP is that consumers can avoid disconnection by paying a substantial part of their monthly income to the utility company. The requirement for a "substantial" payment was the key difference between PIPP and a moratorium. The Commission arbitrarily set the total utility payment at 15% of household income (10% for primary heat, 5% for secondary heat).

To meet concerns that this was a "give away," the Commission has permitted the unpaid amount to continue to build and appear as a debt or arrearage on the individual customer's bill. This is not apparent in the rule. One must read between the lines to find it, reasoning backward from the fact that PIPP is defined as a payment plan.

When they sign up for PIPP, customers typically do not understand or bargain for an accumulating arrearage. Their focus is on maintaining essential utility service. Almost 30 years after PIPP was established, reference to arrearages is curiously missing even from the explanation of PIPP on the Commission's own website[1] other than an explanation of the availability of arrearage crediting once the customer is no longer income eligible.

Although it is structured in the rule as a "payment plan," by any objective definition PIPP is a public benefit for low income customers, a laudable means for making utility payments more nearly affordable. The closest analogy is housing vouchers, which enable low income tenants to pay rent to private landlords based upon their income. However, PIPP is unique among all other benefits in the requirement that the beneficiary ultimately bear the full financial burden of the benefit, deferring full liability to the day that the customer emerges from poverty, discontinues service, or dies.

PIPP customers' continuing liability for a service that is priced well beyond their ability to pay has resulted in an accrued debt of obscene proportions.

Addressing the PIPP Arrearage

CUFA commends the Staff for having addressed the PIPP arrearage problem for the first time in almost 3 decades. However, Staff's proposed modification falls well short of what is needed. Staff's proposed arrearage crediting scheme is too complex to be easily understood by participants and administered by companies, holds no realistic possibility for a customer to shed the burden of arrearages, and fails to distinguish between accrued and accruing arrearages.

Although staff's proposal is limited to gas PIPP, the reality is that virtually all gas customers are also electric customers. ODOD has yet to publish its proposals, and the following comments assume that ODOD and the Commission will ultimately coordinate the programs with a single crediting scheme.

Action on Arrearages Is Long Past Due

---

[1]http://www.puco.ohio.gov/emplibrary/files/media/Publications/Fact_Sheets/Energy%20Assistance%20Programs.pdf

The PUCO last seriously reviewed PIPP in 1990 (*Case No. 90-705-GE-PIPP)*, and the magnitude of the PIPP debt was identified by numerous parties as an issue that had to be addressed. At that time PIPP was less than 10 years old, yet consumers, companies, and the Commission were grappling with the same issues then as today—the only difference is one of magnitude, as is apparent from the following excerpts from comments in that case.

> During the seven years that the PIP plan has been in existence, low income customers have been spared the immediate emergency of winter utility disconnections, but at the cost of deferred PIP arrearages. For many people these arrearages are in the thousands of dollars. There are a number of metaphors that can be used to describe the situation, it can be compared to a time bomb, or an accumulation of snow over the customer's head that is getting ready to avalanche. The utilities have been granted relief in the form of riders which the Commission has approved, which pass the cost of PIP on to the general consumers like another cost of doing business. PIP customers need relief as well. ***Dayton Legal Aid Society***
>
> PIPP arrearages which are approaching $1,000 on average will never be paid by the customers because there is virtually no likelihood that PIPP customers, if and when they become ineligible for PIPP, will be able to carry such a debt burden. The vast majority of PIPP customers can never hope to pay arrearages which exceed the average arrearage accumulated during one year (about $3-$400 for gas and $1-200 for electric). Such large arrearages only serve to discourage the making of timely and consistent payments. ***Legal Aid Society of Cincinnati.***
>
> Customers who no longer qualify for PIP, but whose accumulated arrearages are too great to pay off, may become "trapped" in the PIP program. Customers who may have the opportunity to get employment that would increase their income above the amount that would qualify them for PIP may be discouraged from doing so because their accumulated PIP arrearages are too great to pay off. Thus, instead of allowing them to improve their lives, the PIP program tends to keep them in the welfare system. ***Dayton Power & Light***
>
> Since the utility companies are now made whole by the surcharge on everyone's rates, since there is little likelihood that the low income families will ever be able to pay off such arrearages, and since no help can be expected from the legislative branch of the government, a one-time amnesty plan would resolve the arrearage problem and provide a fresh start for many low income families. ***Greater Cleveland Welfare Rights Organization***
>
> PIP customers have little incentive to leave the plan, even with extended payment arrangements, because the arrearages amassed while on the program can be enormous. Those who are diligent about meeting their extended payment arrangements for a full year should be given a reward for their diligence and incentive to continue such behavior. ***East Ohio Gas***

> The Montgomery County Prosecutor's Office favors and arrearage forgiveness program that commences while the customer is still on PIPP...To qualify for arrearage forgiveness, customers must have made six consecutive payments at their required PIPP level...The benefit to be received is that one-fourth of their past year(s) accumulated arrearage would be forgiven. AS long as the customer continued to make payment, 25% of the past year(s)' arrearage would be forgiven. Once the customer was no longer on PIPP, s/he would have no more than one year of arrearage payments to make. ***Montgomery County Prosecutor's Office***.

Dimensions of the Arrearage Problem

About 250,000 of Ohio's poorest households are today being billed almost one billion dollars by the state's dozen utility companies. The **average** debt showing on the combined gas and electric bills of those households is $3,700. These numbers account for only the companies' "active" PIPP customers. According to data reported by the companies, they are owed an additional billion dollars by low income customers reported as "inactive" and "final."

The only readily available PIPP data are in the monthly "OSCAR" reports compiled by the Commission fro company submissions. The definitions are often uncertain and it is likely that the reporting is not consistent among all of the companies. However, the reports presumably approximate an aggregate reality. The numbers that follow are derived from the May, 2008 report. Adjustments have been made and noted to account for Duke's reporting only combined figures for gas and electric.

Total Active PIPP Gas Customers (Col. 1.02)	243,424 (includes Duke)
Total Active PIPP Electric Customers (Col 1.02)	253,539 (includes Duke)
Total Active PIPP Gas Arrears (Col. 1.03)	$590,689,206 (no Duke)
Total Active PIPP Electric Arrears (Col. 1.03)	$241,013,704 (no Duke)
Total G&E Active PIPP Arrears (Col. 1.03)	$913,351,731 (includes Duke)
Average Active Gas PIPP Arrears	$2,659 (excludes Duke)
Average Active Electric PIPP Arrears	$1,038 (excludes Duke)
Combined Average G&E arrearage	$3,697 (Duke: $3,837)
No. of Active Customers With Arrears Over $2,500 (Col. 5.05)	**75,160**
"Inactive" & "Final" PIPP Accounts	
Total Inactive PIPP Customers (G&E) (Col. 3.01)	279,931
Total Arrears owed by Inactive Customers (Col. 4.02)	$426,296,693
Total Final customers (G&E) (Col 3.02)	618,615
Total Arrears Owe by Final Customers (Col. 4.03)	$750,785,898

The billion (or two billion) dollar PIPP debt is a legal fiction. The utility companies have been made whole through the PIPP and Universal Service riders, and there is certainly no realistic expectation that impoverished households will ever have the means to pay even a tiny fraction of the debt. Unfortunately, however, the PIPP arrearage is a very real number when it is reported on customers' bills and used to deprive households of service when they are no longer PIPP-eligible.

There are distinct differences between the PIPP debt and most other debts that a household may incur:

1. **Amount relative to income**: In many instances the debt now approaches or exceeds the family's annual disposable income.

2. **Organic:** Unless a household has been shut off, the PIPP debt continues to grow whenever a PIPP customer is unable to meet the payment requirements (frequently the case in non-winter months).

3. **Essential Service:** The utility company has a unique collection device in that it can bar the defaulting customer from essential, monopoly services.

4. **Creditor has been made whole:** Thanks to the PIPP and universal service riders, the utility companies continually recover the debt by adding a charge to all residential customers (including PIPP customers).

The simple, cold fact is that the PIPP debt is a bad debt in every sense of the word. It is a debt that cripples the debtor, and it is not even owed to the nominal creditor, the collective utility companies, which have not only long since recovered their money but may also have reaped tax advantages by treating it as "bad debt."

For the individual PIPP customer there is, of course, a way to eliminate the debt in one fell swoop: bankruptcy. Legal Aid clients have reported that company officials have, in fact, suggested just that possibility. Bankruptcy is not, however, a practical option for most PIPP customers. Any realistic and lasting approach will require some form of universal debt liquidation akin to bankruptcy "fresh start."

Two Arrearages: Accrued or Historic and Accruing

To address the problem fully, the Commission must distinguish between two, distinct "arrearages." The figures presented above are the "accrued" or "historic" arrearages. They represent a "debt" that has been building for as long as the program has been in place and for which riders have long-since been levied, and the companies have been made whole.

The "accruing" or "future" arrearage has yet to happen. These are amounts that will result in the future and, absent any modification, will continue to be added to the customers' accounts.

The Staff's proposal implicitly intermingles these amounts with the inevitable result that the most faithful of PIPP payers will have no realistic hope of emerging debt free. Staff would reward the customer for 12 months with a credit of 1/24 of the accrued arrearages. At the year's end, credits would total 50% of the accrued debt. However, at the same the monthly credits were being applied, the customer would be accruing new debt, which will be merged with the remaining half of the original debt, which will then be the new base for a succeeding round of 1/24 credits.

Staff's Sisyphean Proposal Fails the "Simple" and "understandable" Tests

The Staff's proposal clearly fails the "simple" test. The impact on an individual customer's account is unpredictable and any explanation would require the use of hypothetical examples and be replete with conditional "ifs" and confusing math. Below is an approximation of how the program might be explained.

> The company will look at the total amount you owe at the beginning of the billing year. That will be divided by 24, and every month you pay your bill on time, you will get a credit on your bill of 1/24 of that original total. Any time your PIPP payment is less than the total bill, the difference will be added to your bill. At the end of one year, the company will do this all over again.

Example

- ♦ Your arrearage on January 1, 2010 is $3,600.
- ♦ Each month you pay your monthly PIPP bill on time, the company will deduct an additional $150 from your arrearage.
- ♦ Whenever your PIPP payment is less than the actual bill for that month, the company will subtract your payment from the actual bill and add the difference to your bill.
- ♦ If you have paid on time every month, at the end of December, 2010 your original debt will have been reduced to $1,800.
- ♦ If your total gas bill for 2010 was $1,000 and your PIPP payments totaled only $500, your new debt will be $1,800 + $500 or $2,300.

- ♦ The company will divide $2,300 by 24. And start over again in 2011. Each month you pay on time in 2011 you will get a credit of $96.

PIPP is already poorly understood. Customers do not understand when they enroll that they will almost immediately accruing enormous debt. They do not understand the summer/winter switch. They do not understand that even when they are disconnected the company will continue assess income-based payments that will become due when they seek reconnection. They will almost certainly not grasp the essentials of the staff's proposed crediting scheme.

The Rule Must Address Accrued and Accruing Arrearages Separately

In Cinergy's 2001 gas case (01-1478-GA-ALT), CUFA proposed that Cinergy adopt a plan that would erase the accrued arrearage in one year by posting to the customer's account a monthly credit equal to 1/12 of the accrued arrearage. The company rejected that as too complex and, instead, countered with a much simpler proposal to erase in a single stroke the entire arrearage from all accounts—active, inactive and final. As a result of the ensuing agreement, more than $30 million disappeared from customers' accounts in a single month.

Unfortunately, the gas agreement did not address at all the accruing arrearages. As a result, accounts that had been zeroed in 2004 already bear the weight of 4 years of new debt.

CUFA and Cinergy agreed to a more comprehensive approach in the company's 2003 electric alternative regulation case (03-93-EL-ATA). Cinergy agreed in a settlement stipulation to join CUFA in advocating that ODOD adopt an arrearage crediting program that would eliminate the accrued arrearage with a single credit and enable customers to avoid accruing credits by timely payment of monthly bills. Although ODOD has not adopted the joint CUFA/Duke proposal for electric PIPP arrearages, CUFA offers both the gas and electric stipulations as evidence both that more aggressive crediting is well within the scope of what one company has apparently regarded as in its best interest and that the Commission has twice approved as in the public interest.

Recommendations

CUFA recommends that arrearages accrued to each PIPP account as of a specific date be removed entirely from the companies' books and that this be applied across the board to the accounts of active, inactive, and final customers alike. The arrearage would no longer appear on the monthly bills of active customers and would no longer pose a service obstacle to inactive and final customers. Going forward, PIPP customers would have the opportunity to "earn" monthly credits through timely bill payment, with no arrearage accruing in any month in which the customer pays his PIPP share before that month's bill is delinquent.

Incentives are irrelevant and worthless if the person targeted is unaware of the incentive. The rule should establish standards for educating PIPP customers about the initial credit and the very real rewards for timely payment.

Respectfully submitted,

/s/_______________________________
Noel M. Morgan (Supreme Court No. 0066904)
Trial Attorney for Communities
United for Action
Legal Aid Society of Southwest Ohio, L.L.C.
215 East Ninth Street, Suite 500
Cincinnati, Ohio 45202
(513) 241-9400; (513) 241-7871 (fax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was served on all parties of record either electronically or by first class U.S. mail, postage prepaid, this 10th day of September, 2008.

/s/_______________________________
Noel M. Morgan
Trial Attorney for Communities
United for Action