

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Review of Chapters 4901:1-17 and)	Case No. 08-723-AU-ORD
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.)	

**INITIAL COMMENTS OF
EASTERN NATURAL GAS COMPANY
PIKE NATURAL GAS COMPANY AND
SOUTHEASTERN NATURAL GAS COMPANY**

Pursuant to the Entries of June 25 and August 1, 2008, Eastern Natural Gas Company ("Eastern"), Pike Natural Gas Company ("Pike"), and Southeastern Natural Gas Company ("Southeastern") (the "Companies") respectfully submit Initial Comments to the Commission Staff's proposed rules in this case. Eastern (6,700 customers), Pike (7,200 customers), and Southeastern (1,450 customers) would each be considered small natural gas companies under the Commission's proposed rules in Case No. 08-558-AU-ORD.

I. The Commission should grant an exemption from compliance with these rules for small utilities.

On June 25, 2008, the Commission issued an Entry in Case No. 08-723 which proposed excessive changes to the rules in Chapters 4901:1-17 and 4901:1-18 of the Ohio Administrative Code. The Staff proposed two new extended payment plans. Under the proposed modified one-sixth payment plan, a customer would make a down-payment of twenty-five percent of the total bill as the first payment, followed by six payments based on one-sixth of the remaining balance. Under the proposed one-twelfth plan, customers would pay their arrearages in twelve equal monthly payments, in addition to a budget payment plan for their projected

monthly bills which would also end twelve months from their initial payment. The budget portion of the payments may be adjusted periodically during the twelve month period, as needed. The Staff has also proposed two “arrearage forgiveness” plans. In addition, the Staff also proposes a conservation arrearage program in which there would be a credit equal to two twenty-fourths of the arrearage if a customer achieves a ten percent reduction in usage.

These proposed changes, if adopted, will increase the information technology and billings system costs for all public utilities, but will be especially burdensome for small natural gas companies such as Eastern, Pike and Southeastern. Their existing computer systems do not have the capacity to implement the proposed rules.

If the rules are adopted as proposed, small natural gas companies such as Eastern, Pike, and Southeastern will simply be unable to implement those rules under existing conditions.

The Commission, in its June 25, 2008 Entry referenced Governor Strickland’s February 12, 2008 Executive Order 2008-04S entitled “Implementing Common Sense Business Regulation”. Subsection 4G of Executive Order 2008-04S provides:

g. Agencies should consider whether proposed rules and the cumulative effect of related rules, make Ohio a more or less attractive place to do business. Where appropriate, proposed rules should be written with a date on which the rules will expire, in order to account for the rapid changes in many sectors of the economy. Furthermore, where authorized and appropriate, agencies should make exceptions to rules and provide exemptions for small businesses.

The Commission should adhere to Executive Order 2008-04S. It should make a determination whether the proposed rules, and the cumulative effect of related rules, make Ohio a more or less attractive place to do business. The Commission Staff should first make a specific analysis as to what is the problem with the current PIPP program. Consideration should be given to taking incremental steps in addressing specific problems that currently exist. The costs of a

reform of the PIPP program should not be a burden to natural gas companies but should be transparent to all customers.

Further, the Commission should recognize the fact that smaller utilities such as the Companies do not have billing systems and information technology resources which will enable them to implement the changes in operations proposed by these rules. Extensive and costly changes to their billing systems will be required if these rules are to be implemented. Public utilities such as the Companies and those defined as small utilities in Case No. 08-558-AU-ORD should be exempted from those rules that require modified payment plans, arrearage forgiveness programs, and the conservation arrearage program rider.

II. Proposed Rule 4901:1-18-14 “Incentive Programs for PIPP and Graduate PIPP Customers” should be modified.

Proposed Rule 4901:1-18-14 of the Ohio Administrative Code is entitled “Incentive Programs for PIPP and Graduate PIPP Customers”. The idea behind the rule appears to be to encourage or provide an incentive to PIPP and Graduate PIPP customers to make timely payments. But the rule as written allows a PIPP customer or a graduate PIPP customer to make only one timely payment within twelve months and obtain a credit. This rule would also allow a PIPP customer or a graduate PIPP customer in the first year to be able to make timely payments in low consumption months in order to gain credit for one twenty-fourth of the arrearage. This allows customers to “game” the system. If an incentive is to be provided to encourage PIPP or Graduate PIPP customers to make timely payments, such a customer should be required to make at least twelve consecutive timely monthly payments before twelve months of the credits are applied.

The Commission should modify its proposed rule to require that before any arrearage credit is provided, the customer must make twelve consecutive months of timely payments.

III. Proposed Rule 4901:1-18-18 “Payment Agreement for Former PIPP Customers” is beyond the Commission’s authority.

Rule 4901:1-18-18 requires a public utility to enter into a payment agreement with PIPP customers for accumulated arrearages under certain circumstances. Those circumstances are when the PIPP customer a) moves beyond the gas or natural gas company’s service area, b) transfers to a residence where utility service is not in the former PIPP customer’s name or c) moves to a master-metered residence. The proposed rule goes on to specify that the monthly payment cannot be more than the total accumulated arrearage divided by sixty months and that each time the former PIPP customer makes his/her required payment or more by the due date, the Company must reduce the account arrearage with a credit. The arrearage credit is to be calculated at the last re-verification, before the customer’s move or transfer and shall continue to be the applicable arrearage credit amount.

This proposed rule is beyond the Commission’s authority. The Commission has jurisdiction over public utilities and their rendition of service to customers. The Commission has regulatory authority over the public utility-public utility customer relationship. But once the customer moves beyond the natural gas company’s service area or to another state or to a master metered residence, there is no longer a public utility-customer relationship. The relationship becomes that of a creditor-debtor. The Commission has no authority to issue rules governing that type of relationship. Rule 4901:1-18-18 must be stricken.

In Lucas Cty. Commrs. v. Pub. Util. Comm. (1997), 80 Ohio St.3d 344, the Ohio Supreme Court held that the Commission is not statutorily authorized to order a refund of, or

credit for, charges previously collected by a public utility where those charges were calculated in accordance with an experimental rate program which was approved by the commission, but which has expired by its own terms. In the Lucas Cty. Commrs. case, a Commission-approved pilot program known as the Weather Normalization Adjustment (“WNA”) program was implemented by Columbia but later expired. The Commission found, and the Court agreed, that the Commission lacked authority to order a rebate or credit of \$8.5 million.

The Court, in analyzing Section 4905.26, Revised Code, stated:

...By its own terms R.C. 4905.26 authorizes complaints to be filed to challenge any utility rate that “is” unjust or unreasonable. The statutory authority is stated in the present tense, supporting the conclusion that the General Assembly did not intend the complaint procedure of R.C. 4905.26 to be available to those dissatisfied with former utility rates. The county here did not seek relief pursuant to R.C. 4905.26 during the WNA program.

Like the effect of the WNA program being terminated in Lucas Cty. Commrs. the Companies submit that once the public utility-public utility customer relationship has terminated, the Commission is not statutorily authorized to order a credit of, or credit for, charges previously made by a public utility where such charges were calculated in accordance with a rate which was approved by the Commission. Without statutory authority to regulate the relationship of a public utility and a former customer, proposed Rule 4901:1-18-18 must be deleted.

IV. Other

1. Should customers be permitted to choose the monthly due date of their bills on an annual basis?

RESPONSE: Eastern, Pike and Southeastern do not have the capability of allowing customers to pick and choose the monthly due date of their bills each year. If the Commission permits customers to choose their due date on an annual basis, it should do so with respect to the customers of those natural gas companies who have the billing capacity to allow

that. Eastern, Pike and Southeastern must read meters and issue bills on a specific cycle. The Companies respectfully request that the Commission exempt small utilities from any requirement that would permit customers to choose the monthly due date for their bills on an annual basis.

V. Conclusion

The Companies appreciate the opportunity to respond to the proposed rules. The Commission should grant an exemption for compliance with these rules for small utilities. It should modify Proposed Rule 4901:1-18-14 to require customers to make at least twelve consecutive timely monthly payments before credits are applied. The Commission should delete Proposed Rule 4901:1-18-18 as it is beyond the Commission's authority. Finally, the Commission should exempt small utilities such as Eastern, Pike and Southeastern from any requirement that would allow customers to choose the monthly due date of their bills on an annual basis.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Initial Comments was served upon the following parties of record by electronic mail where indicated or by U.S. first class mail this 10th day of September, 2008. I further certify that within two business days of the deadline for filing these Comments, a copy will also be served by electronic mail or by U.S. first class mail upon those additional parties who filed initial comments in this case but are not listed below.

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Summary: Comments Initial Comments of Eastern Natural Gas Company, Pike Natural Gas Company and Southeastern Natural Gas Company electronically filed by Stephen M Howard on behalf of Eastern Natural Gas Company and Pike Natural Gas Company and Southeastern Natural Gas Company