

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review)
of Chapters 4901:1-7 and 4901:1-18 and)
Rules 4901:1-5-07, 4901:1-10-22, 4901:1-) Case No. 08-723-AU-ORD
13-11, 4901:1-15-17, 4901:1-21-14, and)
4901:1-29-12 of the Ohio Administrative
Code.

**MOTION FOR A COMMISSION-ORDERED INVESTIGATION INTO
AMENDMENTS TO THE COMMISSION’S
CREDIT AND DISCONNECTION RULES
BY THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL, THE
APPALACHIAN PEOPLE’S ACTION COALITION, CLEVELAND HOUSING
NETWORK, EMPOWERMENT CENTER OF GREATER CLEVELAND, THE
NEIGHBORHOOD ENVIRONMENTAL COALITION, CONSUMERS FOR FAIR
UTILITY RATES, UNITED CLEVELANDERS AGAINST POVERTY,
SUPPORTS TO ENCOURAGE LOW-INCOME FAMILIES, CLEVELAND
TENANTS’ ASSOCIATION, CITIZENS UNITED FOR ACTION, MAY DUGAN
CENTER, PRO-SENIORS, HARCATUS TRI-COUNTY COMMUNITY ACTION
ORGANIZATION, OHIO INTERFAITH POWER AND LIGHT, THE OHIO
FARM BUREAU FEDERATION, THE OHIO FARMERS’ UNION, AND THE
EDGEMONT NEIGHBORHOOD COALITION**

The Consumer Groups¹ move the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to commence a Commission-Ordered Investigation (“COI”) to develop a record and find facts, pursuant to R.C. 4903.09, with regard to the promulgation of the credit and disconnection rules and offering of low-income assistance

¹ The Consumer Groups are: the Office of the Ohio Consumers’ Counsel, the Appalachian People’s Action Coalition, Cleveland Housing Network, Empowerment Center of Greater Cleveland, the Neighborhood Environmental Coalition, Consumers for Fair Utility Rates, May Dugan Center, United Clevelanders Against Poverty, Supports To Encourage Low-Income Families, Cleveland Tenants’ Association, Citizens United For Action, Pro-Seniors, HARCATUS Tri-County Community Action Organization, Interfaith Power and Light, the Ohio Farm Bureau Federation, Ohio Farmer’s Union, and the Edgemont Neighborhood Coalition.

programs that are critical for low-income Ohioans to obtain and maintain electric and gas utility services during this time of economic hardship and soaring prices for energy. On June 25, 2008, the PUCO initiated the above-captioned rulemaking concerning amendments to the Commission's establishment-of-credit and disconnection rules, but the rulemaking does not provide for the development of a record and the finding of facts necessary for deciding the critical issues for low-income Ohio families that are now before the PUCO.

The PUCO may grant motions such as this one pursuant to Ohio Adm. Code 4901-1-12 and may initiate investigations pursuant to R.C. 4905.26. The grounds for the Consumer Groups' Motion for an Investigation are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This rulemaking, while attempting to address some of the problems with the Commission's current rules, is an inadequate means to address reforms of the Commission's policies on payment plans and disconnection that are needed given rising energy prices in a deteriorating economy. Such policies are intensely fact-based. It is not enough for the Commission to request data after the PUCO staff has drafted proposed rules²; the rules should be drafted based on the facts as presented to the Commission in an investigation.

The June 25th Entry included the PUCO Staff's proposed amendments to the existing rules. There were a number of major substantive changes proposed by the PUCO Staff, including a "restructuring" of rules relating to the Percentage of Income Payment Plan ("PIPP"). The Consumer Groups' comments -- filed today -- address a

² See June 25 Entry, Appendix A.

number of major issues, including arguing that the Commission should open an investigation in order to ensure that these rules – where the underlying facts are critically important to the formation of the state’s policies – are based on a complete evaluation of the crucial information about customers’ needs for obtaining and maintaining energy utility services, reasons for disconnections, impact and solutions regarding arrearages, and other related matters. Further, the hearing recommended by the Consumer Groups will permit testimony from consumers themselves regarding the impact of the rules on their budgets and the ability to maintain vital utility services.³

II. ARGUMENT

A. Ohio Law

The Commission should undertake a Commission-ordered investigation (“COI”) on these issues, using, in part, its general powers and jurisdiction under R.C. 4905.02, R.C. 4905.03, and R.C. 4905.04. The Commission has plenary jurisdiction regarding public utilities. R.C. 4905.04 *et seq.* The Commission has the statutory responsibility to ensure that “[a]ll charges made or demanded for any service rendered * * * shall be just [and] reasonable....” R.C. 4905.22. In terms of electric service, the Commission is required by Ohio law to “[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.” R.C. 4928.02(A).

The Commission has authority, pursuant to R.C. 4905.26, to investigate whether public utilities are providing service in a reasonable and just manner and to hold a hearing regarding any public utility's service:

Upon complaint in writing against any public utility by any person, firm or corporation, or *upon the initiative or complaint of the public utilities commission* that any * * * service rendered * * * is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any * * * practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be inadequate or cannot be obtained, * * * *the commission shall fix a time for hearing* and shall notify complainants and the public utility thereof.

(Emphasis added.) The Commission should open a proceeding upon its own initiative to allow testimony under Ohio Adm. Code 4901-1-29 and permit full discovery under R.C. 4903.082 for intervenors. The Consumer Groups have made attempts at both formal and informal discovery, prior to developing initial comments, with limited success. Only a formal Commission investigation can provide the information and data needed to make fully informed decisions on these vital issues. R.C. 4903.09.

B. A “restructuring” of PIPP” requires a more thorough review of the program than is possible in a rulemaking proceeding.

The Commission's rulemaking proceedings provide no opportunity for evidentiary hearings, public hearings, the filing of testimony, and full discovery is not permitted. The process often does not permit the necessary review of all the relevant facts and public input, particularly when rules are undergoing dramatic change, as is the case in this rulemaking.

The Commission notes in the Entry that the PUCO Staff is “restructuring” the

natural gas PIPP rules in its proposal.⁴ Ohio's establishment-of-service and disconnection policies require a comprehensive review and evaluation distinct from the normal rulemaking and emergency winter reconnection process. The Consumer Groups recommend that, because the proposed rules totally restructure PIPP and other rules, the proposed changes to Ohio Adm. Code 4901:1-17 and Ohio Adm. Code 4901:1-18 be considered subsequent to a COI.

Local public hearings have already been requested by the Consumer Groups.⁵ The public hearings are crucial for the public to educate the Commission and the other parties to the proceeding on the ramifications of participating in PIPP and other aspects of the disconnection rules. An opportunity should be provided for consumers to present their perspectives directly to the Commission regarding how the payment levels and arrearages affect their daily lives. The Consumer Groups and other interested parties should also have an opportunity to present testimony and cross-examine utility company and PUCO staff witnesses.

The PIPP rules were originally adopted by the Commission in a lengthy COI that included public hearings.⁶ That investigation was, in turn, prompted by a prior COI in which the Commission reviewed a disconnection avoidance plan offered by Columbia Gas of Ohio.⁷ The investigation prompted the Commission to review the payment plans of each of the natural gas utilities. A more recent PIPP proceeding that resulted in

⁴ Entry at 2.

⁵ Motion for Public Hearings (July 8, 2008).

⁶ *In re the Investigation into Long-Term Solutions Concerning Disconnection of Gas and Electric in Winter Emergencies*, Case No. 83-303-GE-COI, Opinion and Order (November 23, 1983).

⁷ Special Arrangements COI.

significant changes to PIPP culminated in a stipulation adopted by the Commission.⁸ The stipulation, among other things, established certain arrearage crediting programs for former PIPP customers, established a PIPP balanced budget payment plan, and established annual PIPP “true-up” requirements for electric and natural gas utilities. An evidentiary hearing was also held as part of the proceeding.

The restructuring of PIPP that is proposed in this rulemaking represents a dramatic overhaul of PIPP. These changes to the current framework for PIPP will make fundamental changes in the ability of all Ohioans to establish and maintain essential energy services. Those affected, as well as the parties representing them, deserve nothing less than a full evidentiary hearing to determine the proper direction for low-income energy assistance policies, including those embodied in Ohio Adm. Code 4901:1-17 and Ohio Adm. Code 4901:1-18. The investigation would address all aspects of these rules, including payment levels, incentive programs for timely payments and conservation, and arrearage crediting timing (both upfront and continuing) and amounts.

In Appendix A to the proposed rules, the Commission Staff has requested that the public utilities and other commenters in this proceeding answer numerous questions, including questions regarding prepaid meters, the costs of the proposed PIPP rules, and conservation. Without full and complete answers to these vital questions available for the drafting of initial comments, and without a process in place to permit follow-up to the answers that are provided by the utilities, the rules adopted by the Commission may need to be revisited in short order. Commenters in the rulemaking are at an extreme

⁸ *In re the Review of the Interim Emergency and Temporary PIP Plan Riders Contained in the Approved Rate Schedules of Electric and Gas Companies*, Case No. 88-1115-GE-PIP, Finding and Order (December 2, 1993) (“PIP Plan Rider Stipulation”).

disadvantage in proposing amendments to the rules without the information and the ability to cross-examine witnesses regarding the data that is eventually provided to the Commission.

One of the fundamental provisions of Ohio utilities law is that public utilities are required to provide adequate service to customers. R.C. 4905.22 states, “All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service . . .”⁹ These rules should help accomplish that end.

In this motion, the Consumer Groups are moving for the Commission to open an investigation. In such a motion, the standard is only whether reasonable grounds have been stated.¹⁰ Only after full discovery,¹¹ an evidentiary hearing, and local public hearings¹² will the Commission have the information necessary to guarantee fairness and efficacy in promulgating new rules that disproportionately impact low-income Ohioans¹³. These issues cannot be resolved without a reasonable process such as that recommended by the Consumer Groups.

⁹ See also R.C. 4927.02(A): It is the policy of this state to “[e]nsure the availability of adequate basic local exchange service to citizens throughout the state...”

¹⁰ R.C. 4905.26.

¹¹ R.C. 4903.082.

¹² See Consumer Groups Motion for Local Public Hearings.

¹³ R.C. 4903.09

III CONCLUSION

The Commission should grant the Consumer Groups' Motion for an investigation, to develop a record and find facts, pursuant to R.C. 4903.09, with regard to the promulgation of the credit and disconnection rules and offering of low-income assistance programs that are critical for low-income Ohioan families to obtain and maintain electric and gas utility services during this time of economic hardship and soaring prices for energy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for a Commission-Ordered Investigation and Memorandum in Support were served by first class United States Mail, postage prepaid, to the persons listed below, on this 10th day of September 2008.

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Summary: Motion Motion for a Commission-Ordered Investigation into Amendments to the Commission's Credit and Disconnection Rules by the Office of the Ohio Consumers' Counsel, The Appalachian People's Action Coalition, The Cleveland Housing Network, Empowerment Center of Greater Cleveland, The Neighborhood Environmental Coalition, Consumers for Fair Utility Rates, United Clevelanders Against Poverty, Supports to Encourage Low-income Families, Cleveland Tenants' Association, Citizens United for Action, May Dugan Center, Pro-Seniors, Harcatus Tri-County Community Action Organization, Ohio Interfaith Power and Light, The Ohio Farm Bureau Federation, The Ohio Farmers' Union, and the Edgemont Neighborhood Coalition electronically filed by Patti Mallarnee on behalf of Reese, Richard C. Mr.