

**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-)
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

**REPLY TO
FIRSTENERGY AND GAS COMPANIES MEMORANDUM CONTRA
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
THE APPALACHIAN PEOPLE'S ACTION 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, THE OHIO FARM BUREAU FEDERATION, AND THE
OHIO FARMERS UNION**

On September 10, 2008, the above-listed Consumer Groups filed a motion asking the Public Utilities Commission of Ohio ("PUCO" or "Commission") to open a Commission-ordered investigation ("COI") into the appropriate credit and disconnection rules to be adopted by the Commission, focusing on payment plans and disconnection rules that will enable customers – especially low-income customers -- to retain service without unduly burdening other companies or the gas and electric companies subject to those rules.¹ On September 25, 2008, Ohio Edison, the Cleveland Electric Illuminating Company and the Toledo Edison Company ("FirstEnergy") filed a Memorandum Contra the Motion. Also on September 25, 2008, the Ohio Gas Association; Duke Energy Ohio,

¹ Motion for a Commission-Ordered Investigation into Amendments to the Commission's Credit and Disconnection Rules (September 10, 2008) ("Motion").

Inc.; the East Ohio Gas company d/b/a Dominion East Ohio; and Vectren Energy Delivery of Ohio, Inc. (“Gas Companies”) filed a Memorandum Contra. The Consumer Groups file this reply.²

FirstEnergy’s two-page memorandum argues that because this proceeding is part of the Commission’s regularly scheduled rule review, the parties have had “sufficient time to review existing rules and document any and all changes that need to be made...” including the 60 days given to do initial comments and 30 more for reply comments³ There has indeed been some time, but that time has not been productive compared to the “documentation” that would only be possible through a Commission investigation.⁴

FirstEnergy also says that the “restructuring” of the gas PIPP rules “is the only change that the Consumer Groups can credible [sic] argue represents a significant change.”⁵ To the contrary, the Motion asked for an investigation with “regard to the promulgation of the credit and disconnection rules and offering of low-income assistance 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.”⁶ The issue is not which rules the PUCO Staff has proposed to change -- which include the gas PIPP rules -- but which rules need to be changed in the face of the current economic and regulatory environment. FirstEnergy also notes that no party mentioned the need for

² The reply is filed pursuant to Ohio Adm. Code 4901-1-12(B). On September 18, 2008, AEP Ohio had filed a Memorandum Contra the Motion; the Consumer Groups responded in a Rely Memorandum filed on September 25, 2008.

³ FirstEnergy Memorandum Contra at 2.

⁴ As witnessed by most of the utilities’ non-response to OCC’s discovery responses in this proceeding.

⁵ FirstEnergy Memorandum Contra at 2.

⁶ Motion at 1-2.

a COI at the July 8, 2008 workshop on the PUCO Staff-proposed rules,⁷ as if that somehow bound parties after a more intensive review of the Staff proposal and the responses of Staff at that workshop.

The Gas Companies oppose the Motion because the Motion “seeks to transform this rulemaking into a full-blown adversarial hearing.”⁸ The Consumer Groups do indeed seek to transform this rulemaking – which is so dependent on facts regarding consumers’ payment behavior and companies’ means to deal with that behavior – into a full-blown hearing.⁹ The adversarial nature of such a proceeding would be inversely commensurate with parties’ willingness to address the facts.

The Gas Companies assert that the Consumer Groups have not stated reasonable grounds for complaint.¹⁰ That is not the issue here; the issue is whether the Consumer Groups have stated reasonable grounds for the investigation of current payment plans and disconnection practices, in order to form a solid factual basis for the Commission’s rules.¹¹ This is needed in order to ensure that the utilities’ practices in this area are just and reasonable. This can be done on the “initiative” of the Commission, as distinguished from a “complaint” by the Commission.¹² And the investigation can be into whether any utility “regulation, ... practice affecting or relating to ... or in connection with such

⁷ FirstEnergy Memorandum Contra at 2.

⁸ Gas Companies Memorandum Contra at 1.

⁹ Including cross-examination, which as the Consumer Groups noted in the Reply to AEP Ohio’s Memorandum contra, has been described as “the greatest legal engine ever invented for the discovery of truth.” Consumer Groups Reply Memorandum at 3, quoting Wigmore on Evidence, Vol. 3 at 3.

¹⁰ Gas Companies Memorandum Contra at 2.

¹¹ R.C. 4905.26.

¹² Id.

service, is or will be, in any respect unreasonable, unjust, [or] insufficient....” There are scarcely any limitations on the ability of the Commission to undertake an investigation.. That power unquestionably extends to the utilities’ credit, payment and disconnection practices.

The Gas Companies assert that the Consumer Groups have not justified the “enormous commitment” of resources an investigation would require.¹³ In 1982, the utilities asserted that the PUCO-declared moratorium on disconnections for non-payment must be limited, in order to prevent abuse of the moratorium.¹⁴ The Commission opened an investigation, complete with hearings, into the utilities’ allegations. Ultimately, the Commission decided that the moratorium should stand unchanged.

Surely, the Commission can open an investigation into these broader subjects now. Again, the issue is not really whether the Consumer Groups have been “hindered” in our comments¹⁵; the issue is whether a notice-and-comment proceeding can effectively address these issues, which none of the utilities have disputed are intensely fact-based. And although OCC does – and other Consumer Groups do also – have access to some relevant information,¹⁶ attempts to obtain information for a broad range of the companies have been unavailing.

Finally, the Gas Companies agree with AEP Ohio that “[a]n informal, ‘round table’ discussion process would provide the benefits sought by the Consumer

¹³ Gas Companies Memorandum Contra at 3.

¹⁴ Cite

¹⁵ Gas Companies Memorandum Contra at 3.

¹⁶ As shown in the Consumer Groups’ Comments.

Groups....”¹⁷ As noted in the Consumer Groups’ response to AEP Ohio, an informal process would be a distant second to a formal investigation. It would be doomed to failure if there were not orders – or at least understandings – that utility information on the key subjects would be made broadly available. This investigation and the solutions from it must succeed in the interest of Ohioans.

Neither FirstEnergy nor the Gas companies, in their turn, justify denying the Consumer Groups Motion for a Commission-ordered investigation. Likewise, AEP Ohio’s Memorandum Contra did not do so. The Commission should grant the Consumer Groups’ Motion and open an investigation so that Ohio consumers have credit and disconnection rules that are based in reality rather than speculation.

Respectfully submitted,

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¹⁷ Id. at 4.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Reply Memorandum** was served by first class United States Mail, postage prepaid, to the persons listed below, on this 2nd day of October 2008.

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Summary: Reply Reply to FirstEnergy and Gas Companies Memorandum Contra by The Office of the Ohio Consumers' Counsel, The Appalachian People's Action 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, The Ohio Farm Bureau Federation, and The Ohio Farmers Union electronically filed by Ms. Deb J. Bingham on behalf of David C. Bergmann