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 COMMENTS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, THE APPALACHIAN PEOPLE'S ACTION COALITION, CONSUMERS FOR FAIR UTILITY RATES, MAY DUGAN CENTER, UNITED CLEVELANDERS AGAINST POVERTY, CITIZENS UNITED FOR ACTION, PRO SENIORS, CLEVELAND TENANTS' ASSOCIATION, HARCATUS TRI-COUNTY COMMUNITY ACTION ORGANIZATION, THE OHIO FARM BUREAU FEDERATION, THE OHIO FARMERS' UNION, OHIO INTERFAITH POWER AND LIGHT, AND THE EDGEMONT NEIGHBORHOOD COALITION

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I. INTRODUCTION

On June 25, 2008, the Public Utilities Commission of Ohio ("PUCO" or "Commission") issued an Entry initiating this proceeding (the "June 25 Entry"). The June 25 Entry included proposed revisions to the Commission's rules on establishment of residential service for all public utilities (Ohio Adm. Code Chapter 4901:1-17) and on termination of residential service for gas and electric utilities (Ohio Adm. Code Chapter 4901:1-18). The June 25 Entry also included proposed changes to other rules, addressing the issue of utilities contracting with payday lenders as authorized payment agents.

After requests for extension of time were filed and granted, comments were filed on September 10, 2008. From the consumer side, joint comments were filed by the

Office of the Ohio Consumers' Counsel ("OCC"), 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 ("Harcatus"), Ohio Interfaith Power and Light, the Ohio Farm Bureau Federation, the Ohio Farmers' Union, and the Edgemont Neighborhood Coalition ("Consumer Groups"). Comments were also filed by AARP-Ohio, Coalition on Homelessness and Housing in Ohio, Ohio Association of Community Action Agencies, Ohio Association of Second Harvest Foodbanks, and Ohio Partners for Affordable Energy ("AARP, et al."), and by Communities United For Action ("CUFA").[1]

Comments were also filed by the Ohio Department of Development ("ODOD"). A letter was filed by the Franklin County Department of Jobs and Family Services, addressing only proposed Ohio Adm. Code 4901:1-18-06(A)(3)(c).[2]

On the industry side, comments were filed by gas companies, electric companies, Ohio's single combination company, Duke Energy Ohio ("Duke") and telephone companies. The gas companies included Columbia Gas of Ohio, Inc. ("COH"); Constitution Gas Transport Co., Inc., Foraker Gas Company, Inc., KNG Energy, Inc. and the Swickard Gas Company ("Constitution, et al."); East Ohio Gas Company d/b/a

[1] As noted in the Consumer Groups initial comments, CUFA joined in all of the Consumer Groups comments other than on up-front arrearage crediting. Harcatus supported CUFA on up-front arrearage crediting.

[2] As in the Consumer Groups initial comments, the proposals from the June 25 Entry will be referred to as, e.g., Proposed Rule 18-06(A)(3)(c), while the current rules will be referred to as, e.g., Ohio Adm. Code 4901:1-17-08.

Dominion East Ohio ("Dominion"); Eastern Natural Gas Company, Pike Natural Gas Company and Southeastern Natural Gas Company ("Eastern, et al."); the Ohio Gas Company ("Ohio Gas"); Sheldon Gas Company ("Sheldon"); and Vectren Energy Delivery of Ohio ("Vectren"). The electric companies included Columbus Southern Power Company and Ohio Power Company ("AEP"); the Dayton Power and Light Company ("DP&L"); and Ohio Edison Company, Cleveland Electric Illuminating Company and Toledo Edison Company ("FirstEnergy"). The telephone companies included the AT&T Entities ("AT&T"), Cincinnati Bell Telephone Company LLC ("CBT"), and the Ohio Telecom Association ("OTA"). Comments were also filed by payday lenders ACE Cash Express, Inc. ("Ace") and CheckFreePay Corporation ("CheckFree").

The Consumer Groups provide these reply comments. The utilities' comments show what can charitably be described as fragmentation, with some companies focusing on one proposed rule and other companies concerned about other rules, with few rules attracting comments from numerous utilities. Most importantly, there were few comments on key portions of the PUCO Staff proposals, specifically on percentage-of-income payment plan ("PIPP") requirements and arrearage crediting.[3]

There is one unsettling theme running through the comments, however. There are numerous instances where the companies oppose a "staff proposal" without apparent awareness that the proposal, is, in fact, part of the current rules.[4] The companies'

[3] This may be because, as noted by the Consumer Groups, the utilities are made whole for PIPP. See. e.g., Consumer Groups Comments at 5.

[4] See, e.g., COH Comments at 20, Duke Comments at 18, FirstEnergy Comments at 8.

disagreements with these rules are disconcerting, giving rise to questions about whether the current rules are being followed.

II. A COMMISSION-ORDERED INVESTIGATION IS NECESSARY TO DEVELOP THE STATE'S REGULATIONS FOR DISCONNECTION OF SERVICE, ESPECIALLY FOR LOW-INCOME PAYMENT PROGRAMS.

In the initial comments, the Consumer Groups extensively discussed the need for investigation into the bases for these rules, which focus on customer behavior and the customer's ability to maintain service under prescribed conditions.[5] Those reasons were also set forth in the Consumer Groups' separate Motion for a Commission-Ordered Investigation, filed at the same time as the initial comments. Some utilities have opposed the Motion[6]; the Consumer Groups have responded in Reply Memoranda.[7]

The comments filed by the utilities reinforce the need for an investigation that will bring the facts concerning customer payments and disconnections into the public record. Many of the utilities did not respond to the Commission's requests for information[8]; and others responded incompletely.[9] Vectren was most consistent in responding to the Commission's inquiries.[10] Others supported their positions with scattered facts.[11]

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[5] Consumer Groups Initial Comments at 11-14.

[6] AEP filed a Memorandum Contra the Motion on September 18, 2008; FirstEnergy filed a Memorandum Contra, and a joint Memoranum Contra was filed by the Ohio Gas Association, Duke, Dominion and Vectren, both on September 25, 2008.

[7] A Reply to AEP was filed on September 25, 2008 and a Reply to FirstEnergy and the gas companies was filed on October 2, 2008.

[8] See, e.g., Eastern, et al. Comments.

[9] See, e.g., Dominion Comments at 6. FirstEnergy correctly noted (Comments at 3) that the PIPP changes discussed in the June 25 Entry pertain only to gas companies, so did not respond to those questions.

[10] Vectren Comments at 9-10, 13-15.

[11] See, e.g., COH Comments at 2-5; Vectren Comments at 3, 19 and Attachment; Duke Comments at 12.

III. GOALS OF THE PUCO'S DISCONNECTION RULES AND THE PERCENTAGE OF INCOME PAYMENT PLAN FOR LOW-INCOME OHIOANS

The Consumer Groups disagree with Dominion that a goal of the PIPP rules should be to ensure that "the system is not being abused or manipulated.[12]" Dominion provides no evidence that PIPP is being "abused" or "manipulated," and acknowledges that customers "more likely, are simply unable to handle the rising cost of energy in comparison to their household income.[13]" Dominion's comments seemingly recognize that many low-income customers cannot afford natural gas service without the availability of PIPP. Thus Dominion's comments on the goals of PIPP are not constructive and should be disregarded by the Commission.

Dominion also states that "PIPP is not operating as a short-term patch to help lower-income customers get through one heating season."[14] The Consumer Groups are unaware of any public policy or legal position which claims that PIPP is intended as "short-term" patch for low-income customers. PIPP is a response to the continuing emergency presented by the difficulties faced by low-income customers in maintaining natural gas and/or electric service year-round.

Finally, Dominion dismissively states that "[I]t is not clear that further subsidization of PIPP bills will encourage any reversal of the demonstrated poor payment history of PIPP customers."[15] Yet it is clear to the Consumer Groups that current PIPP rules have not resulted in natural gas being more affordable to low-income customers.

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[12] DEO Comments at 5.

[13] Id.

[14] Id.

[15] Id. at 5-6.

The Consumer Groups again note that Dominion's comments are not constructive. Dominion fails to note that the Staff's proposed goals, as well as the Consumer Groups' initial comments contemplate that more affordable payments will result in PIPP customers making *more* monthly payments thus avoiding additional costs.[16]

IV. PAYMENT REQUIREMENTS FOR PIPP CUSTOMERS

Before getting into the key issue for PIPP -- payment levels -- it should be noted that, in response to the Entry's question about a new name for PIPP, only one suggestion was made for a new name: Duke proposed calling it "Ohio's Energy Assistance and Conservation Program."[17] This would not be appropriate: In the first place, PIPP is only one of a number of "energy assistance" programs in Ohio; in the second place, under PUCO Staff's proposal, conservation is included as a small, likely ineffective incentive, making it difficult to see how that could be elevated to being included in the name of the program.[18] The central concept of PIPP is that low-income customers are required to pay a percentage of their incomes in order to maintain their utility service. It seems fitting that the name of the program should remain the "Percentage of Income Payment Plan."

The initial comments filed by the Consumer Groups proposed that the Commission consider low income affordability in setting PIPP payment levels.[19] The apparent assumption made by Staff was that an 8% payment level could generate the same level of revenues as the current 10% payment level, because more payments would

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[16] Consumer Groups Comments at 23-24.

[17] Duke Comments at 41. Vectren supported adopting a new name but did not propose one. Vectren Comments at 21.

[18] This would also be true under the Consumer Groups' proposal for an enhanced conservation incentive.

[19] Consumer Groups Comments at 18.

be made on an annual basis. The Consumer Groups explained that the 8% payment level proposed by Staff was excessive and proposed a 5% payment level.[20] In their comments, AARP, et al. likewise recommended a 5% payment level.[21]

COH disagrees that Staff's consideration of affordability will benefit the program.[22] Grasping for support for its position, COH states that a decrease in payment levels from 10% to 8% will add another $20 million annually in program arrearages.[23] COH also expresses concern that the 8% payment level proposed by Staff will make the program more attractive as a payment option for a greater number of customers.[24] Dominion suggests that lowering the payment level aggravates the tension between establishing affordability and escalating program costs.[25] Duke is unable to discern if an 8% payment level will result in more payments, but notes without any support that expecting 10-11 monthly payments per year is a risky assumption.[26] VEDO makes no suggestion concerning the reduced payment level, but recommends that PIPP customers be denied rights to the use of the winter reconnection order unless at least 10-12 payments are made annually.[27] One of the more outspoken critics of the reduced payment level is Sheldon Gas who states, "If they won't pay 10%, they won't pay 8%.[28] In contrast to the information presented by the Consumer Groups that supported the

[20] Consumer Groups Comments at 19.

[21] AARP, et al. Comments at 18.

[22] COH Comments at 5.

[23] Id.

[24] Id.

[25] Dominion Comments at 5.

[26] Duke Comments at 33.

[27] Vectren Comments at 7.

[28] Sheldon Comments at 1.

principle that lowering payment requirements would increase payment frequency, the utilities presented no data to show that increasing payment requirements would increase the revenues collected under PIPP.

Although some utilities are critical of proposals to reduce PIPP payment levels, the fact of the matter is that maintaining the status quo 10% payment level does not help even the utilities. So long as the PIPP riders can be adjusted whenever needed to account for additional program costs, the utilities have no real stake in consideration of affordable payment levels. The key to the problem is the state of the Ohio economy and the ever-increasing number of customers that need PIPP to maintain essential utility services.[29]

COH provides support for its premise that the increasing PIPP costs are driven by the number of participants as opposed to gas costs, by noting that its average GCR rate dropped by approximately 11% between 2005 and 2007, but PIPP costs climbed.[30] As more and more customers go on PIPP, program costs can only escalate unless payment frequency patterns are changed.[31] Changing payment patterns is not practical when payment levels are extreme.

To make matters even worse, ODOD is now proposing a 7% payment level for electric PIPP customers.[32] It is difficult to see how an overall 15% PIPP payment level

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[29] According to the April 2008 OSCAR data, 7.3% of residential consumers were on the gas PIPP program. In April 2003 when the credit and disconnection rules were last under review, 4.9% of residential customers were on the gas PIPP program.

[30] COH Comments at 5.

[31] Dominion suggests that either rising energy costs or "customer gaming" are the causes for the increasing PIPP costs. Dominion Comments at 5. Neither premise is supported and such comments are intended to shift the responsibility for responding to the economic conditions within the utility service territory as opposed to addressing the core issues. The fact of the matter is that the poor economic conditions in Cleveland are forcing more customers onto PIPP in order to maintain essential utility services.

[32] See http://development.ohio.gov/cms/uploadedfiles/CDD/OCS/PIPP%20Rules%20Draft%2009152008.pdf, at 10. The Consumer Groups have opposed ODOD's proposal on payment levels.

(for gas and electric) could be more affordable if the allocation between industries is 8% gas and 7% electric compared with the current 10% gas and 5% electric. But if both COH and ODOD prevail, PIPP customers will actually see an increase in PIPP payment levels from an unaffordable 15% to an extreme payment level of 17%.[33] Under any standards, this cannot be seen as a just and reasonable result when the lowest income Ohioans are required to pay almost three times as much of their meager incomes for gas and electric services than do median income customers.

Since affordability is not being considered in establishing PIPP payment levels, there is a serious concern with the ability of PIPP customers to actually be able to make payments. Sheldon indicates that PIPP customers are forgoing natural gas service in the summer months when the service is not needed for heating.[34] Looking at the payment frequency in a vacuum, the relatively low payment frequency may indicate that customers are disconnecting unaffordable gas service during months in which the service is not needed for heating.

A general theme throughout the comments filed by the utilities is that payment frequency will not change and therefore, taking whatever payment customers happen to make is good. The public policy implication is that setting as high a payment level as possible will result in at least obtaining some money from customers. This approach is flawed as can be seen in the table below. Staff requested that the utilities answer a series of questions about payment frequency, average monthly payments, the contribution of the

[33] COH recommends maintaining the current 10% payment level for gas (COH Comments at 5) and ODOD is proposing increasing electric PIPP from 3% and 5% based on poverty level to 7% for all PIPP customers.

[34] Sheldon Comments at 1 ("Low income customers must be held accountable for their choice to discontinue payments once the heating system is over.").

total bill paid by customers, and the frequency of payment that would need to occur to generate the same level of revenues if the payment amount was reduced to 8%. The electric utilities did not answer the questions, so their payment frequency information is not available. Columbia used a sample of 10 customers and reached no conclusions.[35] The responses provided by Dominion, Vectren, and Duke support the conclusion reached by the Consumer Groups, that a 5% payment level for gas PIPP would likely result in more payments being made.[36] None of the utilities provided information to refute the contention that lower payment levels will result in more payments being made.

Responses to Staff Data Request

Company	Average Payment Frequency per Year	Average Monthly PIPP amount	% of Annual Bill Paid by Customer	Payment Frequency to Achieve the same Revenues with 8% payment level
COH	No Answer	120.00	No Answer	No Answer
Dominion	6.26	73.00	67.8%	7.9
Vectren	4.25	$100.00	No Answer	6.0
Duke (gas)	7.0	$97.08	71%	No Answer
FirstEnergy	No Answer	No Answer	No Answer	No Answer
AEP	No Answer	No Answer	No Answer	No Answer
DP&L	No Answer	No Answer	No Answer	No Answer
Duke (electric)	No Answer	No Answer	No Answer	No Answer

[35] Columbia Gas of Ohio, Inc.'s responses to Appendix A, Low Income Payment Programs Question No. 2.

[36] Consumer Groups Comments at 28.

Vectren provided information about an on-going low-income assistance program in Indiana that it claims has been successful for customers.[37] The Indiana program is one of several programs offered nationwide where the customer bill is calculated at a discounted rate based on income levels as opposed to a percentage of income. According to research on different types of low-income assistance programs, such rate discount programs tend to be easy to administer, but the benefits may not be targeted to the specific financial need, unlike PIPP where the payment level is based on specific customer income.[38] Benefit Matrix programs are also used in Indiana and other states where the level of the benefit is determined by specific customer characteristics such as the extent of poverty and the dwelling type.[39] Although the Consumer Groups are not opposed to exploring other types of low-income assistance programs in the context of a COI, the advantage of a percentage of income payment program is that customers are only required to pay a predefined portion of their income to sustain services. The primary issue with the Ohio PIPP program is the unaffordable payment levels and this creates a situation where the lowest income Ohioans have energy burdens that far exceed the energy burden of median income customers. Lowering the payment level to 5% as proposed by the Consumer Groups will address this concern.

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[37] McNees Wallace & Nurick LLC letter dated October 3, 2008.

[38] APPRISE and Fisher, Sheehan and Colton, "Ratepayer-Funded Low Income Energy Programs: Performance and Possibilities (Final Report)" (July 2007) at 68.

[39] Applied Public Policy Research Institute for Study and Evaluation (APPRISE), Ratepayer-Funded Low-Income Energy Programs: Performance and Possibilities, Final Report, July 2007, Page 68.

V. MINIMUM PAYMENTS FOR PIPP CUSTOMERS WITH ZERO REPORTED INCOME

The comments do not provide any rationale for the PUCO Staff's proposal to impose a minimum $10 payment on the consumers whose income -- as calculated pursuant to ODOD's guidelines -- is zero. These are the customers with the least amount of resources; the PUCO Staff proposal would add to these customers' burden of everyday existence.

ODOD does, however, propose that the minimum payment be adopted for all PIPP customers, not just those with zero income.[40] COH also supports a minimum payment for all.[41]

Although the ODOD and COH proposals do remove one of the more objectionable features of PUCO Staff's proposal -- that gas PIPP customers with zero income would pay more than customers whose income was $124 per month[42] -- they nonetheless involve increasing the energy burden on the poorest of the poor. And this is proposed without any showing that the consumers in question actually have income -- again as defined by ODOD -- sufficient to make these payments, or that these minimal payments from these customers will substantially ease the burden on other customers.[43] And neither ODOD nor COH provide any rationale at all for imposing a minimum payment. The PUCO Staff's proposal -- and ODOD's and COH's -- must be rejected.

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[40] ODOD Comments at 18.

[41] COH Comments at 24-25. Notably, these were the only comments (with the exception of the Consumer Groups') that even addressed the minimum payment proposal.

[42] See Consumer Groups Comments at 33; COH Comments at 25.

[43] If there is a suspicion that these lowest-income customers are somehow misrepresenting their actual income, there is no basis for assuming that the misrepresentation is not also occurring among customers with higher reported incomes.

Sheldon Gas proposes that income reverification for those with zero income be put back to every 30 days.[44] The rationale is that "[t]hese people must show that an effort is being made to get them out of their current situation."[45] To be charitable, it is not clear from Sheldon Gas's comment how requiring these customers -- and only these customers -- to reverify their lack of income every 30 days, thus increasing the burden not only on the customers but on the agencies that do the income verification, leads "these people" to show their efforts to get out of that lack-of-income category.

Indeed, if zero-income PIPP customers are to be subject to a minimum payment requirement, then the requirement for reverification every 90 days[46] makes even less sense than it does now. Such customers, who pay the $10 a month minimum payment, will be required to reverify more frequently than other customers who pay less than $10 as their monthly payment. The situation is just as unreasonable if an overall monthly minimum payment is adopted.

Finally, it must be noted that if ODOD adopts its proposed overall minimum monthly payment, customers whose income is zero -- again as determined pursuant to ODOD's rules (or guidelines) -- will have to pay $20 a month to maintain their gas and electric service. This may be twice as infeasible for these lowest-of-the-low-income customers as a single $10 monthly payment.

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[44] Sheldon Gas Comments at 1-2.

[45] Id. at 2.

[46] Proposed Rule 18-12(E)(2).

VI. ARREARAGE CREDITING FOR PIPP CUSTOMERS

The Consumer Groups agree with the comments of ODOD that unless the accrual of arrearages ceases during the period of time that customers are making timely payments "[m]any customers will remain unable to pay or retire their arrearages because credits are always pushed out 24 months into the future."[47] A successful arrearage crediting program should result in customers being able to retire their PIPP debt with timely payments and, perhaps, "graduate" from PIPP. The retirement of PIPP debt is only possible if arrearages cease to accrue while customers are making their PIPP payments.

The Consumer Groups also agree with AARP et al. that the goals of the PIPP rule revisions will not be realized if customers always have an arrearage "on their bill based on the difference between the PIPP payment and the actual bill."[48] Further, the Consumer Groups recognize, as does CUFA, that "[c]ustomers typically do not understand or bargain for an accumulating arrearage" and that their only goal when they sign up for PIPP is to maintain their natural gas service.[49] Finally, the Customer Groups agree with CUFA that the Staff-proposed arrearage crediting scheme is far too complex for the average customer to understand and it must be simplified and leaves customers burdened by arrearage debt perhaps indefinitely,[50] Accordingly, as the Consumer Groups and CUFA have agreed in principle, there must be significant upfront arrearage forgiveness coupled with a higher monthly arrearage credit percentage.[51]

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[47] ODOD Comments at 15.

[48] AARP, et al. Comments at 19-20.

[49] CUFA Comments at 2.

[50] Id.

[51] See Consumer Groups Comments at 39-40.

The Consumer Groups also support the proposal by ODOD for the Commission to align its definitions to reflect that a PIPP payment received before a bill is issued for the next billing cycle be considered an "on time" payment for arrearage crediting purposes.[52] The ODOD-proposed definition indeed provides additional opportunities for customer to "retire accumulated and accumulating arrearages and is consistent with the goals of the proposed amendments to the rules."[53]

On the other hand, the Consumer Groups emphatically disagree with Eastern, et al. that in order to receive an arrearage credit, a customer must make twelve consecutive payments and then can receive twelve credits.[54] If customers see a credit each month, that will incent more payments; on the other hand, if customers must make twelve payments in order to see any benefit, the program is doomed to failure. This is why COH misses the point in claiming that its arrearage crediting program is more generous than that proposed by PUCO Staff.[55] COH's program is only more generous if the customer is able to make all required payments, which experience shows is rarely the case under current payment levels. For example, a customer could be on track making payments for ten months when a family illness arises, where the need to purchase medications may override intentions to make timely utility payments.

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[52] Id. at 17. The change should be reflected in Ohio Adm. Code 4901:1-1701(G) in the definition of "past due."

[53] Id.

[54] Eastern, et al. Comments at 3.

[55] COH Comments at 26-27.

VII. ENERGY CONSERVATION INCENTIVES FOR PIPP CUSTOMERS

The PUCO Staff proposed that energy conservation credits be provided to PIPP customers who could reduce their gas usage by 10% over a twelve month period. In the initial comments, the Consumer Groups supported the energy conservation concept, but suggested that the conservation incentives needed to be applied to current payment requirements as opposed to arrearages, and needed to be provided at a lower level of achieved conservation.[56] Indeed, COH suggests that PIPP customers have no incentive to conserve because the payment amount is tied to income and not to the total bill.[57]

The Consumer Groups agree with COH that energy conservation incentives work best if tied to pricing signals. The Consumer Groups believe that a reduction in the monthly PIPP amount required to be paid provides such an incentive.[58] The proposal of the Consumer Groups is that a 4% reduction in usage over a six month period of time, compared to the same six months in the previous year, would result in customers being required to pay half their normal PIPP amount for the next month.

ODOD shows that the potential energy savings through the Home Weatherization Assistance Program ("HWAP") can achieve annual gas and electric savings of $490.[59] ODOD further projected average weatherization costs of approximately $3,800 per residence.[60]

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[56] Consumer Groups Comments at 42.

[57] COH Comments at 27.

[58] The Consumer Groups disagree with COH, however, that PIPP payment requirements should be based on consumption rather than income. COH Comments at 27. This would be contrary to the purpose of PIPP; even COH acknowledges that "the ability of many low-income customers to conserve will be constrained by the inefficiency of their home furnaces and the draftiness of their homes." Id. at 27-28.

[59] ODOD Comments at 9.

[60] Id. at 8.

PIPP customers are an appropriate group to target for conservation incentives. But significant reductions in usage beyond the 4% proposed by the Consumer Groups may be outside the control of the customer. The following table shows the average annual PIPP usage by company.

Gas PIPP Usage

Company	Average Residential Usage (Mcf)	Average PIPP Usage (Mcf)
COH	82.5	109.4
Dominion	102.7	121.5
Vectren	XX	XX
Duke (gas)	80.9	104.1

There are a number of factors that result in the average PIPP usage tending to be higher than other residential consumers. According to the HWAP Evaluation, these factors include the available housing stock, lack of insulation, older furnaces/ appliances, larger homes, and more people in the household.[61] However, the HWAP program is able to make more extensive changes in the energy profile of the home and can save customers on average 21.6 Mcf annually.[62]

Because the average cost of HWAP per home is $3,800, there are significant funding limitations in making HWAP available to all PIPP customers.[63] Yet PIPP customers that have not been fortunate enough to obtain HWAP can still effect some overall reduction in their usage and can be encouraged to conserve through a reduction in

[61] Quantec, "Ohio Home Weatherization Assistance Program Impact Evaluation," (July 6, 2006) at 29.

[62] ODOD Comments at 9.

[63] Id. at 8.

their PIPP payment. One final point is that as part of the COI requested by the Consumer Groups, the Commission should address the extent of significant changes that are required in the billing systems as referenced by Duke.[64] Comments that are hypothetical in nature about the magnitude of changes in billing systems may tend to inhibit meaningful discussion about energy conservation for PIPP customers.

DP&L argues that energy conservation programs for low-income customers should be proposed by utilities in connection with Senate Bill 221 implementation.[65] It is to be hoped that the utilities will propose such programs for all customers, not just low-income customers, but the S.B. 221 proceedings will be just for the electric companies; a COI that addresses low-income conservation programs for both electric and gas companies would likely have a more widespread effect. It does not appear that the companies made such proposals in the three electric security plan ("ESP") cases that have been filed.

VIII. EXTENDED PAYMENT PLANS FOR NON-PIPP CUSTOMERS

In the initial comments filed by the Consumer Groups, support was provided for the Staff recommendation to require utilities to offer a modified one sixth and one twelfth plan in addition to the current one-third, one-sixth, and budget payment plans. However, the Consumer Groups recommended additional payment plans be offered to consumers and that affordability be considered in the offering of a customized payment plan. An affordable payment plan is one in which the customer is not billed in excess of 5% of

[64] Duke Comments at 21.

[65] DP&L Comments at 2.

their monthly income.[66] The consumer groups believe that because PUCO Staff's proposed payment plans fail to address affordability, PIPP customers and other ratepayers alike may be negatively affected. No customer is well served by large down payment requirements or long term plans to eliminate arrearages if these arrangements become unmanageable.

The need to focus on affordability is supported by the increasing energy burden faced by many consumers. For this reason AARP et al. suggested considering income in addition to the actual energy burden when modifying payment plans.[67] This supports the Consumer Group's position that payment plans should be tailored with respect to individual needs.

According to the initial comments filed by the utilities, some companies currently offer a variety of payment plans to ensure that customers are able to successfully complete the agreements. These companies include Vectren[68] and Constitution Gas, et al.[69] Additionally, DP&L encourages its staff to provide more flexibility to the companies when selecting a payment plan for their customers.[70]

Constitution Gas, et al.'s comments indicate that they experience few disconnections because they work with their customers in providing customized payment plans.[71]. Naturally, fewer disconnections are in the best interest of customers and all

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[66] Consumer Groups Comments at 47.

[67] AARP et al. at 13-15.

[68] Vectren Comments at 5. Vectren states that it offers a "host" of payment plans (id.), but does not describe them.

[69] Constitution et al. Comments at 2.

[70] DP&L Comments at 13.

[71] Constitution, et al. Comments at 3.

ratepayers. These companies' practices of working with customers and customizing payment plans to create win-win situations for all involved seems to work. Perhaps the larger companies – gas and electric alike -- can be reminded of the value of working with customers from their smaller counterparts. Therefore, the Commission should adopt a standard of affordable payments as a goal for all customers[72]. It should be noted that consumers also find customized payment plans preferable to Commission-required plans[73]when the options are available.

In addition, the PUCO Staff-proposed 1/6 plan requires a 25% down payment while the original 1/6 plan does not. As such, there is no incentive for a consumer to opt for the modified 1/6 if the original 1/6 plan is available and may require a reduced down payment.[74] COH supports the modified 1/6 plan because of the required down payment and because it requires full payment of current bills, and suggests that the modified plan replace the existing plan.[75] The variation in interpretation suggests that staff's modified 1/6 plan is unclear.

Moreover, COH's support of the modified 1/6 plan once again highlights the issue of affordability. A customer who was able to pay large amounts of money to establish a payment plan would be less likely to be faced with disconnection to begin with. Finally, if the payment plan is offered at the company's discretion, there is essentially no need to

[72] One of Staff's goals for PIPP is to make PIPP payments more affordable. June 25 Entry at 6.

[73] Constitution, et al. Comments at 3.

[74] Vectren Comments at 5.

[75] COH Comments at 15.

modify the plan.[76] Indeed, this further supports the Consumer Groups' position that payment plans require flexibility to address affordability.

COH acknowledges the effects of poorly designed payment plans by labeling the proposed 1/12 plan "ill-advised and unnecessary"[77]. The implication is that COH believes that consumers will be unable to meet the terms of a 1/12 payment agreement because of cost fluctuation during the heating season. The Consumer Groups support this position, along with Duke[78] (which offers quantitative data to support the company position) and DP&L.[79] Further, the proposed 1/12 plan is very similar to the existing budget plans. It is unclear whether staff considered the ramifications of establishing the modified 1/12 while level or budget billing exists.[80]

DP&L would make any additional payment plans optional for the companies.[81] In that event, it seems unlikely that consumers will ever learn of the plans' existence.

In conclusion, the Consumer Groups request that the Commission adopt the additional payment plans proposed by Staff, but also require utilities to tailor payment plans that meet the needs of consumers. The Commission should adopt an affordability standard as proposed by the Consumer Groups that limits the monthly payment obligation to no more than five percent of the customer's monthly income. The collection practices of Constitution et al. prove that utilities can work with customers to achieve customized payment plans that avoid disconnections.

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[76] DP&L Comments at 12, 13.

[77] COH Comments at 16.

[78] Duke Comments at 11-12.

[79] DP&L Comments at 12.

[80] See COH Comments at 16.

[81] DP&L Comments at 12-13.

IX. PREPAID METERS

COH stated that it was unaware of any gas pre-paid meter programs.[82] Vectren commented that the company has not studied any prepaid meter program and has not priced any specific gas prepaid metering technology, but recognizes the need to work with customers that are struggling to pay utility bills.[83] Duke commented about its research for prepaid metering programs in Kentucky, Texas, and California and the soon-to-start pilot program in Ohio.[84] AEP recommends consideration of the Salt River Project and the Tacoma Power Program.[85] According to AEP, both programs can be transitioned to an Automated Metering Infrastructure (AMI) environment.

FirstEnergy comments that it has not installed prepaid meters, but that the capability may be beneficial in certain conditions.[86] FirstEnergy notes that customers should be required to pay for the prepaid meter as a condition for having the service. In that event, it is unlikely that any consumer in distress will be able to -- much less will desire to -- adopt a prepaid meter. Duke favors requiring prepaid service for customers that have been disconnected for a specific period of time.[87]

The common theme within all of the comments is the lack of a regulatory framework and infrastructure in Ohio to support application of prepaid technology.[88] The utilities clearly do not have experience with using prepaid metering technology. In

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[82] COH Comments, Appendix A, Prepaid Meters No. 001.

[83] VEDO Initial Comments at 18.

[84] Duke Comments at 38.

[85] AEP Initial Comments at 4.

[86] First Energy Comments at 4.

[87] Id. at 54.

[88] Initial Comments at 54.

addition, some customers might be harmed by the lack of appropriate consumer protections if such rules are not in place ahead of the deployment of pre-paid meters.

AARP et al. commented that there is little experience by customers or utilities in Ohio with prepaid metering and opposes the use of prepaid meters for any purpose including the establishment and reestablishment of credit.[89] The Consumer Groups maintain their recommendation that a Commission Ordered Investigation (COI) be initiated before rules are developed to work out the many regulatory details associated with prepaid meters.[90] The Consumer Groups believe the initial comments filed by other parties support the initiation of a COI prior to adoption of rules. Specific topics for the COI would include, but are not limited to, state of the art assessment, consumer protections for "at risk" customers, service standards, disconnect notice provisions, cost-benefit assessments, unbundling billing and discounted cost of service, affordability assessments, impact on ratepayers, support for conservation.

X. OSCAR REPORT

In its initial comments, DP&L deferred any comments regarding the revisions to the OSCAR report until the revised electric PIPP rules were released.[91] However, DP&L did propose using the "revenue month" instead of the 28th of the month for reporting purposes.[92] The Company commented that the 28th of the month would result in data that

[89] AARP et al. Comments at 10.

[90] Initial Comments at 55.

[91] DP&L Comments at 5; see also FirstEnergy Comments at 5.

[92] DP&L Comments at 6.

is not "meaningful" or "helpful" to the Commission or ODOD in making month-to-month or year-to-year comparisons.[93]

Interestingly enough, COH proposed no changes and made no comments in Appendix B. However, COH stated that the OSCAR Report (proposed and current) is complex.[94] COH suggested a report that focuses only on PIPP would be beneficial and would be simpler.[95]

Dominion expressed that it was reasonable to standardize the date for reporting purposes but that clarification should be added when the 28th of the month falls on a holiday or weekend.[96] Dominion also commented on Columns 2.03, 3.05-.06, 7.01-.04 that it does not track data on customers who move out of its service territory and thus could only report the number of former PIPP customers who no longer have gas service with the Company.[97] Additionally, Dominion stated, for Column 4.02, that it would be able to provide this information only to the extent that agency payments are identified in its customer information system, and noted that payments from smaller assistance agencies may be not identified in its system as agency payments and thus may not be excluded.[98]

In its initial comments, Duke agreed that much of the information gathered in the report is needed to determine the success rate of the PIPP Program but is not certain that much of the information included in the report is actually utilized to assess the success of

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[93] Id.

[94] COH Comments, Appendix A, Other, Question No. 2.

[95] Id.

[96] Dominion Comments at 14.

[97] Id.

[98] Id. at 15.

the program.[99] Duke stated that the Commission consider the PUCO Staff-proposed new data columns, as well as the current columns, to ensure that the benefit of the report continues to outweigh the cost of making the technically labor-intensive modifications.[100] But Duke also suggests adding columns to the report, including: the number of PIPP customers who pay their PIPP amounts in full each month and the number of PIPP customers who make only partial payments; a column reflecting the amounts that each utility will not receive reimbursement; and the number of PIPP customers who use "other programs, such as medical certifications, Emergency HEAP, etc. to avoid service disconnections."[101]. In addition, in Column 7, Duke stated it would be impossible to track and maintain payments from former PIPP customers and proposes the Commission to remove Columns 7.01 through 7.04.[102] Duke also proposes to make changes in Columns 8.17 and 9.07 to capture the one-ninth program that it proposed, if approved.[103] Finally, Duke proposes to add a column to track the number of reconnections of Graduate PIPP customers who had been disconnected for nonpayment.[104] ODOD at 12 supports the PUCO Staff-proposed proposed changes in the OSCAR report but recommends the Commission add a column titled "The Cost of the Utility Service for PIPP Customers" to measure the cost of PIPP.[105]

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[99] Duke Comments at 42.

[100] Id. at 42.

[101] Id.

[102] Id. at 43-44.

[103] Id.

[104] Id.

[105] ODOD Comments at 12.

AEP commented that the Company would need 12 months of IT programming and associated costs to accommodate the changes.[106] Like AEP, Ohio Gas stated the proposed changes would impose extensive programming changes to collect the required information.[107] In addition, Ohio Gas stated the additional data that needed to be collected would impose significant time burdens on its staff.[108] In contrast, Vectren estimated that it would take 200 hours of coding and 150 hours of testing over approximately three calendar months to implement the new OSCAR Report.[109]

The Consumer Groups support the Duke and ODOD recommendations for additional columns that should be included in the OSCAR Report. The Consumer Groups, however, oppose COH's proposal to limit the report to the PIPP program. Prior review of the OSCAR report has shown inconsistencies with reporting of data (e.g., revenue month, last day of the month, cumulative or report information is at the end of the month) and/or no data reported in some columns). Consistency and accuracy of the data reported by the natural gas and electric companies is important in evaluating the effectiveness of all payment plans, including PIPP, and to determine what adjustments, if any, that should be made. To that end, the Commission should require all natural gas and electric utility companies to complete the OSCAR report. Therefore the Commission should dismiss the companies' oppositions to the proposed revisions in the report. In addition, the Commission should dismiss AEP's and Ohio Gas' claims regarding programming time and costs until the companies can provide data to support those

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[106] AEP Comments at 6.

[107] Ohio Gas Comments at 5.

[108] Id.

[109] Vectren Comments at 19-20.

claims., especially in light of Vectren's statement that it will take approximately three months to implement the proposed report.

XI. PAYMENT AGENTS

COH commented that 35 to 40% of its authorized agents were check-casher or payday lenders and that elimination of this method for customers to make payment would reduce payments in the near-term.[110] FirstEnergy comments that it does not contract directly with authorized agents, but rather contracts with reputable and long standing agent networks like Western Union and CheckFree Corp., and that fewer payment locations would be available if the payday lenders were no longer used as authorized agents for the Company.[111] AEP comments that 20,000 customers used payday lenders to make payments in June 2008.[112] Duke comments that it uses 21 check-cashing establishments as authorized agents throughout its service territory and that any change should be implemented over time.[113] OTA claims that check cashing businesses are popular with customers and that existing rules limit the processing fee to make the payment to $2.00.[114] AT&T comments that it no longer has Company-owned payment centers and instead contracts with Western Union to provide these services.[115] DP&L comments that 15 out of 83 pay agents are considered to be check-cashing businesses and that elimination would result in a burden to the "very financially vulnerable low-income

[110] COH Comments at 6.

[111] FirstEnergy Comments at 5.

[112] AEP Comments at 7.

[113] Duke Comments at 31.

[114] OTA Comments at 3.

[115] AT&T Comments at 14.

population".[116] Yet Dominion comments that it eliminated payday loan establishments as authorized agents in August 2007.[117]

The initial comments confirm that the number of customers who are making payment through authorized agents is staggering: ACE commented that it processed 134,836 utility payments in Ohio between August 1, 2007 and July 31, 2008.[118] CheckFreePay comments that it processed 1,126,158 Ohio utility payments between May 1, 2008 and July 29, 2008.[119]

Many of these customers are the same ones that used to make payments at utility payment centers before the utilities closed their centers. Because customers must now pay fees to pay authorized agents of the utility, millions of dollars that could be applied to customer accounts are instead being used to pay vendors to accept payment. This includes payment made to authorized agents, through credit card and electronic check transactions, and various other ways where payment of an additional fee is mandated to pay the utility bill.[120] This is not a cost of convenience for customers who have no other way to make payment of utility bills. Instead, this is shifting the costs that should be legitimately borne by the utilities onto consumers. Utilities should absorb the cost for acceptance of payment regardless if the payment is made to a company-owned payment center or an agent acting on behalf the utility to accept payment.[121]

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[116] DP&L Comments at 17.

[117] Dominion Comments at 12.

[118] ACE Comments at 4.

[119] CheckFreePay Comments at 4.

[120] According to the OSCAR Reports, there were 436,755 gas and electric disconnections between January 1, 2008 and July 31, 2008.

[121] Consumer Groups Comments at 58.

The Consumer Groups commented that the payment of high utility bills is already enough of a struggle for many Ohio consumers without the additional burden of charges to make payments and the potential exposure for predatory lending practices.[122] With the exception of Duke, all of the major gas, electric, and telephone utilities in the state have closed company-owned payment centers. Duke has a single company-owned payment center called Holiday Park in Cincinnati.[123] Over time, the general trend by the utilities has been to close company-owned payment centers and to shift the costs for making payments to consumers. This trend should be reversed.

XII. OTHER ISSUES

There were certain other issues raised by the June 25 Entry as to which the Consumer Groups did not comment, but which deserve reply to others' comments. These include: the question raised in Appendix A about whether companies that do not disconnect according to the timelines in the rules should be able to recover the forgone revenues from other customers[124]; whether customers should be allowed to change their bill due dates on an annual basis[125]; and when an application to reconnect disconnected service should become an application for new service.[126] In addition, comments from small gas companies asked for blanket waivers from the rules for the small companies. Those comments are replied to here.

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[122] Consumer Groups Comments at 58.

[123] Duke Comments at 41.

[124] June 25 Entry, Appendix A at 3.

[125] Id. at 5.

[126] Id. at 6.

A. Forgone Disconnection and Collection of Associated Revenues

PUCO Staff had raised the following question:

> For companies that do not disconnect customers according to the timelines and payment levels provided for in the proposed rules in Chapter 4901:1-18 of the Administrative Code, should the uncollected charges incurred beyond the timelines specified in the rules be ineligible for recovery from other customers?[127]

The answer to the question from the gas and electric companies was a resounding negative.[128]

We will not attempt to dissect the utilities' reasons for opposing the idea. But by and large, the Consumer Groups agree with COH's statement of the issue:

> [T]he existence of these rules indicates that the Commission desires to balance societal considerations against the financial costs created by customers who do not pay their bills. The comments made by Columbia and other parties in this proceeding are proof that this balance is not perfect, and improvements can be made. However, the suggestion that costs incurred beyond the timeline provided for in the rules should not be recoverable by utilities is a radical departure from the existing framework. If the balance that the Commission has created is to continue to exist, utilities must be allowed to recover its [sic] legitimately incurred costs of providing gas service to both those customers who pay timely and the cost of providing service to those customers who are afforded protection under the Commission rules.[129]

Even under PUCO Staff's proposals, utilities are encouraged to work with customers to establish payment plans acceptable to the company and the customer.[130] It is to be hoped that some of these payment plans will be more lenient for the customer than the standard plans. It would appear that these plans would fall under PUCO's

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[127] Id. at 3.

[128] See AEP Comments at 3-4; COH Appendix A, Foregone Disconnection and Associated Revenue Staff Questions; DP&L Comments at 3 (cost of disconnecting may be more than customer's arrearage); Dominion Comments at 10-11; Duke Comments at 37; VEDO Comments at 16.

[129] COH Appendix A, Foregone Disconnection and Associated Revenue Staff Questions.

[130] The Consumer Groups proposed even greater flexibility. Consumer Groups Comments at 43-48.

Staff's "proposal" to exclude them from recovery. This would require the utilities to be totally inflexible with regard to payment plans, or risk being denied recovery.

In addition, under the proposal implied by the question, each individual customer's situation and the possibility of disallowance would essentially be part of a mini-prudence review. That is a path that the Commission, and the utilities, and indeed consumer advocates, should not want to go down.

B. Adjusting Customers' Dill Due Dates

The Entry asked, "Should customers be permitted to choose the monthly due date of their bills on an annual basis?"[131] To begin, it should be noted that Duke (the combination utility) currently allows customers to do so on an annual basis.[132] COH and Vectren also approved of the possibility, within limits.[133] Those views should dispel the opposition of the other utilities to this customer-friendly option,[134] which the Consumer Groups support.

C. Reconnected Service vs. New Service

The June 25 Entry asked, "[H]ow long must a customer's service be disconnected before the customer or former customer is considered a new applicant pursuant to proposed Rule 4901:1-17-03(D), O.A.C.?"[135] In this respect, the utilities' comments are all over the map, reflecting their current practices: FirstEnergy says that a former

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[131] Appendix A at 5.

[132] Duke Comments at 39-40.

[133] COH Comments, Appendix, Other; Vectren Comments at 19. Vectren's statement that the customers to whom it currently extends this payment option -- those on fixed income or SSI -- pay late, "despite that accommodation" (id.), overlooks the characteristics of that group, who would be struggling with payment in any case.

[134] FirstEnergy Comments at 4-5; DP&L Comments at 4; AEP Comments at 5. Eastern, et al. state that they do not have the capability to adjust billing dates. Eastern, et al. Comments at 5-6.

[135] June 25 Entry at 6.

customer becomes a new customer after the "final bill due date"[136] but does not give details on when that final bill is issued or becomes due. Duke would have a customer become a new applicant five business days after disconnection.[137] DP&L proposes that the cut-off would come "ten days after disconnection,"[138] and AEP would put the date at the point when the customer has been disconnected for 30 days.[139] On the other hand, Vectren states that when a customer is disconnected for nonpayment, the customer does not become a new customer,[140] apparently regardless of the length of the disconnection.

That is on the energy side. On the telecom side, OTA correctly points out that carriers are governed by the Minimum Telephone Service Standards ("MTSS"), which, according to OTA, Ohio Adm. Code 4901:1-15-10 "address[] these concerns."[141] Specifically, as CBT notes, Ohio Adm. Code 4901:1-15-10(L) requires telephone companies to provide a "warm line" or "soft dial tone" for 14 days after disconnection; CBT proposes that after the 14 days after disconnection the customer should be considered a new applicant.[142]

The bottom line is that given this variety, the Commission desperately needs to adopt a rule defining -- for all utilities -- when a disconnected customer is to be considered a new customer. The Consumer Groups would suggest that AEP's 30-day

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[136] FirstEnergy Comments at 5.

[137] Duke Comments at 41.

[138] DP&L Comments at 5.

[139] AEP Comments at 6.

[140] Vectren Comments at 21.

[141] OTA Comments at 7-8.

[142] CBT Comments at 7. AT&T states that "once service has been disconnected, the former customer immediately becomes an applicant for service subject to meeting the required criteria needed to establish their financial responsibility…." AT&T Comments at 17-18. One hopes that the "disconnection" referred to is one occurring after the warm line period.

approach appears the most reasonable. It should be noted, however, that this should pertain only to customers who have service disconnected without availing themselves of a payment plan; customers on payment plans should be able to regain service under their old account by paying the payment plan default amount.

D. Waivers for Small Gas Companies

Four of the small gas companies seek exemptions. Eastern, Pike and Southeastern seek exemption, apparently for themselves and all small utilities, "from those rules that require modified payment plans, arrearage forgiveness programs, and the conservation arrearage program rider."[143] Ohio Gas seeks exemption from "any rules that would require the addition of technological capability or reprogramming of existing computerized billing systems,"[144] without specifying which rules. Absent any clear estimation of the costs of such changes,[145] it is difficult to assess these requests. But it is not clear that the benefits to the customers of these companies of the changes proposed would not outweigh the costs to the companies. The Consumer Groups urge the Commission to deny such blanket requests and to require small companies to file company- and rule-specific requests for waiver, in which the companies demonstrate their needs for the waivers.

[143] Eastern, et al. Comments at 3.

[144] Ohio Gas Comments at 4.

[145] See Section II., supra.

XIII. COMMENTS ON SPECIFIC RULES

NOTE: These reply comments omit the portions of PUCO Staff's proposed rules that did not receive comment; thus the sections that remain are those that elicited comments.[146] The reply comments here are in *italics.*

Chapter 4901:1-17 Establishment of Credit for Residential Service

AT&T Ohio begins its comments on the rules by arguing that not only should "telecommunications providers" be exempt from the establishment of credit rules in this chapter, but they should be exempt from the MTSS.[146] Of course, this is not the place to argue about the MTSS, which have a separate docket and review period. But it must be noted that just last year the Commission addressed the arguments of AT&T Ohio and the other incumbent local exchange companies ("ILECs") that the MTSS should be done away with, ***and rejected that argument****.[147] Indeed, contrary to AT&T Ohio's implication, the Commission has not yet even adopted the changes to one of the rules in the MTSS that AT&T Ohio supports.[148]*

More specific to this proceeding, AT&T Ohio argues that the deposit rules place it at a competitive disadvantage.[149] This argument gains AT&T Ohio little sympathy: The fact that its competitors are able to take advantage of their customers while AT&T Ohio and the other ILECs are not, is no grounds for exempting the ILECs. Further, if AT&T's deposit policies are less onerous than its competitors', this would make AT&T a more -- not less -- attractive option for consumers. It is important to recognize that even if AT&T Ohio's basic service in many of its exchanges has been found to be eligible for alternative regulation under R.C. 4927.03(A),[150] the authorizing statute specifically disallows an exemption from R.C. 4905.231 -- the MTSS statute -- as part of alternative regulation.[151] AT&T Ohio's citation to R.C. 4927.02(A)(7) is also unavailing; that statute expresses a policy not to "unduly" disadvantage any telecommunications provider. AT&T Ohio's arguments fall far short of showing that the deposit rules place it at an "undue" disadvantage.

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[146] AT&T Ohio Comments at 2.

[147] *In the Matter of the Review of the Commission's Minimum Telephone Service Standards Found in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 05-1102-TP-ORD ("05-1102"), Opinion and Order (February 2, 2007)at 5; id., Entry on Rehearing (July 11, 2007) at 7.

[148] AT&T Ohio Comments at 2.

[149] Id. at 3.

[150] Id. at 2-3.

[151] R.C. 4927.03(A)(3).

OTA, on the other hand, argues that telecommunications providers should be exempt from these rules ***because of the existence of*** *the MTSS.*[152] *Indeed, OTA asserts that the MTSS "offer greater protections for customers of telecommunications providers than does proposed Chapter 4901:1-17."*[153] *OTA does not point to a single such protection, however. The Consumer Groups have not done a detailed comparison between the MTSS and Chapter 17, but would not have fundamental objection to an exemption for telecommunications providers from Chapter 17* ***so long as all of the protections in Chapter 17 are embodied in the MTSS.***

4901:1-17-01 Definitions.

4901:1-17-02 General Provisions.

4901:1-17-03 Establishment of Credit.

Appendix – Guarantor Agreement

4901:1-17-04 Deposit to Reestablish Creditworthiness.

4901:1-17-05 Deposit Administration Provisions.

4901:1-17-06 Refund of Deposit and Release of Guarantor.

4901:1-17-07 Record of Deposit.

4901:1-17-08 Applicant and/or Customer Rights.

[152] OTA Comments at 4-5.

[153] Id. at 4.

4901:1-17-01 Definitions.

For purposes of this chapter, the following definitions shall apply:

(A) "Applicant" means any person who requests or makes application with a utility company for any of the following services: electric, gas, natural gas, telecommunications, waterworks, or sewage disposal.

OTA seeks a clarification that this definition applies only to retail services.[154] *The Consumer Groups are not aware that any wholesale customer has attempted to come under the protections of this Chapter, but have no objection to OTA's proposed clarification.*

(B) "Arrears" means any utility bill balance that is unpaid at the next billing cycle.

AT&T says that the dictionary definition of arrears should be used,[155] *while OTA asserts that there is no difference between "arrears" and "past due," the definition of which appears in paragraph (G) of this proposed rule.*[156] *The Consumer Groups disagree: There can be a substantial difference in timing between "at the next billing cycle" and "by the bill due date." That being said, the only place that "arrears" appears in this Chapter is in Proposed Rule 17-04(B), and the only place "past due" appears is in Proposed Rule 17-03(A)(3); it is not clear that both concepts are necessary for this Chapter.*[157]

(D) "Consumer" means any person who is an ultimate user of the electric, gas, natural gas, telecommunications, waterworks, or sewage disposal services.

AT&T Ohio proposes to delete this definition as it applies to telecommunications providers.[158] *In this chapter, "consumer" appears only in the definitions in (F) and (M) in this rule, but one doubts whether AT&T Ohio really wants those rules not to cover "consumers" as well as "customers."*

(E) "Customer" means any person who enters into an agreement to purchase by contract and/or by tariff any of the following utility services: electric, gas, natural gas, telecommunications, waterworks, or sewage disposal.

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[154] OTA Comments at 5.

[155] AT&T Ohio Comments at 4-5.

[156] OTA Comments at 5.

[157] The distinction is of greater relevance in Chapter 18.

[158] AT&T Ohio Comments at 6.

Duke would require the customer to also be a consumer "at the premises," unless the premises are master-metered.[159] *Again, for the purpose of this chapter, the distinction is not important. The Consumer Groups will address Duke's argument in Chapter 18.*

(F) "Fraudulent act" means an intentional misrepresentation or concealment by the customer or consumer of a material fact that the electric, gas, natural gas, telecommunications provider, waterworks company, or sewage disposal system company relies on to its detriment. Fraudulent act does not include tampering.

VEDO would delete the last sentence, so that "tampering" would be included as a "fraudulent act."[160] *The Consumer Groups recognize that both tampering and "intentional misrepresentation or concealment… of a material fact" should have negative consequences for the consumer or customer, but the differences between these two wrongs are substantial. The distinction should be included in these definitions. See also comment under (D) above.*

(G) "Past due" means any utility bill balance that is not paid by the bill due date.

ODOD indicates that it plans to issue rules on electric PIPP that provide that payment before the next bill is issued is "on time."[161] *Given the limited use of "past due" in this Chapter, it appears that ODOD's proposal might better be made in Chapter 18, whether in the definitions or in the arrearage crediting program for PIPP customers, which is the reason for ODOD's comment.*

(K) "Tampering" means to interfere with, damage, or by-pass a utility meter, conduit, or attachment with the intent to impede the correct registration of a meter or the proper functions of a conduit or attachment so as to reduce the amount of utility service that is registered on the meter. Tampering includes the unauthorized reconnection of an electric, gas, natural gas, or waterworks meter or a conduit or attachment that has been disconnected by the utility.

The text of this paragraph is included here to show the lack of need for VEDO's proposal (see above) to add "tampering" to the definition of "fraudulent act."

(M) **"**Utility" or **"**public utility" means all persons, firms, or corporations in the business of providing electric, gas, natural gas, waterworks or sewage disposal service to consumers as defined in division (A)(11) of section 4928.01 of the Revised Code, division (A)(5) of section 4905.03 of the Revised Code, division (G) of section 4929.01 of the Revised Code and divisions (A)(8) and (A)(14) of section 4905.03 of the Revised Code, respectively, and telecommunications providers.

See comment under (D) above.

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[159] Duke Comments at 3.

[160] VEDO Comments at 2.

[161] ODOD Comments at 17.

4901:1-17-02 General Provisions. (NEW)

(B) Nothing contained in this chapter shall in any way preclude the commission from any of the following:

(1) Altering, or amending, in whole or in part, these rules and regulations.

(2) Prescribing different standards for the establishment of credit for utility service as deemed necessary by the commission in any proceeding.

COH opposes this provision. Yet just such a provision has been part of the MTSS for some time, see Ohio Adm. Code 4901:1-5-02(B)(2), and does not appear to have caused any of the problems alleged by COH.

(3) Waiving any requirement, standard, or rule set forth in this chapter for good cause shown, as supported by a motion and supporting memorandum. The application for a waiver shall include the specific rule(s) requested to be waived. If the request is to waive only a part or parts of a rule, then the application should identify the appropriate paragraphs, sections, or subsections to be waived. The waiver request shall provide sufficient explanation, by rule, to allow the commission to thoroughly evaluate the waiver request.

See comment under (F), below.

(D) Each public utility shall establish and maintain written credit procedures consistent with these rules that allow an applicant for residential service to establish, or an existing residential customer to reestablish, credit with the utility. The procedures should be equitable and administered in a nondiscriminatory manner. The utility, without regard to race, color, religion, gender, national origin, age, handicap, or disability, shall base its credit procedures upon the credit risk of the individual as determined by the utility without regard to the collective credit reputation of the area in which the residential applicant or customer lives. The utility shall make its current credit procedures available to applicants and customers upon request.

COH proposes that only a summary of the utility's credit procedures be made available.[162] *The Consumer Groups agree that such a summary would be helpful, but would insist that customers be able to access the details of the credit policy if they wish.*

On the other hand, OTA proposes to delete the last sentence, such that the utility need not make its policies available to applicants and customers upon request, because that is

[162] COH Comments at 7-8.

"cumbersome."[163] *Utility consumers should have a right to this information; OTA's proposal should be rejected.*

(F) Nothing contained in this chapter shall relieve any utility company from meeting any of its duties or responsibilities as prescribed by these rules or by the laws of the state of Ohio.

COH asserts that this provision is in apparent conflict with the waiver provision in Proposed Rule.[164] *These provisions coexist in the current rule, and the Consumer Groups are unaware of any instance of conflict. This provision should stay in the rules.*

[163] OTA Comments at 5.

[164] COH Comments at 8.

4901:1-17-03 Establishment of Credit.

AARP et al. oppose imposing any credit requirements on PIPP customers, and propose that such be explicit in these rules.[165] *Given the nature of PIPP, where a customer need only demonstrate income to qualify for service, the Consumer Groups agree.*

(A) Each utility may require an applicant for residential service to satisfactorily establish financial responsibility. If the applicant has previously been a customer of that utility, the utility may require the residential applicant to establish financial responsibility pursuant to paragraph (C) of rule 4901:1-17-04 of the Administrative Code. Each utility shall advise the applicant, at the time of application, of each of the criteria available to establish credit. If the utility requires an applicant to provide additional information to establish credit, such as identification or written documentation, then the utility shall confirm with the applicant when it receives the requested information. An applicant's financial responsibility will be deemed established if the applicant meets any one of the following criteria:

AEP notes that this provision refers to both "credit" and "financial responsibility" and states that only one of the terms should be used.[166] *The current rule refers only to "financial responsibility."*[167] *It appears that the use of that term would be preferable.*

On the other hand, AEP also objects to informing customers of all of the options available to establish financial responsibility.[168] *Apparently under AEP's view, it would be up to each utility to decide which of the options allowed by the Commission's rules to tell consumers about. Thus unless the customer had some independent source of knowledge, the unrevealed options might as well not exist. AEP's assertion that "this requirement will result in lengthy telephone conversations…"*[169] *ignores the fact that consumers need to know about their options.*

For its part, OTA asserts that "[o]ne object of the new rules was to minimize excessive disclosure of detailed regulation to customers."[170] *That sentiment appears nowhere in the rules or the Commission's Entry, but the central flaw in OTA's argument is in its assumption that informing customers of their options is "excessive" disclosure. Again, if disclosure of all the options is not required, then it will be left to the utilities to decide which options consumers will know about. The same sentiment is apparent in OTA's proposal that the word "any" be removed from the last sentence of the paragraph, such that it would read "An applicant's financial responsibility will be deemed established if*

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[165] AARP, et al. Comments at 12-13.

[166] AEP Comments at 7-8.

[167] Ohio Adm. Code 4901:1-17-03(A).

[168] AEP Comments at 8.

[169] Id.

[170] OTA Comments at 5.

the applicant meets one of the following criteria…."[171] *It would thus be up to the utilities to decide which of the criteria to make available to consumers. Under those circumstances, customers would be misled into thinking that only the utility-selected criteria were available.*

AT&T and CBT both assert that these rules should be limited for ILECs because of the competitive alternatives available, where their competitors are not required to meet such regulations.[172] *But it is only the ILECs that are carriers of last resort; therefore the ILECs customers (or potential customers) deserve the broadest number of options for establishing service.*[173]

> (1) The applicant is the owner of the premises to be served or of other real estate within the territory served by the utility and has demonstrated financial responsibility with respect to that property.

FirstEnergy proposes to remove this provision.[174] *FirstEnergy ignores the fact that this means of avoiding a deposit is required by statute for gas, electric and water companies.*[175] *DP&L also objects to this provision, but may be objecting only to the inclusion of "with respect to that property."*[176] *The statute refers only to a "freeholder who is financially responsible…"*[177]*; the PUCO Staff's proposed addition may be beyond the Commission's power to enact. On the other hand, Dominion seeks to define "financial responsibility* [178] *in a fashion that would limit it to payment of utility bills. This may also be an improper limitation of a broad statute. Duke proposes to delete "with respect to that property" because of problems with owners of multiple properties,*[179] *which may be more consistent with the statute.*

OTA presents a somewhat thornier problem for the telephone companies, seeking clarification that (1), (3) and (5) do not apply to telephone companies, although (2) and (4) do.[180] *OTA provided no explanation. It may be that OTA's basis is that R.C. 4933.17 does not apply to telephone companies. Yet under current Ohio Adm. Code 4901:1-17-*

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[171] Id.

[172] AT&T Comments at 6-7; CBT Comments at 1-2.

[173] CBT asserts that three of the options (property ownership, payment for similar utility service and guarantors) are rarely used. CBT Comments at 1-2. It is safe to assume that one reason for this is that the utilities have not informed potential customers about those options, because the rule did not specifically require it.

[174] FirstEnergy Comments at 6.

[175] R.C. 4933.17(A).

[176] DP&L Comments at 6.

[177] R.C. 4933.17(A).

[178] Dominion Comments at 1-2.

[179] Duke Comments at 4-5.

[180] OTA Comments at 5.

03, all five options are available for customers of telephone companies. And in the most recent revisions to the MTSS, no telephone company challenged the applicability of the general deposit requirements. Indeed, as the Commission noted in its Opinion and Order in that case,

> *The Consumer Groups raise a concern that the language allowing providers to "apply reasonable and nondiscriminatory creditworthiness standards for customers to establish service" in some manner limits the options found in Chapter 4901:1-17, O.A.C. The Consumer Groups request the Commission include a statement at the end of proposed Rule 5(A) incorporating all opportunities to establish service found in Chapter 4901:1-17, O.A.C. (Consumer Groups initial comments at 60). CBT agrees with the Consumer Groups that proposed Rule 5(A) is unclear. CBT joins the Consumer Groups' request in seeking the applicability of Rule 4901:1-17-03 O.A.C., to the new rules.*
>
> *The Commission has added a reference to proposed Rule 5(A) to address the Consumer Groups' concern. The language cited by the Consumer Groups as raising options for the providers is now modified by the language "consistent with Chapter 4901:1-17 of the Administrative Code." It is now clear that the options used by the provider must be consistent with the methods the Consumers Groups reference. The Commission notes that providers are free to propose other deposit policies under the tariff procedures where the Commission can review them on a case-by-case basis to determine the reasonableness of the options.*[181]

The deposit requirements in both the MTSS and in Chapter 17 stem from the Commission's authority under R.C. 4905.231. This effectively rebuts OTA's proposal.

> (2) The applicant demonstrates that he/she is a satisfactory credit risk by means that may be quickly and inexpensively checked by the utility. Under this provision, the utility may request the applicant's social security number in order to obtain credit information and to establish identity. Prior to requesting the applicant's social security number, the utility shall advise the applicant that it will use the social security number to obtain credit information and to establish identity, and that providing the social security number is voluntary. The utility may not refuse to provide service if the applicant elects not to provide his/her social security number. If the applicant declines the utility's request for a social security number, the utility shall inform the applicant of all other options for establishing creditworthiness.

[181] 05-1102, Opinion and Order (February 2, 2007) at 32.

Outrageously, DP&L asserts that utilities should be able to deny service based on a potential customer's refusal to provide a social security number.[182] *Not only is this contrary to the statute,*[183] *it ignores the other options available under these rules.*[184]

AT&T asserts that the Commission should delete the Staff-proposed requirement that potential customers be informed how the social security number will be used, because "[c]ustomers understand the how [sic] SSNs are used and are savvy enough to refuse to provide theirs if they have privacy concerns."[185] *To the contrary: Informing the customer of the limited purposes for which the company seeks this information may well convince more consumers (savvy or not) to supply the information.*

> (3) The applicant demonstrates that he/she has had the same class and a similar type of utility service within a period of twenty-four consecutive months preceding the date of application, unless utility records indicate that the applicant's service was disconnected for nonpayment during the last twelve consecutive months of service, or the applicant had received two consecutive bills with past due balances during that twelve-month period and provided further that the financial responsibility of the applicant is not otherwise impaired.
>
> (4) The applicant makes a cash deposit to secure payment of bills for the utility's service as prescribed in rule 4901:1-17-05 of the Administrative Code. For telecommunications service applicants the amount of the cash deposit will be determined in accordance with rule 4901:1-5-05 of the Administrative Code.
>
> (5) The applicant furnishes a creditworthy guarantor to secure payment of bills in an amount sufficient for a sixty-day supply for the service requested. If a third party agrees to be a guarantor for a utility customer, he or she shall meet the criteria as defined in paragraph (A) of this rule or otherwise be creditworthy.

FirstEnergy, DP&L and Vectren all recommend that the guarantor must be a customer of the same utility, for ease of administration.[186] *The Consumer Groups do not object to this provision.*[187] *Similarly, DP&L would release the guarantor and require a deposit if*

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[182] DP&L Comments at 7; see also Duke Comments at 4.

[183] R.C. 4933.17.

[184] DP&L's and COH's protestations that requiring the social security number protects the customer (DP&L Comments at 7; COH Comments at 9) rings hollow in the face of a potential customer's desire **not** to provide this information.

[185] AT&T Comments at 8.

[186] FirstEnergy Comments at 8; DP&L Comments at 8; Vectren Comments at 3 (giving data on guarantors who did not pay).

[187] R.C. 4933.17(A) provides that the guaranty must be "reasonably safe."

the guarantor no longer meets criteria for creditworthiness.[188] *This also appears reasonable.*

On the other hand, FirstEnergy asserts that the guarantor's liability should be increased from 60 days to 90 days.[189] *Duke proposes that the liability should be a specified or preset amount.*[190] *This is contrary to the statute, which provides that the guaranty shall be "in an amount sufficient to secure the payment of bills for sixty days' supply…."*[191]

VEDO and AT&T note that few customers use this option[192] *Again, perhaps that is more a result of the companies' not informing customers about the option than a problem with the option itself. Vectren gives data (at 3)*

> (a) The guarantor shall sign a written guarantor agreement that shall include, at a minimum, the information shown in the appendix to this rule. The company shall provide the guarantor with a copy of the signed agreement and shall keep the original on file during the term of the guaranty.

DP&L proposes to allow a "verbal" [sic] guarantee over the telephone that would be memorialized by a confirming letter.[193] *This would be acceptable, but DP&L's proposed language*[194] *would imply that the requirement to sign an agreement would be optional, including for the guarantor.*

> (b) The company shall send to the guarantor a copy of all disconnection notices sent to the guaranteed customer.
>
> (c) When the guaranteed customer requests a transfer of service to a new location, the utility shall send a new guarantor agreement to the guarantor. The new guarantor agreement shall display the guaranteed customer's name and new service address. The cover letter accompanying the new guarantor agreement shall include:
>
> (i) A statement that the transfer of service to the new location may affect the guarantor's liability.
>
> (ii) A statement that, if the guarantor does not sign and return the new guarantor agreement within fifteen days, the utility

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[188] DP&L Comments at 8.

[189] FirstEnergy Comments at 8.

[190] Duke Comments at 7-8.

[191] R.C. 4933.17(A).

[192] Vectren Comments at 2 (only 254 customers have guarantors); AT&T Comments at 9.

[193] DP&L Comments at 9.

[194] Id.

will notify and bill the guaranteed customer for a security deposit at the new service address.

COH and AT&T would continue the current practice, where the guaranty automatically transfers to the new location.[195] *Given the gravity of the guarantor's agreement, however, PUCO Staff's proposed modification makes sense. DP&L would allow re-establishment of guarantor's creditworthiness at time of a transfer of service.*[196] *This is reasonable.*

(6) For electric, gas, and natural gas service applicants, the applicant agrees to receive service(s) through a prepaid meter. If the applicant elects to receive services through a prepaid meter, the utility shall provide the following information, at a minimum, to the applicant concerning this service delivery alternative:

See discussion in main text.

Rule 4901:1-17-03, Appendix

Guarantor Agreement

I, (name of guarantor), agree to be the guarantor for the (utility type) service provided by (name of utility company) for (customer's name) at the service address of (location).

As the guarantor for (customer's name), I agree to be obligated for charges for the (type of utility) services provided to the guaranteed customer, (customer's name), through the date of termination of the guaranty.

I understand that the company will send a notice to me when the customer requests to transfer service to a new location and I will have the option to sign a new guarantor agreement.

I understand that the company will also send to me all disconnection notifications sent to (name of customer), unless I affirmatively waive that right.

Dominion and COH correctly note that the Proposed Rule does not allow guarantor to waive the right.[197]

If (customer's name) defaults on the account, I will be held legally responsible for and agree to pay the defaulted amount. As guarantor, I understand that the defaulted amount may be transferred to my account and that my service may be subject to disconnection, if the

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[195] COH Comments at 11; AT&T Comments at 9-10.

[196] DP&L Comments at 9:

[197] Dominion Comments at 2, COH Comments at 12; see Consumer Groups Comments at 69.

transferred amount remains unpaid for thirty days. I understand that this amount will not be more than the amount of the bill for sixty days of service or two monthly bills.

I understand that I may terminate this guarantor agreement upon thirty days' written notice to (name of company). I also understand that, if I terminate this guarantor agreement, (customer's name) may be required to reestablish creditworthiness when I terminate the guaranty.

I understand that the company shall annually review the account history of each customer who has provided a guarantor. Once (customer's name) satisfies the requirements for the release of a guarantor, as stated in Rule 4901:1-17-06, of the Ohio Administrative Code, (name of company) shall, within thirty days, notify me in writing that I am released from all further responsibility for the account.

I agree to be a guarantor for (customer's name).

(signature of guarantor)

(date)_____

I waive the right to receive all disconnection notices regarding (customer's name) guaranteed service.

See comment above.

(signature of guarantor)
(date)_____

4901:1-17-04 Deposit to Reestablish Creditworthiness.

AT&T proposes modifications consistent with its proposals on Rule 3.[198] *See discussion above. AT&T also proposes rolling Rule 4 into Rule 3.*[199] *It is not clear that this would be any significant benefit.*

(B) After considering the totality of the customer's circumstances, a utility may require a deposit if the customer's account is in arrears and the customer has not made full payment or payment arrangements for any given bill containing a previous balance for regulated services provided by that company.

Dominion proposes to delete "totality of circumstances" from this provision.[200] *The Consumer Groups agree that the phrase is not necessary.*[201] *The Consumer Groups disagree, however, that using "if credit history warrants" as the sole determining factor*[202] *is at all appropriate.*

AT&T asserts that this provision imposes additional criteria beyond the MTSS.[203] *It does not.*[204]

(C) A utility may require a deposit if the applicant for service was a customer of that utility, during the preceding twelve months, and had service disconnected for nonpayment, a fraudulent act, tampering, or unauthorized reconnection.

DP&L asserts that the Commission should allow companies to require a deposit if a disconnection notice has been issued, even if the disconnection is not carried out.[205] *DP&L does not indicate the degree to which imposing deposits under those circumstances would reduce its exposure to financial risk. In the absence of such information, there is no reason to change this rule.*

(D) After considering the totality of the customer's circumstances, an electric, gas, or natural gas service utility may require, as an alternative to payment of a deposit, that the customer receive service(s) through a prepaid meter. If the utility elects to provide services through a prepaid meter, the utility shall also provide the following information, at a minimum, to the applicant concerning this alternative:

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[198] AT&T Comments at 11.

[199] Id.

[200] Dominion Comments at 3.

[201] See Consumer Groups Comments at 71.

[202] Dominion Comments at 3.

[203] AT&T Comments at 11-12.

[204] See discussion at beginning of Chapter 17.

[205] DP&L Comments at 11.

See comments in main text.

4901:1-17-05 Deposit Administration Provisions.

(A) No public utility, as defined in this chapter, except telecommunications providers, shall require a cash deposit to establish or reestablish credit in an amount in excess of one-twelfth of the estimated charge for regulated service(s) provided by that utility for the ensuing twelve months, plus thirty per cent of the monthly estimated charge. No telecommunications provider shall require a cash deposit to establish or reestablish credit in an amount in excess of that prescribed in rule 4901:1-5-05 of the Administrative Code. Each utility, upon request, shall furnish a copy of these rules to the applicant/customer from whom a deposit is required. If a copy of the rule is provided to the applicant/customer, the utility shall also provide the name, address, website address, and telephone number of the public utilities commission of Ohio.

Both FirstEnergy and Duke propose that this rule be changed to increase deposits to one-sixth of the estimated charges for the next 12 months plus thirty percent, rather than one-twelfth.[206] *This would be directly contrary to the statute: R.C. 4933.17 directs that "a deposit not exceeding an amount sufficient to cover an estimate of the monthly average annual consumption plus thirty per cent may be required."*

[206] FirstEnergy Comments at 8, Duke Comments at 9-10.

4901:1-17-06 Refund of Deposit and Release of Guarantor.

(A) After discontinuing service, the utility shall promptly apply the customer's deposit, including any accrued interest, to the final bill. The utility shall promptly refund to the customer any deposit, plus any accrued interest, remaining. A transfer of service from one customer location to another within the service area of the utility does not prompt a refund of the deposit.

DP&L proposes that it be required to refund only when the balance is greater than $1.00.[207] DP&L provides no information on how often such a situation occurs, and also provides no reason why it should be entitled to retain those amounts. DP&L's proposal should be rejected.

(B) The utility shall review each account holding a deposit or a guarantor agreement every twelve months and promptly refund the deposit, plus any accrued interest, or release the guarantor, if the account meets the following criteria:

(1) The customer has paid his/her bills for service for twelve consecutive months without having had service disconnected for nonpayment.

(2) The customer has not had more than two occasions on which his/her bill was not paid by the due date.

(3) The customer is not currently delinquent in the payment of his/her bills.

DP&L would like to add a provision that the deposit could be held if the customer has paid with a check from an account that had insufficient funds.[208] It would seem that this would count as an occasion where the bill was not paid by the due date, and would not deserve special treatment.[209]

OTA calls this provision "unreasonably lenient,"[210] despite the fact that the provision has been in the rules for many years. OTA proposes "eliminating criteria (1) and (3) entirely."[211] OTA would retain criterion (2) but would make the criterion "no" occasions of late payment in the previous twelve months.[212] OTA provides no justification for a) why the current rule doesn't work; or b) why OTA's draconian proposal is appropriate.[213] OTA's proposals should be rejected.

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[207] DP&L Comments at 11.

[208] Id.

[209] Most utilities also have insufficient funds check charges.

[210] OTA Comments at 6.

[211] Id.

[212] Id.

[213] Presumably, late payment charges more than recompense the utilities for the cost of late payments.

(D) Once the customer satisfies the requirements for release of the guarantor, pursuant to paragraph (B) of this rule, the utility shall notify the guarantor in writing, within thirty days, that the guarantor is released from all further responsibility for the account.

Duke proposes an addition to this rule that would address the need for the customer whose guarantor is released (at the guarantor's request) to establish creditworthiness after the release.[214] *This appears reasonable.*

[214] Duke Comments at 10.

4901:1-17-08 Applicant and/or Customer Rights.

(A) Each public utility that requests a cash deposit shall notify the applicant/customer of all options available to establish credit as listed in paragraph (A) of rule 4901:1-17-03 of the Administrative Code.

AT&T asserts that this provision is unnecessary as redundant of Proposed Rule 3.[215] *The Consumer Groups agree, but cannot see the harm in including it under "applicant and/or customer rights."*

(C) If a public utility requires a cash deposit to establish or reestablish service and the applicant/customer expresses dissatisfaction with the utility's decision, the company shall inform the customer of the following:

(4) The right to have the utility's decision reviewed by the commission staff, and provide the applicant/customer the local or toll-free numbers and/or TTY numbers, address, and the website address of the public utilities commission of Ohio as stated below:

FirstEnergy asserts that "Staff's proposed language is confusing."[216] *This is the language in the current rule.*[217] *It is not clear in what way the current language is confusing, but FirstEnergy's proposed language*[218] *would be acceptable.*

(D) Upon request, each public utility shall provide the information required by paragraph (C) of this rule to the applicant/customer, in writing, within five business days of the request.

AT&T asserts that paragraphs (C) and (D) are unnecessary, given federal law.[219] *These requirements establish Ohio-specific and regulated industry-specific protections for customers (especially regarding recourse to the Commission) and are far from unnecessary.*

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[215] AT&T Comments at 13.

[216] FirstEnergy Comments at 8.

[217] Ohio Adm. Code 4901:1-17-08(B)(4).

[218] FirstEnergy Comments at 9.

[219] AT&T Comments at 13, citing "Section 615 - Requirement on Users of Consumer Reports of the Federal Fair Credit Reporting Act and the Equal Credit Opportunity Act."

Chapter 4901:1-18 : Termination of Residential Service

4901:1-18-01 Definitions.

For purposes of this chapter, the following definitions shall apply:

(B) "Arrears" means any utility bill balance that is unpaid at the next billing cycle.

Vectren asserts that the inconsistent use of "arrears," "default," and "past due" are confusing, "and should be clarified and made consistent throughout.[220] *The Consumer Groups agree.*

(C) "Bona fide dispute" means a complaint registered with the commission's call center or a formal complaint filed with the commission's docketing division.

AEP opposes this definition, because it "will encourage the lodging of complaints … simply to avoid disconnection of service."[221] *AEP would prefer that the rules "simply refer to 'good faith' complaints."*[222] *Although the PUCO Staff-proposed definition is overly limiting,*[223] *at least it provides an objective basis. AEP's contrary suggestion would (presumably) allow the utility to judge which disputes were in good faith, and which were not. That will only engender more disputes.*

(D) "Collection charge" means a tariffed charge assessed to a residential customer by a company when payment or proof of payment is given to a company employee whose original purpose was to disconnect the service and who is authorized to accept payment in lieu of disconnection.

FirstEnergy proposes that the rules allow imposition of a collection charge if proof of a payment arrangement is given to disconnecting employee.[224] *This appears to be within the intentions of this rule.*

(G) "Consumer" means any person who is an ultimate user of electric, gas or natural gas service.

(H) "Customer" means any person who enters into an agreement to purchase residential electric, gas, or natural gas service by contract and/or by tariff.

Duke would require all customers to also be consumers at the premises.[225] *There are all sorts of reasons why customers and consumers might not live at the same premises. Duke's ostensible rationale -- to prevent disadvantage to the consumer if the customer*

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[220] Vectren Comments at 4-5.

[221] AEP Comments at 9.

[222] Id.

[223] See Consumer Groups Comments at 78.

[224] FirstEnergy Comments at 9.

[225] Duke Comments at 10-11.

does not share information[226] *-- cannot possibly address all of those reasons. (Of course, if there is a landlord-tenant relationship involved, the provisions and protections of Proposed Rule 18-08 apply.)*

(P) "PIPP anniversary date" means the calendar date twelve months from the date that the customer enrolled in PIPP.

COH points out that, e.g., Proposed Rule 12(E)(1) requires reverification 12 months from PIPP anniversary date; so would define this as the "calendar date ~~twelve months from the date~~ that the customer enrolled in PIPP." The Consumer Groups agree.

[226] Id. at 11.

4901:1-18-03 Reasons for Disconnecting Residential Electric, Gas, or Natural Gas Service.

Electric, gas, or natural gas companies under the jurisdiction of the commission may disconnect service to residential customers only for the following reasons:

AEP notes that the current rules allow disconnection under the following circumstances: "For any violation of or refusal to comply with a contract and/or the general service rules and regulations on file with the commission that apply to the customer's service."[227] AEP proposes that this provision be retained. This is problematic, because first, as required by Proposed Rule 18-2(C), these rules prevail over contrary provisions in utility tariffs, and second, because no notice is required. The Consumer Groups agree with the PUCO Staff proposal to delete that provision. At the very least, notice should be required.

(E) When a customer, consumer, or his/her agent does any of the following:

(1) Prevents company personnel from reading the meter for a year or more.

AEP notes that the current rule provides that the utility need not wait a year if tampering is suspected.[228] The Consumer Groups do not oppose retaining the current language. On the other hand, AEP also proposes that the "year or more" be reduced to four months.[229] That is not in the current rule, and is unnecessarily brief, particularly if no notice is given.[230]

[227] AEP Comments at 10, citing Ohio Adm. Code 4901:1-18--02(B).

[228] AEP Comments at 9, citing Ohio Adm. Code 4901:1-18-02(G).

[229] AEP Comments at 9.

[230] See Consumer Groups Comments at 83.

4901:1-18-05 Extended Payment Plans and Responsibilities.

(A) Upon contact by a customer whose account is delinquent or who desires to avoid a delinquency, the company shall inform the customer that it will make extensions or other extended payment plans appropriate for both the customer and the company. If the customer proposes payment terms, the company may exercise discretion in the acceptance of the payment terms based upon the account balance, the length of time that the balance has been outstanding, the customer's recent payment history, the reasons why payment has not been made, and any other relevant factors concerning the customer including health, age, and family circumstances.

Duke would modify this provision to require a utility to "make reasonable extensions or other extended payment plans appropriate for both the customer and the company."[231] *One presumes that these could be distinguished from the many unreasonable extensions appropriate for both company and customer that are currently being agreed to.*

(B) If the customer fails to propose payment terms acceptable to the company, the company shall then advise the customer of the availability of all of the following extended payment plans and PIPP pursuant to rule 4901:1-18-12 of the Administrative Code:

See discussion in main text.

(4) In addition to the three plans listed above, during the winter heating season, the company shall offer the one-third payment plan for any bills that include any usage occurring from November 1 through April 15. The one-third plan requires payment of one-third of the balance due each month (arrearages plus current bill). For any outstanding balance remaining after the last one-third bill has been rendered, the company shall remove the customer from the one-third payment plan and shall offer the customer the option to pay the balance or to enter into one of the three plans above, in this rule, or PIPP provided that he/she meets the qualifications for that plan.

FirstEnergy objects to the use of "usage occurring" here, and wants the rule to be keyed to the payment due date.[232] *"Usage occurring" is part of the current winter payment plan requirement.*[233] *As discussed elsewhere, this comment calls into question the utilities' compliance with the current rules.*

(D) For customers without arrearages, the company shall also offer a budget plan (a uniform payment plan) on an annual basis.

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[231] DP&L Comments at 11.

[232] FirstEnergy Comments at 9.

[233] Ohio Adm. Code 4901:1-18-05(B)(2).

DP&L notes, in apparent agreement with the Consumer Groups, that the PUCO Staff-proposed one-twelfth plan is not consistent with this provision.[234]

(G) The company shall advise the customer, who enters into an extended payment plan, that it will provide the customer with the terms of the plan in writing. The company shall also advise the customer that failure to make a payment under the extended payment plan may result in the disconnection of service in accordance with the procedures set forth in rule 4901:1-18-06 of the Administrative Code.

FirstEnergy and AEP both oppose providing the terms of a payment plan to the customer.[235]*: The current rule requires the utilities to provide such a notice upon the customer's request.*[236] *If customers do not know that they are entitled to a copy, it is unlikely that they will make the request. Requiring affirmative advice would assist customers.*

(H) No company shall charge late payment fees to customers that are current on the payment plans identified in paragraphs (A) or (B) of this rule or PIPP.

FirstEnergy opposes this provision, asserting that a "late payment fee serves as a carrying charge."[237] *Clearly, no cost basis has been established for utility late payment fees, which are designed more to influence customer behavior than to recompense the utilities for expenses that may already be included in rates.*[238] *And customers who have entered into a payment plan have had their behavior influenced already; it is not necessary to add a late payment charge penalty.*

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[234] DP&L Comments at 12; see Consumer Groups Comments at

[235] FirstEnergy Comments at 10, AEP Comments at 10-11.

[236] Ohio Adm. Code 18-05(F).

[237] FirstEnergy Comments at 10.

[238] See *In the Matter of the Application of SBC Ohio to Modify the General Terms and Conditions Contained in the General Terms and Regulations Part of PUCO Tariff No. 20*, Case No. 03-965-TP-SLF, Finding and Order (June 10, 2003) at 10.

4901:1-18-06 Disconnection Procedures for Electric, Gas, and Natural Gas Utilities.

Duke asserts that the Commission needs to adopt protocols for smart meters.[239] *But Duke does not propose any such protocols. As discussed by the Consumer Groups, a separate Commission-investigation needs to be opened on this subject.*[240]

(A) If a residential customer is delinquent in paying for regulated services, the company may, after at least fourteen days' notice, disconnect the customer's service during normal company business hours in compliance with all of the following conditions:

(3) Third-party or guarantor notification.

(c) In compliance with division (E) of section 4933.12 and division (D) of section 4933.121 of the Revised Code, if the company plans to disconnect the residential utility service of a customer for the nonpayment of his/her bill, and that customer resides in an Ohio county in which the Department of Job and Family Services has provided the company with a written request for ongoing notification of residential service disconnection prior to the disconnection, then the company shall provide, on an on-going basis, the appropriate county Department of Job and Family Services with an electronic means for acquiring information on those customers whose service will be disconnected for nonpayment. This information will include at a minimum, the customer's first name, middle initial, last name, account number, service address, county of residence, account status, current balance, amount past due, total account balance, as well as the amount to be paid to prevent disconnection or to restore service. The said information shall be made available to the county Department of Job and Family Services simultaneous with the generation of disconnection notices being distributed to customers. The county Department of Job and Family Services may use this information to assist customers in the payment of delinquent utility bills in an effort to avoid disconnection of service.

FirstEnergy, DP&L, AEP and COH all identify PUCO Staff's proposals as problematic.[241] *The cited statute states,*

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[239] Duke Comments at 14-15.

[240] See Consumer Groups Comments at 53-56.

[241] FirstEnergy Comments at 11, DP&L Comments at 13-14, AEP Comments at 11-12, COH Comments at 17-18.

> *On or before the first day of November, a county human services department may request a company to give prior notification of any residential service terminations to occur during the period beginning on the fifteenth day of November immediately following the department's request and ending on the fifteenth day of the following April. If a department makes such a written request, at least twenty-four hours before the company terminates services to a residential customer in the county during that period for failure to pay the amount due for service, the company shall provide written notice to the department of the residential customer whose service the company so intends to terminate. No company that has received such a request shall terminate such service during that period unless it has provided the notice required under this division.*[242]

And the current rule, Ohio Adm. Code 18-5(C)(3), states,

> *In compliance with division (E) of section 4933.12 and division (D) of section 4933.121 of the Revised Code, if the company plans to disconnect the residential utility service of a customer for the nonpayment of his/her bill, and that customer resides in a county in which the department of job and family services has provided the company with a written request for prior notification of residential service disconnection, then the company shall provide the appropriate county department of job and family services with a listing of those customers whose service will be disconnected for nonpayment at least twenty-four hours before the action is taken.*

The current rule is not limited to November-April disconnections, so the companies' protests in that regard come a bit late. The PUCO Staff proposal's reference to electronic notice is clearly more efficient than the statute's written notice, and should be of substantially less cost to the utilities. And the specific details in the Proposed Rule concerning material that must be in the electronic notice can be construed as merely providing detail to the "notice" required by the statute and the current rule. Thus the companies' protests should be disregarded.

(4) Utility employees or agents who disconnect service at the premises may or may not, at the discretion of the company, be authorized to make extended payment arrangements. Utility employees or agents who disconnect service shall be authorized to complete one of the following:

(a) Accept payment in lieu of disconnection.

(b) Dispatch an employee to the premises to accept payment.

(c) Make available to the customer another means to avoid disconnection.

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[242] R.C. 4933.12(D) (gas); R.C. 4933.121 is almost identical for electric companies.

FirstEnergy says that the Commission should not require acceptance of payment or proof of payment to prevent disconnection.[243] *This is because "[a]t the time the Companies make a field visit to disconnect service, a customer has been given ample opportunity to make a payment or set up a payment arrangement."*[244] *FirstEnergy would apparently prefer to play Scrooge, rather than continuing to work with its customers to maintain their service. Given the capability of imposing a collection charge to recompense it for the costs of the premise visit that was supposed to have been for disconnection but ended up accepting payment or proof of payment, the utility in fact should be more interested in continuing service than disconnecting. This provision is in the current rule*[245] *and should be retained.*

(5) The disconnection notice may be mailed separately or included on the regular monthly bill. If the notice is included on the regular monthly bill, it shall be prominently identified as a disconnection notice. The following information shall be clearly displayed either on the disconnection notice or in documents accompanying the disconnection notice:

(g) An explanation of the payment plans and options available to a customer whose account is delinquent, as provided in this rule and rule 4901:1-18-05 of the Administrative Code, and PIPP, pursuant to rule 4901:1-18-12 of the Administrative Code, and, when applicable, rule 4901:1-18-09 of the Administrative Code.

Ohio Gas objects to including details of new payment plans on the disconnection notice, because it wants to use up bill stock.[246] *This can be accomplished through the waiver process.*

(B) During the period of November first through April fifteenth, if payment or payment arrangements are not made to prevent disconnection before the disconnection date stated on the fourteen-day disconnection notice, the company shall not disconnect service to residential customers for nonpayment unless the company completes each of the following:

(1) Makes contact with the customer or other adult consumer at the premises ten days prior to disconnection of service by personal contact, telephone, or hand-delivered written notice. Companies may send this notice by regular, U.S. mail; however, such notice must allow three calendar days for mailing. This additional notice shall extend the date of disconnection,

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[243] FirstEnergy Comments at 11.

[244] Id.

[245] Ohio Adm. Code 4901:1-18-05(A)(4).

[246] Oho Gas Comments at 6.

as stated on the fourteen-day notice required by paragraph (A) of this rule, by ten additional days.

DP&L proposes to amend this rule in order to permit the continuation of DP&L's procedures as allowed in Case No. 05-1171-EL-UNC, in which DP&L was granted a waiver on this rule.[247] *Clearly, the preferable course would be for DP&L to seek another waiver of the rules adopted in the instant docket, rather than to modify the rule for all utilities.*[248]

(C) Medical certification

The Consumer Groups oppose the changes to Proposed Rule 05(c) proposed by COH, Duke, and FirstEnergy. The companies' reasons for requesting additional information to process a medical certificate are unwarranted.

COH requests that the medical certification form reflect a medical exam conducted no more than 30 days prior to the medical certificate request.[249] *In addition, COH is requesting to reduce the number of times a consumer/customer can renew a medical certification to one.*[250] *Columbia cites the following reasons for making these changes:*

1) *Last winter's moratorium, "coupled with the rule allowing a nine-day medical certification period per year, allowed some consumers to avoid disconnection for non-payment during almost the entire winter heating season."*[251]

2) *"Reducing the number of times that a consumer may renew a medical certification to one will help reduce these negative incentives."*[252]

3) *COH "feels that adding this information to each submitted medical certification form will make it easier to verify medical certification claims and therefore will reduce the potential for fraudulent certifications."*[253]

Similar to COH's suggested change, Duke proposes that the document include the date on which the patient/applicant was examined.[254] *Furthermore, Duke "also requests that the Commission add a provision to the form that requires applicants to be seen by a*

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[247] DP&L Comments at 14.

[248] See 05-1171-EL-UNC, Entry (January 4, 2006).

[249] COH Comments at 18.

[250] Id. at 19.

[251] Id.

[252] Id.

[253] COH Comments at 20.

[254] Duke Comments at 15.

licensed physician within thirty (30) days preceding the date of the medical certification."[255]

On the other hand, FirstEnergy requests that "the medical certificate be connected to the outstanding balance as opposed to an arbitrary twelve-month period. Once the outstanding balance is paid in full, the customer would then be eligible for three medical certificates on any new outstanding balance."[256]

The Commission should dismiss the added requirements that are being recommended by COH, Duke, and FirstEnergy. First, the utilities have neglected to provide sufficient reasons regarding the usefulness of obtaining the date when the consumer/patient was last examined by a medical professional and making sure a consumer has been examined by a medical professional within (30) days prior to the initiation of a medical certificate. Second, requiring that a customer's outstanding balance be paid in full in order to initiate a medical certificate would be unconscionable, especially if the customer is facing a financial hardship due to a short-term and/or long-term medical condition that exists in the household and a medical professional has certified that disconnection of services for non-payment would be detrimental to the consumer's health. Indeed, if the customer's bill were paid in full, the customer would not need a medical certificate! Under FirstEnergy's proposal, the most vulnerable of consumers, those who are on fixed incomes due to a medical condition, would be exposed to risks from other health complications. Likewise, limiting medical certifications to once per twelve months places those customers at risk.[257]

(2) The medical condition or the need for medical or life-supporting equipment shall be certified to the company by a licensed physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or local board of health physician.

(c) Initial certification by the certifying party may be by telephone if written certification is forwarded to the utility company within seven days.

Dominion requests that in this Proposed Rule, and in paragraphs (d) and (f), the Commission specify business or calendar days. The Consumer Groups submit that "business days" would be more appropriate.

(d) Certification shall prohibit disconnection of service for thirty days.

(f) If service has been disconnected within twenty-one days prior to the certification of either a special danger to the health of a qualifying resident or the need for medical or life-supporting

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[255] Id.

[256] FirstEnergy Comments at 12.

[257] See Consumer Groups Comments at 94-96.

equipment, the company shall restore service to that residence once the certifying party provides the required certification to the company and the customer agrees to an extended payment plan.

DP&L suggests that the rule make clear that it is disconnection "for nonpayment" that is addressed here.[258] *That seems to have been the intention of this rule, so the Consumer Groups concur.*

(h) A consumer may renew the certification two additional times (thirty days each) by providing additional certificates to the company. The total certification period may not exceed ninety days per household in any twelve-month period.

(i) At least seven days prior to the end of the thirty-day extension created by the medical certification, the company shall either make personal contact with the customer or send a notice which shall include all of the following:

COH and AEP object to providing this notice to those customers for whom disconnection of service would be especially dangerous to health.[259] *It might be that such a customer would have concerns that override concerns over utility bills; this notice is important to ensure that such customers do not lose service, and must be provided.*

(E) Upon request of the customer, the company shall provide an opportunity for review of the initial decision to disconnect the service. The company shall review the circumstances surrounding the disconnection, escalate the review to an appropriate supervisor if requested, and inform the customer of the decision upon review as soon as possible. At the customer's request, the company shall respond in writing.

FirstEnergy objects to this Proposed Rule as a "proposed change."[260] *In fact, this is a continuation of the current rule, Ohio Adm. Code 18-05(D). FirstEnergy's reasons*[261] *do not justify eliminations of a customer's ability to have the decision to disconnect reviewed by a supervisor.*

(F) The company when contacted by the commission's staff shall respond to an inquiry concerning a pending disconnection or actual disconnection within two business days. At the request of commission staff, the company shall respond in writing. Commission staff will notify the customer of the company's response.

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[258] DP&L Comments at 16.

[259] COH Comments at 19-20, AEP Comments at 12.

[260] FirstEnergy Comments at 12-13.

[261] Id. The reasons, in fact, call into questions FirstEnergy's compliance with the current rule.

COH asserts that this provision conflicts with Ohio Adm. Code 4901:1-13-10, which requires status reports on complaints.[262] *In the first place, this is a continuation of current Ohio Adm. Code 4901:1-18-05(E). Equally importantly, this provision deals only with disconnections, which are a subset of complaints, and addresses "inquiries" that may not rise to the level of a complaint.*

COH also insists that there be special notice to companies if this provision is adopted.[263] *Apparently the companies have been able to manage under the current rule without special notice.*

(G) The company shall include in its tariff its current standard practices and procedures for disconnection, including any applicable collection and reconnect charges. Any company proposing changes to its disconnection notice shall submit a copy to commission staff for review.

DP&L opposes sending changes to disconnection notices to Commission staff for review.[264] *The current rule requires that "[t]he company shall submit a sample disconnection notice for approval."*[265] *There is no substantive difference sufficient to justify deleting this provision -- indeed, the Proposed Rule could be looked at as more favorable to the utility. As previously stated, the Consumer Groups also support changed disconnection notices being sent to OCC.*[266]

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[262] COH Comments at 20.

[263] Id.

[264] DP&L Comments at 16-17.

[265] Ohio Adm. Code 4901:1-13-05(F).

[266] Consumer Groups Comments at 99.

4901:1-18-07 Reconnection of Service.

The company shall reconnect service that has been disconnected for nonpayment pursuant to the following provisions:

(A) Upon payment or proof of payment of the delinquent amount as stated on the disconnection notice, or of an amount sufficient to cure the default on any extended payment plan described in rule 4901:1-18-05 of the Administrative Code, or PIPP, including any reconnection charge, the company shall reconnect service by the close of the following regular company working day, unless service has been disconnected for greater than ten business days. If service has been disconnected for greater than ten business days, the timeline to reconnect service shall be consistent with rules 4901:1-10-09 (A) and/or 4901:1-13-05 (A) and (C) of the Administrative Code. The amount sufficient to cure the default includes all amounts that would have been due and owing under the terms of the applicable extended payment plan, absent default, on the date that service is reconnected.

FirstEnergy asserts that "once a customer defaults on a payment plan and service is disconnected as a result of such default, … such payment arrangement becomes null and void."[267] *FirstEnergy provides no support for this proposition, which is contradicted by the fact that the language at issue is a repeat of the current rule, Ohio Adm. Code 4901:1-18-6(A). This language contemplates that curing the default revives an extended payment plan, which is appropriate.*

Duke confuses "current charges" with the delinquent charges that can render a customer subject to disconnection.[268] *Duke apparently would require payment of current charges, even if those charges were not part of the reason for disconnection. Indeed, the language that Duke seeks to strike (the last sentence) would appear to allow a company to require payment of charges that were not the basis for disconnection if they would have been due before the reconnection occurs.*

Dominion submits that the Commission should clarify how the timeline for reconnecting accounts that have been without service for more than ten days will be impacted by the Winter Reconnect Order.[269] *Such possible conflicts are another reason to remove this provision from the rules.*[270]

(B) If service is disconnected for non-payment of service for no greater than 10 business days and the customer wishes to guarantee the reconnection of service the same day on which payment is rendered:

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[267] FirstEnergy Comments at 13.

[268] Duke Comments at 15-16.

[269] Dominion Comments at 3.

[270] See Consumer Groups Comments at 104-105.

(2) If the customer requests that reconnection occur after normal business hours, the company may require the customer to pay or agree to pay the company's approved tariff charges for after-hours reconnection. The company may collect this fee prior to reconnection or with the customer's next monthly billing.

FirstEnergy asserts that this provision "assumes that the Companies offer after-hour non-emergency service reconnection."[271] *Is it safe to assume, then, that the FirstEnergy companies and COH never reconnect service after normal business hours? Similar provisions have been in the rules for many years,*[272] *and such practices should be encouraged.*

[271] FirstEnergy Comments at 13; see also COH Comments at 21.

[272] See Ohio Adm. Code 4901:1-18-06(B)(2).

4901:1-18-08 Landlord-tenant Provisions.

A company may disconnect utility service of consumers whose utility services are included in rental payments and of consumers residing in a multi-unit dwelling (i.e., tenants who receive master-metered services) for which the customer is the landlord, only in accordance with the following:

(A) The company shall give a notice of disconnection of service to the landlord/agent at least fourteen days before the disconnection would occur. If, at the end of the fourteen-day notice period, the customer has not paid or made payment arrangements for the bill to which the fourteen-day notice relates, the company shall then make a good faith effort by mail, or otherwise, to provide a separate ten-day notice of pending disconnection to the landlord/agent, to each unit of a multi-unit dwelling (i.e., each tenant who receives master-metered service), and to single-occupancy dwellings where the utilities are included in the rent. This ten-day notice shall be in addition to the fourteen-day notice given to the landlord/agent. This notice requirement shall be complied with throughout the year. In a multi-unit dwelling, written notice shall also be placed in a conspicuous place.

A number of the companies have problems with this provision, as if it established some totally new requirement. Yet it is in the current rules.[273] *What is new is the specific mention of "single-occupancy dwellings where the utilities are included in the rent," but it is safe to say that such dwellings were covered under the current rule. The complaints about this provision*[274] *are fundamentally addressed by the Consumer Groups' proposal for a rebuttable presumption that a residence is a rental property if the billing address is different from the service address.*[275] *COH's confusion as to the meaning of "single-occupancy"*[276]*) is silly.*

[273] Ohio Adm. Code 4910:1-18-08(A). This makes FirstEnergy's assertion that it must be clarified whether a landlord residing in a building exempts the utility from complying with this rule (FirstEnergy Comments at 13) a little too late. The notices required by this rule are to protect the tenants; the fact that the landlord resides in the building should not deprive the tenants of those protections.

[274] See AEP Comments at 13-14, COH Comments at 22, Duke Comments at 17.

[275] Consumer Groups Comments at 110.

[276] COH Comments at 22.

4901:1-18-09 Combination Utility Companies.

Duke opposes Staff's "additions" of paragraphs (C) and (D) in this proposed rule.[277] *But those provisions are in fact part of the current rule.*[278] *These provisions are only necessary because Duke "[a]s the only combination utility under the Commission's jurisdiction"*[279] *is the only utility that would be able (in the absence of this rule) to hold its customers gas service hostage to their electric service, and vice versa. These provisions must be retained in the rules.*

Duke's bills now report past due amounts (including PIPP arrearages) for gas and electric as a single figure. Anecdotal experience is that Duke's customer service representatives do not affirmatively offer to perform the separation between gas and electric bills and, in fact, often appear unfamiliar with the separation requirement, requiring intervention at the supervisory level.

(C) Whenever a residential customer receiving both gas and electric service from a combination utility company has received a disconnection of service notice, the company shall give the customer each of the following options:

(1) An extended payment plan for both gas and electric as provided for in rule 4901:1-18-05 of the Administrative Code.

(2) An extended payment plan to retain either gas or electric service as chosen by the customer. Such extended payment plan shall include an extended payment plan as provided in rule 4901:1-18-05 of the Administrative Code.

(D) If a residential customer of a combination utility company who has entered into one extended payment plan for both gas and electric service receives a disconnection of service notice and notifies the company of an inability to pay the full amount due under such plan, the company shall offer the customer, if eligible pursuant to paragraph (B) of rule 4901:1-18-05 of the Administrative Code, another payment plan to maintain both services. The company shall give the customer the opportunity to retain only one service by paying the defaulted payment plan portion attributable to that service and by continuing payment on the portion of the extended payment plan attributable to that service subject to paragraph (B) of rule 4901:1-18-06 of the Administrative Code.

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[277] Duke Comments at 18.

[278] Ohio Adm. Code 4901:1-18-10(C) and (D).

[279] Duke Comments at 18.

4901:1-18-10 Insufficient Reasons for Refusing Service or for Disconnecting Service.

The company shall not refuse service to or disconnect service to any applicant/customer for any of the following reasons:

(A) Failure to pay for service furnished to a former customer unless the former customer and the new applicant for service continue to be members of the same household.

FirstEnergy proposes a new rule that would "enable a utility to hold an applicant/customer responsible for an outstanding balance incurred at a premise as long as they resided at the premise at the time the balance was incurred and continue to reside at such premise, even if the account is under another name."[280] *It is not at all clear how this would operate differently from the current rule*[281] *(or the PUCO Staff-proposed rule here), unless under the inference that the new applicant/customer would be liable even if the new applicant/customer had moved out of the premise and then had moved back.*[282] *FirstEnergy provides no basis for its proposal, which would do even more violence to the fundamentals of contract law than the current provision.*

Going even further, COH proposes to require customers to inform the utility of all full-time residents in their households.[283] *Shades of Big Brother, indeed. The same utilities that would like to avoid giving customers advice as to their rights would require those customers to keep the utility constantly informed of who is living in the household. (Presumably, that would include children as well.) All of this record-keeping would be required in order to allow the companies the opportunity to enforce the "benefit-of-service" rule. COH's proposal must be rejected.*

(B) Failure to pay for nonresidential service.

DP&L asserts that it allows residential customers to guarantee bills for non-residential service, and seeks changes to allow that practice.[284] *This is another long-standing rule, which DP&L apparently has been violating, if it has denied or disconnected residential service due to amounts owing for non-residential service. The Consumer Groups oppose this practice. The rule should stand.*

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[280] FirstEnergy Comments at 14.

[281] Ohio Adm. Code 4901:1-18-11(A).

[282] Compare FirstEnergy's provision that "[t]he applicant/customer shall only be responsible for service furnished at the time the applicant/customer resided at the premise (FirstEnergy Comments at 14) to the current and proposed rule language "unless the former customer and the new applicant for service **continue** to be members of the same household…." (Emphasis added.)

[283] COH Comments at 22.

[284] DP&L Comments at 17.

(C) Failure to pay any amount which is in bona fide dispute. Where the customer has registered a complaint with the commission's call center or filed a formal complaint with the commission that reasonably asserts a bona fide dispute, the company shall not disconnect service if the customer pays either the undisputed portion of the bill, if known or can reasonably be determined, or the amount billed for the same billing period in the previous year.

See comment under Proposed Rule 18-01(C).

Rule 4901:1-18-12 Percentage of Income Payment Plan (PIPP) Program Eligibility –Gas

(B) The gas or natural gas company shall inform the following applicants and customers about the availability of PIPP:

(1) applicants for new service;

COH objects to the idea that new applicants be informed of PIPP because it is "unnecessary," or "could offend" some customers, but in addition; "could encourage some new applicants for service who would otherwise pay in full for their service to enroll in PIPP instead."[285] *In these uncertain economic times, it is appropriate to ensure that all customers be aware of their options.*

(E) In addition to the requirements set forth in paragraphs (C) and (D) of this rule, a PIPP customer must also periodically re-establish his/her eligibility.

(1) All PIPP customers, except zero-income customers, must provide proof of eligibility to the Ohio department of development of the household income at least once every twelve months from the customer's PIPP anniversary date. The customer shall be accorded a grace period of thirty days after the customer's PIPP anniversary date to reverify eligibility.

COH posits that under this rule, twenty-two months could pass between reverifications.[286] *It is difficult to see how "at least once every twelve months from the customer's PIPP anniversary date" could be reasonably subject to such an interpretation, and COH's proposed solution*[287] *is itself not very clear.*

[285] COH Comments at 23.

[286] Id. at 23-24.

[287] Id. at 24.

Rule 4901:1-18-13 Payment Requirements for the PIPP Customers

(B) Any money provided to the jurisdictional gas or natural gas company from the regular Home Energy Assistance Program (HEAP), or similar program, on behalf of the PIPP customer as energy assistance shall not be considered household income or counted as part of the monies paid by the customer to meet the monthly PIPP income-based payment requirement. These monies shall be applied to the customer's arrearages.

ODOD suggests that the Commission defer to ODOD rules or practices in this area.[288] *The Consumer Groups agree, so long as the ODOD rules or practices remain reasonable.*

(C) Any money provided to the gas or natural gas jurisdictional company on an irregular or on an emergency basis by a public or private agency, excluding HEAP and Emergency Home Energy Assistance (E-HEAP), on behalf of the PIPP customer, for the purpose of paying utility bills shall not be considered as household income. These monies shall first be applied to the customer's defaulted income-based payment with any money in excess of the amount necessary to satisfy the defaulted income-based payment being applied to the customer's current bill and then to any arrearages.

Vectren asserts that the Commission should not allow PIPP customers to use the $175 E-HEAP payment for reconnection under the Winter Reconnection Rule.[289] *This is a matter for the Winter Reconnection Order, not for this rule.*[290] *Such action would neither "help contain the escalating costs or the low-income energy program" or necessarily "permit those customers not eligible for PIPP … additional resources…."*[291] *What it would do would be to ensure that most of the PIPP customers who were forced to give up their utility service because it was unaffordable would stay without service in the winter months. That goes against the fundamental rationale for PIPP and the winter reconnect order. Vectren's alternative proposal that the $175 be available only if a PIPP customer has made at least ten of twelve PIPP payments during the year*[292] *strains credulity: It is likely that a PIPP customer who was able to make ten payments during the year would not have been disconnected, and thus would not need the $175 in order to be reconnected.*

Duke asserts that this provision is intended to discontinue allowing PIPP customers to receive E-HEAP funds in order to restore service after disconnection for nonpayment.[293] *That is not what this Proposed Rule contemplates: E-HEAP monies shall first be applied*

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[288] ODOD Comments at 13.

[289] Vectren Comments at 6-7.

[290] But see Proposed Rule 17(D).

[291] Vectren Comments at 7.

[292] Id.

[293] Duke Comments at 20.

to defaulted income-based payments, which is precisely what is needed under the Winter Reconnect Order.[294] *There is a proposal under Proposed Rule 17(D) to accomplish what Duke discusses.*

[294] Duke's horror stories of the "inappropriate conduct" of "many" PIPP customers who discontinue paying their PIPP charges "early in the year" then use medical certificates to suspend disconnection until they are able to receive E-HEAP (id. at 20-21) are not backed up by facts.

Rule 4901:1-18-14 Incentive Programs for PIPP and Graduate PIPP Customers.

See discussion in main text.

(F) The company shall notify the PIPP customer by telephone message or direct mail, within five days after the due date, when the customer has failed to make a payment.

Various companies object to providing this notice.[295] *They clearly do not see any merit to helping to ensure that PIPP customers maintain service. The objections lack merit.*

(G) The company shall notify the PIPP customer by telephone message, direct mail or prominent notice on the bill, of the PIPP customer's reverification date at least thirty days before the PIPP customer's anniversary date. This notice shall also remind the customer of the availability of the conservation incentive credit pursuant to rule 4901:1-18-14(B) of the Administrative Code.

COH and Dominion assert that ODOD (or its agents) currently provides such a notice.[296] *If this is the case, then the notice is better provided by ODOD than by the companies.*

[295] Dominion Comments at 4, COH Comments at 28, Duke Comments at 21-22.

[296] Dominion Comments at 4, COH Comments at 28-29.

Rule 4901:1-18-16 Graduate PIPP Program.

(A) Former PIPP customers that remain within the gas or natural gas company's service territory may be enrolled in the graduate PIPP program when the customer:

(1) Elects to terminate participation in the PIPP program; or

(2) Is no longer eligible to participate in PIPP as a result of an increase in the household income or a change in the household size.

Former PIPP customers removed from the program due to fraud are not eligible to participate in graduate PIPP.

Various companies assert that customers who have tampered with their utility service should also not be eligible for the graduate PIPP program.[297] *The Consumer Groups agree, although there does not appear to be any evidence that customers who have tampered have tried to enroll in the current graduate PIPP programs.*

(E) The graduate PIPP customer's payment due, except for former zero-income PIPP customers, shall be determined as follows:

Duke proposes that under the graduate PIPP program, a $20 monthly payment toward arrearages should be required in year one, with $25 and $30 being required for year two and year three respectively.[298] *Such payments should not be required, but a graduate PIPP customer who makes such payments should receive additional credits to reduce the arrearages even faster.*

(1) For the first twelve monthly bills (year one) following enrollment in graduate PIPP, the customer shall continue to be billed the PIPP income-based payment. The income-based payment due shall be based on the income and household size immediately prior to the PIPP customer becoming ineligible for PIPP.

(2) Then, for the next twelve monthly bills (year two) after enrollment in graduate PIPP, the customer shall be billed, at the customer's option, the current bill amount or the budget bill plan amount.

(3) Then, for the next twelve monthly bills (year three) after enrollment in graduate PIPP, the customer shall be billed, at the customer's option, the current bill amount or the budget bill amount plus twenty dollars ($20.00) until the arrearage is zero or the graduate PIPP period ends, whichever occurs first. After three years, the graduate PIPP customer is no longer

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[297] COH Comments at 29, Vectren Comments at 2, Duke Comments at 22.

[298] Duke Comments at 23-24.

eligible for arrearage and/or conservation incentive credits. Any remaining arrearages on the customer's account may become due and the customer placed on one of the extended payment plans in rule 4901:1-18-05 of the Administrative Code. If the arrearage remains on the customer's account, and the customer fails to make extended payment arrangements, the company may initiate disconnection procedures for failure to pay the remaining arrearage.

(F) Zero-income customers who subsequently become PIPP ineligible, due to an increase in household income, may enter the graduate PIPP program. The graduate PIPP payment level for former zero-income PIPP customers will be established at the time of the enrollment into the graduate PIPP program.

Duke requests clarification of how the graduate PIPP payment level for former zero-income PIPP customers will be established.[299] *The Consumer Groups strongly agree.*[300]

[299] Duke Comments at 27.

[300] See Consumer Groups Comments at 132.

Rule 4901:1-18-17 Removal from or Termination of Customer Participation in PIPP.

(D) PIPP customers are not eligible to receive funds from the Emergency Home Energy Assistance Program (E-HEAP) to restore or prevent the disconnection of gas utility service. PIPP customers must pay their missed PIPP payments and any other non-recurring fees (i.e. reconnection fees, collection charges, trip charges, bad check charges) to bring their account current in order to restore gas or natural gas service.

ODOD would prefer to have the Commission defer to ODOD rules or practice regarding E-HEAP.[301] *This may be necessary, although the Commission should not defer to ODOD rules or practices that may be unreasonable.*

(E) **Fraud.** The gas or natural gas company shall terminate a customer's participation in PIPP when it is determined that the PIPP customer was fraudulently enrolled in the program. The customer shall be required to make restitution and shall not be eligible to participate in PIPP, graduate PIPP, or to receive any other benefits available to PIPP customers or graduates for twenty-four months.

Duke would explicitly include tampering as a disqualification from PIPP.[302] *The Consumer Groups would not disagree, but would suggest that it be made a separate paragraph in this rule, given the distinction between fraud and tampering in the definitions.*

[301] ODOD Comments at 13.

[302] Duke Comments at 28.

Respectfully submitted,

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Summary: Reply REPLY COMMENTS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, THE APPALACHIAN PEOPLE'S ACTION COALITION, CONSUMERS FOR FAIR UTILITY RATES, MAY DUGAN CENTER, UNITED CLEVELANDERS AGAINST POVERTY, CITIZENS UNITED FOR ACTION, PRO SENIORS, CLEVELAND TENANTS' ASSOCIATION, HARCATUS TRI-COUNTY COMMUNITY ACTION ORGANIZATION, THE OHIO FARM BUREAU FEDERATION, THE OHIO FARMERS' UNION, OHIO INTERFAITH POWER AND LIGHT, AND THE EDGEMONT NEIGHBORHOOD COALITION
electronically filed by Ms. Deb J. Bingham on behalf of Bergmann, David C.