

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In The Matter of the Commission's )  
Review of Chapters 4901:1-17 and 4901:1-18 )  
and Rules 4901:1-5-07, 4901:1-10-22, )  
4901:1-13-11, 4901:1-15-17, 4901:1-21-14, )  
and 4901:1-29-12 of the Ohio Administrative )  
Code. )

Case No. 08-723-AU-ORDO

PUGO

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**APPLICATION FOR REHEARING  
OF 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**

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AARP-Ohio, the 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 (collectively "Ohio Consumer Advocates" or "OCA") respectfully submit this application for rehearing in the above-captioned docket initiated by the Public Utilities Commission of Ohio ("Commission") to review Chapters 4901:1-17 and 4901:1-18 of the Ohio Administrative Code ("OAC") 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, OAC. The Commission's Finding and Order dated December 17, 2008 is unreasonable and unlawful in the following respects:

1. The Commission acted unreasonably in failing to adopt a more flexible approach to the Percentage of Income Payment Program ("PIPP") payment percentage amount; the Commission should keep the percentage of income under consideration and under analysis in order to determine if further downward movement in the

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percentage will be necessary in the future to meet the Commission's goals for the gas PIPP program.

2. The Commission acted unreasonably in failing to conform the gas PIPP program to the electric PIPP program administered by the Ohio Department of Development ("ODOD") in that the electric PIPP program allows for arrearage forgiveness for PIPP customers who make their payments by the due date plus five days whereas the Commission unreasonably requires that payment be made by the due date in order to qualify for arrearage forgiveness.
3. The Commission acted unreasonably in failing to conform the gas PIPP program to the electric PIPP program administered by ODOD in failing to give zero-income PIPP customers a 180-day waiver of the minimum bill payment.
4. The Commission acted unreasonably in failing to provide for a hardship waiver program for zero-income PIPP customers who may be unable to pay the minimum bill.
5. The Commission acted unreasonably and unlawfully in failing to give ODOD discretion over the application of Home Energy Assistance Program ("HEAP") funds to customer accounts.

The grounds supporting these allegations of error are set forth in the attached memorandum in support.

Respectfully submitted,

Colleen Mooney  
David C. Rinebolt  
Colleen L. Mooney  
Ohio Partners for Affordable Energy  
1431 Mulford Road  
Columbus, OH 43212  
Telephone: (614) 488-5739  
FAX: (419) 425-8862  
e-mail: [cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)

Phil Cole/clm  
Phil Cole, Executive Director  
Ohio Association of Community  
Action Agencies  
50 W. Broad Street, Suite 1616  
Columbus, OH 43215  
Telephone: (614) 224-8500  
FAX: (614) 224-2587  
e-mail: [phil@oacaa.org](mailto:phil@oacaa.org)

Ron Bridges/clm  
Ron Bridges, Associate State  
Director  
AARP-Ohio  
17 S. High Street, Suite 800  
Columbus, OH 43215-3467  
Telephone: (614) 222-1503  
FAX: (419) 224-9801  
e-mail: [RBridges@aarp.org](mailto:RBridges@aarp.org)

Bill Faith/clm  
Bill Faith, Executive Director  
Coalition on Homelessness and  
Housing in Ohio  
175 S. Third St.  
Telephone: (614) 280-1984  
FAX: (614) 463-1060  
e-mail: [billfaith@cohhio.org](mailto:billfaith@cohhio.org)

Lisa Hamler-Fuggit/clm  
Lisa Hamler-Fuggit, Executive  
Director  
Ohio Association of Second Harvest  
Foodbanks  
51 N. High Street, Suite 761  
Columbus, OH 43215  
Telephone: (614) 221-4336  
FAX: (614) 221-4338  
e-mail: [lisa@oashf.org](mailto:lisa@oashf.org)

## **MEMORANDUM IN SUPPORT**

- I. The Commission acted unreasonably in failing to adopt a more flexible approach to the Percentage of Income Payment Program ("PIPP") payment percentage amount; the Commission should keep the income percentage under consideration and under analysis in order to determine if further downward movement in the percentage will be necessary in the future to meet the Commission's goals for the gas PIPP program.

In our initial comments on Rule 4901:1-18-13, OCA's position was that the proposed 8% of income was too high and that the amount should be no more than 6%. While OCA would prefer a lower percentage, the Commission's adoption of 6% should be seen as a means to an end, rather than an end in itself. The goal should be affordable payments in order to have higher payment compliance rates. Other jurisdictions have adopted more affordable payments based on lower percentages of income in order to see higher payment compliance rates and achieve other policy goals. A lower percentage, coupled with a greater emphasis on education and casework, should result in more monthly payments.

The adopted 6% may not achieve the goal of more affordable payments, meaning that a lower percentage will be necessary in the future to achieve the Commission's goal. The Commission should keep an open mind with regard to the payment percentage and continue to analyze the data to assure that the percentage is achieving the goal of affordable monthly payments. Specifically, the Commission should analyze payment compliance under the 6% rule to determine if 6% is allowing the Commission to meet its goals. The Commission should review the outcome to determine whether future changes are necessary.

If the goal of more affordable payments does not become a reality, the Commission should initiate a proceeding to adjust the percentage downward.

The Commission should grant rehearing and state that it intends to continue to review the income percentage. The Commission should determine if the chosen percentage is low enough to increase payment compliance. If future changes are necessary, the Commission should have the flexibility to make the changes.

- II. The Commission acted unreasonably and unlawfully in failing to conform the gas PIPP program with the electric PIPP program administered by the Ohio Department of Development ("ODOD") in that the electric PIPP program allows for arrearage forgiveness for customers who make their payments at the due date plus five days whereas the Commission unreasonably requires that payment be made by the due date in order to qualify for arrearage forgiveness.

The Finding and Order states that customers will have arrearage crediting so long as they pay the ten dollar minimum payment or the PIPP payment by the due date. Finding and Order at 59. The Commission acknowledged that most customers, including PIPP customers, do not make timely payments. While the Commission considered the comments of ODOD that "on time" payment could be defined more broadly, the Commission did not conform its rules to ODOD's rules and did not allow for a broader definition of "on time." Finding and Order at 63. This inconsistency guarantees at least one waiver request to the PUCO or ODOD by Duke, which as a combined utility must comply with both sets of rules.

Under the rules issued by ODOD for the electric PIPP program, a payment received no later than five days after the due date is considered an on-time

payment for purposes of triggering the arrearage credit under the arrearage crediting program. However, the Commission believed that requiring the PIPP payment by the due date would be beneficial to PIPP customers and was in keeping with the goals of improving payment patterns. Thus, the Commission found that PIPP customers must make their payments by the stated due date to receive the arrearage credit. Finding and Order at 63.

The Commission acted unreasonably in failing to allow for additional time after the due date for a bill to be considered timely. Even the Internal Revenue Service follows a "mailbox" rule under which a payment mailed by the due date is a payment timely made. The Commission should harmonize its rule with ODOD's rule, which gives the PIPP customers five days after the due date for bills to be considered timely paid. Moreover, the five extra days from the due date should be easy for utilities to program into their systems, a task that the electric utilities must complete in any event, given that ODOD has already adopted the additional five days rule.

Five days is roughly the equivalent of a "mailbox" rule that would consider the mailing of a payment on the due date sufficient to be considered a timely payment. The Commission's rule is onerous because it does not give customers the benefit of a "mailbox" grace period. Moreover, the Commission's goal to encourage timely payments is not promoted by this overly onerous rule, which the Commission acknowledges is not followed by the majority of bill payers. If the Commission were to adopt ODOD's five additional days rule, the Commission would certainly see more timely payments and more arrearage crediting than the

strict due date rule would provide. Thus, by harmonizing its rule with ODOD's rule, the Commission would further its goals, not only for harmony but also for more timely bill payments and more arrearage crediting. The Commission should grant rehearing and find that PIPP payments will be considered timely if they are made five days after the due date.

- III. The Commission acted unreasonably and unlawfully in failing to conform the gas PIPP program with the electric PIPP program administered by ODOD by failing to give a six-month waiver of the minimum bill requirement to customers who are determined at the time of enrollment in the PIPP program to have a monthly household income of zero dollars.

Under the rules adopted by ODOD for the electric PIPP program, the minimum payment of \$10 per month is waived for the first 180 days after the customer establishes a zero income. After 180 days, the customer income must be re-evaluated and the minimum payment applies. ODOD has also considered providing for an additional waiver, such as the hardship waiver ODOD, OCA and others have requested in this docket. The Finding and Order states, however, that the minimum payment is applicable for the gas PIPP program immediately upon enrollment in the PIPP program. The Commission allows for no waivers of the minimum bill payment.

The Commission should harmonize its gas PIPP rules with ODOD's electric PIPP rules and allow for a 180-day waiver of the minimum bill after the customer establishes zero income. The 180-day waiver (along with the hardship waiver also proposed by OCA and ODOD) considers the needs of customers with zero income. While it is necessary to encourage payments, it is also

necessary to consider that zero income customers are in need of electric and gas utility service. The waiver period will ensure that the customer is not unduly penalized by the minimum bill provision.

If the Commission fears that the zero-income customer is being treated too favorably, the Commission should recognize that during the time the waiver is in place and the customer is paying nothing, there is no arrearage crediting. Moreover, after the 180-day period, the customer's income must be re-evaluated and the minimum payment applies. The ODOD rule rightly extends to the zero-income customer just applying for PIPP a short-term waiver of the minimum bill. The Commission should grant rehearing, harmonize its rules with ODOD's rules and adopt the 180-day waiver of the minimum payment for the first 180 days after a customer establishes a zero income.

- IV. The Commission acted unreasonably in failing to provide for a hardship waiver program for zero-income PIPP customers who may be unable to pay the minimum bill.

The Commission adopted a *minimum gas PIPP* payment of \$10 applicable immediately upon enrollment in PIPP. ODOD also adopted a minimum monthly payment of \$10 for the electric PIPP program but the monthly amount is waived for a period of 180 days after enrollment. Finding and Order at 58. After the 180 day grace period, the minimum payment applies.

In our initial comments, OCA recommended that the rules provide local community action agencies with the authority to continue a zero PIPP amount for customers with an ongoing emergency situation. For example, there are often major delays in processing disability applications. This creates an ongoing crisis



for households affected and warrants a continuation of zero-income treatment without a minimum bill. Another example of an ongoing emergency situation would be when members of households exhaust unemployment benefits and may not be able to find a job.

OCA believes that the \$10 minimum payment is too high; we supported a smaller minimum payment of \$1-2 in order to trigger the arrearage crediting programs. Customers with no income or very low income do not have bank accounts. They must either pay the bill in person, with associated travel costs, or use a money order, which also increases the cost. Local community action agencies currently have appeal procedures for Emergency-HEAP and numerous other programs they operate under the Community Services Block Grant (CSBG) umbrella. They have the necessary skills and should be given the discretion to set payments based on the interview and their review of the customer's application and documentation. Should a minimum payment be applied, the customer should have the right to appeal. ODOD also recommended a hardship waiver proposal to the Commission.

In response, the Finding and Order states that making provision for a zero-income PIPP customer to continue to be billed at zero is inappropriate. Finding and order at 59. In its consideration of the hardship waiver, the Commission worried that the community action agency would be required to inform zero-income PIPP customers of the possibility of a hardship waiver, and then evaluate whether the customer's circumstances would meet the criteria for such a waiver. The Commission found that the development, implementation,

and monitoring of a hardship waiver process to ensure that hardship waivers are granted fairly and equally and only in very limited circumstances would be onerous and cumbersome. Therefore, the Commission declined to adopt the hardship waiver proposal. Finding and Order at 60.

The Commission acted unreasonably in failing to allow for a hardship waiver for the minimum bill requirement. There should be a hardship waiver program. The Commission itself noted comments that ODOD's proposed minimum payment for electric PIPP means that customers with zero income will have to pay \$20 a month to maintain their gas and electric utility services. Finding and Order at 58.

A hardship waiver program can and should be implemented by the local community action agencies at the intake process for customers with zero income. The Commission's justification for failing to adopt a hardship waiver as being too onerous for local agencies is not convincing. The Commission, ODOD and the local community action agencies certainly have the ability to figure out the specifics of a hardship waiver program and apply it evenly and fairly.

The hardship waiver program would give the local agencies the flexibility they will need to mitigate the hardships that the minimum bill requirement might bring in certain cases. The local agencies should have the ability to waive the minimum bill for zero-income customers based on individual discretion. There is no reason to believe that the local agencies would abuse their discretion and no reason to fail to institute a hardship waiver program simply because of a

foregone (and erroneous) conclusion on the Commission's part that the program would be onerous to administer fairly.

The hardship waiver program is the only way that the Commission can bring a human touch to the minimum bill payment concept. After all, we are discussing customers who have zero income. The Commission is adopting new rules that require customers with zero income to pay \$20 per month to maintain essential gas and electric service. Under the circumstances, the Commission's failure to adopt a hardship waiver provision for the minimum bill requirement is unreasonable. The Commission should grant rehearing and provide for a hardship waiver of the minimum bill for zero-income PIPP customers.

- V. The Commission acted unreasonably and unlawfully in failing to give ODOD discretion over the application of HEAP funds to customer accounts.

In its comments, ODOD noted that it is the agency vested with the responsibility to administer and distribute federal funds in a manner that aligns with federal program mandates and objectives. Finding and Order at 56. ODOD believes that it can best serve Home Energy Assistance Program ("HEAP") clients if it has discretion to determine the best way to apply HEAP funds. Thus, to provide ODOD flexibility in the administration and disbursement of federal funds, ODOD recommended that the Commission's rule at Rule 4901:1-18-13 be revised to direct that HEAP funds will be applied in the manner determined by ODOD in its Low-Income Home Energy Assistance program Federal Fiscal Year

State Plans for the State of Ohio submitted annually to the U. S. Department of Health and Human Services.

In response, the Commission found that, if ODOD issued funds directly to gas companies, it was appropriate that the Commission's rules direct the application of HEAP funds to a customer's account in a manner which best balances the goals of the gas PIPP program. Thus, the Commission found that directing HEAP monies first toward customer arrearages was an integral component of the Commission's PIPP program and should remain a part of the Commission's rules. Finding and Order at 56.

The Commission acted unreasonably and unlawfully in setting a priority for the use of HEAP funds. The Commission should grant rehearing and find that the use of HEAP funds is within the discretion of ODOD under federal law. The Commission should defer to ODOD on the use of federal funds and give ODOD the discretion it needs. The rules should state that ODOD has this discretion.

Respectfully submitted,

Colleen Mooney  
David C. Rinebolt  
Colleen L. Mooney  
Ohio Partners for Affordable Energy  
1431 Mulford Road  
Columbus, OH 43212  
Telephone: (614) 488-5739  
FAX: (419) 425-8862  
e-mail: [cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)

Phil Cole/clm  
Phil Cole, Executive Director  
Ohio Association of Community  
Action Agencies  
50 W. Broad Street, Suite 1616  
Columbus, OH 43215  
Telephone: (614) 224-8500  
FAX: (614) 224-2587  
e-mail: [phil@oacaa.org](mailto:phil@oacaa.org)

Ron Bridges/clm  
Ron Bridges, Associate State  
Director  
AARP-Ohio  
17 S. High Street, Suite 800  
Columbus, OH 43215-3467  
Telephone: (614) 222-1503  
FAX: (419) 224-9801  
e-mail: [RBridges@aarp.org](mailto:RBridges@aarp.org)

Bill Faith/clm  
Bill Faith, Executive Director  
Coalition on Homelessness and  
Housing in Ohio  
175 S. Third St.  
Telephone: (614) 280-1984  
FAX: (614) 463-1060  
e-mail: [billfaith@cohhio.org](mailto:billfaith@cohhio.org)

Lisa Hamler - Fuggit/clm  
Lisa Hamler-Fuggit, Executive  
Director  
Ohio Association of Second Harvest  
Foodbanks  
51 N. High Street, Suite 761  
Columbus, OH 43215  
Telephone: (614) 221-4336  
e-mail: [lisa@oashf.org](mailto:lisa@oashf.org)

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served  
by U.S. Mail upon the persons identified below on this 16<sup>th</sup> day of January, 2009.

  
Colleen L. Mooney, Esq.

Richard Reese  
Office of the Ohio Consumers'  
Counsel  
10 West Broad St., Suite 1800  
Columbus, Ohio 43215

Barth E. Royer  
Bell & Royer Co., LPA  
33 South Grant Avenue  
Columbus, Ohio 43215-3900

Eric Gallon  
Porter Wright Morris & Arthur LLP  
41 S. High Street  
Columbus, Ohio 43215

David Kutik  
Jones Day  
901 Lakeside Avenue  
Cleveland, Ohio 44114

Thomas E. Lodge  
Thompson Hine LLP  
10 West Broad Street, Suite 700  
Columbus, Ohio 43215-3435

Ellis Jacobs  
Legal Aid Society of Dayton  
333 W. First Street, Suite 500  
Dayton, Ohio 45402

Duane W. Luckey  
Chief, Public Utilities Section  
Office of Attorney General  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

Ebony Miller  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308

Samuel C. Randazzo  
Lisa G. McAlister  
McNees Wallace & Nurick LLC  
21 East State Street, 17th Floor  
Columbus, Ohio 43215

Rocco D'Ascenzo  
Duke Energy Ohio, Inc.  
139 East Fourth Street  
Cincinnati, Ohio 45201

Tim Walters  
May Dugan Center  
4115 Bridge Avenue  
Cleveland, Ohio 44113

Douglas Hart  
441 Vine Street, Suite 4192  
Cincinnati, Ohio 45202

Daniel Creekmur  
Columbia Gas of Ohio, Inc.  
200 Civic Center Drive  
P.O.Box 117  
Columbus, Ohio 43216-0117

Jon F. Kelly  
AT&T Ohio  
150 E. Gay Street Rm. 4-A  
Columbus, Ohio 43215

Judith Sobecki  
Dayton Power and Light Co.  
1065 Woodman Drive  
Dayton, Ohio 45432

Marvin I. Resnik  
American Electric Power Service  
Corp.  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215

Mike Smalz  
Ohio State Legal Services  
555 Buttles Avenue  
Columbus, Ohio 43215-1137

Stephen Howard  
Vorys, Sater, Seymour & Pease  
52 East Gay Street  
Columbus, Ohio 43216-1008

Noel Morgan  
Legal Aid Society of SW Ohio  
215 E. Ninth Street  
Cincinnati, Ohio 45202

Bill Faith  
Coalition on Homelessness and  
Housing in Ohio  
175 S. Third Street  
Columbus, Ohio 43215

Ohio Gas Association  
Roy Rushing, Executive Director  
200 Civic Center Drive  
Columbus, Ohio 43215

Ohio Farm Bureau Federation  
Dale Arnold, Director Energy Ser.  
P. O. Box 182383  
Columbus, Ohio 43218

Jenny Ricci O'Donnell  
Check Free Pay Corporation  
15 Sterling Drive  
Wallingford, CT 06492-7544

Joseph Meissner  
Legal Aid Society of Cleveland  
1223 W. 6<sup>th</sup> Street  
Cleveland, Ohio 44113

Elizabeth Anstaett  
Ace Cash Express  
2250 Huntington Center  
41 S. High Street  
Columbus, Ohio 43215

Community Action Partnership  
Lorana Kelly  
719 South Main Street  
Dayton, Ohio 45402

Harcatus Tri-County Community  
Action Agency  
108 N 2<sup>nd</sup> Street  
Dennison, Ohio 44621

Rep. Sandra Williams  
Ohio House of Representatives  
77 S. High Street  
Columbus, Ohio 43215-6111

Ron Bridges  
AARP-Ohio  
17 S. High Street, Suite 800  
Columbus, Ohio 43215-3467

Lisa Hamler-Fuggit  
Ohio Associations of Second  
Harvest Foodbanks  
51 N. High Street, Suite 761  
Columbus, Ohio 4315

Sheldon Gas Company  
12925 Blanchard R.R. 50  
Dunkirk, Ohio 45836

Douglas Lumpkin  
Franklin County DJFS  
80 East Fulton Street  
Columbus, Ohio 43215-5174