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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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-ORD

APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF THE OHIO GAS COMPANY

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January 16, 2009

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APPLICATION FOR REHEARING

Pursuant to Section 4903.10, Revised Code and Rule 4901-1-35, Ohio Administrative Code, Ohio Gas Company ("Ohio Gas") hereby submits its Application for Rehearing and Memorandum in Support of the Public Utilities Commission of Ohio's ("Commission") December 17, 2008 Opinion and Order under the following points of error:

- The Commission's decision to only provide a waiver of Rules 4901:1-18-12, Ohio Administrative Code ("O.A.C.") through 4901:1-18-17, O.A.C., for natural gas companies with fewer than 15,000 customers and who do not have a percentage of income payment plan ("PIPP") program rider was unreasonable.
- The Commission erred when it failed to exempt natural gas companies with fewer than 75,000 customers from the monthly credit arrearage requirement.
- The Commission's decision to address revisions to the Ohio Statistics on Customer Accounts Receivable ("OSCAR") Report in a subsequent order is unreasonable.
- The Commission's failure to specifically address and grant the commenting parties' request for adequate time to modify and test billing systems to implement the changes to the current rules is unreasonable.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On June 25, 2008, the Commission issued an Entry requesting comments on Commission Staff's ("Staff") proposed revisions to the Commission's rules and appendices related to credit and collections as well as extended payment programs and low-income payment programs, namely the PIPP program. Additionally, Staff conducted a workshop on July 8, 2008 to allow interested stakeholders to ask questions to clarify the proposed rule amendments and appendices. Initial Comments were filed on September 10, 2008 and Reply Comments were filed on October 14, 2008. The Commission issued its Finding and Order in this proceeding on December 17, 2008. Ohio Gas Company ("Ohio Gas" or "Company") respectfully submits its Application for Rehearing for the Commission's consideration.

II. REQUESTS FOR REHEARING

A. The Commission should grant an exemption from the Graduate PIPP and arrearage crediting provisions of Chapter 4901:1-18, O.A.C., for natural gas companies with less than 75,000 customers.

In its Finding and Order, the Commission exempted small regulated utility companies with less than 15,000 customers who do not have a PIPP rider from the newly amended rules related to the PIPP and Graduate program.[1] The Commission noted that customers of both small and large regulated utilities are having trouble paying their utility bills. The Commission also observed that "the cost to implement programming to bill for and retain detailed customer information may outweigh the benefits of the computer system updates for small companies with fewer customers over which to spread the costs."[2] The Commission further stated that it would revisit the waiver if subsequent monitoring demonstrated that low-income customers of such utility companies are harmed by the exemption.[3]

Ohio Gas appreciates the Commission's recognition of the complex and expensive programming changes that will have been required by compliance with the proposed rules in their entirety as well as some of the additional requirements suggested by certain commenters.[4] It is apparent that the Commission is attempting to balance the benefits of helping those in need of assistance while also fostering greater payment frequency from PIPP and Graduate PIPP customers. While Ohio Gas appreciates the Commission's efforts, the Commission should modify the exemption to

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[1] Finding and Order at 51 (December 17, 2008).

[2] *Id.*

[3] *Id.* at 52.

[4] *Id.* at 51, 67, 74, 75.

the PIPP and Graduate PIPP rules contained within its Finding and Order and adopted rules.

As the Commission is aware, Ohio Gas is uniquely situated among Ohio's local distribution companies ("LDCs"). Ohio Gas serves approximately 45,000 distribution customers in northwest Ohio. As a basis for comparison, the smallest of the large LDCs, Vectren Energy Delivery of Ohio ("VEDO"), serves approximately 315,000 customers in west central Ohio.[5] Thus, Ohio Gas is seven times smaller than the next largest LDC. On the other hand, Ohio Gas believes the next largest natural gas utility with a PIPP rider is Pike Natural Gas Company with approximately 7,200 customers.[6] Ohio Gas finds itself in a unique position among LDCs in Ohio, with a customer base too small to justify the types of technology systems often required to comply with regulatory rules, but too large to qualify for available small company exemptions.[7]

The Commission should modify its Finding and Order and exempt LDCs with less than 75,000 customers from the Graduate PIPP and arrearage crediting provisions of Chapter 4901:1-18, O.A.C. Additionally, the Commission should not condition exemption on whether the LDC has a PIPP rider. Such an exemption would recognize Ohio Gas' status consistent with that of a small company and not unduly harm customers of Ohio Gas or other small natural gas companies. Ohio Gas' operations and size more closely mirror that of the small natural gas companies and the

[5] *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case Nos. 07-1080-GA-AIR, *et al.*, Application at 1 (November 20, 2007).

[6] Initial Comments of Eastern Natural Gas Company, Pike Natural Gas Company, and Southeastern Natural Gas Company at 1 (September 10, 2008).

[7] *See also In the Matter of the Amendment of Chapter 4901:1-13, Ohio Administrative Code, to Establish Minimum Gas Service Standards*, Case No. 05-602-GA-ORD, Request for Clarification or, in the Alternative, Application for Rehearing and Request for Waivers of Ohio Gas Company at 4 (February 16, 2006).

Company's rehearing requests, as more fully explained below, are reasonable and should be granted by the Commission.

Ohio Gas' request is not a complete exemption from the PIPP program in the adopted rules. Rather Ohio Gas seeks an exemption for LDCs with fewer than 75,000 customers from offering the Graduate PIPP program as well as the arrearage crediting programs for both PIPP and Graduate PIPP customers.[8]

Ohio Gas and numerous other commenters alerted the Commission of the significant information technology and other costs implicated by the proposed rule changes (both in Staff's proposal and the modifications suggested by other commenters). Although the Commission did not adopt all of the proposed changes contemplated in this rulemaking, implementation of the changes in the adopted rules will still require very significant information technology upgrades to Ohio Gas' billing system. Ohio Gas estimates it would take, at a minimum, 185 programming hours from outside consultants and over 400 hours of internal employees' time to design and test the new billing system changes as well as train employees on the new changes. Even with this extensive modification to Ohio Gas' information technology system, some manual intervention would be required with each PIPP or Graduate PIPP customer to implement the newly revised and adopted rules. Ohio Gas' information technology costs and the costs associated with the personnel hours that must be utilized to implement the changes dwarf the possible benefits that might inure to Ohio Gas customers as a result of implementing the Graduate PIPP and arrearage crediting rules.

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[8] *See* Rules 4901:1-18-13(A)(2), 4901:1-18-14, and 4901:1-18-16, O.A.C. (as adopted on December 17, 2008).

Under the adopted rules, a customer is automatically placed in the Graduate PIPP program if the customer voluntarily terminates participation in the PIPP program or if he no longer qualifies for PIPP.[9] The payment for a customer in the Graduate PIPP program will be greater than the payment amount for a customer enrolled in the ordinary PIPP program.[10] Therefore, so long as a customer still qualifies for PIPP, the only incentive for the customer to voluntarily terminate enrollment in PIPP is to have the customer's arrearage more quickly diminished for on-time payments.[11] Ohio Gas respectfully submits that the number of customers choosing to voluntarily terminate their participation in the PIPP program in order to more quickly erase an arrearage balance would be very small. Further, in 2008, only 10 Ohio Gas customers moved from PIPP to an alternative payment plan due to no longer qualifying for PIPP. It appears that very few Ohio Gas customers would actually utilize the Graduate PIPP program.

Ohio Gas noted in its reply comments that it prefers and has successfully employed the Ohio Gas Plan, in addition to the Commission's standard payment plans, to make payment accommodations for Ohio Gas customers.[12] Ohio Gas will continue to work with all of its customers, including those customers not eligible for the PIPP program or those who voluntarily terminate their participation in the PIPP program, to work out realistic and mutually agreeable payment arrangements. Those Graduate PIPP customers who might otherwise benefit from the adopted rules will still be

[9] 4901:1-18-16(A), O.A.C. (as adopted on December 17, 2008).

[10] 4901:1-18-13(A), O.A.C. (as adopted on December 17, 2008).

[11] 4901:1-18-14(A), O.A.C. (as adopted on December 17, 2008).

[12] *See* Reply Comments of Ohio Gas Company at 4 (October 14, 2008).

provided a mechanism by which to retain their gas service while also paying their arrearages at a manageable pace.

In its Finding and Order, the Commission recognized that its decisions on each aspect of the gas PIPP program are interrelated as well as its "obligation to balance the interests of not just the low-income customers that benefit from the payment assistance programs; but also the interests of those utility customers who pay to support these programs."[13] The Commission also observed that it cannot "turn a blind eye toward the impact of the PIPP program on utility ratepayers generally and must, through their respective rules, foster qualifying customers' successful participation in PIPP."[14] Ohio Gas, as of January 2009, has only 743 PIPP customers on its system and averaged less than 540 PIPP customers per month in 2008. The cost burden that would be carried by Ohio Gas' non-PIPP customers to implement these programs outweighs the benefits that might be provided by the modified rules.

The Commission previously recognized the unique position of Ohio Gas in the Minimum Gas Service Standard ("MGSS") rules. On rehearing, in response to a request from Ohio Gas, the Commission redefined "small natural gas company" to include Ohio Gas, which provided Ohio Gas exemption from provisions of the MGSS related to the monitoring of customer service phone calls.[15] This exemption permitted Ohio Gas to avoid significant information technology costs to implement those rules. An exemption in this instance would once again recognize the imbalance between the

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[13] Finding and Order at 56.

[14] Finding and Order at 61-62.

[15] *In the Matter of the Amendment of Chapter 4901:1-13, Ohio Administrative Code, to Establish Minimum Gas Service Standards*, Case No. 05-602-GA-ORD, Entry on Rehearing at 14 (May 16, 2006).

benefits to customers and the costs associated with the benefits afforded by the adopted rules.

Granting Ohio Gas' Application for Rehearing would also be consistent with Governor Ted Strickland's Executive Order entitled "Implementing Common Sense Business Regulation."[16] The Regulatory Reform Task Force Report, recently released by a bipartisan committee of the 127th General Assembly, "agrees wholeheartedly with the goals outlined in the Executive Order" and suggested that better progress could be made in implementing the Governor's Executive Order.[17] Pursuant to the Executive Order, administrative agencies should "make exceptions to rules and provide exemptions for small businesses."[18] The Executive Order also mandates that administrative agencies strike "a reasonable balance between the underlying regulatory objectives and the burdens imposed by regulatory activity."[19] Ohio Gas is essentially a small business.[20] Granting Ohio Gas' request would achieve a proper balance between the regulatory objectives sought to be achieved by such changes while also

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[16] Executive Order, *Implementing Common Sense Business Regulation* (February 12, 2008), (hereinafter cited as "*Executive Order*").

[17] Regulatory Reform Task Force Report at 5 (December 17, 2008). (Attachment 1). The General Assembly itself has also recognized the need to spare smaller natural gas companies with less than 15,000 gas cost recovery ("GCR") customers the costs associated with some aspects of Commission regulation, prohibiting the Commission from charging such natural gas companies the costs associated with GCR audits. *See* Sections 4905.302(C)(2) and (C)(3), Revised Code.

[18] *Executive Order* at 3 (paragraph 4g).

[19] *Id.* at 2 (paragraph 4c).

[20] Ohio Gas meets the definition of "small business" referenced by the Regulatory Reform Task Force Report, which is the same standard used by the U.S. Small Business Administration (a business entity, including its affiliates, that is independently-owned and operated and employs fewer than five hundred full-time employees or has gross annual sales of less than six million dollars.") *See* Regulatory Reform Task Force Report at 5. This same definition of small business was included in legislation in the last General Assembly that dealt with regulatory reform. *See* House Bill 285 at http://www.legislature.state.oh.us/bills.cfm?ID=127_HB_285.

acknowledging the magnitude of the burdens imposed by the proposed rule modifications upon smaller gas or natural gas companies.

The Commission should grant Ohio Gas' request for rehearing and exempt LDCs with less than 75,000 customers from the Graduate PIPP and arrearage crediting provisions of Chapter 4901:1-18, O.A.C.

B. The Commission should exempt natural gas companies with fewer than 75,000 customers from the monthly arrearage credit requirements if it does not grant a complete exemption from the Graduate PIPP and arrearage crediting rules.[21]

Adopted Rule 4901:1-18-14, O.A.C, requires natural gas companies to provide arrearage crediting for PIPP and Graduate PIPP customers on a monthly basis. The Commission explains that current arrearage crediting programs require 12-consecutive timely payments before credits are granted and that it believes it is unrealistic to expect PIPP and Graduate PIPP customers to always make timely payments, especially when non-PIPP customers made timely payments only 47 percent of the time in 2007.[22] Thus, the Commission reasons that a monthly rather than a yearly incentive is imperative.[23]

If the Commission does not grant an exemption from the Graduate PIPP and arrearage crediting rules to LDCs with fewer than 75,000 customers, the Commission should modify its adopted arrearage crediting programs to permit LDCs with less than 75,000 customers to require 12-consecutive monthly payments before granting arrearage credits inasmuch as monthly crediting imposes an undue burden upon

[21] Ohio Gas recognizes that granting its rehearing request in Subsection A would moot this assignment of error.

[22] Finding and Order at 63.

[23] Finding and Order at 65.

smaller LDCs as compared to the expected benefits of the arrearage crediting program. To encourage 12-consecutive monthly payments, the Commission should then grant complete arrearage forgiveness to both PIPP and Graduate PIPP customers of these smaller LDCs who meet this threshold.

As the Commission has recognized, the information technology changes necessitated by the new rules are extensive and costly and smaller LDCs have fewer customers over which to spread these costs. Indeed, the monthly arrearage crediting program may very well be the most costly aspect of the information technology changes necessitated by the adopted rules. And, at least for Ohio Gas, computer systems cannot be feasibly programmed to implement all of the changes. At least some manual intervention will be required by an Ohio Gas employee for each and every credit that the adopted rules require. Additionally, allowing LDCs with less than 75,000 customers to compute and award arrearage crediting on a yearly basis might permit such LDCs to implement the arrearage crediting program through manual calculations and avoid the information technology costs associated with providing this benefit to the few customers who might take advantage of it.[24]

Ohio Gas understands the Commission's concern for providing a more timely incentive for customers. However, while the monthly crediting program may provide some incentive for those PIPP customers who do make timely payments, that incentive is outweighed by the information technology and personnel implementation costs necessitated by compliance with this rule.

[24] As noted above, Ohio Gas currently only has 743 PIPP customers and, should this request for rehearing be granted, Ohio Gas would endeavor to manually calculate and provide arrearage credits to qualifying PIPP customers instead of making costly and complicated information technology changes.

C. The Commission should address OSCAR changes and associated costs before requiring compliance with the rules.

In its Finding and Order, the Commission states that it will address revisions to the OSCAR Report in a subsequent order.[25] The Commission's decision to wait to address the proposed revisions to the OSCAR Report is unreasonable in light of the information technology changes required to track and accumulate all of the data proposed by Staff as well as by various commenters. Numerous LDCs pointed out in their initial and reply comments that the changes to OSCAR would, like the substantive changes to the PIPP and other rules under review, involve very costly and complex information technology upgrades. A significant piece of those upgrades would be due to changes in the OSCAR Report. Without knowing the changes to the OSCAR Report, LDCs cannot have a complete and thorough grasp on the information technology changes that will have to be made to their computer systems. It is unfair to leave such an important element unresolved such that an LDC would be forced to possibly make two, rather than one, major computer infrastructure upgrades. Additionally, it is not inconceivable that electronic compilation of the data required by the revised OSCAR Report may not be easily retrieved by the upgrades made to implement the rule changes.

Further, as even the Consumer Groups acknowledged, the Commission has not explained the usefulness of this data in analyzing these programs. The value of expanding this data collection effort is unclear. The Consumer Groups also recommended convening a workshop to come to agreement on the specific definitions in each matrix in order to come to a "clear understanding for each of the data metrics

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[25] Finding and Order at 27.

and how this data is used for analysis of the effectiveness of the programs."[26] The confusion surrounding the gathering of the information as well as the unclear value of this information further lends support to the need for the Commission to address the OSCAR Report requirements to give all interested parties a complete picture of what will be required to implement the adopted rules.

The Commission should address the proposed OSCAR revisions in order to provide all stakeholders a comprehensive understanding of the changes needed to implement the revised rules adopted in this rulemaking.

D. The Commission's failure to address and grant the commenting parties' request for adequate time to modify and test billing systems to implement the changes to the current rules is unreasonable.

As noted above, Ohio Gas appreciates the Commission's acknowledgement of the information technology and other changes that will be required to implement the adopted rules. However, the Commission did not specifically address the concerns of numerous commenters related to the time necessary to design, test, and to put into operation the adopted rules. Time constraints to implement the adopted rules are not limited to just information technology changes. It will also consume internal resources to test the changes to ensure that billing systems can function properly as well as time to train call center and other employees on the substantive changes made to the rules.

The Commission should grant all companies affected by the rules 18-months to implement the rules. Specifically, the Commission should make the effective date of the rules 18-months after the approximate date in which the rules would finish the Joint Committee on Agency Rule Review ("JCARR") process. This would give all companies

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[26] Initial Comments of Consumer Groups at 57.

affected by the rules a sufficient and fair amount of time to design and test billing system changes as well as train employees on the rule modifications.

III. CONCLUSION

The Commission should modify its Finding and Order and exempt LDCs with less than 75,000 customers from the Graduate PIPP and arrearage crediting provisions of Chapter 4901:1-18, O.A.C. In the alternative, the Commission should modify its adopted arrearage crediting programs to permit LDCs with less than 75,000 customers to require 12-consecutive monthly payments before granting arrearage credits. Additionally, the Commission should address the proposed OSCAR revisions as well as make the effective date of the rules 18-months after the approximate date in which the rules would finish the JCARR process.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing and Memorandum in Support of The Ohio Gas Company* which was served upon the following parties of record this 16th day of January, 2009, via electronic transmission, hand-delivery or first class mail, postage prepaid.

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