

**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

**MEMORANDUM CONTRA OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
THE APPALACHIAN PEOPLE'S ACTION COALITION, CONSUMERS FOR
FAIR UTILITY RATES, MAY DUGAN MULTI-SERVICE CENTER, UNITED
CLEVELANDERS AGAINST POVERTY, ORGANIZE OHIO, COMMUNITIES
UNITED FOR ACTION, PRO SENIORS, INC., CLEVELAND TENANTS'
ORGANIZATION, HARCATUS TRI-COUNTY COMMUNITY ACTION
ORGANIZATION, EMPOWERMENT CENTER OF GREATER CLEVELAND,
NEIGHBORHOOD ENVIRONMENTAL COALITION, CLEVELAND HOUSING
NETWORK, THE EDMONT NEIGHBORHOOD COALITION, AND OHIO
FARM BUREAU FEDERATION
TO APPLICATIONS FOR REHEARING**

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Richard C. Reese, Counsel of Record
David C. Bergmann
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574
reese@occ.state.oh.us
bergmann@occ.state.oh.us

Tim Walters
4115 Bridge Street
Cleveland, OH 44113

May Dugan Multi-Service Center,
Consumers for Fair Utility Rates, United
Clevelanders Against Poverty, Organize
Ohio

Noel Morgan
215 East Ninth Street, Suite 5200
Cincinnati, OH 45202

Communities United for Action

Mike Piepsny, Executive Director
3631 Perkins Avenue, Suite 3A4
Cleveland, OH 44114

Cleveland Tenants Organization

Ellis Jacobs
Legal Aid Society of Dayton
333 West First Street, Suite 500
Dayton, OH 45402

Edgemont Neighborhood Coalition

Michele Lucas
108 North 2nd Street
Dennison, OH 44521

HARCATUS Tri-County Community
Action Organization

Michael Walters
Pro Seniors, Inc.
7162 Reading Road, Suite 1150
Cincinnati, OH 45237

Pro Seniors

Michael Smalz
Ohio State Legal Service Association
555 Buttrick Avenue
Columbus, OH 43215-1137

Appalachian People's Action Coalition

Joseph P. Meissner
Legal Aid Society of Greater Cleveland
3030 Euclid, Suite 100
Cleveland, OH 44115

Empowerment Center of Greater Cleveland,
Neighborhood Environmental Coalition,
United Clevelanders Against Poverty,
Cleveland Housing Network,
The Consumers for Fair Utility Rates

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

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INTRODUCTION

Pursuant to Ohio Adm. Code 4901:1-35, the Office of the Ohio Consumers' Counsel ("OCC"), the Appalachian People's Action Coalition, Consumers for Fair Utility Rates, May Dugan Multi-Service Center, United Clevelanders Against Poverty, Organize Ohio, Communities United For Action, Pro Seniors, Inc., Cleveland Tenants' Organization, Organize Ohio, Harcatus Tri-County Community Action Organization, Empowerment Center of Greater Cleveland, Neighborhood Environmental Coalition, Cleveland Housing Network, the Edgemont Neighborhood Coalition, and Ohio Farm Bureau Federation (collectively, "Consumer Groups"), submit this memorandum contra the applications for rehearing filed on January 16, 2009 by Columbia Gas of Ohio, Inc.

(“Columbia”); Columbus Southern Power Company and Ohio Power Company (collectively “AEP Ohio”); Duke Energy Ohio (“Duke”); Eastern Natural Gas Company, Pike Natural Gas Company and Southeastern Natural Gas Company (collectively, “Clearfield”); East Ohio Gas Company d/b/a Dominion East Ohio (“Dominion”); Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company (collectively, “FirstEnergy”)¹; and Ohio Gas Company (“Ohio Gas”). The applications for rehearing were filed in response to the December 17, 2008, Finding and Order (“F&O”) of the Public Utilities Commission of Ohio (“PUCO” or “Commission”) in this proceeding.² The various applications for rehearing should be denied, for the reasons set forth below.³ This Memorandum contra discusses the various applications for rehearing in rule order.

Rule 4901:1-18-05

Duke’s application for rehearing of this rule is global, calling into question the Company’s compliance with the current payment plan requirements:

The extended payment plans proposed in OAC Chapter 4901:1-18-05 create an unreasonable imposition upon utility companies. Indeed, utility

¹ FirstEnergy’s Application for Rehearing is procedurally improper, in that it fails to specify which provisions of which rules are unjust, unlawful or unreasonable, merely stating, “The Finding and Order adopted certain rules that conflict with the language and intent of the Revised Code, rendering such rules improper and subject to invalidation.” and “The Finding and Order adopted rules that will impose unjust and unreasonable burdens on the Companies.” See *Discount Cellular, Inc. v Public Util. Comm.*, 112 Ohio St.3d 360, 373-376, 2007-Ohio-53, ¶¶ 55-60; cf. *Cincinnati v Public Util. Comm.*, 151 Ohio St. 353 (1949). Nonetheless, the Consumer Groups will respond to the more-specific allegations set forth in FirstEnergy’s Memorandum in Support.

² The Consumer Groups also filed an application for rehearing. A joint application for rehearing was 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. An Application for Rehearing was also filed by Vectren Energy Delivery of Ohio, Inc. The Consumer Groups do not respond here to these applications.

³ The silence of this Memorandum Contra with regard to any particular party’s allegation(s) of error should not be construed as agreement with that allegation.

companies will be forced to offer a mutually acceptable repayment arrangement to any customer who seeks to avoid a delinquency. This arrangement alone will force utility companies to expend time and resources in accommodating customers who may simply wish to forego [sic] timely payments of their utility bills. Moreover, Section 4901:-18-05(B) [sic] requires utility companies to also offer predetermined repayment plans. These repayment plans are of set duration - six or twelve months in length - and prohibit the utility company from accelerating the term of repayment.⁴

The current rules require utilities “to offer a mutually acceptable repayment arrangement to any customer who seeks to avoid a delinquency”; the current rules require “utility companies to expend time and resources in accommodating customers who ... wish to forego [sic] timely payments of their utility bills”; the current rules require “utility companies to also offer predetermined repayment plans”; and the current rule requires the companies to offer the “fixed duration” one-sixth plan.⁵ Duke’s complaints in this regard come a bit late. Thus, compliance with the new rules should not be problematic, unless of course, Duke is in noncompliance with current rules. Moreover, the Consumer Groups object to Duke’s attempt to make a case for the burden of “offering a mutually acceptable repayment plan” being unreasonable. What is the alternative for a customer with limited funds? Disconnection? We would certainly hope not.

The remainder of Duke’s argument consists of direct copying from its initial comments.⁶ Duke has offered nothing new for the Commission’s consideration; its application for rehearing on this ground should be denied.

⁴ Duke at 11.

⁵ See Ohio Adm. Code 4901:1-18-05.

⁶ Compare Duke at 11-12 with Duke Initial Comments at 11-13.

Rule 4901:1-18-05(B)

FirstEnergy complains about the one-twelfth payment plan.⁷ Its focus appears to be on the “balance (albeit declining) that the Companies would now be required to carry on their books for an entire year” under the twelve-month plan⁸ The alternative to carrying this balance is, of course, that those customers who cannot meet the terms of the modified one-sixth plan⁹ would be disconnected... in which case those balances would still be carried on the utilities’ books (albeit not declining).¹⁰ Finally, it does not appear that the one-twelfth plan concerned FirstEnergy enough to have discussed it in the comments.¹¹ The Commission should reject FirstEnergy’s application for hearing on this issue.

A broader attack on the one-twelfth plan comes from Columbia.¹² Apart from repeating the arguments from its comments, which completely overlook the purpose of the plan -- which is to help customers avoid disconnection -- Columbia adds two new items.

First, Columbia asserts that “[i]f rehearing is granted, Columbia is prepared to offer data that recently became available regarding the arrearage levels experienced by

⁷ FirstEnergy Memorandum in Support at 6-7.

⁸ Id. at 6.

⁹ The Consumer Groups applied for rehearing with regard to the elimination of the “traditional” one-sixth plan and its replacement by the modified one-sixth plan.

¹⁰ FirstEnergy’s complaint about the lack of standards for who can use a payment plan (id.) has been true since the payment plans were first adopted. These matters were judged not appropriate for the utilities to have veto power over.

¹¹ See Finding and Order at 35; FirstEnergy Comments at 9-10.

¹² Columbia at 3-6.

Columbia's sister companies in other states under payment plans of various lengths.”¹³

Columbia does not explain why this data only recently became available, and why it could not have been submitted earlier in this proceeding.

Nonetheless, Columbia proceeds to submit some (all?) of this data, which does not really help its cause. Columbia asserts that in Virginia, Kentucky and Maryland, its affiliates offer three-month (or similar) payment plans, which have a minority of customers who are “more than thirty days in arrears”; in Ohio, about half of customers on the six-month plan are more than thirty days in arrears; and in Pennsylvania, about three-quarters of customers on a twelve-month plan for lower income customers are more than thirty days in arrears.¹⁴ Columbia does not define “in arrears.” The data does not reveal the size of these customers’ bills, and also does not reveal whether the arrearage situation is cured before the end of the payment plan term or before the plan is cancelled by the utility. This data specifically does not “demonstrate that offering lengthy payment periods simply increases customer arrearages.”¹⁵ It also does not balance these payments with the benefit of allowing customers to keep their gas service on, and the concomitant savings in disconnection and reconnection costs.

Columbia also reaches back to the November 1983 Opinion and Order in Case No. 83-303-GE-COI, where the Commission noted the opposition of some low-income representatives to a twelve-month payment plan, and cites the Commission’s rejection of such a plan.¹⁶ That opposition and rejection was based on the fact that the plan would not

¹³ Id. at 4.

¹⁴ Id. at 4.

¹⁵ Id.

¹⁶ Id. at 5-6.

sufficiently help low-income customers; **instead, the Commission adopted PIPP for that purpose.** The newly-adopted twelve-month plan has PIPP as a back-up for income-qualified customers; all customers will have the new plan as an option. This is scarcely the context (or the reason behind) the Commission's rejection of a twelve-month plan 25 years ago. The Commission should reject Columbia's application for rehearing on this issue.

Rule 4901:1-18-05(C)

Dominion asks for clarification as to whether, pursuant to Rule 18-5(C), customers on the one-third payment plan set forth in Rule 5(B)(3) who default are required to be offered PIPP, as is required for customers on the modified one-sixth payment plan set forth in Rule 18-5(B)(1) or the one-twelfth payment plan set forth in Rule 18-5(B)(2).¹⁷ This is because Rule 18-5(C) specifically refers only to (B)(1) and (B)(2). This matter was not discussed in the Finding and Order.

The Consumer Groups agree that clarification is needed. There is no reason to treat customers on the one-third payment plan differently from customers on the modified one-sixth plan or the one-twelfth plan. The rule should be clarified so that Rule 18-5(C) refers to (B)(1) **through** (B)(3).

On a related note, Vectren states that the two new payment plans are "for customers not eligible for PIPP."¹⁸ Vectren is incorrect: PIPP-eligible customers can, if they wish, use either of the two new plans and the Commission should make that point

¹⁷ Dominion at 3.

¹⁸ Vectren at 3.

clear in its Entry on Rehearing.

Rule 4901:1-18-05(H)

FirstEnergy insists on being able to charge late payment charges to customers who are on payment plans.¹⁹ FirstEnergy does not explain why the need arises now; such charges have not previously been allowed by the Commission. FirstEnergy also does not explain why its other expense-recovery mechanisms are inadequate to recoup the costs of these plans – where customers have entered into an agreement on a payment plan, rather than merely failing to pay their bills. Assessing late payment charges on balances that are being properly reconciled through payment plans serves no purpose other than to make energy costs all the more unaffordable for customers.

The Commission must reject FirstEnergy's unsupported statement that customer arrears from the current payment plans amount to \$200 million per year.²⁰ Without an analysis of the context and content of that statement, it demonstrates nothing. The Consumer Groups also would note that such uncertainties serve to emphasize the need for an evidentiary proceeding supporting these rules, as the Consumer Groups proposed early on in this proceeding.²¹

¹⁹ FirstEnergy at 7.

²⁰ Id.

²¹ See Consumer Groups Motion for Public Hearings (July 8, 2008); Consumer Groups Motion for a Commission-Ordered Investigation (September 10, 2008).

Rule 4901:1-18-06(A)(3)(c)

Duke asserts that “this requirement [to give customer information to local agencies] unlawfully violates the privacy restrictions on customer accounts.”²² Duke appears not to have read the Finding and Order, which cites the statutes which this provision follows, or the rule as set forth in the Finding and Order,²³ or even the PUCO Staff draft rule, which all also cited the statutes, being R.C. 4933.12(E) and 4933.121(D). Indeed, in the Finding and Order, the Commission deliberately limited the information discussed in the draft rule, in order to better comply with the statutes. Further, the statute prevails over the privacy restrictions on customer accounts established through the Administrative Code given that the Commission’s rules must follow the statute..

Rule 4901:1-18-06(C)

This rule prohibits utilities from charging a tariffed collection charge unless the utility worker sent to perform a disconnection does not do so because the customer provides payment or proof of payment. AEP’s sole ground for rehearing is that the rule prohibits charging a collection charge when

[a]t the request of the Commission's staff AEP Ohio ... delays scheduled disconnections under extenuating circumstances where disconnection of service could affect the welfare of the customer. In those circumstances AEP Ohio can leave an extra two-day notice giving the customer one last chance to avoid disconnection by paying its past due charges or securing a medical certification. The existing rule allows AEP Ohio to charge customers the tariffed costs of providing those customers the benefits of the extra notice and more time to pay unpaid charges. These measures taken by AEP Ohio are not required by the rules and would need to be reevaluated if the rule is not changed on rehearing.²⁴

²² Duke at 13, citing Ohio Adm. Code 4901:1-10-12(F)(1)-(4).

²³ Finding and Order at 39.

²⁴ AEP at 3.

AEP gives no indication of how often this delay occurs, and, therefore, how much uncollected cost would be involved. It appears that this practice -- which undoubtedly benefits the affected consumer -- is entirely at AEP's discretion even when requested by PUCO Staff. It also appears that the practice would be better addressed through a waiver request, rather than by the rule change proposed by AEP, with all the latitude that will give all the utilities. AEP's application for rehearing should be denied. AEP should request a waiver if necessary.

Rule 4901:1-18-07(A)

Columbia first asserts that all companies should be required to treat customers who are disconnected for more than ten days as new customers, because, compared to a company that decides not to treat such customers as new, those who are treated as new are placed "at a disadvantage."²⁵ Actually, this is the reason for doing away with the ten-day rule, as argued by the Consumer Groups in their application for rehearing: The "disadvantage" to these customers is real, and it is unreasonable.²⁶ More importantly, Columbia's argument at base is that no utility should be allowed to treat its customers more leniently than any other. That view is unreasonable in the extreme.

Having argued that all customers who are disconnected more than ten days should be treated as new customers, however, Columbia then argues that nonetheless such customers should be charged a "reconnection" charge.²⁷ The logical flaw does not seem

²⁵ Columbia at 8.

²⁶ Consumer Groups Application for Rehearing, at 2; id., Memorandum in Support at 13-17.

²⁷ Columbia at 8-9.

to occur to Columbia: If you are a “new” customer, you cannot be “reconnected.”

Again, this is actually an argument against the Commission’s rule.²⁸

Rules 4901:1-18-12 through 4901:1-18-16

As explained in the Consumer Groups’ Application for Rehearing, the Finding and Order improperly granted a complete waiver from PIPP to small gas companies that lack a PIPP rider.²⁹ Clearfield had asked only for a waiver from the rule changes that would increase small gas companies’ information technology costs.³⁰

But not content with getting far more than it asked for, Clearfield wants more: On rehearing, Clearfield argues that it was unreasonable and unlawful for the Commission not to also give a waiver of PIPP to small gas companies that do have PIPP riders.³¹ Despite this, Clearfield again refers to “expensive upgrades to computer systems,”³² indicating that the real focus is on the changes to the rules, rather than PIPP itself. Indeed, it makes even less sense to waive PIPP for the companies that do have PIPP riders. As stated in the Consumer Groups’ application for rehearing, “There is no justification for denying the low-income customers of these utilities the protections of PIPP.”³³ The application for rehearing acknowledged that, at most, the Commission

²⁸ As is Columbia’s identification of another issue: That the rule “actually encourages seasonal disconnection” because customers will seek to avoid the utility’s customer charge. *Id.* at 9. And this encouragement grows under the Commission’s focus on the straight fixed variable rate design, where the customer charge is substantially increased.

²⁹ Consumer Groups Application for Rehearing , Memorandum in Support at 17-18.

³⁰ Clearfield Initial at 3.

³¹ Clearfield Application for Rehearing at 1.

³² *Id.*, Memorandum in support at 4.

³³ Consumer Groups Application for Rehearing, Memorandum in Support at 18.

could exempt small gas companies from the newly-adopted features of PIPP that would substantially increase the small companies' IT costs.

Ohio Gas' application for rehearing asserts that it was error for the Commission to limit the waiver of PIPP to companies under 15,000 customers without a PIPP rider.³⁴ But Ohio Gas also specifies that an error occurred when the Commission did not exempt Ohio Gas from just the arrearage crediting requirements.³⁵ Even though Ohio Gas is one-seventh the size of the next-largest local distribution company ("LDC"),³⁶ it is still six times the size of the next-smaller LDC with a PIPP rider. It does not appear that Ohio Gas has shown why its PIPP customers should be denied the benefits of the arrearage crediting program.³⁷ Neither has the Company shown that it should be entirely exempt from PIPP (if that is the meaning of its Application for Rehearing).

Rule 4901:1-18-12(D)

Dominion complains that the Commission's rule does not require ODOD to provide PIPP customers with notice of upcoming reverification deadlines.³⁸ Without getting into the matter of whether the PUCO could lawfully issue such a rule that would require action of another state agency, the Consumer Groups agree that reverification notices are important. In its pending rulemaking, ODOD has proposed a rule that

³⁴ Ohio Gas Application for Rehearing at [1].

³⁵ Id.

³⁶ Id., Memorandum in Support at [3].

³⁷ The Ohio Gas Memorandum in Support asks that Ohio Gas' customers be required to make 12 consecutive payments before receiving an arrearage credit (id. at [4]) and appears to ask for exemption from the graduate PIPP program. Id. at 3. Both go beyond the relief requested in Ohio Gas' Application for Rehearing, and should not be considered.

³⁸ Dominion at 3-4.

requires “reasonable efforts” towards such notices.³⁹ That rule should allay Dominion’s concern. If the ODOD rule is not adopted, however, the Commission should adopt a rule requiring utilities -- over which it **does** have jurisdiction -- to provide this notice.

On the other hand, Duke complains about the Commission’s decision to require zero-income PIPP customers to reverify their income every twelve months, rather than the current every ninety days:

[A] lengthy reverification process^[40] provides little incentive for zero-income PIPP customers to initiate efforts to improve their financial position and assume fair responsibility for the utility services that they consume. This lack of incentive increases the financial imposition upon other rate payers whose contributions fund the program. Furthermore, protracted reverification requirements for zero-income PIPP customers are contrary to the Commission's apparent desire to encourage fiscal responsibility and independence.⁴¹

It is not at all clear how more frequent income verification gives zero-income PIPP customers any real incentive “to initiate efforts to improve their financial position and assume fair responsibility for the utility services that they consume” or “to encourage fiscal responsibility and independence to that is not already present in their distressed economic circumstances.” Duke’s argument lacks foundation.

Although the Consumer Groups remain adamantly opposed to the minimum PIPP payment requirement,⁴² it is clear that if there is a minimum payment, it is unfair to require PIPP customers with zero income -- as defined by a state agency -- to reverify every ninety days, when all other customers reverify once a year (whether their monthly

³⁹ Proposed Ohio Adm. Code 122: 5-3-02(C)(1).

⁴⁰ Presumably Duke is referring to the period of time between reverifications, rather than to the length of the process itself.

⁴¹ Duke at 14.

⁴² See Consumer Groups Application for Rehearing at 2; *id.*, Memorandum in Support at 25-28.

income is \$1, \$10, \$100, or \$1,000). This is especially true when all customers with incomes of under \$166 a month.⁴³ or less than \$2,000 a year, will be making the same minimum payment of \$10 under the PUCO rules.⁴⁴

Rule 4901:1-18-12(D)(2)

Columbia notes that the rules

do not explain whether a customer who is removed from the PIPP program for nonpayment may ever rejoin the PIPP program. New Rule 4901:1-18-17(B) states that a customer removed from PIPP for failure to timely reverify eligibility may re-enroll, but that Rule does not apply to customers removed for nonpayment. If a customer removed from PIPP for nonpayment is permitted to rejoin the PIPP program, the New Rules do not explain the requirements, conditions, or timeframe for rejoining.⁴⁵

The Consumer Groups note that even a customer found to have fraudulently enrolled in PIPP is allowed to rejoin the program after two years.⁴⁶ A customer who is removed from PIPP for nonpayment should be allowed to rejoin the program if the customer makes up the missed payment(s), and the Consumer Groups agree that this provision should be embodied in the rules.

Rule 4901:1-18-13

The Consumer Groups' Memorandum in Support showed how the Commission's chosen 6% of income monthly PIPP payment was unreasonably high, for a multitude of

⁴³ A customer with an income of \$166 a month would pay \$9.96 under a 6% monthly payment requirement.

⁴⁴ Duke's reference to the graduate PIPP program in this respect (Duke at 14-15) is inapposite. A customer is not likely to move from zero income to income greater than 150% of the poverty level.

⁴⁵ Columbia at 10.

⁴⁶ Adopted Ohio Adm. Code 4901:1-18-17(D).

reasons, and should be lowered to 5%.⁴⁷ Dominion reluctantly concedes that the 8% originally proposed by PUCO Staff should be adopted,⁴⁸ and Columbia asserts that the payment level should remain at 10%.⁴⁹ Both positions should be rejected.

Columbia's main argument against lowering the payment amount is, perplexingly, that more consumers will benefit from a lowered amount.⁵⁰ In these economic crisis times, Columbia's is hardly a responsible position. The alternative to lowering the payment amount is that the company and its other customers will be burdened with the costs of more disconnections and possible reconnections, while the disconnected customers will suffer the dangers of being without gas service.

Dominion's complaint is that the Commission reduced the payment amount without evidence that lowering the payment amount will increase payment frequency.⁵¹ The Consumer Groups comments provided precisely that evidence.⁵² Any error in the payment amount will be ameliorated by the fact that the Commission has committed to review the results of the change within two years,⁵³ particularly if the Commission adopts an open and rigorous review process as recommended by the Consumer Groups.⁵⁴ Again, in these deteriorating economic times, the inclination should be towards allowing consumers to maintain their vital energy services.

⁴⁷ Consumer Groups Application for Rehearing, Memorandum in Support at 21-25.

⁴⁸ Dominion at 4-5.

⁴⁹ Columbia at 2-3.

⁵⁰ Id. at 3.

⁵¹ Dominion at 5.

⁵² Consumer Groups Initial Comments at 19, n.43.

⁵³ Finding and Order at 62.

⁵⁴ Consumer Groups Application for Rehearing, Memorandum in Support at 36-39.

4901:1-18-13(C)(2)

Columbia asks for clarification of this rule so that “E-HEAP money is treated the same way as other ‘[m]oney provided on an irregular or emergency basis by a public or private agency[.]’”⁵⁵ The Consumer Groups agree.⁵⁶

Rule 4901:1-18-15(B)

Dominion complains that this rule gives a newly-enrolled PIPP customer the choice to apply a previously-assessed deposit to the customer’s account or to receive a refund.⁵⁷ This provision was part of the original PUCO Staff proposal,⁵⁸ but it does not appear that Dominion objected in its comments.⁵⁹ Thus Dominion’s complaint comes somewhat late.

In any event, under the rules the utilities are not permitted to assess a deposit on a new PIPP customer. It thus makes sense to give a newly-enrolled PIPP customer who has a deposit being held the **option** to get a refund of the deposit amount.

UNIFICATION OF GAS AND ELECTRIC PIPP RULES -- TREATMENT OF DUKE

One of the goals of the Commission Staff in proposing changes to the PIPP rules was to create more consistency between the gas PIPP program administered by the

⁵⁵ Columbia at 11, citing the adopted rule.

⁵⁶ See Consumer Groups Application for Rehearing, Memorandum in Support at 28-29.

⁵⁷ Dominion at 5.

⁵⁸ Entry (June 25, 2008), Appendix A at 59.

⁵⁹ See Dominion Initial at 4. This rule is not addressed in Dominion’s reply comments.

Commission and the electric PIPP program administered by ODOD.⁶⁰ It should be clear that both agencies have largely failed in that attempt.

But Duke seemingly would elevate the need for consistency to a legal requirement, applying for rehearing with regard to the differences between ODOD rules and PUCO rules -- but not specifying how those differences should be resolved.⁶¹

Although the Consumer Groups also support consistency, it should not be pursued for its own sake, in the absence of any review of the impact of consistent rules on consumers.

Duke's position stems from its unique position as a combination utility, serving both gas and electric customers. That in itself is not a sufficient reason for unifying the rules. After all, electric service and gas service differ in many different ways, technologically and regulatorily -- for instance, electric service is governed by the Electric Service and Safety Standards ("ESSS"), and gas service by the Minimum Gas Service Standards ("MGSS").⁶²

Having different policies applied on the electric side and on the gas side is one of the fallouts of being a combination company. If Duke wants to avoid applying different policies, it should ask one or the other agencies for waivers in order to unify its PIPP program. Duke's concerns are insufficient in and of themselves to justify changing the rules, especially given that Duke does not express a preference for one set of rules or the other.

⁶⁰ Entry (June 25, 2008) at 7.

⁶¹ Duke at 5-11. It is interesting that Duke views the Commission's rules as providing for 100% utility company reimbursement. *Id.* at 5. Duke does not cite any specific rule for that proposition.

⁶² Ohio Adm. Code 4901:1-10-12; Ohio Adm. Code 4901:1-13-06.

REVIEW OF THE PIPP PROGRAM

Columbia's referral to the 83-303 Finding and Order that established PIPP⁶³ should serve as a reminder to the Commission that PIPP was adopted in a proceeding that included public hearings. As the Consumer Groups have consistently argued, the issues regarding these credit and disconnection rules – especially regarding customers' payment levels and payment behavior – are intensely fact-based.⁶⁴ Thus these rules should be based on an effective investigation of those facts. The Consumer Groups can only hope that in the next iteration in two years the Commission will be willing to engage in such a process.

CONCLUSION

For the reasons discussed herein, most of the utilities' Applications for Rehearing should be denied. In other respects, as discussed herein, the rules should be clarified.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Richard C. Reese

Richard C. Reese, Counsel of Record
David C. Bergmann
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574
reese@occ.state.oh.us
bergmann@occ.state.oh.us

⁶³ Columbia at 5-6.

⁶⁴ Consumer Groups Motion for Commission-Ordered Investigation (September 10, 2008), Memorandum in Support at 1.

/s/ Tim Walters - DCB

Tim Walters
4115 Bridge Street
Cleveland, OH 44113

May Dugan Center, Consumers for Fair
Utility Rates, United Clevelanders Against
Poverty, Organize Ohio

/s/ Noel Morgan - DCB

Noel Morgan
215 East Ninth Street, Suite 5200
Cincinnati, OH 45202

Communities United for Action

/s/ Mike Piepsny - DCB

Mike Piepsny, Executive Director
3631 Perkins Avenue, Suite 3A4
Cleveland, OH 44114

Cleveland Tenants Organization

/s/ Ellis Jacobs - DCB

Ellis Jacobs
Legal Aid Society of Dayton
333 West First Street, Suite 500
Dayton, OH 45402

Edgemont Neighborhood Coalition

/s/ Michele Lucas - DCB

Michele Lucas
108 North 2nd Street
Dennison, OH 44521

HARCATUS Tri-County Community
Action Organization

/s/ Michael Walters - DCB

Michael Walters

Pro Seniors, Inc.
7162 Reading Road, Suite 1150
Cincinnati, OH 45237

Pro Seniors

/s/ Michael Smalz - DCB
Michael Smalz
Ohio State Legal Service Association
555 Buttrick Avenue
Columbus, OH 43215-1137

Appalachian People's Action Coalition

/s/ Joseph P. Meissner - DCB
Legal Aid Society of Greater Cleveland
3030 Euclid, Suite 100
Cleveland, OH 44115

Cleveland Housing Network,
Empowerment Center of Greater
Cleveland, The Neighborhood
Environmental Coalition

/s/ Dale Arnold - DCB
Dale Arnold
Director, Energy Services
Ohio Farm Bureau Federation
P.O. Box 182383
Columbus, OH 43218

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Consumer Groups Memorandum Contra Applications for Rehearing was served by first class United States Mail, postage prepaid, to the persons listed below, on this 26th day of January 2009.

/s/ David C. Bergmann
David C. Bergmann
Assistant Consumers' Counsel

SERVICE LIST

Duane W. Luckey, Chief
Public Utilities Commission of Ohio
Attorney General Section
180 East Broad Street, 9th Floor
Columbus, OH 43215-3793

Greg Hitzhusen, Director
P.O. Box 26671
Columbus, OH 43226

Marvin Resnik
American Electric Power Service Corp.
1 Riverside Plaza, 29th Fl.
Columbus, OH 43215

David C. Rinebolt
Ohio Partners for Affordable Energy
P.O. Box 1793
Findlay, OH 45839-1793

Elizabeth Anstaett
Dreher, Langer & Tomkies LLP
2250 Huntington Center
41 S. High St.
Columbus, OH 43215

Mary Ryan Fenlon
Jon F. Kelly
AT&T Services, Inc.
150 E. Gay St., Room 4-A
Columbus, OH 43215

Jenny Ricci O'Donnell
CheckFreePay Corp.
P.O. Box 5044
Wallingford, CT 06492-7544

Douglas E. Hart
441 Vine St., Ste. 4192
Cincinnati, OH 45202

Stephen B. Seiple
Columbia Gas of Ohio
P.O. Box 117
Columbus, OH 43216-0117

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Ave.
Columbus, OH 43215-3927

Thomas McNamee
Public Utilities Commission of Ohio
Attorney General Section
180 East Broad Street, 12th Floor
Columbus, OH 43215-3793

Judi Sobecki
Dayton Power & Light Co.
1065 Woodman Dr.
Dayton, OH 45432

James W. Burk
Ebony L. Miller
76 South Main Street
Akron, OH 44308

Thomas E. Lodge
Thompson Hine LLP
41 S. High St., Ste. 1700
Columbus, OH 43215-3200

Mary-James Young
Vectren Corp.
One Vectren Square
Evansville, IN 47708

Lisa Hamler-Fuggit
Ohio Association of Second Harvest
Foodbanks
51 N. High St., Ste., 761
Columbus, OH 43215

Phil Cole
Ohio Association of Community Action
Agencies
50 W. Broad St., Ste. 1616
Columbus, OH 43215

Joseph Logan
Government Affairs Director
Ohio Farmers Union
20 South High Street, Suite 130
Columbus, OH 43215

Rocco D'Ascenzo
Duke Energy Ohio
139 East 4th St., 25th Fl., Atrium II
Cincinnati, OH 45202

Stephen M. Howard
P.O. Box 1008
Columbus, OH 43216-1008

Joseph M. Clark
Daniel J. Neilsen
McNees, Wallace & Nurick LLC
21 E. State St., 17th Fl.
Columbus, OH 43215-4653

Sheldon Gas Co.
12925 Blanchard T.R. 50
Dunkirk, OH 45836

Lisa G. McAlister
McNees, Wallace & Nurick LLC
21 E. State St., 17th Fl.
Columbus, OH 43215-4653

Ron Bridges
AARP-Ohio
17 S. High St., Ste. 800
Columbus, OH 43215-3467

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

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