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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

**MEMORANDUM CONTRA
THE CONSUMER GROUPS' APPLICATION FOR REHEARING
BY THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

I. INTRODUCTION

Pursuant to Rule 4901-1-35, Ohio Administrative Code, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") hereby files its Memorandum Contra the Application for Rehearing of the self-styled Consumer Groups that was filed on January 16, 2009 in the above-captioned case. For the reasons set forth below, the Commission should deny the Application for Rehearing.

II. ARGUMENT

A. The Consumer Groups continue to demonstrate little concern for the impact of their proposals on non-PIPP customers.

Many of the Consumer Groups' proposals to grant further entitlements to PIPP customers would have the certain effect of inflating PIPP arrearages with no assurance of a corresponding benefit to other customers. These include the following proposals:

- With respect to the 1/6 payment plan, eliminate the down payment requirement or lower it to 15% of the balance, and enable customers to spread past due charges over 18 or even 24 months. (CG App., pp. 9-12.)
- Eliminate responsibility for payment by PIPP customers during months when they do not receive service. (*Id.*, pp. 19-22.)

— Lower the monthly PIPP payment amount from 6% of income to 5%. (*Id.*, pp. 22–26.)

As discussed in DEO’s application for rehearing, the Commission has already taken a number of drastic steps in remaking the PIPP program, such as reducing the monthly PIPP payment from 10% of monthly income to 6%. Leaving aside the Consumer Groups’ requests, Ohio ratepayers will already bear a greatly increased load going forward. The Consumer Groups present no reason to increase this load even more.

B. The Consumer Groups misstate Ohio law concerning credit checks.

In reference to Rule 4901:1-17-03(A)(1), the Consumer Groups argue that the Commission may not allow utilities to use a credit check as a first criterion to establish financial responsibility because “R.C. 4933.17 provides consumers the right to demonstrate financial responsibility using any one of three methods including being a freeholder of property [and two other methods].” (CG App., p. 4.)

The Consumer Groups, however, misstate R.C. 4933.17 and omit a critical phrase—the statute provides that a consumer who “is a freeholder *who is financially responsible*” may not be charged a deposit. R.C. 4933.17. It does not state that a consumer may “demonstrate financial responsibility” merely by showing that he or she is “a freeholder of property.” (*See* CG App., p. 4.) Thus, contrary to the Consumer Groups’ argument, R.C. 4933.17 authorizes utilities to determine whether consumers are financially responsible.

Because a credit check determines “financial responsibility,” it is entirely consistent with R.C. 4933.17. Indeed, in the Consumer Groups own words, it is a “quick and inexpensive” method of doing so (CG App., p. 3), which if anything counsels that it be the method of choice. And R.C. 4933.17 expresses no limitation on how financial responsibility may be determined,

nor on the Commission's authority to enact rules applying that term. Thus, the Consumer Groups offer no sound reason to revise the proposed rule.

C. No changes are necessary to the rules governing the provision of social security numbers.

The Consumer Groups seek to add to Rule 4901:1-17-03(A)(2) a provision requiring utilities to advise customers "that providing the social security number [to obtain credit information and to establish identity] is voluntary." (CG App., pp. 4-8.)

The Consumer Groups have not demonstrated that this rule change would be either necessary or prudent. As the Consumer Groups recognize, there is already an agency entrusted with leading "the war on identity theft" (*id.*, p. 8), and this agency (the FTC) has promulgated rules that cover this precise issue. As the Consumer Groups also recognize, these rules apply to and impose obligations on utilities. (*See id.*, p. 6.) Given that this situation is already being addressed by the appropriate agency, the rule change requested by the Consumer Groups would likely do little besides add inconvenience and costs (both direct and indirect) to the processes associated with checking credit and establishing identity. DEO therefore opposes the Consumer Groups' proposed revision.

D. The Consumer Groups have justified no further modifications to the one-sixth payment plan.

The Consumer Groups propose that the Commission should reduce the one-sixth payment plan's down payment from 25% to 15% (or perhaps eliminate it altogether), as well as "consider adapting [sic] other required payment plans," such as spreading "past due charges . . . over 18 or even 24 months." (CG. App., p. 12.)

It is notable that the Consumer Groups appear to recognize that suggesting a standard 1/24th payment plan is asking for the moon. These proposals, and others like them, confirm the impression that the Consumer Groups are willing to create an endless and convoluted cycle of

debts, arrearages, write-offs, and installment plans—anything so long as it pushes dollars from “current charges” to “account balance.” It is questionable whether any of these proposals do anything to address the underlying issues. But the proposals here, to further reduce upfront payments and to extend mandatory payment plans beyond one year, go too far. Utilities should not be required to make long-term, interest-free loans to all customers.

E. DEO opposes the Consumer Groups’ proposal to remove the ten-day distinction from the reconnection rules.

The Consumer Groups states that “[t]he ten day distinction in reconnection standards in Ohio Adm. Code 4901:1-18-07 (A) and (B) should be removed.” (CG App., p. 18.) DEO opposes the Consumer Groups’ request and strongly supports the proposed change.

DEO’s records show that approximately one-third of its reconnections occur after ten days have elapsed—this is over 10,000 reconnections. The existing requirement to reconnect all customers—regardless of how long they have been disconnected—on the same day as payment (if reported before 12:30 p.m.) frequently forces field crews to work overtime, which leads to increased expense and potentially higher rates. The new rule better enables utilities to organize and prioritize their reconnection efforts and provides flexibility that is helpful in reducing costs. To the degree that situations do exist requiring expedited reconnection, there are mechanisms tailored to the task, such as the Winter Reconnect Order. Thus, there is no reason to revise the rule as the Consumer Groups propose.

DEO is not opposed, however, to the Consumer Groups’ suggestion that the Commission clarify the application of the rule. DEO suggests that the following modification would be sufficient:

If service has been disconnected for greater than ten business days, the utility company ~~may~~ shall treat the situation as a new service request and connect the service consistent with the timeframes in

paragraph (A) of rule 4901:1-10-09 and/or paragraphs (A) and (C) of rule 4901:1-13-05 of the Administrative Code.

F. Making PIPP customers responsible for PIPP payments during periods of no service presents no discrimination problem.

The Consumer Groups attack the provision of the rules making “PIPP customers responsible for payment during months in which service is not provided” as “punitive and potentially discriminatory,” because “[t]here are no other customers who are held responsible for missed payments when service is not being provided.” (CG App., pp. 21–22.) As authority for this proposition, the Consumer Groups cite R.C. 4905.35.

As an initial matter, R.C. 4905.35 applies only to utilities in the provision of regulated services. *Id.* (“No *public utility* shall make or give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage.”) (emphasis added). It does not apply to the Commission, which of course is the agency entrusted to apply that particular statute and discern between reasonable and unreasonable treatment.

Even if the statute did apply, the rules would pose no problem. The prohibition applies only to “undue and unreasonable” differential treatment. *Id.* Given the sheer magnitude of the discount authorized here for PIPP customers, the balance of benefits and burdens surely favors these customers. The trade-off of a continuing payment responsibility for all months is reasonable in light of the substantial subsidies and ongoing arrearages.

And these payments are *not* punitive. The Consumer Groups’ argument is apparently founded on the implication that PIPP customers will be forced to pay for service they are not taking. In reality, these payments are being applied to arrearages that reflect usage by these customers and would otherwise be paid for by other ratepayers. The Commission carefully

addressed this issue in the Finding and Order. The Consumer Groups have not provided a valid basis reconsidering this issue.

G. DEO opposes reducing the monthly PIPP payment from 6% of income to 5% and opposes the elimination of the \$10 minimum charge for service.

For the same reasons DEO opposes the reduction of the monthly PIPP payment from 10% to 6% (*see* DEO Reh'g App., pp. 4–5), DEO opposes the reduction from 6% to 5% proposed by the Consumer Groups, as well as the proposed elimination of the proposed \$10 minimum charge for PIPP customers. (*See* CG App., pp. 22–29.)

As one would expect, the Consumer Groups' proposal would only further exacerbate the revenue shortfall to be borne by other ratepayers. Data from DEO's billing system shows that if the PIPP payment is reduced to 5% of monthly income, *even 12 payments a year* will result in a revenue shortfall compared to current PIPP recovery. If current payment frequencies continue at the 5%-of-income level, DEO projects an additional annual deficit of approximately \$23.8 million compared with current revenue.

With respect to the Consumer Groups' arguments that the Commission is bound by its prior rules in a later rulemaking and thus cannot authorize a minimum charge, this is false. (*See* CG App., p. 27 (“[w]hen the commission has made a lawful order, it is bound by certain institutional constraints to justify that change before such order may be changed or modified”).)¹ So long as the decision itself is reasonable on the merits, the Consumer Groups can claim no prejudice. *See Ohio Domestic Violence Network v. Pub. Util. Comm.* (1994), 70 Ohio St.3d 311, 324 (rejecting similar claim by OCC and stating that, “having upheld the commission’s approval

¹ The Consumer Groups quote *Cleveland Electric Illuminating Co. v. Public Utilities Commission* (1975), 42 Ohio St. 2d 403, 431, as holding “[w]hen the commission has made a lawful order, it is bound by certain institutional constraints to justify that change before such order may be changed or modified.” That decision contains no such language, however. It is not clear, therefore, on which decision the Consumer Groups rely, which makes it difficult to determine whether this language is in fact relevant to this proceeding.

of the services on the merits, we can find no prejudice by the commission's alleged departure from precedent"). And if this doctrine did apply in a generic rulemaking, it would surely be the undoing of many of the changes favored by the Consumer Groups—if the \$10 minimum charge is a too-drastic departure from "precedent," wouldn't the same be true of the payment reduction from 10% of monthly income to 5% (or for that matter, 6%)?

The Company believes the move from 8% to 6% is too drastic. The Consumer Groups have not justified an even more precipitous drop.

H. DEO opposes the Consumer Groups' proposed upfront arrearage crediting.

The Consumer Groups recommend "a credit of 50% of a PIPP customer's accumulated arrearage, applied to the accounts of new and existing PIPP customers, former PIPP customers, and graduate PIPP customers, upon the adoption of the restructured PIPP rules, or when a new PIPP customer enrolls." (CG App., p. 31.) This is "to provide an immediate, concrete showing of what will happen thereafter upon timely payment." (*Id.*)

The arrearage-crediting program provided for in the rules already gives adequate incentive for timely payment by providing for the full crediting of PIPP arrears provided that its requirements are met. *See* Rule 4901:1-18-14(A)(1). These provisions fully address the issue noted by the Consumer Groups that "[m]any PIPP customers have enormous arrearages despite making regular PIPP payments." (*Id.*) Giving such a substantial credit before any payments have been made severs the link between arrearage crediting and responsible payment behavior. The new arrearage-crediting program adopted by the Commission provides adequate rewards to PIPP customers for making timely payments. DEO therefore continues to oppose this proposal.

I. DEO is not opposed to clarification of the restitution requirement.

The Consumer Groups ask the Commission to “clarify [Rule 4901:1-18-17(E)] to define the items that are subject to restitution.” (CG App., pp. 36–37.) DEO is not opposed to the Commission further clarifying this rule.

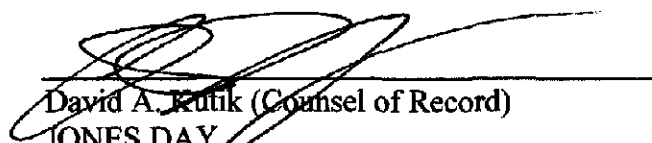
J. DEO continues to oppose the Consumer Groups request for a Commission-ordered investigation.

The Consumer Groups again suggest the Commission should open an investigation. (CG App., pp. 39–40.) DEO would again restate its opposition to this request for the reasons given in the Memorandum Contra the Consumer Groups’ Motion for a Commission-Ordered Investigation filed on September 25, 2008, on behalf of DEO and the Ohio LDCs.

III. CONCLUSION

For the foregoing reasons, DEO respectfully requests the Commission to deny the Consumer Groups’ application for rehearing to the extent set forth above.

Respectfully submitted,

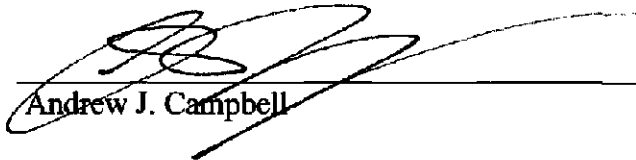

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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum Contra the Consumer Groups' Application for Rehearing of The East Ohio Gas Company d/b/a Dominion East Ohio was served upon the following parties this 26th day of January, 2009:²


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