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FILE

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

CONSTITUTION GAS TRANSPORT CO., INC.,
FORAKER GAS COMPANY, INC.,
KNG ENERGY, INC.,
AND
THE SWICKARD GAS COMPANY
MEMORANDUM CONTRA
CONSUMER GROUPS' APPLICATION FOR REHEARING

By its finding and order in this docket of December 17, 2008 ("Finding and Order"), the Commission adopted amended rules governing, among other things, the operation of the percentage of income payment plan ("PIPP") program available to income-eligible customers of the state's natural gas distribution utilities. In its Finding and Order, the Commission, citing cost concerns raised in the initial comments of the Clearfield companies,[1] determined that the requirements of the gas PIPP rules set forth in Rules 4901:1-18-12 through 4901:1-18-17, Ohio Administrative Code ("OAC"), should be waived for those gas and natural gas companies that do not currently have PIPP riders and that serve fewer than 15,000 customers.[2]

In their application for rehearing filed herein on January 16, 2009, the Office of the Ohio Consumers' Counsel and various other entities representing the interests of low-income consumers (collectively, the "Consumer Groups") charge that the Commission's waiver of the

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[1] *See* Initial Comments of Eastern Natural Gas Company, Pike Natural Gas Company, and Southeastern Natural Gas Company dated September 10, 2008.
[2] *See* Finding and Order, 51-52.

gas PIPP requirements for small companies is unreasonable.[3] In support of this ground for rehearing, the Consumer Groups contend that there is "no justification for denying the low-income customers of these utilities the protections of PIPP."[4] In the alternative, the Consumer Groups argue that, at most, the small gas companies should be exempted only from offering the newly-adopted features of the gas PIPP program (*e.g.*, graduate PIPP) that might increase their information technology costs, noting that limiting the exemption in this fashion would be consistent with the Clearfield companies' comments.[5] Constitution Gas Transport Co., Inc., Foraker Gas Company, Inc., KNG Energy, Inc., and The Swickard Gas Company (collectively, the "Small LDCs") hereby submit their memorandum contra the Consumer Groups' application for rehearing on this ground pursuant to Rule 4901-1-35(B), OAC.

Contrary to the assertion of the Consumer Groups, there is, in fact, a compelling justification for exempting state's smallest gas companies from the requirement that they offer PIPP to their income-eligible customers. As the Commission correctly observed in its Finding and Order, it is important that a balance be struck between the potential benefits of the PIPP program and the costs associated with offering and administering the program.[6] Although PIPP may work well for larger LDCs, the PIPP program imposes a disproportionate burden on small companies in view of the small number of potential income-eligible customers involved and the very small customer base over which the costs of the PIPP program, including the resulting revenue shortfall, the cost of the required technology, and the additional personnel time, can be spread. Indeed, the waiver granted by the Commission is consistent with Governor Strickland's "Common Sense Business Regulation" executive order, which, among other things, directed

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[3] Consumer Groups' Application for Rehearing, 17-18.
[4] *Id.*
[5] *Id.*
[6] Finding and Order, 51.

state agencies to review their rules to ensure that they are necessary and are not needlessly burdensome and, where appropriate, to make exceptions to rules and provide exemptions for small businesses.[7] In so stating, the Small LDCs in no way intend to suggest that preserving service to economically disadvantaged customers is not an appropriate objective. However, in the absence of a showing that such customers are unable to retain service through other reasonable and more cost-effective means, insisting that the state's smallest gas companies, and, ultimately, their other customers, shoulder the burden associated with the PIPP program flies in the face of the Governor's order.

Simply put, the Consumer Groups' position, at least as it relates to the Small LDCs, is a solution in search of a problem. None of the Small LDCS has ever had a PIPP customer, yet rarely, if ever, have they found it necessary to disconnect a customer for nonpayment because they routinely work with their customers to come up with payment arrangements that are actually more advantageous and/or attractive to the customer than PIPP or, for that matter, the other payment options mandated by the Commission's rules.[8] The Small LDCs take this case-by-case approach because it is far more cost-effective for them to keep a customer on line by devising a mutually acceptable payment plan than to gear up to offer PIPP, even assuming that they could recover the associated costs from their other ratepayers, which, from a practical standpoint, would be problematic at best, and, from an equitable standpoint, would be unfair to their paying customers. Indeed, the Commission has previously applauded the Small LDCs' efforts in this

[7] *See* Executive Order 2008-04S dated February 12, 2008.

[8] In their initial comments, the Small LDCs, although indicating their willingness to offer the other payment arrangements identified in Rule 4901:1-18-05(B), OAC, expressed concern that the fact that the proposed rule does not expressly identify "Any other payment arrangement the company, it is discretion. may elect to propose" could be interpreted as limiting the Small LDCs' flexibility to work out other mutually acceptable payment arrangements with their customers. Although the Commission did not address this comment in its Finding and Order, the Small LDCs assume that, in waiving the PIPP rules for small companies, the Commission's expectation was that small companies would continue to attempt to preserve service to economically disadvantaged customers by coming up mutually acceptable alternatives.

regard in relieving them from including an example PIPP bill in the bill format packages submitted for Commission approval.[9]

Although, as the Consumer Groups point out, the waiver authorized in the Finding and Order goes somewhat beyond the exemption proposed by the Clearfield companies in their initial comments, this has no bearing on the reasonableness and lawfulness of the approved exemption. PIPP was created by the Commission, not the legislature, and the Commission unquestionably has the authority to waive PIPP-related requirements where, as in the case of these very small companies, it makes sense to do so. Further, unlike the Clearfield companies, the Small LDCs do not currently have PIPP programs in place. Thus, the Consumer Groups' alternative suggestion that the waiver be limited to those newly-approved PIPP features that would increase the utility's information technology costs does not address the fundamental issue for the Small LDCs, which is whether the Small LDCs, whose customer count, in the aggregate, is only a fraction of the 15,000 customer threshold, should be subjected to the same PIPP-related requirements as entities like Columbia Gas of Ohio, Dominion East Ohio, and Vectren. As the Commission correctly found, the answer to that question is clearly no.

Finally, the Commission has specifically reserved the option of revisiting its decision to waive the requirements of the PIPP rules for small companies "if subsequent monitoring demonstrates that the low income of customers of such utility companies are unduly harmed by this exemption."[10] Thus, if, contrary to the historical experience, a pervasive problem should arise for low-income customers of an individual Small LDC, the Commission can withdraw the waiver if it deems such a measure necessary to protect the low-income customers of that

[9] *See* Case No. 03-888-AU-ORD, Entries dated June 8, 2005 and February 27, 2007.
[10] Finding and Order, 52.

company from being unduly harmed. The Small LDCs respectfully submit that this flexible approach is obviously in the best interests of all concerned.

WHEREFORE, the Small LDCs' urge the Commission to reaffirm its waiver of the requirements of the gas PIPP rules set forth in Rules 4901:1-18-12 through 4901:1-18-17, OAC, for those gas and natural gas companies that do not currently have PIPP riders and that serve fewer than 15,000 customers, and to deny the Consumer Groups' application for rehearing on this ground.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties by first-class US mail, postage prepaid, this 26th day of January 2009.

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