

**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

**MOTION FOR WAIVER
AND MEMORANDUM IN SUPPORT
OF THE OHIO GAS COMPANY**

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Joseph M. Clark (Counsel of Record)
Gretchen J. Hummel
McNEES WALLACE & NURICK LLC
FIFTH THIRD CENTER
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
jclark@mwncmh.com
ghummel@mwncmh.com

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Attorneys for The Ohio Gas Company

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MOTION FOR WAIVER OF THE OHIO GAS COMPANY

On June 25, 2008, the Public Utilities Commission of Ohio ("PUCO" or "Commission") issued an Entry requesting comments on Commission Staff's ("Staff") proposed revisions to the PUCO's rules and appendices related to credit and collections, extended payment programs and low-income payment programs, namely the percentage of income payment plan ("PIPP") program. After a workshop and the filing of initial and reply comments, the Commission issued its Finding and Order and adopted amended rules in Chapters 4901:1-17 and 4901:1-18, Ohio Administrative Code ("O.A.C"). Several commenters then filed Applications for Rehearing and the Commission issued its Entry on Rehearing on April 1, 2009.

Ohio Gas filed initial and reply comments as well as an Application for Rehearing in this rulemaking proceeding. Ohio Gas consistently encouraged the Commission to recognize the lopsided costs smaller natural gas companies would incur implementing the rules versus the benefits that might be derived from the amended rules. Specifically, Ohio Gas requested a waiver for natural gas companies serving less than 75,000 customers from the Graduate PIPP and arrearage crediting portions of the rules.

The Commission denied Ohio Gas' request for rehearing. However, the Commission also stated:

The Commission believes that the mid-size gas companies (fewer than 75,000 customers) like OGC should continue to offer PIPP. We recognize, however, that the new arrearage crediting and graduate PIPP programs may present issues unique to the midsize companies, since they have relatively fewer PIPP customers and fewer non-PIPP customers over which to spread the costs of these new programs. Therefore, we are willing to consider a company specific request for a waiver of the arrearage crediting and graduate PIPP programs where the costs to non-PIPP customers outweigh the benefits and where an alternative proposal might meet the spirit of the rules. Thus, should OGC have a specific concern OGC should make a company specific request in a separate filing for our consideration.¹

The Commission's Entry on Rehearing was consistent with its Finding and Order, which acknowledged the costs associated with implementing the rules and that the costs associated with implementing the changes to the rules may outweigh the benefits of computer system updates, especially for small gas companies with fewer customers over which to spread the costs.


Ohio Gas hereby requests a waiver from the Commission's Graduate PIPP and credit arrearage provisions. Specifically, Ohio Gas requests a waiver from Rules 4901:1-14 and 4901:1-16, O.A.C. Of note, Ohio Gas' request is not for a complete exemption from the PIPP program in the adopted rules. Rather Ohio Gas seeks an exemption from the Graduate PIPP rules as well as the arrearage crediting programs for both PIPP and Graduate PIPP customers. Finally, Ohio Gas requests an exemption from bill format modifications that might be required to address the arrearage crediting and Graduate PIPP programs.

In an attempt to meet the spirit and language of the Commission's Order that utilities immediately begin making the computer programming changes necessitated by

¹ Entry on Rehearing at 45 (April 1, 2009).

the new and modified rules, Ohio Gas endeavored to make this request as quickly as reasonably possible. Ohio Gas respectfully requests the Commission rule upon its waiver request promptly so that Ohio Gas may be afforded adequate time to make computer programming changes to the extent it is required to comply with the new and modified rules in Chapters 4901:1-17 and 4901:1-18, O.A.C.

Respectfully submitted,



Joseph M. Clark (Counsel of Record)

Gretchen J. Hummel

MCNEES WALLACE & NURICK LLC

FIFTH THIRD CENTER

21 East State Street, 17th Floor

Columbus, OH 43215-4228

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

jclark@mwncmh.com

ghummel@mwncmh.com

Attorneys for The Ohio Gas Company

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MEMORANDUM IN SUPPORT OF THE OHIO GAS COMPANY

Ohio Gas is a natural gas company providing service to approximately 45,000 customers in Northwest Ohio. As the Commission knows, Ohio Gas is uniquely situated among Ohio's local distribution companies ("LDC"). 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.² 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.³ 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

² *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).

³ Initial Comments of Eastern Natural Gas Company, Pike Natural Gas Company, and Southeastern Natural Gas Company at 1 (September 10, 2008).

often required to comply with regulatory rules, but too large to qualify for available small company exemptions.⁴

Good cause exists to grant Ohio Gas' request inasmuch as granting Ohio Gas' request acknowledges that the costs to implement the changes significantly outweigh the benefits that would be conveyed to the relatively few PIPP and Graduate PIPP customers that the newly amended rules would impact. Further, granting Ohio Gas' request is consistent with the Governor's Executive Order entitled "Implementing Common Sense Business Regulation", the Regulatory Reform Task Force Report issued by the 127th Ohio General Assembly, current legislation pending before the General Assembly, and Commission precedent.

A. The costs and burdens associated with implementing the Graduate PIPP and arrearage crediting rules far outweigh any benefits that might be derived by customers.

Ohio Gas appreciates the Commission's recognition in the Entry on Rehearing of the substantial information technology and other costs implicated by the adopted rules. The greatest challenge presented by the rules is the fact that Ohio Gas' computer system cannot be modified to automate all of the changes required by the rules. At least some manual intervention will be required to award each and every arrearage credit. Ohio Gas estimates that *manual intervention for the arrearage crediting alone* will occupy two hours per day of one of its employees. Separate and apart from the expense and time burdens associated with information technology changes that Ohio Gas can actually make to its computer system to implement the rules, this ongoing cost

⁴ 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).

of compliance represents an extreme burden for the small benefits (see below) that would accrue to PIPP and Graduate PIPP customers.

To the extent that Ohio Gas can utilize its information technology resources to comply with the Graduate PIPP and arrearage crediting rules, at least 200 hours of information technology programming changes to its billing software by outside consultants will be required as well as a minimum of 400 hours from its key employees to oversee design, testing, implementation, and training.⁵ These minimum estimates relate specifically to addressing the credit arrearage and Graduate PIPP portions of the rules and represent work that is in addition to the significant expenses and burdens on Ohio Gas associated with implementing the entirety of the new and modified rules in Chapters 4901:1-17 and 4901:1-18, O.A.C. It will take Ohio Gas approximately 30 months to design, test, and implement the arrearage crediting and Graduate PIPP rules. Ohio Gas employs only one person in its information system department and one customer accounting person capable of business systems design and would have to rely on outside consultants to implement the changes.

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. Good cause exists to grant Ohio Gas' waiver request. Further, granting Ohio Gas' request would fulfill the Commission's "obligation to balance the interests of not just the low-income customers that benefit

⁵ The estimates include the expense and time associated with changes necessary to bill backing formats.

from the payment assistance programs; but also the interests of those utility customers who pay to support these programs.”⁶

Arrearage Crediting

As of May 2009, only 918 Ohio Gas customers were enrolled in the PIPP program. Ohio Gas averaged 562 PIPP customers per month over the last 12 months. Of the 918 PIPP customers, 270 PIPP customers had a credit balance on their account. Of Ohio Gas PIPP customers, only 227 customers stayed on the PIPP program for the entire past 12 months and only 77 PIPP customers have paid their bill on time at least 9 times in last 12 months. Twenty four of these 77 PIPP customers have a credit balance on their account. The chart below breaks out PIPP customer payment data by payment amounts.

Customer # PIP	PIPP Payment Amount	Total Arrears	Average Arrears	Customers # with Credits
52	0	\$30,815.24	\$592.60	13
43	1.00 - 25.00	\$48,449.27	\$1,126.73	4
114	26.00 - 50.00	\$98,895.95	\$867.51	22
224	51.00 - 75.00	\$185,897.49	\$829.90	68
165	76.00 - 100.00	\$155,775.10	\$944.09	57
100	101.00 - 125.00	\$71,875.95	\$718.76	37
87	126.00 - 150.00	\$60,718.70	\$697.92	23
49	151.00 - 175.00	\$42,804.58	\$873.56	18
49	176.00 - 200.00	\$33,893.14	\$691.70	18
35	Over 200.00	\$33,040.96	\$944.03	10
918		\$762,166.38	\$830.25	270

Extensive information technology changes will be needed to comply with the arrearage crediting rules. Ohio Gas' billing program will need to be modified to calculate and store current monthly arrearage credit amounts on each PIPP customer record. To apply the monthly arrearage credits, a daily update would be required to

⁶ Finding and Order at 56.

check if PIPP and Graduate PIPP customers made full and timely payments and, if so, the defined credit for the customer total arrearage would then have to be calculated and reported. These credits must be manually applied to customer accounts. Ohio Gas' computer systems cannot be reprogrammed to apply the credit without manual intervention. This credit would then need to print on the next customer bill.

Thus, the arrearage crediting rules would require Ohio Gas to undertake an expensive and time consuming overhaul of its information technology assets for approximately 75 customers per month. Additionally, over one quarter of Ohio Gas' PIPP customers have credit balances and there is no balance against which to apply the arrearage credits. The data shown above also demonstrates that less than 100 PIPP customers have made on-time payments frequently enough to garner any significant benefit from the arrearage crediting.

Graduate PIPP

The adopted Graduate PIPP program rules automatically place a PIPP customer in the Graduate PIPP program if the customer voluntarily terminates participation in the PIPP program or if the customer no longer qualifies for PIPP.⁷ 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.⁸ 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.⁹ Ohio Gas respectfully submits that the number of customers choosing to

⁷ 4901:1-18-16(A), O.A.C.

⁸ 4901:1-18-13(A), O.A.C.

⁹ 4901:1-18-14(A), O.A.C.

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. Ohio Gas respectfully suggests that very few Ohio Gas customers would actually utilize the Graduate PIPP program.

Implementing this program would require extensive program changes to calculate Graduate PIPP customers' bills as well as to apply the arrearage crediting rules as they apply to Graduate PIPP customers. Ohio Gas' current system does not keep the data needed to accommodate this new program and fields would need to be added to gather the data to correctly calculate Graduate PIPP customers' bills. Ohio Gas should not be required to undertake the expense and effort to implement a program that might be used by approximately .0002% of Ohio Gas' customers.

Ohio Gas previously noted¹⁰ 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. 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 provided a mechanism by which to retain their gas service while also paying their arrearages at a manageable pace.

¹⁰ Ohio Gas Reply Comments at 4; Application for Rehearing of Ohio Gas at 5 (of memorandum in support).

Bill Format Modifications

Ohio Gas also requests an exemption from any bill format modifications that the Commission might require to complement the arrearage crediting and Graduate PIPP rules. Staff has explained to Ohio Gas the bill format modifications required as a result of the new and modified rules. The bill modifications Staff is going to require are extensive and reformatting Ohio Gas' bill backings to include the information associated with the arrearage crediting and Graduate PIPP programs will add significant time burdens and expenses on top of what will be required just to comply with the new and modified rules. The benefits that might be associated with modifying bill backings to include credit arrearage and Graduate PIPP information are far outweighed by the costs, especially in light of the small number of PIPP and Graduate PIPP customers Ohio Gas may serve under the PIPP and Graduate PIPP rules. Finally, requiring Ohio Gas to include this information on its bill backings would be unnecessary should the Commission grant Ohio Gas' waiver request from the arrearage crediting and Graduate PIPP rules.

B. Governor Strickland's Executive Order, the Regulatory Reform Task Force Report, pending legislation, and Commission precedent support Ohio Gas' waiver request.

Granting Ohio Gas' waiver request would also further the goals contained in Governor Ted Strickland's Executive Order entitled "Implementing Common Sense Business Regulation."¹¹ Pursuant to the Executive Order, administrative agencies should "make exceptions to rules and provide exemptions for small businesses."¹² The

¹¹ Executive Order, *Implementing Common Sense Business Regulation* (February 12, 2008), (hereinafter cited as "Executive Order").

¹² Executive Order at 3 (paragraph 4g).

Executive Order also mandates that administrative agencies strike “a reasonable balance between the underlying regulatory objectives and the burdens imposed by regulatory activity.”¹³ Ohio Gas is the very type of business¹⁴ that the Governor’s Executive Order contemplates granting regulatory relief. Granting Ohio Gas’ request would achieve a proper balance between the regulatory objectives sought to be achieved by such changes while also acknowledging the magnitude of the burdens imposed by the proposed rule modifications upon Ohio Gas.

Granting Ohio Gas’ waiver request would also be consistent with the Regulatory Reform Task Force Report, a recently released report by a bipartisan committee of the 127th General Assembly that “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.¹⁵ The Report concludes that “some regulations are unnecessarily duplicative and burdensome and the cost of compliance can exceed the benefit of the regulated activity” and warns against excessive regulation on smaller businesses that have fewer resources to navigate regulatory compliance.¹⁶ The Regulatory Reform Task Force Report spurred the introduction and passage of Senate

¹³ *Id.* at 2 (paragraph 4c).

¹⁴ Ohio Gas employs 85 people and therefore 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.

¹⁵ 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.

¹⁶ Regulatory Reform Task Force Report at 4.

Bill 3 earlier this year in the Ohio Senate, which requires administrative agencies to consider the impact of their rules on small businesses.¹⁷ Senate Bill 3 is pending in the State Government Committee of the Ohio House of Representatives. Granting Ohio Gas' waiver request furthers the regulatory common sense espoused by the Regulatory Reform Task Force Report and pending Senate Bill 3.

Finally, 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.¹⁸ This exemption permitted Ohio Gas, and ultimately its customers, to avoid significant information technology costs to implement those rules. An exemption in this instance would once again recognize the imbalance between the benefits to customers and the costs associated with the benefits afforded by the adopted rules.

The Commission should grant Ohio Gas' waiver request inasmuch as doing so would be consistent with the above-described policy objectives.

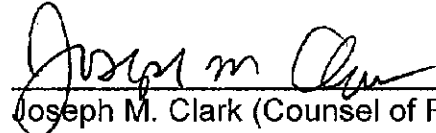
III. CONCLUSION

Ohio Gas respectfully requests the Commission grant its Motion for Waiver inasmuch as Ohio Gas has shown good cause to grant the waiver. Ohio Gas appreciates the Commission's consideration of its request.

¹⁷ http://www.legislature.state.oh.us/bills.cfm?ID=128_SB_3.

¹⁸ *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).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph M. Clark", is written over a horizontal line.

Joseph M. Clark (Counsel of Record)

Gretchen J. Hummel

McNEES WALLACE & NURICK LLC

Fifth Third Center

21 East State Street, 17th Floor

Columbus, OH 43215-4228

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

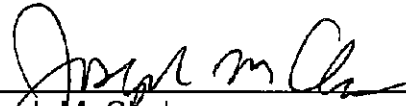
jclark@mwncmh.com

ghummel@mwncmh.com

Attorneys for The Ohio Gas Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion for Waiver and Memorandum in Support of The Ohio Gas Company* which was served upon the following parties of record this 27th day of May, 2009, via electronic transmission, hand-delivery or first class mail, postage prepaid.



Joseph M. Clark

Lisa G. McAlister
McNees Wallace & Nurick
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215-4228

ON BEHALF OF VECTREN ENERGY DELIVERY OF OHIO

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

ON BEHALF OF CONSTITUTION GAS, TRANSPORT CO., INC., FORAKER GAS COMPANY, KNG ENERGY, INC., THE SWICKARD GAS COMPANY AND THE OHIO DEPARTMENT OF DEVELOPMENT

James W. Burk, Counsel of Record
Ebony L. Miller
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

ON BEHALF OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY

Eric Gallon
Porter Wright Morris & Arthur
41 South High Street, Ste. 3000
Columbus, OH 43215

ON BEHALF OF COLUMBIA GAS OF OHIO

David A. Kutik
Andrew J. Campbell
Jones Day

325 John H. McConnell Boulevard, Suite 600
P.O. Box 165017
Columbus, OH 43216-5017

ON BEHALF OF DOMINION EAST OHIO

David C. Rinebolt
Colleen L. Mooney
1431 Mulford Road
Columbus, OH 43212

ON BEHALF OF OHIO PARTNERS FOR AFFORDABLE ENERGY

Bill Faith
175 S. Third Street
Columbus, OH 43215

ON BEHALF OF COALITION ON HOMELESSNESS AND HOUSING IN OHIO

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

ON BEHALF OF AARP-OHIO

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

**OHIO ASSOCIATION OF SECOND HARVEST
FOODBANKS**

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

**OHIO ASSOCIATION OF COMMUNITY
ACTION AGENCIES**

Elizabeth L. Anstaett,
Dreher Langer & Tomkies L.L.P.
2250 Huntington Center
41 S. High Street
Columbus, OH 43215

ON BEHALF OF ACE CASH EXPRESS

Thomas E. Lodge
Thompson Hine
41 S. High St., Suite 1700
Columbus, OH 43215

ON BEHALF OF OHIO TELECOM ASSOCIATION

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

ON BEHALF OF AT&T SERVICES, INC.

Janine L. Migden-Ostrander
Consumers' Counsel
Richard C. Reese
David C. Bergmann
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215

**ON BEHALF OF THE OFFICE OF THE OHIO
CONSUMERS COUNSEL**

Tim Walters
4115 Bridge Street
Cleveland, OH 44113

**ON BEHALF OF THE MAY DUGAN CENTER,
CONSUMERS FOR FAIR UTILITY RATES, UNITED
CLEVELANDERS AGAINST POVERTY**

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

ON BEHALF OF CITIZENS UNITED FOR ACTION

Mike Piepsny
3631 Perkins Avenue, Suite 3A
Cleveland, OH 44114

ON BEHALF OF CLEVELAND TENANTS ASSOC.

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

**ON BEHALF OF EDMONT NEIGHBORHOOD
COALITION**

Michele Lucas
108 North 2nd Street
Dennison, OH 44521

**ON BEHALF OF HARCATUS TRI-COUNTY
COMMUNITY ACTION ORGANIZATION**

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

ON BEHALF OF PRO SENIORS

Michael Smalz
Ohio State Legal Service Assoc.
555 Buttlers Ave.
Columbus, OH 43215

**ON BEHALF OF APPALACHIAN PEOPLES ACTION
COALITION**

Dale Arnold
Ohio Farm Bureau
P.O. Box 182383
Columbus, OH 43218

ON BEHALF OF OHIO FARM BUREAU FEDERATION

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

**ON BEHALF OF OHIO INTERFAITH POWER AND
LIGHT**

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

ON BEHALF OF OHIO FARMERS UNION

Douglas Lumpkin
Job and Family Services
80 E. Fulton Street
Columbus, OH 43215

**ON BEHALF OF FRANKLIN COUNTY JOB AND
FAMILY SERVICES**

Jeffrey A. Diver
Executive Director
P.O. Box 1322
Hamilton, OH 45012

**ON BEHALF SUPPORTS TO ENCOURAGE LOW-
INCOME FAMILIES**

Joe Meissner
3030 Euclid Suite 100
Cleveland, OH 44115

**ON BEHALF OF THE EMPOWERMENT CENTER OF
GREATER CLEVELAND, NEIGHBORHOOD
ENVIRONMENTAL COALITION, UNITED
CLEVELANDERS AGAINST POVERTY, CLEVELAND
HOUSING NETWORK, AND CONSUMERS FOR FAIR
UTILITY RATES**

Stephen M. Howard
52 E. Gay Street
P.O. Box 1008
Columbus, OH 43216

**ON BEHALF OF EASTERN NATURAL GAS
PIKE NATURAL GAS AND SOUTHEASTERN GAS**

Jenni Ricci-O'Donnel
CheckFreePay Corp.
15 Sterling Drive
Wallingford, CT 06492

ON BEHALF OF CHECKFREE PAY CORP.

Judi Sobecki
Dayton Power & Light Company
1065 Woodman Drive
Dayton, OH 45432

ON BEHALF OF DAYTON POWER & LIGHT

Marvin Resnik
American Electric Power
1 Riverside Plaza, 29th Floor
Columbus, OH 43215

ON BEHALF OF AMERICAN ELECTRIC POWER

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

**ON BEHALF OF CINCINNATI BELL
TELEPHONE COMPANY LLC**

Paul Colbert
Duke Energy Ohio
139 East Fourth Street
Cincinnati, OH 45201

ON BEHALF OF DUKE ENERGY OHIO