BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Chapter 4901:1-13, Ohio Administrative Code.	)))	Case No. 09-326-GA-ORD

JOINT REPLY COMMENTS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND OHIO STATE LEGAL SERVICES ASSOCIATION

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June 8, 2009

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I. INTRODUCTION

On April 22, 2009, the Public Utilities Commission of Ohio ("PUCO" or "Commission") issued an Entry calling for comments on proposed amendments by the PUCO Staff to the Minimum Gas Service Standards ("MGSS") rules, Ohio Adm. Code 4901:1-13. The MGSS rules are intended to promote reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices with regard to such matters as metering, customer service levels, billing and payments, etc. The Office of the Ohio Consumers' Counsel ("OCC") and the Ohio State Legal Services Association ("OSLSA") together ("Joint Advocates") submitted Initial Comments on May 22, 2009. In addition, Initial Comments were filed by Columbia Gas of Ohio, Inc. ("COH"); Ohio Home Builders Association, Inc. ("OHB"); Ohio Gas Company ("Ohio Gas"); and Joint Comments were filed by the East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") and Vectren Energy Delivery of Ohio, Inc. ("VEDO"). The Joint Advocates herein reply to the Initial Comments filed by the other parties.

II. ARGUMENT

4901:1-13-01(A)

Ohio Gas objects to the proposed definition of a bona fide dispute because, it claims, any complaint registered with the PUCO call center could qualify as a bona fide dispute and could result in delay of disconnection of service.[1] Ohio Gas suggests that the Commission reject the proposed rule, or in the alternative, that the definition for bona fide dispute include language that the complaint be made in good faith and without fraud or deceit.[2] The Joint Advocates are concerned about the possibility of customers being disconnected because of an error from inaccurate billing or other circumstances that are outside of the customer's control. Mistakes do happen in customer billings, and customer contacts with the PUCO or OCC call centers may be the venue in which the billing issues are initially raised and addressed with the company. Although it is understandable and perhaps desirable to raise the standard for determining a "bona fide dispute" to one that is "made in good faith without fraud or deceit", as a practical matter, such a standard is unenforceable. Fraud is necessarily a subjective standard and begs the question of who is the arbiter, since one is not suggested in the comments; however, we assume it would not be a unilateral decision by the company.

It also leaves open the question of the definition of fraud, which typically takes on a legal definition. One possible definition would be:

1) A false statement

2) in reference to a material fact

3) made with knowledge of its falsity

4) with intent to deceive, and

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[1] Ohio Gas Initial Comments, at 2.
[2] Id.

5) with action taken in reliance upon the representation.

In addition, fraud allegations are usually required to be proven by "clear and convincing evidence" a standard of proof higher than the typical "preponderance of the evidence" standard in civil cases. There must be an intent (to deceive) factor when determining fraud. In light of the rigorous legal definition and high burden of proof for establishing fraud, neither a company representative nor a PUCO call center representative is in a position to unilaterally determine through a phone call that a customer has committed fraud. Consequently, the Joint Advocates fear that such rigorous standards for determining fraud as described above, will be invariably and conveniently diluted as there will be a rush to judgment concerning whether the dispute is bona fide or fraudulent, especially if the company is left to unilaterally decide, since they have a vested interest to disconnect service. This result would seriously compromise consumer protections. Therefore, Joint Advocates recommend that the Ohio Gas recommendation be rejected and that the recommendation made by the Joint Advocates in the initial comments be adopted by the Commission.[3]

4901:1-13-04(G)(2)

COH asserts that the proposed rules apply the consumer protection provisions in R.C. 4933.28, to any situation in which a natural gas company fails to read a meter and not just to situations involving continuing problems under its control.[4] COH contends that the rule as written is inconsistent with Ohio Adm. Code 4901:1-13-04(G)(1)(c) which states that a gas company's adherence to its meter-reading plan creates a rebuttable presumption that a failure to read the meter once in a twelve-month period was sufficient to demonstrate that the matter was beyond its control.[5]

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[3] Joint Advocates, Initial Comments, at 3.
[4] COH Initial Comments at 4.
[5] COH Initial Comments at 5.

The Joint Advocates addressed this issue in their initial comments and maintain that the mere acceptance of a meter-reading plan should not create a rebuttable presumption that the natural gas company complied with Ohio law and/or Commission standards.[6] The Joint Advocates assert that the current rule is abundantly clear that natural gas companies are responsible for reading meters at least once every twelve months. If the natural gas company fails to read the meter, the Commission's rules provides for other specific consumer protection rights.[7] The issue of whether or not the factors that contributed to the meter not being read were continuing problems under a natural gas company's control should be determined through an administrative process and not through compliance with some arbitrary meter-reading plan.

COH recommends deleting the words in the existing rules "a continuing problem under its control" and in their place substituting the words "any reason." COH's recommendation could lead to unreasonable and unjust results for consumers. The Joint Advocates recommend that the Commission disregard COH's recommendation because, under COH's recommendation, the determination as to whether the problem is under the natural gas company's control is both arbitrary and subjective, and would provide the natural gas company an opportunity to minimize the effectiveness of the Commission's rule. A natural gas company could otherwise unilaterally assert countless excuses why meters are not being read at least one time every twelve months, as required by the Commission, and the company could thereby deny customers their rights under the Commission's rules to receive actual meter reads. The Staff's more consumer-oriented proposal for this rule should be adopted.

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[6] Joint Advocates Initial Comments at 11.
[7] R.C. 4933.28, Correcting residential utility billings.

4901:1-13-05(C)(2)

Comments filed jointly by DEO and VEDO recommend that the rule be modified to exclude from the MGSS standards appointments that were missed due to the natural gas company's response to emergencies and those appointments that are cancelled by customers.[8] Under the existing MGSS rule, natural gas companies are required to demonstrate that 95% of the scheduled appointments were completed on a monthly basis. The DEO/VEDO recommendation is unreasonable because the practical effect of excluding missed appointments is to skew the level of the service being provided to consumers under the analysis required by the MGSS rules. Excluding missed appointments due to alleged emergencies, from the monthly MGSS calculations, is inappropriate because gas companies could take unfair advantage of consumers by liberally interpreting situations causing appointments to be missed as emergencies. The natural gas companies should be required to report any month in which 95% of the scheduled appointments are not fulfilled, regardless of cause. By excluding missed appointments due to a natural gas company's response to alleged emergencies and appointments cancelled by customers, from the MGSS calculation, the true level of service being provided is distorted. Joint Advocates recommend the Commission reject the DEO and VEDO recommendation.

4901:1-13-05(C)(3)

COH proposes that electronic notification be added to the proposed rule to expand upon the different call-ahead options that may be used to alert customers that the company is en route for an appointment.[9] COH asserts that e-mails or text messages could be used to alert the customer of their imminent arrival. DEO and VEDO currently use different technologies for their call-ahead

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[8] DEO and VEDO Initial Comments at 5.
[9] COH Initial Comments at 11.

capabilities.[10] DEO provides automated outbound calls that do not require an affirmative answer from the consumer. VEDO makes live calls and will make repeat calls if the customer does not answer.

Adding the word "electronic" to the rule as proposed by COH does not necessarily mean that the notification will be provided to consumers in real time. There could be reasons why receipt of e-mails or text messages may be delayed. In addition, the inclusion of electronic notification could result in the natural gas companies claiming to have fulfilled their responsibility for meeting a scheduled appointment by simply sending an e-mail. Under Columbia's proposal, if the customer failed to respond to the e-mail or text message, the company would cancel the appointment, claiming the customer wasn't home without confirmation that the electronic message was received.

DEO and VEDO claim to be providing better customer service now than would be provided under the proposed rule.[11] DEO comments that the Company places outbound calls to alert the customer, but DEO does not require an answer, and appointments are never cancelled for such reason. The Commission should consider adopting DEO's outbound call procedure instead of the PUCO Staff's proposed amendment to the rule.[12] The Staff's proposed change to this rule could create more hardship for consumers because it explicitly states that the appointment will be considered cancelled if the customer does not respond to the call.[13]

COH's suggestion for the addition of electronic notification and the additional changes proposed by DEO and VEDO provide more examples of how the call-ahead rule as proposed by the Staff is wrought with problems and should be rejected by the Commission. However, if the

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[10] DEO and VEDO Initial Comments at 6.
[11] DEO and VEDO Initial Comments at 7.
[12] DEO and VEDO Initial Comments at 6.
[13] DEO and VEDO Initial Comments at 7.

Commission decides to modify this rule, the Joint Advocates' recommendation in their initial comments should be adopted and as is the current practice of VEDO, all gas companies should be required to make at least two calls prior to canceling an appointment.[14]

4901:1-13-05(D)

DEO and VEDO oppose the new requirement that 95% of natural gas repairs requiring a shut-off be completed by the next day on the basis that both natural gas companies have just assumed responsibility for repair of service lines and new performance standards are premature.[15] DEO and VEDO also find the term "complete the repair" to be non-specific and could imply that a repair is not complete until the appliance pilots are re-lit.[16] COH requests that the Commission set forth the factors and analysis it considered in establishing a 95% baseline.[17] Ohio Gas recommends that the rule more accurately describe the portion of service line that is affected by the rule, and that LDC's be given more flexibility for scheduling during the onset of the winter heating season or other busy times during the year.[18]

Joint Advocates oppose the recommendation made by DEO and VEDO that the term "business day" be added to the rule. Natural gas companies are compensated through distribution rates for maintaining sufficient resources to handle situations that arise during non-business hours. Requiring customers to wait for two to three days for the next business day to complete a repair is unjust and unreasonable, and subjects customers to potentially significant hardship and expense

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[14] Joint Advocates Initial Comments at 18.
[15] DEO and VEDO Initial Comments at 7.
[16] DEO and VEDO Initial Comments at 9.
[17] COH Initial Comments at 11.
[18] Ohio Gas at 3.

during the winter heating season. Customers who are temporarily without natural gas service may be unable to remain in the household and without natural gas service these customers could also face the risk of inside pipes bursting during cold weather.

Similarly, the Joint Advocates are concerned about the recommendation made by DEO and VEDO that a completed repair should not be defined to include re-lighting of pilot lights.[19] Re-lighting pilot lights is the final step in a process that places the customer back in service and that should constitute the completion of the repair. Furthermore, many customers are unable to re-light the pilot lights themselves and depend on the natural gas company to perform this service as part of the restoration of service. If the pilot lights cannot be re-lit by the natural gas company because of inside piping issues or needed appliance repairs, that is a circumstance beyond the natural gas company's control, and in that event, the repair for purposes of this rule can be assumed to be completed because the natural gas company fulfilled all of its responsibility.

The claim made by DEO and VEDO, as well as Ohio Gas, that baseline standards for repair of service lines are premature is simply unfounded. None of the utilities provided any concrete data in comments to support their claim. COH has proposed that the Commission set forth the factors that it considered in determining the proposed repair standard, instead of providing data itself.[20] Perhaps the most insightful information was provided by DEO and VEDO that the duration of repair depends on the type of service line.[21] According to DEO and VEDO, the Commission's standard for completing repairs for service lines that are smaller than 2 inches in diameter is of little concern.[22] Since most, if not all, residential service lines are smaller than 2 inches, the Joint Advocates

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[19] DEO and VEDO Initial Comments at 9.
[20] COH Initial Comments at 11.
[21] DEO and VEDO Initial Comments at 8.
[22] DEO and VEDO Initial Comments at 6.

recommend that the Commission consider different timeliness of repair standards depending on the diameter of service line.

DEO and VEDO made recommendations to modify the MGSS rule by creating the opportunities for natural gas companies to build delay into their repair completions by adding business day to the rule and by excluding re-lighting pilot lights from the determination as to when a repair has been completed. These recommendations should also be rejected by the Commission.

4901:1-13-11(A)

DEO and VEDO comment that the proposed change in MGSS requirements from rendering bills "regularly" to rendering bills "monthly" is not necessary because the bill cycle could be slightly longer or shorter than 30 days.[23] This appears to be yet another example of natural gas companies resisting Commission requirements that they operate according to established minimum standards. Customers have a right to be billed accurately and fairly and this includes natural gas companies rendering bills on a monthly basis. Trying to pay natural gas bills that are for a period of time longer than 31 days can pose a hardship on consumers by leading to: delayed payments, the imposition of extra charges to pay the bill, and/or late payment fees. The DEO and VEDO comment should be rejected and the Joint Advocates recommendation for defining a month as 28 – 31 days should be adopted by the Commission.[24]

4901:1-13-11(B)(11)

COH recommends that the total charges attributed to gross receipts taxes be eliminated from customer bills and that instead, the rate attributed to the gas cost recovery ("GCR") and gross receipts

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[23] DEO and VEDO Initial Comments at 10.

[24] Joint Advocates Initial Comments at 27.

tax rate be provided on the bill.[25] COH asserts that this information is more directly comparable for customers who are evaluating competitive choices. However, the Joint Advocates can see merit in having both the gross receipts tax rate and the total charges attributed to the gross receipts tax listed on the bill. Translating the gross receipts tax rate into a total charge on the bill can be difficult for some customers. The Commission should disregard COH's recommendation.

4901:1-13-11(E)(1)

Under Staff's proposed modification to this rule, natural gas companies would be required to provide signage containing their logo to authorized agents. DEO and VEDO seek clarification on the expectations for the signage, and they have also raised concern for consideration of the costs of compliance associated with the proposed rule.[26] Both companies query if a simple sticker will suffice for compliance with the proposed rule.

Unfortunately, because of the utilities' decision to close company neighborhood business offices, customers must rely on payment agents as an option to pay their utility bills. It is important that customers are able to differentiate between authorized agents and unauthorized payment centers. Customers who pay utility bills to unauthorized payment centers are unreasonably subjected to the risk associated with the delay in payment processing by the unauthorized payment centers, and if those customers who make their payment at an unauthorized payment center are experiencing collection issues they could potentially be disconnected even though a timely payment was made.

The natural gas companies have contractual relationships with some businesses, authorized agents, to accept payment on their behalf. The natural gas companies should aggressively promote

[25] COH Initial Comments at 11.
[26] DEO and VEDO Initial Comments at 10.

the use of these businesses as opposed to unauthorized bill payment centers. This is consistent with the recent rules promulgated by the Commission involving the Electric Service and Safety Standards. The new rules require electric utilities to distinguish authorized agents using signage with company logo's and other indicators that affirm authorized agents from other bill payment locations.[27] The Joint Advocates emphasize that signage at authorized agents should be sufficiently sized to prominently display the fact that the agent is authorized to accept payment for the natural gas company.

4901:1-13-11(E)(2)

DEO and VEDO state that the $2.00 charge proposed by the PUCO Staff for payments made to authorized agents is reasonable.[28] The rules currently limit the fee for payments made to authorized agents at two times the cost of a first class stamp or $0.88. The Joint Advocates are unaware of any justification provided by either the natural gas utilities or the authorized agents that warrants an increase in the fee. Furthermore, a $2.00 fee for paying a natural gas bill could not be considered reasonable when many customers have no other option to pay their bill except through an authorized agent. The Joint Advocates reiterate that raising the fee for paying utility bills at this time is unreasonable in light of the fact that the state is currently experiencing a near record high 10.2% unemployment level[29] and other economic challenges that are stressing consumer finances to the limit. The Commission should reject the Staff's proposal and the DEO and VEDO's support for the increase.

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[27] *In the Matter of the Commission Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24, and 4901:1-25 of the Ohio Administrative Code*, Finding and Order at 104, (November 5, 2008).
[28] DEO and VEDO Initial Comments at 11.
[29] http://jfs.ohio.gov/RELEASES/unemp/200905/UnempPressRelease.asp.

DEO and VEDO also seek clarification that fees charged by third-party entities such as Internet Service Providers to accept natural gas payments should not be limited by the Commission because the natural gas companies have no ability to dictate such fees.[30] The current rules authorize charges for processing payments by check over the phone, credit card, or electronic money transfers. However, there are no limitations applied by the Commission, or the natural gas companies for the magnitude of such charges. As a result, natural gas customers in Ohio are made to pay anywhere between $3.50 and $6.95 just to pay their gas bill by credit card or electronic check. The Joint Advocates argue that natural gas companies should exert far more influence in reducing the magnitude of these charges. Joint Advocates contend that entities that accept electronic check payments, credit card payments, internet payments, and electronic fund transfers are acting as authorized agents for the natural gas company and the fee for such payments should be limited to no more than the fee charged for accepting payments by other authorized agents.

4901:1-13-12(D)(1)(b)

COH recommends that the Commission add language in the rule that enables the natural gas companies to provide account numbers of customers that participate in PIPP and/or HEAP to agencies that serve low-income customers through PUCO-approved energy conservation programs without prior consent.[31] COH concludes that high-use PIPP customers could then be more easily targeted for energy efficiency services. The Joint Advocates are opposed to the release of customer account numbers without the prior consent of the consumer. The Commission Entry on Rehearing in the recent Credit and Disconnection rulemaking affirms the Commission requirement that PIPP

[30] DEO and VEDO Initial Comments at 11.
[31] COH Initial Comments at 12.

customers are required to apply for all weatherization programs for which the customer is eligible and to sign a release form that effectuates this requirement.[32]

While the Joint Advocates support Columbia's efforts to help low-income customers reduce usage, the protection of customer privacy is a major concern that necessitates more control of the account number. There are many reasons to protect the customer account number, and one of the more pronounced reasons is the anti-slamming consumer protections in the Ohio gas choice programs.[33] PIPP customers cannot specifically participate in choice, but there are many other low-income recipients of the home energy assistance program and weatherization, who are not participating in the PIPP program, and could potentially be slammed if their account numbers are not being adequately protected. Providing blanket authority for natural gas companies to release account numbers without customer consent places some low-income customers at risk of having their natural gas supplier changed without authorization. If the goal is to identify large-use PIPP/HEAP customers for conservation and weatherization benefits, then there should be less intrusive methods employed to accomplish this goal without violating the privacy rights of these customers. Joint Advocates recommend that the Commission disregard COH's recommendation.

III. CONCLUSION

The Joint Advocates appreciate the opportunity to provide reply comments to help strengthen the consumer protection standards of the natural gas industry in Ohio. While considerable progress has been made over the last five years in implementing baseline standards, this rulemaking is an important opportunity to better balance the needs of consumers and the interests of the natural gas

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[32] 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, Entry on Rehearing, April 1, 2009, at 53.

[33] 4901:1-29-06, See also 4901:1-29-08.

industry in Ohio. Adoption of the Joint Advocates' Initial Comments and these Reply Comments will result in significant improvements in the MGSS standards.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Joint Reply Comments by the Office of the Ohio Consumers' Counsel and Ohio State Legal Services Association* has been electronically filed and served upon the below-named counsel via Electronic Mail this 8th day of June 2009.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/8/2009 3:19:44 PM

in

Case No(s). 09-0326-GA-ORD

Summary: Reply Joint Reply Comments by the Office of the Ohio Consumers' Counsel and Ohio State Legal Services Association electronically filed by Mrs. Mary V. Edwards on behalf of Sauer, Larry S. Mr. and Office of the Ohio Consumers' Counsel