

**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-)	Case No. 08-723-AU-ORD
13-11, 4901:1-15-17, 4901:1-21-14, and)	
4901:1-29-12 of the Ohio Administrative)	
Code.)	

**MEMORANDUM CONTRA OHIO GAS COMPANY'S MOTION FOR
WAIVERS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

On May 27, 2009, Ohio Gas Company ("Ohio Gas") filed a Motion for Waiver in this proceeding. Ohio Gas asks the Public Utilities Commission of Ohio ("Commission" or "PUCO") to grant it a waiver "from the Commission's Graduate [Percentage of Income Payment Plan] PIPP and credit arrearage [sic] provisions. Specifically, Ohio Gas requests a waiver from Rules 4901:1-14 and 4901:1-16, O.A.C."'¹

The arrearage crediting provision in Ohio Adm. Code 4901:1-14 ("Rule 14") and the Graduate PIPP program in Ohio Adm. Code 4901:1-16 ("Rule 16") are two of the key consumer benefits established in the recent revisions to the Commission's PIPP rules. Ohio Gas' reasons for requesting a waiver are inadequate, and do not meet the Commission's standard for this waiver; the Commission stated that it would consider "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

¹ Ohio Gas Motion for Waiver (May 27, 2009) at 2. Ohio Gas also requests a waiver from the bill format modifications that might be required as a result of these two rules. Id.

spirit of the rules.”² Therefore, the Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of residential utility consumers, opposes Ohio Gas’ waiver request.

To begin, it is notable that Ohio Gas filed its request for a waiver **before the Commission ever established an effective date** for the rules in question. On June 3, 2009, the Commission issued an Entry that set the effective date for these rules as November 1, 2010. Apparently, Ohio Gas had determined prior to that time that it would never be able to comply with the rule.

Ohio Gas is merely arguing the same point that it unsuccessfully argued in Initial Comments, Reply Comments, and the Application for Rehearing. In Initial Comments, Ohio Gas requested a permanent waiver from the rule modifications, but also suggested that in the alternative, time be granted to allow for full implementation of the rules. (It specifically proposed two years as sufficient time.)³

In the Entry initiating this proceeding, the Commission had requested an assessment of the amount of time needed to implement the proposed program modifications.⁴ In its initial comments, Ohio Gas estimated between 360 and 500 programming hours and 300 oversight hours to implement **all** the proposed changes.⁵ Now, however, Ohio Gas states that 200 programming hours and 400 oversight hours would be needed for implementing just the Graduate PIPP and arrearage crediting rules and 30 months would be needed to implement this subset of requirements.⁶

² Entry on Rehearing (April 1, 2009) at 45.

³ Ohio Gas Initial Comments (June 10, 2008) (“Initial Comments”) at 4.

⁴ Entry (June 25, 2008), Appendix A, at 2.

⁵ Initial Comments at 3.

⁶ Motion for Waiver, Memorandum in Support at 6.

Ohio Gas claims that the cost of implementation dwarfs the possible benefits for consumers.⁷ Yet even if the 600 hours were correct (and we have nothing other than Ohio Gas' assertions to go on), the cost of 600 programming hours, even if it were fully loaded at \$150/hour, would be \$90,000.⁸ According to the company, its 918 current PIPP customers owe \$762,166 in arrears.⁹ Clearly, the benefit to those customers of having their arrearages forgiven far outweighs the asserted cost to Ohio Gas.¹⁰

Ohio Gas claims that granting the waiver request will fulfill an obligation of the Commission to balance the interests between the PIPP customers that benefit from the program and all other customers that pay for the program.¹¹ Ohio Gas cites a statement by the Commission referring to the allocation of emergency HEAP dollars as support for Ohio Gas' argument.¹² Actually, Ohio Gas should recall that PIPP customers also contribute to the cost of the PIPP program by paying the same PIPP rider that non-PIPP customers pay.

Ohio Gas bases its entire analysis on account data for the 918 PIPP customers who were enrolled in May 2009.¹³ This analysis is essentially meaningless, considering

⁷ Id.

⁸ It is unclear over what period these costs would or should be amortized, but it is clear that the costs of an ongoing program should not be compared to a one-time estimate of benefits.

⁹ Id. at 7. Furthermore, this does not include the benefit for final PIPP customers. As of January 2009, there were 2,168 final PIPP customers and a total arrearage of approximately \$1.4 million. January 2009 OSCAR Report.

¹⁰ Ohio Gas also asserts that "manual intervention for the arrearage crediting alone will occupy two hours per day of one of its employees." Motion for Waiver, Memorandum in Support at 5 (emphasis in original). This unsupported assertion lacks any credibility.

¹¹ Motion for Waiver, Memorandum in Support at 6-7.

¹² The December 17, 2008 Finding and Order in this proceeding (at 56) refers to the issue if E-HEAP can be applied to make missed PIPP payments. It has nothing to do with the "social injustice" argument Ohio Gas is attempting to make.

¹³ Motion for Waiver, Memorandum in Support at 7.

that the PIPP modifications will result in lower payment levels, leading to more frequent payments. And the fact that under the current rules “only 77 PIPP customers have paid their bills on time in the last 12 months”¹⁴ ignores the fact that the new rules give a credit towards arrearages for **each** month when timely payment is made. Thus even if payment patterns did not change, the benefits to PIPP customers from arrearage crediting would be substantial. And the whole purpose of the arrearage crediting program is to incent more timely payments from PIPP customers, which will mean that more PIPP customers will benefit.¹⁵

Ohio Gas asserts that its “computer systems cannot be reprogrammed to apply the credit without manual intervention.”¹⁶ Despite the antiquity of its technology, the company did manage to issue an astounding 3725 disconnection notices in the month of January 2009.¹⁷ In addition, the Company had the technical wherewithal to manage 374 deposits on PIPP accounts valued in excess of \$42,000.¹⁸

With regard to the Graduate PIPP program, Ohio Gas claims that only ten of its customers in 2008 moved from PIPP to another payment plan.¹⁹ The graduate PIPP program can be used both by customers who are eligible for PIPP, and those who have

¹⁴ Id.

¹⁵ In addition, Ohio Gas mentions that one-quarter of its PIPP customers have credit balances on their accounts and would therefore not benefit from arrearage credits. Id. at 8. This leads to speculation as to why these customers were on PIPP in the first place, but because gas PIPP payment levels are being reduced to 6% from the current 10%, the magnitude of these credit balances should also be reduced.

¹⁶ Id.

¹⁷ January 2009 OSCAR Report.

¹⁸ Id.

¹⁹ Motion for Waiver, Memorandum in Support at 9. Ohio Gas does not specify the payment plans involved, including the so-called “Ohio Gas Plan.” Id.

become ineligible. The ten customers Ohio Gas is referring to in 2008 that went off PIPP to another payment plan were likely no longer income-eligible to be on PIPP.

Ohio Gas represents that Governor Strickland's Executive Order and the findings from the Regulatory Reform Task Force support this waiver request.²⁰ Once again, Ohio Gas purports that the cost of regulation exceeds the benefits for consumers. As was pointed out earlier, the benefits for consumers far exceed the implementation costs. In addition, the Governor initiated an anti-poverty task force to address many of the low-income issues facing Ohioans. One of the recommendations from the task force is priority for protection of families in crisis and ensuring they have access to basic utilities including gas, electric, water, and telephone service.²¹ PIPP is the primary financial assistance program in the state that helps protect access to essential utility services.

Ohio Gas has not justified its claimed costs of implementing arrearage crediting or Graduate PIPP. Further, Ohio Gas has not made "an alternative proposal [that] might meet the spirit of the rules."²² Ohio Gas' request for waiver must be denied.

²⁰ Id. at 10.

²¹ Ohio Anti-Poverty Task Force, Governor's Office of Faith-Based and Community Initiatives, "Strategic Recommendations for Expanding Opportunity and Reducing Poverty in Ohio" (April 28, 2009).

²² Entry on Rehearing (April 1, 2009) at 45.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Ohio Gas Company's Motion for Waivers was served by first class United States Mail, postage prepaid, to the persons listed below, on this 11th day of June, 2009.

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