

**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 COLUMBIA GAS OF OHIO INC.'S
APPLICATION FOR A WAIVER
BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") submits this memorandum contra the application for a waiver filed on August 25, 2009, by Columbia Gas of Ohio, Inc. ("Columbia").¹ OCC objects to the Application with respect to three of the six requirements of Ohio Adm. Code 4901:1-17 and Ohio Adm. Code 4901:1-18 for which Columbia seeks a waiver. In its Application, Columbia actually seeks to implement certain rules prior to the time set forth in the recent Entry² of the Public Utilities Commission of Ohio ("PUCO" or "Commission") in this case, rather than seeking an actual waiver of the rules' requirements.

II. BACKGROUND

In the June 3 Entry, the PUCO delayed, until November 1, 2010, the implementation of changes in programs to assist low-income Ohioans regarding the cost

¹ Ohio Adm. Code 4901-1-12(B)(1).

² June 3, 2009 Entry at 2.

of their electric and natural gas services.³ On July 6, 2009, the “Consumer Groups”⁴ filed an Application for Rehearing opposing the delay of the implementation of the rules, or in the alternative proposing that the Commission require that the natural gas companies gradually implement certain rules to provide relief to Ohio’s low-income customers.⁵ The Commission ignored the Consumer Groups’ Application for Rehearing⁶ but has already granted waivers of certain rules⁷ and is likely to consider more waiver requests in the future.

The Consumer Groups recognized, as Columbia has, that there is no reason why every one of the pending rule changes should be delayed until November 1, 2010. As Columbia states in its Application:

However, Columbia believes that implementing a small number of the non-PIPP changes in advance, at a pace and in an order consistent with Columbia's existing internal schedule, would ease the transition to the new rules for Columbia's programmers, business personnel, and customer support staff. For these reasons, and as further described below, Columbia respectfully requests that certain requirements of Chapters 4901:1-17 and 4901:1-18, O.A.C, as enumerated below, be waived so that Columbia may implement the revisions to those chapters in advance of the November 1, 2010 effective date.⁸

³ The delay applied to implementation of amendments to the Commission’s rules contained in Ohio Adm. Code 4901:1-17 (credit and collection rules) and Ohio Adm. Code 4901:1-18 which generally applies to the disconnection of service and the Percentage of Income Payment Plan (“PIPP”).

⁴ The Consumer Groups consisted of OCC, Consumers for Fair Utility Rates, the Neighborhood Environmental Coalition, Cleveland Housing Network, Empowerment Center of Greater Cleveland, Community Action Partnership, May Dugan, Multi-Purpose Center, United Clevelanders Against Poverty, Communities United for Action, Cleveland Tenants’ Association, Harcatus Tri-County Community Action Organization, Organize Ohio, Pro Seniors, Inc., The Ohio Farm Bureau Federation, The Ohio Poverty Law Center, and the Edgemont Neighborhood Coalition.

⁵ Consumers Groups’ Application for Rehearing at 2.

⁶ Due to the Commission’s failure to act on the Consumer Groups’ Application for Rehearing, the Application was denied by operation of law on August 5, 2009.

⁷ Entry of August 19, 2009.

⁸ Columbia Application at 2.

OCC recognizes that the transition to the new rules will present certain “scheduling” challenges to the utilities. OCC also agrees with the following Columbia argument:

Going forward with a “big bang” approach - introducing all of the Commission's rule revisions at once - would lead to increased implementation problems and errors, which could impact customers. The phased approach that Columbia is proposing will lessen the chance of error by allowing Columbia to train its personnel and introduce the necessary process changes over time, rather than all at once.⁹

While OCC is concerned that the rules be properly implemented, OCC is particularly concerned that amendments to the rules which benefit residential customers be enacted promptly to ease the burden of high energy bills on Ohioans.

In May 2008, Governor Ted Strickland initiated an Anti-Poverty Task Force through an Executive Order with a mandate to identify strategic recommendations to reduce poverty in Ohio.¹⁰ The task force recognized and provided a significant recommendation that families in crisis needed protection to access basic utility services including gas, electric, water, and telephone service.¹¹ In December 2008, Governor Strickland stated that “Our great state is confronted with challenges of historic proportions” as he referred to the economic hardships that Ohio was facing.¹²

When the Commission initiated this proceeding to amend Ohio Adm. Code 4901:1-17 and Ohio Adm. Code 4901:1-18,¹³ Ohio’s unemployment rate stood at 6.6

⁹ Id. at 6.

¹⁰ Strategic Recommendations for Expanding Opportunity and Reducing Poverty in Ohio, The Ohio Anti-Poverty Task Force, April 28, 2009 at 1.

¹¹ Id., Recommendation 9 at 17.

¹² Governor Discusses Impact of National Economic Deterioration on Ohio Budget, <http://www.governor.ohio.gov/News/PressReleases/2008/December2008/tabid/923/Default.aspx>

¹³ Commission Entry of June 16, 2009.

percent.¹⁴ When the Commission issued its Finding and Order in this case in December of 2008, the same month that Governor Strickland spoke of Ohio's economic crisis, Ohio's unemployment rate stood at 7.8 percent.¹⁵ By the time that the Commission issued its Entry¹⁶ setting forth the implementation date of the new rules, the unemployment rate in Ohio was 11.2%.¹⁷

While the unemployment rate has risen by 70% during the course of this proceeding, there is no relief in sight for PIPP customers in the form of lower payments or arrearage forgiveness. The Commission should ensure that the waiver of rules or the early implementation of *some* rules is considered in light of the current economic conditions of the state. For instance, any early implementation of rules that will likely increase the number of disconnections or make the establishment of credit more difficult for residential customers should be offset or balanced by the implementation of lower monthly PIPP payments and other provisions that will assist residential customers in maintaining their service.¹⁸

OCC does not oppose the early implementation of several of the rules, as requested by Columbia. OCC does, however, oppose the early implementation of several of the rules as requested by Columbia which result in fewer protections for residential customers with no offsetting benefits. This Memorandum Contra first discusses OCC's

¹⁴ <http://jfs.ohio.gov/RELEASES/unemp/200807/UnempPressRelease.asp>.

¹⁵ <http://jfs.ohio.gov/RELEASES/unemp/200901/UnempPressRelease.asp>.

¹⁶ June 3, 2009 Entry.

¹⁷ <http://jfs.ohio.gov/RELEASES/unemp/200908/UnempPressRelease.asp>.

¹⁸ See Consumer Groups' Application for Rehearing at 7-9. The Consumer Groups recommended the implementation of a number of rules that could be implemented with minimal programming and education challenges.

position regarding the early implementation of certain rules that benefit, or do not harm residential customers. OCC's comments then address the rules which we believe should not be considered by the Commission for expedited implementation.

III. EXPEDITED RULE IMPLEMENTATION THAT OCC DOES NOT OPPOSE

OCC does not oppose the expedited implementation, by Columbia, of the rules discussed below. OCC's rationale is provided following the explanation of each rule amendment.

Existing Rule:

No comparable rule

Amended Rule:

Rule 4901:1-18-05(B)(2): Creates a one-ninth extended payment plan (nine equal monthly payments on arrearages, plus a budget payment plan for nine months)

Comment: The new, one-ninth installment payment plan (spreading delinquent payments over nine equal payments) simply adds three months to the one-sixth plan that has been in place for decades. Expensive reprogramming and extensive training are not needed to make such a simple change. The current high rate of disconnections indicates that customers need additional payment options now and there is no need for the Commission to deny customers the additional payment options until 2010. OCC does not oppose the expedited implementation of this rule by Columbia.¹⁹

¹⁹ In fact, the Consumer Groups proposed early implementation of this very rule in the July 6, 2009 Application for Rehearing.

Existing Rule:

Rule 4901:1-18-05(C)(4) and (6)(a):

The company shall provide medical certification forms upon request. The certification shall include the name of the person to be certified; a statement that the person is a permanent resident of the premises in question; the name, address, and telephone number of the certifying party; the nature of the condition; and a signed statement certifying that disconnection would be especially dangerous to health.

Amended Rule:

Rule 4901:1-18-06(C)(3)(a)-(b) and Appendix:

The company shall provide the medical certification form provided in the appendix to Rule 4901:1-18-06 upon request.

Comment: The amended form poses no substantial additional risk for those in need of a medical certification from their physician. The use of the form does not require an extensive education process for company personnel or consumers by Columbia. OCC does not oppose the expedited implementation of this rule.

Existing Rule:

Rule 4901:1-18-07:

Landlord-tenant notice provisions, which apply to individuals whose utility services are included in rental payments and consumers residing in a multi-unit dwelling for which the customer is the landlord.

Amended Rule:

Rule 4901:1-18-08:

Extends the existing landlord-tenant notice provisions to apply to single-occupancy dwellings where the utilities are included in the rent.

Comment: The additional notice provisions required by the amended rule will immediately benefit tenants in single-occupancy dwellings. The additional notice provisions of this rule do not require an extensive education process for company personnel or consumers. OCC does not oppose the expedited implementation of this rule by Columbia.

IV. EXPEDITED RULE IMPLEMENTATION THAT OCC OPPOSES

OCC opposes the expedited implementation, by Columbia, of the rules discussed below. The only circumstances under which the Commission should consider permitting early implementation of these rules is if such implementation is offset by the implementation of other rules, such as the lower monthly PIPP payment levels included in Ohio Adm. Code 4901:1-18.

Existing Rule:

Rule 4901:1-18-06(A):

Upon payment or proof of payment of delinquent amounts or amounts sufficient to cure defaults on payment plans, customers shall be reconnected by the close of the following regular company working day.

Amended Rule:

Rule 4901:1-18-07(A):

Maintains the existing requirements for customers disconnected from service for ten business days or less. Upon payment or proof of payment of delinquent amounts or amounts sufficient to cure defaults on payment plans, customers disconnected from service for more than ten business days may be reconnected within the timeframes set for new customers and may be assessed a reconnection charge in accordance with approved tariffs.

Comment: The expedited implementation of this rule will increase the amount of time that residential customers who are more than ten days late in paying their bill will have to wait to be reconnected. There is no offsetting reduction in payment levels for PIPP customers who will be disproportionately affected by the expedited implementation of this rule. Columbia's Table A, attached to its Application, allegedly illustrates "non-pay" and "reconnect" orders from September through November of 2008.²⁰ Columbia hypothesizes that the variations in the number of non-pay and reconnect orders during

²⁰ Application at 8.

this timeframe “is driven largely by demands for same-day or next-day reconnection.”²¹

OCC does not understand how Table A supports Columbia’s hypothesis and notes that Table A is nearly illegible. In any event, with no offsetting relief for customers who will now not be considered for same-day or next-day reconnection, the Commission should not grant Columbia’s request for expedited implementation of this rule. Granting expedited implementation will only increase the amount of time that low-income customers are without service. Considering the lack of progress on the implementation of the new PIPP provisions, as well as the well-documented economic downturn in Ohio, OCC opposes the expedited implementation of this rule.

Existing Rule:

Rule 4901:1-18-05(B)(1):

Company shall not disconnect service to residential customers for nonpayment between November 1 and April 15 unless the company “[m]akes contact with the customer or other adult consumer at the premises ten days prior to disconnection of service by personal contact, telephone, or hand-delivered written notice,”

Amended Rule:

Rule 4901:1-18-06(B)(1):

Same requirements as before, but also allows utility companies to send the notice by regular U.S. mail, so long as the notice allows three calendar days for mailing and the company extends the disconnection date by ten days.

Comment: There is no offsetting reduction in payment levels for PIPP customers who will be disproportionately affected by the expedited implementation of this rule. The provision of personal notice, rather than notice by mail, should continue in the winter months until additional rules are implemented that assist low-income consumers in maintaining service. Considering the lack of progress on the implementation of the new

²¹ Id.

PIPP provisions, as well as the well-documented economic downturn in Ohio, OCC opposes the expedited implementation of this rule.

Existing Rule:

Rule 4901:1-17-03(A)(5) and (C) and Rule 4901:1-17-06:

Permits an applicant for residential service to establish financial responsibility by furnishing a creditworthy guarantor. Requires the guarantor to sign a written agreement. Requires the utility company to send a notice to the guarantor when the customer transfers service to a new location. Permits collection actions against the guarantor. Allows for release of the guarantor if certain payment criteria are met.

Amended Rule:

Rule 4901:1-17-03(A)(5) and (C) and Rule 4901:1-17-06:

Maintains previous requirements, with some additions: Guarantors must now be a customer of the utility company as well. Guarantors may no longer waive the right to obtain copies of disconnection notices sent to guaranteed customers. Provides for notice to guaranteed customer when the guarantor is subject to disconnection. Clarifies the payment criteria for releasing a guarantor. Clarifies the guarantor's ability to request a release of financial responsibility. Provides for notice to guaranteed customer when a guarantor seeks a release of financial responsibility.

Comment: The existing guarantor provisions should be kept in place until such time that other pending rule changes are implemented which provide enhanced opportunities for customers to establish and maintain service. Considering the lack of progress on the implementation of the new PIPP provisions, as well as the well-documented economic downturn in Ohio, OCC opposes the expedited implementation of this rule.

V. CONCLUSION

For the reasons discussed herein, Columbia's Application should be granted in part and denied in part by the Commission. Expedited implementation of the rules already approved by the Commission in the rulemaking proceeding could allow natural gas PIPP customers to enjoy the benefits of PIPP reform as soon as possible. However,

the Commission should refrain from approving the expedited implementation of stricter credit and collections requirements until corresponding payment and arrearage crediting rules are also implemented.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served by first class United States Mail, postage prepaid, to the persons listed below, on this 14th day of September, 2009.

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