

**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-)
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

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") applies for rehearing¹ from the August 19, 2009 Entry of the Public Utilities Commission of Ohio ("PUCO" or "Commission") granting Ohio Gas Company's ("Ohio Gas" or "Company") requests for waiver of Ohio Adm. Code 4901:1-18-14² and Ohio Adm. Code 4901:1-18-16³. These rules pertain to the forgiveness of the arrearages of certain low-income customers, as recently adopted by the Commission in its Percentage of Income Payment Plan ("PIPP") rules.⁴

OCC submits that the Commission's Entry is unreasonable in the following respects, and should be abrogated or modified:

¹ The Application for Rehearing is made pursuant to R.C. 4903.10 and Ohio Adm. Code 4901:1-35.

² Amended rule Ohio Adm. Code 4901:1-18-14, which is scheduled to be implemented on November 1, 2010 by Ohio's natural gas companies, provides for arrearage crediting for PIPP customers who pay their bills on time.

³ Amended rule Ohio Adm. Code 4901:1-18-16, which is scheduled to be implemented on November 1, 2010 by Ohio's natural gas companies, provides for arrearage crediting for graduate PIPP customers who pay their bills on time. "Graduate PIPP customers" means a customer who was previously enrolled in PIPP and remains with the same natural gas company. Former PIPP customers are automatically enrolled in the graduate PIPP program.

⁴ The Commission's June 3, 2009 Entry set November 1, 2010 as the effective date of the new rules.

- A. The Commission's Entry unreasonably grants Ohio Gas a waiver of the provisions of Ohio Adm. Code 4901:1-18-14 while accepting an "alternative" arrearage forgiveness plan proposed by the Company. The alternative arrearage forgiveness plan accepted by the Commission will deny the incentive of arrearage forgiveness to the majority of the PIPP customers of Ohio Gas.
- B. The Commission's Order unreasonably grants Ohio Gas a waiver of the provisions of Ohio Adm. Code 4901:1-18-16, which will deny the incentive of arrearage forgiveness to graduate PIPP customers of Ohio Gas.

The grounds upon which the Commission's Entry is unreasonable are more fully explained in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

When the Commission initiated this proceeding to amend Ohio Adm. Code 4901:1-18⁵ and assist low-income customers with affording natural gas service, Ohio's unemployment rate stood at 6.6 percent.⁶ Ohio's unemployment rate as of August, 2009, stood at 10.8%.⁷

Against this backdrop, Ohio Gas filed a motion for waiver, on May 27, 2009. Ohio Gas sought a waiver of the Commission's newly adopted arrearage forgiveness rules.⁸ Ohio Gas claimed that the waiver was necessary to avoid imposing on all customers the costs of reprogramming its system for the low-income customers that the PUCO intended to assist. Ohio Gas later altered its request, on August 18, 2009, by

⁵ Commission Entry of June 16, 2009.

⁶ <http://jfs.ohio.gov/RELEASES/unemp/200807/UnempPressRelease.asp>.

⁷ <http://jfs.ohio.gov/RELEASES/unemp/200908/UnempPressRelease.asp>.

⁸ The arrearage forgiveness rules, which be implemented on November 1, 2010, are contained in Ohio Adm. Code 4901:1-18-14 and Ohio Adm. Code 4901:1-18-16.

asking that the PUCO accept an “alternative” arrearage forgiveness plan in lieu of the one contemplated by Ohio Administrative Code 4901:1-18-14⁹.

OCC filed a Memorandum Contra, on June 11, 2009. OCC explained that Ohio Gas was seeking waivers of PUCO rules that were designed to provide needed assistance to protect low-income customers. OCC argued that the waivers sought by Ohio Gas were not shown to be reasonable and would, if granted, only deepen the plight of low-income consumers in these times of financial distress. While Ohio Gas characterized its request as a waiver, it actually sought to implement a modified version of certain rules that the PUCO had promulgated.

As noted, Ohio Gas’ motion was preceded by the PUCO’s rulemaking Order in this case. For purposes relevant here, the PUCO ruled that low-income customers enrolled in PIPP or customers who were graduated from PIPP could obtain forgiveness of the past amounts (arrears) they owed to utilities such as Ohio Gas. This forgiveness was to be available for customers who made timely PIPP payments.

Ohio Gas’ motion was followed in time by the PUCO’s ruling, in response to requests of natural gas utilities, to postpone the implementation of the PIPP-related rules until November 1, 2010, 2010. The arrearage forgiveness rules at issue here were among the postponed rules.

Ultimately, the PUCO granted Ohio Gas its requested waivers, by Entry dated August 19, 2009. In the Entry, the PUCO authorized Ohio Gas to implement the Company’s proposed alternative arrearage forgiveness plan and also waived the

⁹ The alternative plan would provide for arrearage forgiveness for only those PIPP customers who made timely payments at least 75% of the time in a twelve-month period.

requirements of Ohio Adm. Code 4901:1-18-16.¹⁰ While the PUCO characterized its ruling as granting Ohio Gas a “waiver” of the rules, the ruling is not merely a waiver of an existing rule but represents the PUCO’s fashioning of, in essence, an entirely new rule. Through this application for rehearing, OCC asks the Commission to reconsider its granting of the waivers and, in the interest of low-income customers at this challenging time in the Ohio economy, abrogate or modify its decision.

For this reason alone, the Commission should reconsider granting the waivers of the arrearage crediting provisions requested by Ohio Gas. Millions of Ohioans are struggling to pay their bills and retain vital utility services such as natural gas. The Commission should not extend waivers to “mid-size” companies on top of the blanket waiver of the PIPP rules already afforded to small natural gas companies.¹¹ The economic conditions being experienced by the customers of natural gas companies do not vary according to the size of the natural gas company serving them.

The Entry provides no evidence that the Commission or the PUCO Staff have verified the costs of implementing the arrearage forgiveness rules as projected by Ohio Gas. The Commission’s Entry states:

Accepting Ohio Gas’ analysis of PIPP participation and timely payment of PIPP bills, the Commission finds it unreasonable to require Ohio Gas’s non-PIPP customers to incur \$90,000 to \$100,000 in programming fees, not to mention the time of Ohio Gas employees, to provide a small number of customers the opportunity to receive the arrearage credit under the arrearage crediting provisions of the PIPP rules, where the company has presented a less expensive, feasible alternative.¹²

¹⁰ Ohio Adm. Code 4901:1-18-16 applies to graduate PIPP.

¹¹ August 19, 2009 Entry at 8. The Commission gives consideration to the “unique” size of Ohio Gas as a “midsize gas utility” in considering the costs and benefits of implementing the new rules.

¹² Id.

The Commission should not accept at face value the cost/benefit projections of Ohio Gas at face value.¹³ OCC and other parties to this proceeding have long-held concerns that unverified data concerning programming and billing change costs could derail the implementation of the rules or result in an undue financial burden on all natural gas customers in the form of higher rates. As the Consumer Groups¹⁴ have previously stated:

It is vital that cost data associated with the implementation efforts of the utilities be provided as programming and billing changes are accommodated. This cost data should be provided as it becomes available so that this rulemaking does not serve as a de facto rate case with an implication of pre-approval of programming costs.¹⁵

In the winter months, the neediest Ohioans depend on the natural gas PIPP program, their lifeline for maintaining heat. OCC requests that the Commission reconsider the waivers granted to Ohio Gas so that the Company's customers are provided the benefits of the amended rules consistent with the Commission's stated goals and the current economic situation in Ohio.

II. ARGUMENT

Unfortunately, the cost/benefit analysis provided by Ohio Gas has not been subject to public scrutiny nor have the costs been verified. In addition, the "small number" of customers discussed by Ohio Gas¹⁶ is the number of PIPP customers who

¹³ Indeed, the \$90,000-\$100,000 figure does not appear in the record.

¹⁴ 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.

¹⁵ Consumer Groups' Application for Rehearing, July 6, 2009 at 13.

¹⁶ See Entry at 3.

have paid their bills on time at least nine times in the previous twelve months, not the number of PIPP customers who have paid their bills on time at any time during the year and would therefore benefit from the arrearage forgiveness program. And this disregards the lower PIPP payment levels in the new rules. An expansive waiver of the PIPP rules, which removes much of the timely incentive components of the rules, should not be granted with such one-sided input.

Rule 4901:1-18-14

- A. The Commission Entry unreasonably granted Ohio Gas a waiver of the provisions of Ohio Adm. Code 4901:1-18-14 while accepting an “alternative” arrearage forgiveness plan proposed by the Company. The alternative arrearage forgiveness plan accepted by the Commission will deny the incentive of arrearage forgiveness to the majority of the PIPP customers of Ohio Gas.**

After initially requesting a total waiver of the provisions of Ohio Adm. Code 4901:1-18-14 in its Motion for Waiver¹⁷, Ohio Gas developed an “alternative” to the rule’s arrearage crediting provisions. This alternative first appeared in Ohio Gas’ Reply to the Memoranda Contra filed by Ohio Partners for Affordable Energy (“OPAE”) and OCC.¹⁸ As described by the Commission in its Entry, Ohio Gas proposed the following alternative to Ohio Adm. Code 4901:1-18-14:

In its reply, Ohio Gas proposes that, as an alternative to the PIPP arrearage crediting in adopted Rule 18-14, Ohio Gas will manually calculate and apply to each PIPP customer's account, once each year, a credit for timely payment. More specifically, Ohio Gas proposes that the PIPP customer would receive a credit if the customer: (a) Has been an active PIPP customer for the previous 12-month period, August 1 through July 31; (b) Has been an active

¹⁷ May 27, 2009, Ohio Gas Motion for Waiver.

¹⁸ The Reply was filed on June 18, 2009.

PIPP customer on the same account during the August 1 through July 31 period; and (c) Has made at least nine timely payments during the 12-month period that equal the total amount due under that customer's PIPP program payment arrangement for the same 12-month period.¹⁹

In addition, Ohio Gas proposed “to manually determine, calculate, and issue the arrearage credit ... after the end of the July billing period and would apply the total arrearage credit on the September monthly bill.”²⁰ Finally, Ohio Gas offered to extend the provisions of its alternative even to customers who move during the twelve-month period.²¹ The PUCO accepted Ohio Gas’ proposals.

The title of the principal arrearage forgiveness rule, Ohio Adm. Code 4901:1-18-14, is “Incentive programs for percentage of income payment plan and graduate percentage of income payment plan customers.” By its very title, the rule’s intention is to provide incentives to PIPP customers to make timely payments and reduce their PIPP debt. The Commission has previously stated that this rule “offer[s] a significant incentive for PIPP customers who pay by the due date.”²² Apparently, given Ohio Gas’ alternative proposal, Ohio Gas does not believe its customers are entitled to the same incentives, such as those provided for in the arrearage forgiveness rules, as other natural gas customers in Ohio. By granting the waiver, the Commission is effectively agreeing with the Company.

¹⁹ Entry at 7.

²⁰ Id.

²¹ Ohio Gas filed a clarification of its waiver request on August 18, 2009 which added additional terms to its alternative to Ohio Adm. Code 4901:1-18-14. In OCC’s opinion, the clarification offered by Ohio Gas does nothing to improve the Company’s alternative to Ohio Adm. Code 4901:1-18-14.

²² Entry on Rehearing at 32.

The Commission, in granting the alternative proposal put forth by Ohio Gas, would deny the arrearage crediting incentives to all PIPP customers except those who pay their bill on time 75% of the time. The Commission recognized in its initial Finding and Order²³ in this case, and in the Entry granting the waiver requests of Ohio Gas, that “non-PIPP” electric and natural gas customers made timely payments only 47 percent of the time.”²⁴ The waiver approved by the Commission makes the incentive driving the arrearage forgiveness rules nearly impossible to achieve. In fact, the alternative proposed by Ohio Gas appears to be intended to reduce its alleged administrative costs by driving down the number of its PIPP customers that can benefit from making timely PIPP payments.

The fact that half of *non-PIPP* customers do not pay their bills on time should bolster the argument that arrearage forgiveness rules should be flexible for low-income PIPP customers. Low-income customers pay a demonstrably greater share of their income towards utility bills than medium and high-income customers.²⁵ The Commission cites the argument of Ohio Gas that “[t]he number of PIPP customers who go on and off the PIPP program and the frequency with which PIPP customers move further diminishes the consumer benefit of arrearage crediting.”²⁶ The number of customers “who go on and off” the PIPP program and the fact that PIPP customers move often, is a further indicator of the financially precarious conditions many low-income natural gas customers experience. Such an argument does not support the need to

²³ Finding and Order at 63.

²⁴ Entry at 6.

²⁵ Consumer Groups’ Initial Comments at 20-21.

²⁶ *Id.*

remove payment incentives. The argument put forth by Ohio Gas and accepted by the Commission would negate the need for any arrearage crediting program for any PIPP customers served by any natural gas company. The waiver request by Ohio Gas is not the appropriate forum for rearguing the over-all efficacy of the Commission's recently adopted rules.

The provisions of the arrearage forgiveness plan proposed by Ohio Gas also would deny any arrearage forgiveness to a PIPP customer who makes less than 9 timely payments in a twelve-month period. Such a result is unreasonable to PIPP customers who make timely payments when they are able. A customer would not know that he or she would receive arrearage forgiveness until at least nine timely payments had been made.

Apparently, Ohio Gas' main problem, and the reason the Commission granted a waiver, was the reprogramming expense of having automatic arrearage forgiveness every month. But Ohio Gas provided no data whatsoever on the cost of the annual manual adjustments it proposed. It is not at all clear, therefore, what the cost to the company would be of a similar program of applying manual arrearage forgiveness for all timely payments by all PIPP customers once a year, rather than just for customers who make 75% of their payments on time. Surely PIPP customers would be more incented to make timely payments if they knew that they would receive credits for all timely payments, even if the credit were applied only once a year, compared to Ohio Gas' proposal that was accepted by the Commission.

The Commission should keep in mind that the concept of arrearage forgiveness is so that those that are burdened by large debts to their natural gas companies are incented

to make timely payments. The Commission has noted in the past that “[i]t is clear that PIPP arrearages have become an impediment to some low-income consumers from taking employment.”²⁷ Many PIPP customers have enormous arrearages despite making regular PIPP payments.

Finally, OCC notes that the offer of Ohio Gas to permit arrearage forgiveness for timely payments even to those PIPP customers who move during the course of the payment period, is not a significant improvement over the existing or amended PIPP rules. A PIPP customer who moves to another service location within the same natural gas company’s service territory has always remained on PIPP. The alternative proposed by Ohio Gas does little or nothing to provide incentives to its low-income, PIPP customers to increase their number of timely payments and should be rejected by the Commission.

Rule 4901:1-18-16

- B. The Commission Order unreasonably grants Ohio Gas a waiver of the provisions of Ohio Adm. Code 4901:1-18-16, which will deny the incentive of arrearage forgiveness to graduate PIPP customers of Ohio Gas.**

The Commission erred in accepting Ohio Gas’ argument that PIPP customers are unlikely to voluntarily terminate their participation in the PIPP program.²⁸ Ohio Gas bases its opinion on the operation of the existing PIPP rules and presents no empirical data regarding the effect of a graduate PIPP program that has not been implemented. Ohio Gas also maintains that the number of customers eligible for graduate PIPP does not

²⁷ PIP Plan Rider Stipulation at 18.

²⁸ Ohio Gas Motion for Waiver at 8-9.

justify additional programming or changes to its billing system.²⁹ The Commission should not grant waivers of incentive-driven rules for low-income customers based on the unsupported projections of Ohio Gas.

OCC submits that even if the number of Ohio Gas customers who benefit from Ohio Adm. Code 4901:1-18-16 may be few, that would suggest that the costs of manual administration of the graduate PIPP program would also be minimal to the Company. In other words, if few of the Company's customers participate in the graduate PIPP customers, even the manual administration of the graduate PIPP provisions would be inexpensive to the Company. Certainly those customers who continue to make payments after leaving the PIPP program should benefit from the timely payment incentives of Ohio Adm. Code 4901:1-18-16. There is no reason to grant Ohio Gas a waiver of the graduate PIPP arrearage crediting.

III. CONCLUSION

The Commission erred in granting waivers of the vital arrearage forgiveness provisions of the pending PIPP rules to Ohio Gas. The customers of Ohio Gas should have a right to the same benefits, and the same incentives for timely payment, as PIPP customers of other natural gas companies in Ohio will have available to them with the implementation of the new PIPP rules. For the reasons discussed herein, the Commission should grant OCC's Application for Rehearing and abrogate the waivers of Ohio Adm. Code 4901:1-18-14 and Ohio Adm. Code 4901:1-18-16 granted to Ohio Gas.

²⁹ Id.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing of the Office of the Ohio Consumers' Counsel was served by first class United States Mail, postage prepaid, to the persons listed below, on this 18th day of September 2009.

/s/ Richard C. Reese

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