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**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) Case No. 08-723-AU-ORD
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.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. for a Waiver from) Case No. 10-596-GA-WVR
Certain Provisions of the Ohio)
Administrative Code.)

**INITIAL COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

On April 30, 2010, Duke Energy Ohio, Inc. ("Duke" or "Company") requested a waiver from certain rules contained in Ohio Adm. Code 4901:1-18 concerning the implementation of the Public Utilities Commission ("PUCO" or "Commission") gas PIPP program.¹ Duke contends that it is uniquely affected by the differences between what was adopted by the PUCO for the gas PIPP program and the rules adopted by the Ohio Department of Development ("ODOD") for the electric PIPP programs, because it is the only combination gas and electric utility in the state.²

Duke further notes that the waiver request represents various agreed-upon procedures between itself and the staff(s) of the PUCO and ODOD.³ Apparently a

¹ Duke waiver request at 1.

² Id.

³ Id. at 2.

compromise was reached concerning which of the ODOD electric PIPP rules would be waived and which of the PUCO rules would be waived to enable the implementation of a single subset of PIPP rules that are unique to Duke.⁴ Duke claims that without this waiver, customers will experience significant confusion; and it further implies that the waiver request leads to the most economical program implementation for the Company.⁵ Finally, Duke asserts that it is submitting a “mirror image” waiver request at ODOD for relief from certain electric PIPP rules.⁶

On April 12, 2010, Duke requested the waiver from ODOD related to certain electric PIPP requirements where it stated the intent to follow the gas PIPP requirements instead of the electric requirements.⁷ Interested parties were given until May 13, 2010, to provide comments to ODOD concerning this waiver request. On May 11, 2010, ODOD imposed a suspension of the deadline for providing comments regarding Duke’s electric PIPP waiver requests. Based on OCC’s preliminary assessment of Duke’s request of a waiver from four of the electric PIPP rules, each of the four waiver requests were unsupported and had the potential for harming consumers. In any event, ODOD and the PUCO should consider the waiver requests in the context that any waiver should result in some benefit to the customer of Duke.

A haphazard implementation of rules in which Duke will follow electric PIPP rules for gas and electric customers in some circumstances and gas PIPP rules for gas and electric customers in other circumstances is clearly not in the public interest. The dual

⁴ Id.

⁵ Id. at 2-3.

⁶ Id. at 3.

⁷ Letter from Duke to the Ohio Department of Development, Re: Request for waiver from specific Ohio Department of Development rules, April 12, 2010.

waiver requests filed with the ODOD and the PUCO have caused some confusion for OCC and other parties.⁸ In this regard, it would have been helpful to the process and result if OCC and other consumer groups had been afforded the opportunity to voice concerns in the discussions leading up to the filing of the waivers.

OCC supports consistency between all of the gas PIPP and electric PIPP programs to avoid confusion for consumers. OCC also believes that it is essential that the combined gas and electric Duke PIPP program be available for consumers before the next winter heating season. OCC, therefore, requests that the Commission simplify this dual waiver process by approving Duke's waiver requests. OCC has also compiled comments regarding Duke's pending waiver requests of certain ODOD electric PIPP rules. OCC's comments in this PUCO proceeding are consistent with the comments OCC intends to file with ODOD regarding the electric PIPP rule waivers. OCC will recommend denial of Duke's pending waiver requests of the electric PIPP rules. After careful deliberation and review of each of the seven PIPP rules for which Duke seeks a waiver at either the PUCO or ODOD, OCC supports the implementation of the electric PIPP rules in lieu of the gas PIPP rules. As stated earlier, the granting of the waiver requests filed by Duke with ODOD will not be beneficial for consumers and will be by OCC opposed when the opportunity is available for comment.

⁸ See OP&E letter filed with ODOD on May 11, 2010.

II. SPECIFIC COMMENTS

Duke has proposed waivers of several gas PIPP rules which OCC has listed below. The ODOD electric PIPP rule which Duke's proposes to implement for its PIPP customers, in lieu of the corresponding gas PIPP rule, is listed next to the PUCO rule. OCC has listed its comments regarding each rule immediately below the each rule.

Minimum Payment Waiver

PUCO Rule (4901:1-18-13(A)(1))	ODOD Rule (122:5-3-04(A)(2))
<p>Each PIPP customer shall be billed six per cent of his/her household income or ten dollars, whichever is greater, per billing cycle by the jurisdictional gas or natural gas utility company that provides the customer with his/her source of heat.</p>	<p>Exception to minimum monthly PIPP installment. A limited exception to the minimum monthly PIPP installment amount shall be provided to any eligible customer who is determined at the time of enrollment in the PIPP program, or at a future date during program participation, to have a monthly household income of zero dollars. For a zero-income customer, the minimum monthly PIPP installment amount shall be waived for a period of up to one hundred eighty days not more than once in any five-year period. If during such one hundred eighty day period the customer's household income changes, the customer shall notify the office of community services or a local agency as soon as practicable and provide information necessary for the office of community services or the local agency, as applicable, to reverify household income and calculate a new monthly PIPP installment amount. If the customer's monthly PIPP installment amount has not been reverified during the one hundred eighty day period in response to a change in household income, then the customer shall be required at the end of the one hundred eighty day period to have his/her monthly household income reverified and such customer shall be required after reverification to pay a monthly PIPP installment amount calculated as set forth</p>

	in paragraph (A)(1) of this rule using the customer's reverified monthly household income or the minimum monthly PIPP installment amount, whichever is greater.
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Duke requested a waiver from gas PIPP rule Ohio Adm. Code 4901:1-18-13(A)(1) to enable a 180 day exemption from the \$10 minimum payment requirement.⁹ OCC supports this waiver request because it better supports the Commission's goal of aligning the gas and electric PIPP requirements.¹⁰ The minimum payment requirement of \$10 per month for gas and electric PIPP customers is especially problematic for low income customers who have little if any monthly income. The proposed waiver request will help gas PIPP customers maintain essential utility service and should therefore be adopted by the Commission.

Missed PIPP Payments

PUCO Rule (4901:1-18-12(D)(2))	ODOD Rule (122:5-3-03(C)(1))
<p>The PIPP customer must be current on his/her income-based PIPP payments at the customer's PIPP anniversary date to be eligible to remain on PIPP for the subsequent twelve months. The customer will have one billing cycle after reverification to pay any missed PIPP payments before being removed from the program. Missed PIPP payments include:</p> <p>(a) Any delayed payments as a result of the customer's prior use of a medical certificate in accordance with paragraph (C) of Rule 4901:1-18-06 of the</p>	<p>Annual verification of income eligibility. Income eligibility will be subject to annual verification at or about twelve months from the PIPP customer's most recent PIPP reverification date. The director will use reasonable efforts to notify PIPP customers in advance of annual verification deadlines. PIPP customers will be required to submit then-current application information to the office of community services or a local agency. The director shall use such application information to determine continuing income eligibility. Local agencies and electric distribution utilities</p>

⁹ Id. at 3.

¹⁰ *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 (June 25, 2008) at 7.

<p>Administrative Code.</p> <p>(b) PIPP payments which are due for the months the customer is disconnected from gas utility service. These missed PIPP payments must be paid prior to the restoration of utility service. The amount of the PIPP payments due shall not exceed the amount of the customer's arrearage.</p> <p>(3) All PIPP customers must also provide proof of eligibility to the gas or natural gas Utility company upon request. No gas or natural gas utility company shall request such proof without justification.</p>	<p>will cooperate with the director to facilitate the income verification process. If a PIPP customer fails to submit information sufficient to verify continuing eligibility within sixty days after the customer's annual verification date, the customer will be ineligible to continue in the PIPP program, and the office of community services will send the affected utility by electronic data transfer a drop file to remove such customer as an active PIPP customer. Failure to complete the annual reverification process does not prevent a customer from later applying to re-enroll in the PIPP program, provided, however, that if the customer has not made payments to the electric distribution utility during the time the customer was not an active PIPP customer in an aggregate amount equal to the customer's monthly PIPP installment amount for each month of that period, the customer shall be required as a condition for re-enrollment to pay the electric distribution utility the difference between any customer payments made and monthly PIPP installment amounts that would have been owed to the electric distribution utility had the customer remained an active PIPP customer.</p>
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Duke proposed a waiver of the PUCO's gas PIPP Rule Ohio Adm. Code 4901:1-18-12(D)(2) which requires gas PIPP customers to be current on all income-based payments at the time the customer annually re-verifies income.¹¹ Duke notes that the companion ODOD electric PIPP rule Ohio Adm. Code 122:5-3-03(C)(1)) has no similar provision for dropping customers from PIPP who are not current on payments when the

¹¹ Duke waiver request at 4.

re-verification occurs. OCC supports this waiver request on the basis that the change positively affects gas PIPP customers.

Non-heating Gas PIPP Customers

PUCO Rule (4901:1-18-13(A)(1))	ODOD Rule
Each PIPP customer shall be billed six per cent of his/her household income or ten dollars, whichever is greater, per billing cycle by the jurisdictional gas or natural gas utility company that provides the customer with his/her source of heat.	There is no comparable requirement in the ODOD rules.

Duke proposed a waiver request from PUCO gas PIPP Rule Ohio Adm. Code 4901:1-18-13 which requires natural gas to be the primary heating source for customers that enroll on gas PIPP.¹² While Duke did not provide information concerning how many non-heating gas customers it serves, there may be occasions where non-heating customer enrollment in the gas PIPP program is beneficial. This is especially true for customers who have very low incomes and for those customers who have previous PIPP debt.

Former PIPP Customers

PUCO Rule	ODOD Rule (122:5-3-04(B)(5)(c))
There is no comparable requirement in the PUCO rules.	Post-PIPP – customer account closed. When an electric distribution utility closes the account of a PIPP customer (i.e., account “finaled”), the utility shall report to the office of community services the amount of any customer arrearage for which the utility was previously paid by the fund or through any other percentage of income payment plan mechanism. Each electric distribution utility shall notify such PIPP customer that post-PIPP arrearage credits will be available during the next

¹² Id.

	<p>twelve-month period to reduce the customer's final bill amount and request that such customer contact the utility company for additional information. Each electric distribution utility shall enter into a payment arrangement with any former PIPP customer who will agree to make payments against such customer's arrearage on a finaled account. A post-PIPP customer who makes payments against the customer arrearage on a finaled account as provided in this rule will be eligible for post-PIPP arrearage credits. In order to receive a post-PIPP arrearage credit, the amount of the customer payment must be at least one-sixtieth of the customer arrearage on the finaled account. The post-PIPP customer will earn an arrearage credit for each such payment made to the electric distribution utility during the twelve-month period after the customer's account is closed. The post-PIPP arrearage credit shall be calculated by the electric distribution utility as one-twelfth of the customer arrearage on the finaled account, and the electric distribution utility shall apply the credit against the customer arrearage each time that a customer payment is made as described in this paragraph. If a post-PIPP customer fails to make payments against customer arrearages on a finaled account during the twelve-month post-PIPP arrearage credit period, the uncredited balance of the customer arrearage shall remain on the customer's account.</p>
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ODOD electric PIPP rule Ohio Adm. Code 122:5-3-04(B)(5)(c)) provides an incentive for former electric PIPP customers who no longer live in the electric utility service territory to obtain credits toward the arrearage balance. As can be seen in the above rule, former PIPP customers can receive a one-twelfth credit towards accrued arrearages for each month that a payment equal to at least one-sixtieth of the total

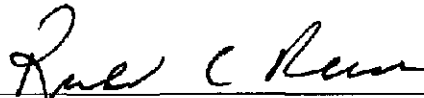
arrearage balance is paid. Since the PUCO has no similar Rule for gas PIPP customers, Duke requested a waiver to follow the ODOD electric PIPP Rule. OCC supports this waiver request to the extent that the rule encourages payment of arrearages and helps reduce the overall gas PIPP costs.

III. CONCLUSION

Duke requested a waiver from several gas PIPP rules and has proposed to follow certain of ODOD's electric PIPP rules instead. Each of the waivers appears to be beneficial for consumers and OCC supports the Commission approval of the waiver requests. In addition, OCC recommends that the Commission's Order concerning the waiver requests provide general instruction that any other inconsistencies between the Duke gas and electric PIPP programs should be resolved by Duke adhering to the ODOD electric PIPP requirements.

Respectfully submitted,

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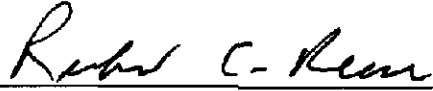


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CERTIFICATE OF SERVICE

I hereby certify that the following Initial Comments were served upon the following by regular U.S. Mail Service, Postage Prepaid, this 17th day of May, 2010.



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