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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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- ) 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. )

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MOTION FOR WAIVER OR SUSPENSION OF  
DISCONNECTION RULES FOR PIPP CUSTOMERS REQUIRED TO MAKE A  
MINIMUM PAYMENT  
DURING WINTER EMERGENCY  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL.

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The Office of the Ohio Consumers' Counsel ("OCC") moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to waive or suspend certain rules related to the disconnection of natural gas and electric service which are due to be implemented on November 1, 2010.<sup>1</sup> Specifically, OCC moves, pursuant to Ohio Adm. Code 4901-1-12, that during the period covered by the Commission's annual Winter Reconnect Order,<sup>2</sup> disconnection of gas and electric service be prohibited for those customers, the lowest of the low-income customers, who are required to make a \$10 per

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<sup>1</sup> Entry, June 3, 2009 at 2.

<sup>2</sup> The Commission annually issues an Entry, known as the "Winter Reconnect Order," targeted to limiting the disconnection of low-income customers and easing conditions for prevention of disconnection and allowing reconnection during the winter heating season. The most recent Entry was issued *In re the Investigation of Long-Term Solutions Concerning Disconnection of Gas and Electric Services in Winter Emergencies*, Case No. 09-782-GE-UNC, Entry ("Winter Reconnect Order") (September 23, 2009). The Winter Reconnect Order is issued pursuant to the Commission's emergency powers under R.C. 4909.16.

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month minimum payment for their gas and electric service,<sup>3</sup> but do not make that payment. These are families whose household incomes are at or below \$166.50 per month. OCC recommends that the Commission grant such waivers no later than the date of its upcoming annual Winter Reconnect Order.

The grounds for this Motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in black ink that reads "Richard C. Reese". The signature is written in a cursive style with a large, prominent "R" and "C".

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<sup>3</sup> See Ohio Adm. Code 122:5-3-02 (electricity); Ohio Admin. Code 4901:1-18-13 (gas).

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**MEMORANDUM IN SUPPORT**

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**I.     THERE IS A ECONOMIC EMERGENCY IN OHIO**

In the fall of 1982, Governor James Rhodes recognized the emergency nature of the disconnection problem during the winter months, and directed the Commission to order a total moratorium on disconnections for nonpayment.<sup>4</sup> The Commission did so, and also ordered a special winter reconnection policy.<sup>5</sup> The PUCO has issued a similar order every year since then.

In May 2008, Governor Ted Strickland signed an executive order<sup>6</sup> creating an Ohio Anti-Poverty Task Force (Task Force) to develop recommendations to reduce poverty in Ohio. In April 2009, the Task Force submitted a report detailing recommendations for both the short-term and long-term reductions in poverty.<sup>7</sup> One of the primary recommendations from the Task Force was to "Protect families in crisis and

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<sup>4</sup> Also cite to 1979 moratorium.

<sup>5</sup> *In the Matter of the Investigation into Special Arrangements for Reconnection of Gas and Electric Service*, Case No. 82-1304-GE-COI, Entry on Rehearing (November 24, 1982) ("Special Arrangements COI").

<sup>6</sup> Executive Order 2008-11S, May 28, 2008.

<sup>7</sup> <http://www.ohiocathconf.org/I/PO/fingovpovtf.pdf>

ensure they have access to basic utilities including gas, electric, water, and telephone service.”

In December 2008, Governor Strickland encouraged the PUCO “to remember those that are unable to heat their homes and that we must do everything we can to prevent loss of life for those without power and heat.”<sup>8</sup> The PUCO issued an Entry on December 19, 2008 that resulted in a moratorium for disconnections for a period of 90 days for customers with household incomes below 175% of the Federal Poverty Level.<sup>9</sup> The Commission specifically noted that higher energy costs associated with winter have a disproportionate impact on low-income Ohioans.<sup>10</sup>

In 2009, the Commission adopted new rules regarding the percentage of income payment plan (“PIPP”).<sup>11</sup> As the Consumer Groups<sup>12</sup> noted following that adoption, Ohio’s economic and unemployment conditions were bleak:

In December 2008, Governor Ted Strickland stated that “Our great state is confronted with challenges of historic proportions” as he referred to the economic deterioration in the state.<sup>13</sup> According to the July 2010 employment statistics, the unemployment level in Ohio is 10.3%.<sup>14</sup> The unemployment level in July 2009 was at

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<sup>8</sup> Letter from Governor Ted Strickland to Chairman Alan Schriber, December 18, 2007, filed *In the Matter of the Investigation into Long-Term Solutions Concerning Disconnection of Gas and Electric Service in Winter Emergencies*, Case No. 07-938-GE-UNC.

<sup>9</sup> Id., Entry (December 19, 2007).

<sup>10</sup> Id. at 2.

<sup>11</sup> Cite The PIPP rules were originally adopted under the Commission’s emergency authority under R.C. 4905.16.

<sup>12</sup> The Consumer Groups consisted of Office of the Ohio Consumers’ Counsel (“OCC”), the Appalachian People’s Action Coalition, Cleveland Housing Network, Empowerment Center of Greater Cleveland, the Neighborhood Environmental Coalition, Consumers for Fair Utility Rates, United Clevelanders Against Poverty, Supports To Encourage Low-Income Families, Cleveland Tenants’ Organization, Communities United For Action, May Dugan Center, Pro Seniors, Inc., Harcatus Tri-County Community Action Organization, the Ohio Farm Bureau Federation, and the Edgemont Neighborhood Coalition.

<sup>13</sup> Governor Discusses Impact of National Economic Deterioration on Ohio Budget, <http://www.governor.ohio.gov/News/Pressreleases/2008/December2008/news12108/>.

<sup>14</sup> <http://jfs.ohio.gov/RELEASES/unemp/201008/unemppressrelease.asp>.

10.6% indicating that there has been little change in the economic conditions in the state over the last year. While emergency legislation has resulted in extensions in benefits for Ohio and other states with high unemployment levels, there is no assurance that benefits will be extended further or that unemployment levels will be dropping anytime in the near future.<sup>15</sup>

The current economic decline has resulted in a tremendous increase in the percentage of Ohioans who live at or below 100% of the Federal Poverty Level ("FPL") reaching near historic levels at 13.1%.<sup>16</sup>

As in the rest of the country, Ohio's unemployment numbers and poverty levels are now much worse than when the disconnection rules in Ohio Adm. Code 4901:1-18 were adopted.<sup>17</sup> Today, the unemployment level is 3% higher than when the rules were finalized by the Commission and there has been no decline in the number of persons in poverty in the state. In fact, based on participation levels in low-income food and nutrition programs, poverty levels in 2009 rose to approximately 16% of the population – growth of almost 3% from when the Commission finalized the Order.<sup>18</sup> The Southern and Southeast Ohio regions<sup>19</sup> continue to have the highest poverty rates (over 18%); while the greatest number of persons with income under the poverty level (over 200,000) were in the Northern and Central regions of the state. Twelve Ohio counties are

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<sup>15</sup> Consumer Groups Application for Rehearing (January 16, 2009) at 1.

<sup>16</sup> <http://www.development.ohio.gov/Research/files/p700000000.pdf>, at 4.

<sup>17</sup> Finding and Order, December 17, 2008.

<sup>18</sup> State of Poverty in Ohio: Building a Foundation for Prosperity, Community Research Partners, January 2010 at 5.

<sup>19</sup> NBC Dateline Special, AMERICA NOW: FRIENDS & NEIGHBORS, July 25, 2010 addressed the poverty issues being experienced in Southeast Ohio.

experiencing poverty levels that are between 15.1 and 27.4%. Another thirty-four counties are experiencing poverty levels that are between 9.6 and 15%.<sup>20</sup>

Further, much uncertainty currently exists regarding the level of LIHEAP dollars that will be available this winter to assist low-income consumers. In early August of 2010, the U.S. Senate Labor-Health and Human Services-Education Appropriations full committee approved their Fiscal Year 2011 budget, which included \$3.3 billion for LIHEAP - a cut from the current level of \$5.1 billion.<sup>21</sup> The implications of this funding reduction, if approved in the final congressional budget are wide-reaching and could have a profound impact on Ohio's low-income consumers

## **II. THE RECENT CHANGES TO PIPP WILL MOST SEVERELY IMPACT THE LOWEST INCOME OHIOANS.**

In the winter months, the neediest Ohioans depend on the natural gas and electric PIPP programs as their lifeline for maintaining heat. Approximately 66% of Home Energy Assistance Program ("HEAP") recipients heat with natural gas and another 22% heat with electricity.<sup>22</sup> For the 2009 winter heating season, 66.23% of the 394,000 recipients of Home Energy Assistance Program (HEAP) benefits had household incomes that were below the poverty level.<sup>23</sup> Nearly half of HEAP recipients, or 186,629 households, are struggling through this difficult time with household incomes that are below 75% of the federal poverty level.

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<sup>20</sup> <http://www.development.ohio.gov/Research/files/p700000000.pdf>, at 14.

<sup>21</sup> <http://www.liheap.org/>.

<sup>22</sup> [http://development.ohio.gov/cms/uploadedfiles/Development.ohio.gov/Divisional\\_Content/Community/Office\\_of\\_Community\\_Services/2010%20HEAP%20Public%20Hearing.ppt#273.6](http://development.ohio.gov/cms/uploadedfiles/Development.ohio.gov/Divisional_Content/Community/Office_of_Community_Services/2010%20HEAP%20Public%20Hearing.ppt#273.6), Slide 6.

<sup>23</sup> [http://development.ohio.gov/cms/uploadedfiles/Development.ohio.gov/Divisional\\_Content/Community/Office\\_of\\_Community\\_Services/2010%20HEAP%20Public%20Hearing.ppt#274.7](http://development.ohio.gov/cms/uploadedfiles/Development.ohio.gov/Divisional_Content/Community/Office_of_Community_Services/2010%20HEAP%20Public%20Hearing.ppt#274.7), Slide 6.

Since its inception, the concept of the percentage-of-income payment has been the underpinning of PIPP. Under the current structure of the plan, a gas customer with a household income of \$1,000 a month pays \$100 (10% of income); a customer with an income of \$500 a month pays \$50; and a customer with an income of \$50 a month pays \$5, in order to keep service on. An electric customer with a household income of \$1,000 a month pays \$50 (5% of income); a customer with an income of \$500 a month pays \$25; and a customer with an income of \$50 a month pays \$2.50, in order to keep service on.

“Household income,” as defined in current Ohio Adm. Code 4901:1-18-01(H) and proposed Rule 18-1(N), “has the meaning attributed to it by the Ohio department of development, office of community services, in the administration of the home energy assistance program.”<sup>24</sup> That meaning, as expressed in ODOD documents, shows clearly that some households have zero income as income is defined in ODOD policies.<sup>25</sup>

Therefore, under current PUCO and ODOD rules (until replaced by the new rules on November 1, 2010), households with less than \$100 monthly income pay less than \$10 to maintain gas service, and households with less than \$200 pay less than \$10 to maintain electric service. A household with zero income (again, as income is defined by ODOD) can maintain gas service by paying 10% of zero, or zero dollars, as a monthly payment toward gas service, and can maintain electric service for the same amount.<sup>26</sup>

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<sup>24</sup> It is unclear how the PUCO rule can effectively be based on such a vague reference.

<sup>25</sup> See, e.g., slides from HEAP presentation at ODOD public hearings; the two pertinent slides are attached as Appendix A.

<sup>26</sup> Such gas customers are required to verify that fact every ninety days, as contrasted with the annual verification for households with any declared income. See current Ohio Adm. Code 4901:1-18-04(B)(6).



In the new rules, however, the Commission added a provision that requires “zero income” gas PIPP customers to pay \$10.00 a month.<sup>27</sup> And ODOD has also added a \$10 minimum payment for electric PIPP customers.

### **III. THE COMMISSION SHOULD SUSPEND OR WAIVE DISCONNECTIONS FOR THESE CUSTOMER WHO ARE UNABLE TO MAKE THESE INCREASED PAYMENTS.**

Based on the circumstances described in Section I. above, this winter is clearly not the time to increase the payment requirements of these poorest of the poor. Yet this is precisely what the Commission did when it adopted a November 1, 2010 implementation date for the new PIPP rules.<sup>28</sup> Customers with these minimal incomes who cannot afford these increased payments will have their service disconnected.

It should be recognized that with the lowered overall payment levels, all gas PIPP customers with household income above \$166.00 per month will see their payments decrease over current levels. This is shown in the following table:

Customer monthly income	Payment under current gas rules (10%)	Payment under new gas rules (6%, with \$10 minimum)	Payment under current electric rules (5%)	Payment under new electric rules (6%, with \$10 minimum)
\$1,000	\$100	\$60	\$50	\$60
\$333	\$33.33	\$19.98	\$16.65	\$19.98
\$300	\$30	\$18	\$30	\$18
\$200	\$20	\$12	\$10	\$12
\$166	\$16.60	\$10.00	\$8.30	\$10
\$100	\$10	\$10	\$5	\$10
\$00	\$00	\$10	\$00	\$10

<sup>27</sup> Proposed Rule 18, Appendix, paragraph (A). Issues regarding such key requirements being placed in appendices, rather than in the rules themselves, are discussed below under Proposed Rule 18.

<sup>28</sup> *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*, Entry (June 3, 2009) at 2.

With the new gas payment percentage of 6%, customers with incomes of less than \$166 a month will see their payments increase to \$10. This includes customers whose official income, as defined by ODOD, is zero. Likewise, with the new electric payment percentage payment of 6%, customers with incomes of less than \$166 a month will see their payments increase to \$10. Furthermore, customers who participate in both the natural gas and electric PIPP program will be required to pay a minimum of \$20 per month to maintain gas and electric service. Current economic conditions make such payments unaffordable to the poorest Ohioans. The unintended consequence is that this will discriminate against the poorest of the poor by rendering utility service out of their reach.

OCC requests that the Commission take note of the economic circumstances discussed above and provide additional relief for these poorest natural gas and electric PIPP customers this winter by suspending or waiving the application of the PUCO's disconnection rules. This would involve suspending or waiving Ohio Admin. Code 4901:1-18-05(F) for these customers, which states:

A customer's failure to make any payment under one of the payment plans in paragraph (B) of this rule or PIPP shall entitle the utility company to disconnect service in accordance with the procedures set forth in rule 4901:1-18-06 of the Administrative Code.

Along with this waiver, the provisions of Ohio Adm. Code 4901:1-18-12(D)(2) and (4) and Ohio Adm. Code 4901:1-18-15(A) would need to be waived or suspended.

This waiver would prevent disconnection of these lowest-income customers during the Winter Reconnect period. The PUCO could waive the \$10 minimum payment

for gas customers, but this would have no impact on the minimum payment for electric customers, which is set by ODOD rule.<sup>29</sup>

OCC recommends that the Commission waive the above-cited disconnection rules for participants in the electric and natural gas PIPP programs who would otherwise be required to make the minimum \$10 payment for the upcoming Winter Reconnect season. While the exact data is not available, the total number of these households who have zero income was projected at approximately 33,000 in 2007 – a 47% reduction from 2005.<sup>30</sup> In December 2007, there were approximately 423,251 active PIPP customers.<sup>31</sup> Based on the current number of PIPP customers, the total number of households with no income that will now be required to make the \$10 minimum payment is around 35,800.<sup>32</sup>

It could be contended that this minimum payment is necessary to raise additional funds for the PIPP program and to ease the burden on other customers currently paying the PIPP riders.<sup>33</sup> If this is the case, it is hard to see how the dollars that would be achieved by receiving the minimum payment would have any significant effect on the

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<sup>29</sup> ODOD's payment requirements for zero-income electric PIPP customers are contained in Ohio Adm. Code 122:5-3-02. **Criteria for customer eligibility.** \* \* \* (C) Commitment to participate in a payment plan program. \* \* \* A customer will satisfy this eligibility requirement by undertaking to pay a monthly PIPP installment calculated as provided in these rules, but not less than ten dollars subject to the limited exception provided in paragraph (A)(2) of rule 122:5-3-04 of the Administrative Code. \* \* \* The PUCO's payment requirements for zero-income natural gas PIPP customers are contained in Ohio Adm. Code 4901:1-18-13. **Payment requirements for percentage of income payment plan customers.** (A) The payment requirements for a percentage of income payment plan (PIPP) or graduate PIPP customer, as referenced in Chapter 4901:1-18 of the Administrative Code, shall be calculated as set forth below. (1) PIPP. 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.  
\* \* \*

<sup>30</sup> Consumer Groups' Initial Comments at 32.

<sup>31</sup> December 2007 OSCAR Report.

<sup>32</sup> The total number of PIPP customers in December 2009 was 495,500 or an 8.5% increase over the number of PIPP customers in December 2007.

<sup>33</sup> On the electric side, such payments come through the USF rider on electric bills.

program. In February, 2006, it was calculated that a \$5.00 minimum payment imposed on all PIPP customers – zero income and above -- would at best raise approximately \$50,000 per month on the gas side.<sup>34</sup> If the same population were assessed, a \$10 minimum payment would raise only \$100,000 statewide, which is not significant in terms of the total PIPP riders. Thus the impact on other customers would be minimal, while the impact of disconnection on these lowest income families might be tragic.

#### **IV. THE COMMISSION HAS THE POWER TO SUSPEND OR WAIVE THESE RULES**

The Commission has plenary jurisdiction regarding public utilities. R.C. 4905.04 *et seq.* The Commission has the statutory responsibility to ensure that “[a]ll charges made or demanded for any service rendered \* \* \* shall be just [and] reasonable....” R.C. 4905.22. In terms of electric service, the Commission is required by Ohio law to “[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.” R.C. 4928.02(A). Furthermore, as noted above, the Commission has emergency power when it:

deems it necessary to prevent injury to the interests of the public or of any public utility of this state in case of any emergency to be judged by the commission, it may temporarily alter, amend, \* \* \* suspend any existing rates, schedules, or order relating to or affecting any public utility or part of any public utility in this state. Rates so made by the commission shall apply to one or more of the public utilities in this state, or to any portion thereof, as is directed by the commission, and shall take effect at such time and remain in force for such length of time as the commission prescribes.

R.C. 4909.16.

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<sup>34</sup> ODOG represented that there were just over 9,000 customers on zero-income gas PIPP at the time.

The Commission clearly has the statutory authority to determine the terms of the disconnection and reconnection of all natural gas and electric service residential consumers including those consumers participating in PIPP. The Commission's authority includes *emergency* powers to suspend or alter the terms of disconnection and reconnection. The Commission should utilize its statutory emergency powers in the upcoming Winter Reconnect Order to prevent the disconnection of natural gas and electric service for Ohio's poorest consumers – those with zero-income.

Further, Ohio Adm. Code 4901:1-18-02(B)(3) specifically authorizes the Commission to waive any provision of Ohio Adm. Code Chapter 4910:1-18 "for good cause shown." Such "good cause" has clearly been shown here.

**V. THE COMMISSION'S WINTER RECONNECT ORDER IS THE PROPER PROCEEDING IN WHICH TO WAIVE THE PUCO'S DISCONNECTION RULES.**

The Commission has previously found that the Winter Reconnect Order provides the Commission the flexibility to align disconnection and reconnection requirements within the rules with the public interest needs at the time and the uncertainties that can exist entering the winter heating season.<sup>35</sup> The concerns the Commission raised when it issued its most recent Winter Reconnect Order should be heightened going into this winter:

The Commission is concerned about those who, because of limited financial resources, have had their gas and/or electric utility services disconnected because they are unable to pay their bills and who, because of arrearages, have been unable to have these services restored. \* \* \* [a] number of Ohio citizens will enter the winter season without utility service for heating purposes, particularly in light of the state of the economy in Ohio. This, we

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<sup>35</sup> Finding and Order at 56.

find, constitutes a continuing emergency. Therefore, in order to prevent injury to the interests of the public, we hereby direct, pursuant to the authority provided by Section 4909.16, Revised Code, the gas, natural gas, and the electric utilities under our jurisdiction to reconnect the services of those who have had their services disconnected for nonpayment \* \* \*<sup>36</sup>

Preventing the disconnection of these lowest-income consumers – rather than waiting until they are disconnected and then reconnecting them – is clearly a better remedy for this emergency.

## **VI. CONCLUSION**

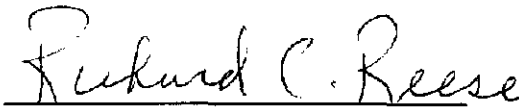
The Commission should grant OCC's motion to waive the disconnection rules, cited in the Memorandum in Support, for all natural gas and electric PIPP consumers who would be subject to the minimum payment for the upcoming winter heating season. A waiver of these rules will further enhance the ability of Ohio's lowest-income families to obtain and maintain natural gas utility services during this time of extreme economic hardship.

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<sup>36</sup> 2009 Winter Reconnect Order at 1.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in cursive script that reads "Richard C. Reese". The signature is written in dark ink and is positioned above a horizontal line.

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion and Memorandum in Support were served by first class United States Mail, postage prepaid, to the persons listed below, on this 27<sup>th</sup> day of August 2010.



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