

FILE

**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, 4901:1-13-11,)
4901:1-15-17, 4901:1-21-14, and)
4901:1-29-12 of the Ohio Administrative)
Code.)

Case No. 08-723-AU-ORD

PUCO

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**REPLY MEMORANDUM
OF THE
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

On August 27, 2010, the Office of the Ohio Consumers' Counsel ("OCC") filed a Motion for Waiver or Suspension of Disconnection Rules for PIPP Customers Required to Make a Minimum Payment During Winter Emergency ("Motion for Waiver"). OCC recommended that the Public Utilities Commission of Ohio ("PUCO" or "Commission") waive or suspend certain rules related to the disconnection of natural gas and electric service which are due to be implemented on November 1, 2010.¹ Specifically, OCC moved that during the period covered by the Commission's annual Winter Reconnect Order,² disconnection of gas and electric service be prohibited for those customers, who are now required to make a \$10 per month minimum payment for their gas and electric service,³ but are unable to make that payment. OCC supported that these are families with the lowest household income in the state.

¹ Entry, June 3, 2009 at 2.

² 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.

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

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On September 13, 2010, a Joint Memorandum Contra OCC's Motion for Waiver or Suspension ("Joint Memorandum") was filed.⁴ The Utilities that filed the Memorandum Contra urge the Commission to reject OCC's Motion for Waiver, in part, because they allege that OCC has not demonstrated any harm that the newly-imposed minimum payment of \$10 for both electric and gas service will have on low-income customers. OCC has amply demonstrated the harm that may be caused to zero-income customers, by noting the sharp increase in the unemployment and poverty rates in Ohio and the nation.⁵ Zero-income customers have never before been required to make a minimum payment during the winter-heating season precisely because they have no income under state guidelines. Proposing to implement the minimum payment requirements on these customers during the worst economic conditions in decades neither teaches "self-sufficiency" nor encourages "responsible behavior."⁶ Rather, it puts the poorest of Ohioans at risk of going without heat this winter.

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 now subject to the minimum payment of \$10 for electric service and \$10 for natural gas service. Ohio's poor are truly suffering "emergency" economic conditions and the Commission should consider the waiver of the minimum PIPP payments as a proper response to the emergency.

⁴ The Parties to the Joint Memorandum are Vectren Energy Delivery of Ohio, Inc., ("VEDO") Dominion East Ohio, Inc., ("DEO") Duke Energy Ohio, Inc., ("Duke") and Ohio Gas Company ("Ohio Gas") (collectively "Companies" or "Utilities").

⁵ Motion for Waiver at 3.

⁶ Joint Memorandum at 4.

II. UTILITIES' ARGUMENT

A. The Utilities Claim That The Commission Has Already Considered And Rejected OCC's Concerns.

The Companies expound at some length about the Commission having already considered and rejected all of OCC's arguments concerning the minimum payment issue during the rulemaking proceeding.⁷ The Companies claim, therefore, that OCC's Motion for Waiver amounts to a "collateral attack" on the Commission's rules.⁸ Apparently, the Companies have neglected to consider the Commission's waiver provisions provided for in Ohio Adm. Code 4901:1-18-2(B):

- (B) Nothing contained in this chapter shall in any way preclude the commission from any of the following:
 - (1) Altering, or amending, in whole or in part, these rules and regulations.
 - (2) Prescribing different standards for the disconnection and reconnection of electric, gas, or natural gas service as deemed necessary by the commission.
 - (3) Waiving any requirement, standard, or rule set forth in this chapter for good cause shown, as supported by a motion and supporting the memorandum. The application for a waiver shall include the specific rule(s) requested to be waived. If the request is to waive only a part or parts of a rule, then the application should identify the appropriate paragraphs, sections, or subsections to be waived. The waiver request shall provide sufficient explanation, by rule, to allow the commission to thoroughly evaluate the waiver request

It is difficult to imagine how the Companies deem OCC's request for a waiver as a collateral attack on the rules considering the numbers of waiver requests filed with the

⁷ Joint Memorandum at 3-4.

⁸ Id.

Commission in a given year. In fact, there have been numerous motions for waiver filed in this docket this year by utilities including Duke.⁹ OCC is merely exercising its right to seek a waiver, as permitted by the Commission's rules and as set forth in the Motion for Waiver.¹⁰

B. The Utilities Claim That OCC'S Proposal Would Frustrate The Goals Intended To Be Achieved By The Revised Rules.

The Companies discuss the goals of the soon-to-be-implemented PIPP rules and how granting a waiver of the PIPP minimum payment provisions of the electric and natural gas rules would "frustrate" such goals.¹¹ The Companies laud the stated goals of the new PIPP rules such as encouraging responsible behavior, improving self-sufficiency, and breaking the cycle of poverty.¹² The Companies fall short, however, in suggesting additional steps to achieve the goal of maintaining natural gas and electric service for low-income Ohioans.

In reality, the OCC-proposed waiver is entirely consistent with the primary goal for the revised PIPP program. The Commission issues the Winter Reconnect Order each year in lieu of codifying all of the disconnection and reconnection requirements in permanent rules so that there is more flexibility to help customers maintain service. The Entry requesting comments was explicit concerning the intent of the PIPP program to help consumers avoid disconnection.

There continues to be customers who, because of limited financial resources, have difficulty maintaining their gas and/or electric utility services. The intent of the PIPP program is to assist low-

⁹ Duke's Motion for Waiver was filed on April 30, 2010. The Motion was ultimately ruled on in Case No. 10-596-GA-WVR.

¹⁰ Motion for Waiver at 9-10.

¹¹ Joint Memorandum at 4.

¹² Id.

income customers who are trying to avoid the disconnection of their gas and electric utility services in spite of their financial situation.¹³

The Commission also recognized that its rules may not thoroughly address the needs of PIPP customers and non-PIPP customers in implementing its rules in stating: “The Commission will continually monitor the PIPP program to determine if further adjustments are necessary.¹⁴” The Commission is, no doubt, monitoring the impact the economy is having on consumers’ ability to pay their natural gas and electric bills. Granting OCC’s Motion for Waiver is crucial in ensuring that customers have access to heat this winter.

The Companies make reference in their Joint Memorandum to the arrearage forgiveness which PIPP customers subject to the minimum PIPP payment would forego if they made no payments on their bills during the winter heating season.¹⁵ It seems likely, however, that the lowest income PIPP customers will be concerned about arrearage forgiveness if they simply have no money to pay their energy bill this winter.

C. The Utilities Claim That OCC's Proposal Will Result In Additional Programming Costs.

The Companies argue once again that “utility billing systems are extremely complex” and costly.¹⁶ The Companies also allege that they may not be able to complete all of the testing of the new programs that are being implemented if the Commission approves the waiver request¹⁷. It is doubtful that testing programs, which have existed

¹³ Entry at 6.

¹⁴ Finding and Order at 59.

¹⁵ Joint Memorandum at 6.

¹⁶ Joint Memorandum at 6.

¹⁷ Joint Memorandum at 7.

for a number of years, would be a difficult undertaking for the Companies, particularly in light of the nature of the waiver that OCC is seeking. The granting of OCC's Motion for Waiver would merely render certain disconnection rules temporarily inapplicable for a finite number of PIPP customers. The "time" and "costs" associated with the claimed programming changes are unknown.¹⁸ The Companies have neither presented estimates of time or costs associated with preventing the disconnection of customers who are unable to make their minimum PIPP payment nor have they forecast the "unintended consequences" to other programming changes.¹⁹

The Commission should ignore the Companies' unsupported claims regarding the costliness and time-consuming efforts of programming changes necessitated by a waiver of disconnection rules. Each year the Companies manage to comply with the Winter Reconnect Order and all of its provisions. The Companies can certainly ensure that PIPP customers who are covered by the minimum payment rules are not disconnected if they fail to pay \$20 (the combined minimum payment for electric and natural gas service) this winter without major adjustments to billing systems.

D. The Utilities Claim That OCC Understates The Impact Of Its Proposal On Other Customers.

Contrary to the claims of the Companies, OCC fully understands that if the Commission grants OCC's waiver request that there may be a modest impact on other customers. OCC is convinced, however, that the waiver of the minimum PIPP payment charge for the winter heating season will protect the health and safety interests of the lowest income Ohioans while also "not unreasonably increasing the cost of service for all

¹⁸ Id. at 6.

¹⁹ Id.

ratepayers.²⁰ OCC reminds the Companies that PIPP customers also pay for the PIPP program and any payments not made by PIPP customers subject to the minimum PIPP payment rules would be rolled into the customers' arrearages, such that the customers would still owe the amounts. In addition, it is unlikely that all PIPP customers subject to the PIPP minimum payment rules would make no payments at all during the six-month winter heating season, particularly given that such consumers can qualify for arrearage credits when they are able to make the minimum payment.

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%.²¹ The National Poverty Rate is now at 14.3%.²² With these economic conditions in mind, and the limited impact that the Commission's granting of OCC's Motion for Waiver would have on the overall cost of PIPP, the Commission should grant OCC's Motion.

III. CONCLUSION

The Commission should recognize the harsh economic conditions being experienced by low-income Ohioans and grant OCC's Motion for Waiver. The implementation of the new minimum payment rule applicable only to the poorest of PIPP participants, during such a severe economic downturn, could result in a severe increase in natural gas and electric disconnections. Such a result would be totally at odds with the intent of the Commission's annual Winter Reconnect Order which is intended to assist

²⁰ Entry on Rehearing at 6. The PUCO was discussing the impact the PIPP rules will have on non-PIPP customers for Ohio Gas customers and is not strictly on point with the Companies' use of the cite when discussing the overall impact of the PIPP rules.

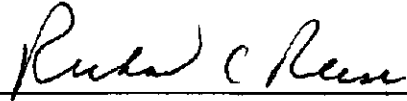
²¹ <http://www.development.ohio.gov/Research/files/p700000000.pdf>, at 4.

²² http://www.census.gov/newsroom/releases/archives/income_wealth/cb10-144.html

low-income natural gas and electric customers to obtain and maintain service during the winter months.

Respectfully submitted,

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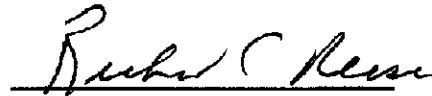


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Reply Memorandum* was served on the persons stated below via regular U.S. mail this 21st day of September 2010.



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