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

ENTRY

The Commission finds:

(1) On December 17, 2008, the Commission issued its Opinion and Order (Order), adopting amended and new rules in Chapters 4901:1-17 and 4901:1-18, Ohio Administrative Code (O.A.C.).[1] The adopted rules include revisions to the Percentage of Income Payment Program (PIPP). Under adopted Rule 18-13, each PIPP customer will be billed six percent of his/her household income or $10, whichever is greater, per billing cycle. In addition, adopted Rule 18-14 provides incentive programs for PIPP customers, by reducing a customer's outstanding arrearages when the customer makes timely payments. For each on-time payment of the amount required under adopted Rule 18-13, a PIPP customer will have his/her account arrearage reduced by the difference between the amount of the required income-based payment and the current monthly bill, plus 1/24 of the customer's accumulated arrearages.

In approving the minimum payment requirement, the Commission noted the need to balance low-income customer needs with the impact of PIPP recovery on non-PIPP customer bills. We found that requiring a payment of $10, in exchange for as much gas as a customer needs, creates a very reasonable balance between providing for the very lowest income customers, while at the same time ensuring that there is some sense that service is not free. In addition, in response to concerns raised by commenting low-income advocates, the Commission noted that the arrearage crediting, given to a PIPP

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1 Hereinafter, the rules in Chapters 4901:1-17 and 4901:1-18, O.A.C., will be referred to by chapter and rule number only. For example, Rule 4901:1-18-14, O.A.C., will be abbreviated to Rule 18-14.

customer upon payment of the $10 by the due date, serves to reduce the customer's debt.

(2) In our Entry on Rehearing issued on April 1, 2009 (Entry), we rejected the argument raised by the Ohio Consumers' Counsel (OCC), Appalachian People's Action Coalition, Consumers for Fair Utility Rates, May Dugan Center, United Clevelanders Against Poverty, Organize Ohio, Communities United for Action, Pro Seniors, Inc., Cleveland Tenants' Organization, HARCATUS Tri-County Community Action Organization, Ohio Farm Bureau Federation, and Edgemont Neighborhood Coalition (jointly, Consumer Groups) that requiring a minimum payment was unreasonable and unjustified by the record. We reasoned that, insofar as it is the rest of the gas customers that pay the bulk of the burden of the PIPP program, it was not inappropriate to require PIPP participants to share the burden of the PIPP program by requiring the PIPP customer to contribute at least a minimum amount for the value of the gas service the customer receives, referencing our belief that even a zero-income PIPP customer has some level of responsibility to the community of ratepayers to contribute to the cost of his/her gas utility service. We also found that arrearage crediting provided important benefits to the minimum payment customers, noting that, while a zero-income PIPP customer did not have to make a payment under the existing PIPP rules, that customer also accumulated significant arrearages thereby increasing the customer's chances of never getting out from under their debt. Finally, we found that, by having a customer make a payment every month, the customer remains cognizant of the value of the services received and gets in the habit of making monthly gas bill payments.

(3) By Entry issued on June 3, 2009, the Commission established November 1, 2010 as the effective date of the new rules.

(4) On August 27, 2010, OCC filed a motion for waiver or suspension of the disconnection rules for PIPP customers required to make a minimum payment during winter emergencies. OCC argues that, since there is an economic emergency in Ohio, the Commission should suspend or waive disconnections for all gas and electric PIPP customers who are unable to make the required $10 per month minimum payments.

(5) In its motion, OCC notes that, in addition to the Commission's new rules, new rules governing the electric PIPP program, which is administered by the Ohio Department of Development (ODOD), will also go into effect on November 1, 2010. Under the new ODOD rules, a $10 minimum payment will also be imposed on electric PIPP customers. As a result, OCC states that gas and electric PIPP customers with zero income, as defined by ODOD,[2] will have to pay $20 per month in order to maintain both electric and gas service. OCC contends that current economic conditions make such payments unaffordable to the poorest Ohioans. In addition, OCC states that the required minimum payments will have a greater impact on customers with incomes less than $166 per month, as a percentage of income, given the reduction from the current requirement of a payment of 10 percent of income, with no minimum payment requirement, to the six percent of income, with $10 minimum, under adopted Rule 18-13. OCC notes that zero income customers, who do not have to make any payments under the current rules, since 10 percent of zero is zero, will begin paying $20 per month once the new rules go into effect. In contrast, PIPP customers with higher incomes will actually see reduced payments under the new rules.

(6) Therefore, in order to continue to provide access to gas and electric services for minimum payment customers, OCC requests that the Commission suspend or waive adopted Rules 18-05(F), 18-12(D)(2) and (4), and 18-15(A). Adopted Rule 18-05(F) allows a utility company to disconnect a PIPP customer for nonpayment, while adopted Rule 18-15(A) states that a PIPP customer who is current on his/her PIPP payments shall not be disconnected, refused reconnection, or denied a transfer of service to a new address because of outstanding arrearages accrued while in the PIPP program. Adopted Rules 18-12(D)(2) and (4) require that any missed PIPP payments be paid in order for a current PIPP customer to remain in the program or before a customer who has been dropped from PIPP can reenroll in the program.

According to OCC, the financial impact of its waiver request, if granted, would be minimal. Relying on a February 2006

2 As explained in both Rule 18-01(H), which is currently in effect, and adopted Rule 18-1(N), the Commission's rules utilize the definition of household income contained in ODOD's rules.

estimate that a five dollar minimum payment imposed on all gas PIPP customers, zero income and above, would raise, at best, $50,000 per month, OCC contends that the $10 minimum payment would recoup only $100,000 statewide. OCC asserts that the resulting impact upon the customers paying for the PIPP riders would be minimal, while the impact of disconnection on the minimum payment customers might be tragic.

(7) On September 13, 2010, Vectren Energy Delivery of Ohio, Inc., The East Ohio Gas Company d/b/a Dominion East Ohio, Duke Energy Ohio, Inc. and Ohio Gas Company (collectively, the Companies) filed a joint memorandum contra OCC's motion. The Companies argue that, since the Commission already considered and rejected OCC's concerns in the Entry, OCC's waiver motion appears to be a collateral attack on the Commission's rules. In addition, the Companies contend that OCC's proposal would frustrate the goals intended to be achieved by the revised rules, result in additional programming costs, and increase the cost of the PIPP riders by over $2 million.

The Companies maintain that the reasoning provided by the Commission in the Order when approving the minimum payment requirements fully addresses the concerns raised by OCC in its motion. In addition, the Companies argue that waiving the rule giving utilities the ability to disconnect customers for failure to make payments will work against the Commission's stated goal, as expressed in the Entry, of encouraging and incenting responsible payment behavior by PIPP customers. The Companies further contend that a moratorium on disconnection for minimum payment customers is particularly problematic at this point in time because no one has any actual experience with the adopted rules, as they have yet to take effect. The Companies also note that OCC's waiver request may unintentionally harm minimum payment customers, because without making the minimum payment those customers will not be eligible for the arrearage credits.

The Companies assert that OCC's proposal would result in increased programming costs, and claim that, with less than sixty days until the effective date of the adopted rules, it may not be possible to complete any additional programming changes. Lastly, the Companies challenge OCC's assessment of cost impacts upon other customers, arguing that OCC calculated only one month's worth of minimum payments and relied upon on an outdated estimate of the number of minimum payment customers. In place of the $100,000 cost estimated by OCC, the Companies insist that that actual cost of OCC's waiver request would be over $2 million.

(8) On September 21, 2010, OCC filed a reply to the Companies' memorandum contra, reiterating the arguments OCC made in its original motion.

(9) Initially, the Commission would note that any requests for waivers should be filed in an appropriate "WVR" docket and not in this case, which was intended for review of the rules themselves and not for waiver requests. In fact, in our June 23, 2010, entry in this case, we directed that any requests for waiver of Chapters 4901:1-17 and/or 4901:1-18, O.A.C., must be filed in a separate "WVR" docket and not in Case No. 08-723-AU-ORD. While the language in that entry referred to companies' filings, it is evident, especially in light of the fact that we issued our entry on rehearing in Case No. 08-723-AU-ORD over a year ago, that motions should no longer be filed in this case. Therefore, the Commission emphasizes that all motions relating Chapters 4901:1-17 and/or 4901:1-18, O.A.C., must be filed in an appropriate case and not in this case. Accordingly, this case should be closed of record.

(10) Having now clearly noted the appropriate method to file a waiver of the Commission's rules, for this final instance we will rule on OCC's motion in this case. Upon review of OCC's request, we agree that it essentially reiterates OCC's comments in this docket that were considered and rejected by the Commission in our Order and Entry adopting new rules. Therefore, the Commission finds that OCC's motion for waiver or suspension of the disconnection rules for minimum payment PIPP customers lacks merit and should be denied. As the recitation of our previous decisions in this proceeding makes clear, the decision to implement the minimum payment requirement for PIPP was an integral part of the systematic improvements made to the PIPP program by the adopted rules. The adopted rules balance the needs of customers who, due to

tough economic conditions, require assistance in order to access and maintain utility service with the financial burden placed on other customers who incur the responsibility for the costs of the PIPP program. The Commission finds that OCC's cost analysis of its waiver request is not credible, as it is based on outdated information and fails to consider the full length of the winter heating season. We also note that, although funding for the Low Income Home Energy Assistance Program (LIHEAP) has been cut for this upcoming winter season, as pointed out by OCC, some assistance is going to be available through LIHEAP this year. Future funding for LIHEAP is not guaranteed, which is why it is appropriate to institute the minimum payment requirement at this time, when additional resources are available for the customers with the greatest financial need. The Commission continues to believe that the goals of the PIPP program are best met by requiring a minimum payment from PIPP customers in exchange for as much gas as a customer needs as well as a significant reduction in the customer's utility debt through arrearage crediting. The Commission finds that encouraging customer payment responsibility continues to be an important goal of the PIPP program, and we believe that, even in these trying economic times, requiring a minimum payment coupled with arrearage crediting offers far more value to a minimum payment customer than a waiver of the minimum payment that ultimately burdens the customer with a far heavier debt load. In addition, the Commission notes that, beginning this past summer, low-income customers have been receiving notices informing them of the changes to the program, including the minimum payment requirement. We find that changing course at this late date is inadvisable, as it would likely create confusion among low-income customers, utility companies, and community action agencies.

As we have previously stated, we will continue to evaluate the restructured PIPP program to ensure that it meets the stated goals of the program and to determine if any adjustments are appropriate. Our evaluation will certainly include a review of the impact upon minimum payment customers.

It is, therefore,

ORDERED, That OCC's motion for waiver or suspension of the disconnection rules for minimum payment PIPP customers be denied. It is, further,

ORDERED, That this docket be closed of record. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

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Secretary