

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)
Review of Ohio Administrative Code) Case No. 19-0052-AU-ORD
Chapters 4901:1-17 and 4901:1-18.)

**APPLICATION FOR REHEARING ON RESIDENTIAL DISCONNECTION
RULES**

BY

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The rules governing residential credit (Ohio Adm. Code 4901:1-17), residential disconnection (Ohio Adm. Code 4901:1-18) and the Percentage of Income Payment Program (PIPP) (Ohio Adm. Code 4901:1-18 and 122:5-3) between regulated utilities and their most vulnerable residential customers are at issue in this proceeding. On some measures, the PUCO took action in its November 4, 2020 Finding and Order (“Order”) to protect consumers.

But the PUCO could have done more to protect consumers. The PUCO should have adopted the Consumer Advocates’¹ recommendations which would amend the rules to provide more flexibility to customers. Consumer Advocates’ recommendations² were

¹ The Office of the Ohio Consumer’s Counsel, Advocates for Basic Legal Equality, Inc., Coalition on Homelessness and Housing in Ohio, Communities United for Action, Legal Aid Society of Southwest Ohio; Legal Aid Society of Cleveland, the Legal Aid Society of Columbus, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services (hereinafter “Consumer Advocates”).

² See, Consumer Advocates Comments (July 19, 2019); Reply Comments (Aug.15, 2019).

designed to adapt these PUCO rules to the needs of the consumers and protect vulnerable consumers as well as all residential customers.

The PUCO's order was unreasonable in the following respects:

ASSIGNMENT OF ERROR NO. 1: The PUCO's Order addressing PIPP eligibility under Ohio Adm. Code 4901:1-18-12 was unreasonable because having to pay for missed PIPP payments for the time the customer was not even on PIPP is patently unreasonable and is a significant barrier for reenrollment for low-income customers.

ASSIGNMENT OF ERROR NO. 2: The PUCO erred because it failed to establish a reconnection charge for customers that have meters that may be remotely read based on the utility's actual cost to disconnect/reconnect as required under R.C. 4928.02 and 4929.02.

ASSIGNMENT OF ERROR NO. 3: The PUCO erred because it failed to require the utilities to report on the number of actual customized plans that are being made for consumers.

ASSIGNMENT OF ERROR NO. 4: The PUCO erred because it failed to modify its rules (Ohio Adm. Code 4901:1-18-02(D)) to reflect that consumers who pay utility bills electronically do not affirmatively consent to receive all notifications electronically, including disconnection notices.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

The rules governing residential credit, residential disconnection, and the natural gas Percentage of Income Payment Plan (“PIPP”) are designed to protect Ohio residential consumers when they are most vulnerable and at risk: those instances when they are facing disconnection of gas and/or electric service, most often due to lack of funds to fully pay their utility bills.

The PUCO when adopting rules on this topic should have consistently implemented solutions that protect residential customers. This especially includes clarifying rules surrounding disconnections and reconnections for fairness and consistency, and easing consumers’ reenrollment into PIPP. Customers of regulated utilities have no choice but to do business with their utility for distribution service – they are “captive.” Therefore, consumer protections related to how regulated utilities serve residential customers must be strengthened to protect the health and safety of consumers.

The importance of these rules is even more crucial for consumers in these times of financial and health crises a result of the global pandemic.³

The PUCO in its Order should have done more to protect consumers. The PUCO's failure to further act to protect consumers was unreasonable and the Order should be modified consistent with these Consumer Advocates' recommendations.

II. MATTERS FOR REHEARING

ASSIGNMENT OF ERROR NO. 1: The PUCO's Order addressing PIPP eligibility under Ohio Adm. Code 4901:1-18-12 was unreasonable because having to pay for missed PIPP payments for the time the customer was not even on PIPP is patently unreasonable and is a significant barrier for reenrollment for low-income customers.

The PUCO's Order capping the number of missed PIPP payments up to 24 months in order to reenroll in PIPP,⁴ while an improvement over the current rules which requires the customer to make missed PIPP payments up to the level of their arrearages, still represents an unfair and significant barrier for reenrollment for low-income customers. It's patently unfair because that 24-month period applies *even for the time period that customers are not actively enrolled in PIPP*. The PIPP program should be structured in a manner that provides fairness and more flexibility for consumers.

The issue surrounding missed PIPP payments is the largest deficiency in the existing rules that still has not been adequately addressed in the current rules. Consumer Advocates recommended revising Ohio Adm. Code 4901:1-18-12(D)(2)(b) to limit customers' responsibilities for PIPP installment payments to only those payments that

³ <https://www.nytimes.com/2020/04/15/opinion/coronavirus-stimulus-check-payment.html>; <https://www.dispatch.com/story/news/2020/09/25/hunger-among-ohio-families-increasing-covid-19-pandemic-persists/3519850001/>

⁴ Order at 57.

occurred while customers were actively enrolled on PIPP. The PUCO's decision limiting the number of months of missed PIPP payments to 24 months instead of up to the level of arrearages accrued while the customer is on PIPP is unreasonable and not helpful in eliminating barriers precluding customers from returning to PIPP. The rule's new 24-month limit is harmful to consumers.

Consumers should not be held responsible for PIPP payments if they are not actively enrolled in the PIPP program.⁵ Otherwise, customers who either voluntarily end their participation in PIPP or customers who are involuntarily dropped from PIPP can be held responsible for PIPP payments even during the time that they were not actively enrolled in PIPP (up to 24 months, under the rule). The missed PIPP payments that are required to be made before customers can reenroll in PIPP is simply unfair and is a major financial barrier for many customers who have no other option but to be served on PIPP to maintain utility services.

Rejecting Consumer Advocates recommendation that customers should only be responsible for missed PIPP payments that accrued only while they were actively enrolled on the program, the PUCO said that these rules are intended to discourage PIPP customers from voluntarily leaving the PIPP program during non-winter months and then reenrolling during the next winter heating months, i.e., "seasonal participation."⁶ But the PUCO's solution, to cap missed PIPP payments up to 24 months, goes well beyond this intention and makes reenrollment on PIPP next to impossible for low-income consumers. The PUCO's Order is unreasonable.

⁵ Consumer Advocates Comments at 3-6.

⁶ Order at 54.

For low-income customers who remain utility customers, but who are removed from PIPP, trying to get back on the PIPP program can be very challenging. It is challenging because the payment obligation continues to accrue even during months in which the customer is not actively on PIPP. Customers can be removed for not reverifying eligibility, not meeting the anniversary date requirements of having made all PIPP payments, including any payments that were missed in the past 12 months. PIPP customers can be dropped because they move to a new location. Customers can be dropped because of non-payment and/or disconnection. But PIPP customers remain responsible for the monthly PIPP installment payment even during months that they were not on PIPP up to the level of arrearages they have when going off PIPP. Considering that almost half of all PIPP customer households have annual incomes below 75% of the Federal Poverty Guidelines, monthly incomes are often insufficient to make the missed payments.

The PUCO's intention to prevent "seasonal disconnection"⁷ with the goal of PIPP customers remaining on the program for the entire year and not choosing months when it would be the most beneficial to be on PIPP is misplaced. The fact of the matter is that most customers would prefer retaining their natural gas service year-round if they possibly could, if for no other reason than to have available hot water and/or the ability to cook in their homes year-round. In July of 2020 and in the midst of a global pandemic where the PUCO even issued a moratorium on shut-off's, 72 percent of PIPP customers made their payments in-full and on-time.⁸ This is strong evidence that the overwhelming

⁷ Order at 54.

⁸ ODSA PBAB Presentation Oct 2020.

number of PIPP customers struggle even during the most difficult times to remain in full compliance with the PUCO and ODSA payment requirements.

The PUCO's incentive credits—lowering the PIPP payment amount from 6 percent of monthly household income to 5 percent⁹--are designed to provide sufficient reason for customers to want to remain on PIPP year-round. In much the same way as the PUCO lowered the PIPP payment amount to help address low-income household affordability issues,¹⁰ other rules in Ohio Adm. Code 4901:1-18-12(D) need to be adapted to provide more flexibility and fairness in helping customers remain on or reenroll on PIPP. Overly restrictive rules tend to be punitive and assume that customers want to voluntarily leave and return to PIPP.

Advocates also recommended extending the grace period to 90 days (up from 60 days) for a PIPP customer to reverify their eligibility to remain in the gas PIPP program.¹¹ The extension of the grace period for the annual reverification of income is designed to help customers avoid being dropped from PIPP unnecessarily because of what appears to be purely arbitrary timelines for the reverification to occur. Consumer Advocates also recommended that Ohio Adm. Code 4901:1-18-12(D)(2) be revised to extend the time period for the PIPP customer to make up any missed PIPP installments from one billing cycle to three months.¹²

The PUCO should provide more time for customers to make any missed payments to remain on PIPP. And most significantly, the PUCO should eliminate requirements that

⁹ Order at 62.

¹⁰ *Id.*

¹¹ Consumer Advocates Comments at 2-4.

¹² *Id.*

PIPP customers are responsible for PIPP payments even during times when they are not actively enrolled in the PIPP program. PIPP needs to provide the flexibility to meet the special needs of the at-risk low-income population that it serves.

The PUCO's Order is therefore unreasonable. Consumer Advocates' application for rehearing should be granted.

ASSIGNMENT OF ERROR NO. 2: The PUCO Order was unlawful because it failed to establish a reconnection charge for customers that have meters that may be remotely read based on the utility's actual cost to disconnect/reconnect as required under R.C. 4928.02 and 4929.02.

The PUCO properly recognized in its Order that utilities should use enhanced metering to reduce customers' costs, consistent with state policy set forth in R.C. 4928.02 and 4929.02.¹³ These statutes recognize state policy that ensures the availability to consumers of reasonably priced electric and natural gas service and charges. And yet, despite such policies, the PUCO failed to reduce overstated utility reconnection charges to reflect the actual lower cost of reconnection achieved through use of updated meters, all paid for by Ohioans across the state. Customers are being overcharged as there is not a cost-based standard for reconnection.

The PUCO has authorized the installation of AMI meters for several years at great cost to consumers (millions and millions of dollars).¹⁴ Utilities are in various stages of deploying AMI meters which can be read remotely. These remote-read meters no longer require physical visits to customers' homes for reconnection. Because the meters can be

¹³ Order at 44.

¹⁴ Customers have spent (or are spending) approximately \$600 million in AMI and communications systems to support AMI across the state. *See*, AEP Case Nos. 08-0917-EL-SSO and 13-1939-EL-RDR; Duke Case Nos. 08-0920-EL-SSO and 17-0032-EL-RDR; FirstEnergy Case Nos. 09-1820-EL-RDR and 16-0481-EL-RDR. Other applications are pending that will increase these costs even more.

read remotely, the utilities' reconnection costs have plunged dramatically. Not so for the charges to customers for reconnection.

All utilities should have cost-based reconnection charges. Customers should be paying for charges for reconnection that reflect the reconnection capability of their meter. Customers who have a traditional meter requiring an actual physical visit to their home for reconnection, should be paying the cost of that reconnection. Customers who have advanced meters that can be remotely read should be paying the cost of reconnection that reflects the throwing of a switch from the utilities' office. That is the fair, just, and reasonable way to charge customers. But that is not what is occurring. Instead many of the utilities overcharge customers based on the cost of physical reconnection when reconnection is being done remotely. The PUCO should have acted to protect consumers from such overcharges. But it did not.

The Consumer Advocates proposed to reduce the reconnection of services charge for customers with advanced metering infrastructure ("AMI") meters that have remote disconnection and connection capabilities.¹⁵ In rejecting this proposal, the PUCO unreasonably failed to adopt *any* kind of standard under Ohio Adm. Code 4901:1-18-07 for ensuring that these charges are cost-based. The utility's charges for remotely reconnecting customers with AMI meters should be based on the utility's cost of service to perform that service. Remote reconnection charges should be minimal compared to the cost utilities incurred when reconnecting a customer that involves dispatching personnel

¹⁵ Consumer Advocates Comments at 14; Consumer Advocates Reply Comments at 15; *see*, Order at 42-44.

and trucks across their service territory to physically disconnect and reconnect service at the customer's meter.

The PUCO's conclusion that it is more appropriate to address a utility's reconnection charge outside the context of a rule review proceeding¹⁶ was unreasonable. The PUCO is merely kicking the can down the road where in some instances the road is very far away. The PUCO's conclusion was also unreasonable because it fails to consider that some utilities who are deploying AMI meters are under no obligation to file rate cases, let alone cases that would lower the reconnection charges consistent with the cost of doing the reconnection.¹⁷ While the utilities were quick to collect customers' money for AMI meter investment, based on alleged consumer savings,¹⁸ they have been slow to offer to reduce reconnection charges to consumers associated with the cost savings.¹⁹ This is wrong.

The PUCO should require utilities without a rate case filing (or a commitment to file) before 2022 to file an application not for a rate increase (ATA) to implement a cost-based tariff for AMI meter disconnections/reconnections. Consumer Advocates' application for rehearing should be granted, and the Order modified consistent with Consumer Advocates' recommendations.

¹⁶ Order at 44.

¹⁷ See, *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for an Extension of the Distribution Modernization Rider*, Case No. 19-0361-EL-RDR at 7 ("Further, we affirm our determination that it was reasonable and appropriate to eliminate the directive to file a rate case at the end of ESP IV.") AEP Ohio has an on-going rate case in Case No. 20-0585-EL-AIR but has included no proposal to reduce reconnection charges based on the cost of service for actually performing the disconnect/ reconnect functions remotely.

¹⁸ Consumer Advocates Comments at 14.

¹⁹ For example, under the AEP Ohio gridSMART Phase 1 deployment, over 132,000 AMI meters were deployed almost a decade ago. Under the gridSMART Phase 2, another approximate 900,000 AMI meters were deployed. Despite over a million AMI meters across AEP's service territory, today a customer who is remotely disconnected and reconnected continues to pay a \$53.00 tariff reconnection charge.

ASSIGNMENT OF ERROR NO. 3: The PUCO unreasonably failed to require the utilities to report on the number of actual customized plans that are being made for consumers.

Ohio Adm. Code 4901:1-18-05(A) requires utility companies to work with customers to establish reasonable payment terms and customized payment plans to avoid delinquency. Customized plans are especially important during the pandemic when so many are struggling. Recent studies indicate that the Ohio poverty level is approximately 13.9% and the food insecurity rate is 14.5%.²⁰ A utility is required to inform the customer about the availability of payment extensions or other extended payment plans that may be available on terms that are mutually agreeable between the customer and the utility. To the extent that a customer and utility cannot agree on mutually acceptable payment terms, the utility is required to offer customers one of the PUCO-ordered payment plans that are specified in Ohio Adm. Code 4901:1-18-05(B).

While the PUCO's Order recognized a utility's responsibility to offer all the options afforded by paragraph (A) and (B) of this Rule,²¹ it was unreasonable for the PUCO not to require the utilities to report to the Staff on the number of actual customized plans that are being made available to consumers. Although utilities are required to report numbers of customers on each of the PUCO ordered payment plans (like the 1/3rd, 1/6th, 1/9th and PIPP), there is no requirement of reporting on the number of actual "customized plans" that are being made for consumers.

To help ensure that the PUCO intent is actually being implemented, the PUCO should require utilities to include reporting on a) the number of customized payment

²⁰ Ohio Poverty Report June 2020; Feeding America Website Jan. 2020.

²¹ Order at 19-21.

plans that were extended to consumers, and b) the number of extensions of due dates that were offered to consumers. The minimum consumer protection standard under the PUCO rules are that the utilities should be working with customers to develop customized payment plans that are under terms that are agreeable to both the customer and the utility.²² This includes more flexible payment arrangements with reduced down-payments, longer payment terms, and adjusted due dates to meet the needs of consumers.

More customized payment plans under terms that are agreeable with consumers are likely to lead to more customers being able to meet their payment obligations and avoid expensive collection activities and dangerous disconnections. It was therefore unreasonable for the PUCO in its Order to not require the utilities to report on the number of customized payment plans and adjusted due dates that are being provided to consumers. Consumer Advocates' application for rehearing should be granted, and the Order modified consistent with Consumer Advocates' recommendations.

ASSIGNMENT OF ERROR NO. 4: The PUCO's Order unreasonably failed to modify Ohio Adm. Code 4901:1-18-02(D) to reflect that consumers who pay utility bills electronically do not affirmatively consent to receive all notifications electronically, including disconnection notices.

The PUCO's Order properly rejected AEP's proposal to amend the rule such that if customers agree to receive *any* transactions or notices electronically, then *all* transactions and notices must be provided electronically. Consumer Advocates argued that that a customer who elects to pay their bill online should not automatically be required to receive all notices, including disconnections notices, online.²³ Nor should the customer be required to forego receiving a paper bill simply by making an online

²² Ohio Adm.Code 4901:1-18-05.

²³ Consumer Advocates Comments at 6-7.

payment. Customers should have the choice to decide which notices are sent electronically and which are not.

The PUCO's Order recognized that where a customer has affirmatively consented to communicate and to conduct transactions with the utility electronically, the utility should abide by the agreement.²⁴ The PUCO clarified that it is not affirmative consent to electronic notice if the customer merely pays the utility bill electronically, and found that the consent agreement to communicate electronically must specifically indicate that all notices, including any disconnection notice, will be sent electronically.²⁵ The PUCO found that that a customer who has affirmatively consented to electronic communications should be permitted, at any time, to withdraw the consent to electronic communications.²⁶

But while the disclosure requirements and the customer's ability to withdraw from electronic notices are discussed in the Order, as explained above, the rule itself was not modified to include these requirements. That is unreasonable. There should be explicit requirements in Ohio Adm. Code 4901:1-18-02(D) that match what is the intent of the Order.

Rulemaking proceedings are where rules' definitions are modified,²⁷ and the rules adopted in the Order obviously need to reflect the substance of the Order. In this instance, the rule should reflect the PUCO's finding that customers should have the right to decide

²⁴ Order at 17.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See, e.g., *In Re Commission's Rev. of Certain Rules in Chapter 4901:1-16, Ohio Adm. Code*, Case No. 2006-540-GA-ORD, Entry (April 10, 2006) (modifying definition of "gathering line"); *In the Matter of the Commissions Rev. of Its Rules for Electrical Safety & Serv. Standards Contained in Chapter 4901:1-10 of the Ohio Adm. Code.*, Case No. 17-1842-EL-ORD, Finding and Order (February 26, 2020) (modifying definition of "major event").

which transactions and notices (if any) they receive electronically and which notices they receive in writing through the mail or in another form. This is the essence of the affirmative consent that the Order is addressing. Customers should be informed by the utility about any risks that they assume by receiving notices (like disconnection notices) electronically rather than through the mail or in-person. Consumer Advocates' application for rehearing should be granted, and the Order modified consistent with our recommendations. The PUCO should grant rehearing and require Ohio Adm. Code 4901:1-18-02(D) be modified to be consistent with the Order.

III. CONCLUSION

Rules regarding residential disconnection and reconnection impact vulnerable consumers and all residential customers. Especially in this financially challenging time, it is important to "get these rules right." Consumer Advocates' recommendations protect residential customers. The PUCO should have adopted them. The PUCO's failure to address the issues raised in this application for rehearing was unreasonable and unlawful.

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Application for Rehearing was served by electronic transmission upon the parties below this 4th day of December 2020.

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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Case No(s). 19-0052-AU-ORD

Summary: App for Rehearing Application For Rehearing On Residential Disconnection Rules By Advocates For Basic Legal Equality, Inc., The Legal Aid Society Of Cleveland, The Legal Aid Society Of Columbus, Legal Aid Society Of Southwest Ohio, LLC., The Office Of The Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., Southeastern Ohio Legal Services electronically filed by Ms. Deb J. Bingham on behalf of Botschner-O'Brien, Amy