

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission )  
 Consideration of Waivers of the ) Case No. 05-1191-AU-UNC  
 Administrative Code.

ENTRY ON REHEARING

The Commission finds:

- (1) By entry issued September 28, 2005, the Commission granted waivers of certain rules contained in the Ohio Administrative Code and expressed its intent to update the affected rules in the future. The Commission granted the waivers to address the apparent contradictory language in many of the rules with new statutes contained in Amended Substitute House Bill 66 (H.B. 66). The new statutes state that the Ohio Consumers' Counsel (OCC) "shall not operate a telephone call center for consumer complaints" and require that the Commission "shall operate a telephone call center for consumer complaints." The new statutes also require that "(a)ny calls received by the consumers' counsel concerning consumer complaints shall be forwarded to the public utilities commission call center." The Commission in turn is required to share with OCC all information received and any material produced relating to residential consumer complaints by its call center. (See Sections 4911.021 and 4905.261, Revised Code.)
- (2) A motion to intervene, application for rehearing, motion for interim relief and request for expedited ruling was filed in this matter by OCC on October 21, 2005. OCC raised four grounds for rehearing.
- (3) On October 25, 2005, the Ohio Telephone Association (OTA) filed a motion to intervene and a memorandum opposing the request for an expedited ruling. OTA has not filed any additional documents.
- (4) A motion to intervene and a motion to practice *pro hac vice* were filed by the Appalachian Peoples' Action Coalition, Community Action Partnership of the Greater Dayton Area, Consumers for Fair Utility Rates, Empowerment Center of Greater Cleveland, Neighborhood Environmental Coalition, and Ohio Partners for Affordable Energy, collectively the Low

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Income Consumer Advocates (LICA), on October 26, 2005. LICA filed an application for rehearing on October 27, 2005. LICA raised two grounds for rehearing.

- (5) On October 28, 2005, the Northeast Ohio Public Energy Council filed an application for rehearing of the Commission's September 28, 2005, entry. Its four grounds for rehearing are substantially the same as the OCC's four grounds.
- (6) In their applications for rehearing, OCC and NOPEC assert that: (a) the Commission waiver entry improperly nullifies OCC's duty and responsibility to assist residential consumers with respect to non-complaint matters; (b) the entry mischaracterizes the language of the Administrative Code; (c) the waiver was initiated without notice or due process; and (d) the Commission should adopt alternative language relating to OCC through a rulemaking proceeding.
- (7) OCC and NOPEC first claim that the language of Section 4911.021, Revised Code, does not state that OCC may not accept calls from Ohioans with inquiries related to their utility service. OCC points out that it will continue to interact with consumers via its existing toll-free number to provide information and educational materials, and that all complaints will be forwarded to the Commission. In its second ground for rehearing, OCC asserts that the Commission's September 28 entry goes beyond the requirements of the statute and mischaracterizes the language of the rules that address consumer complaints. For all of the rules that reference informal complaint handling processes, OCC asserts there is no conflict and the Commission need only expand the scope of the rule beyond the stated complaint-handling intent. NOPEC contends that the Commission's current rules comply with H.B. 66 and that no change in the Commission's rules is necessary. For the sections of the waived rules dealing with bill language or any type of customer notice, OCC claims that, since the actual word "complaint" is not present, there is no conflict.
- (8) OCC and NOPEC appear to misunderstand the intent of the Commission's entry. The Commission never intended to nullify OCC's desire to provide general information and to educate residential consumers, nor did we intend to mischaracterize the language of the Administrative Code, as their first two arguments assert. The entry was issued to list

the rules that pertain to the handling of consumer complaints as referenced in the statutory changes. If the scope of the rule related to consumer complaints or the resolution of consumer issues, the Commission waived the requirement that utilities include OCC contact information to avoid customer confusion. There was no intention to nullify the statutory duties of OCC. Consumers are still free to interact with OCC, and OCC is still free to interact with utilities, but OCC, and the Commission, must comply with the new statutes. The purpose of the entry was to carry out the intent of the General Assembly and to eliminate confusion for consumers seeking assistance in informally resolving an issue with a utility. The Commission does not agree with NOPEC that the Commission's rules at issue comply with H.B. 66. The first two grounds for rehearing raised by OCC and NOPEC should be denied.

- (9) The applications for rehearing next claim that the waiver was initiated without any due process or request of any party in interest. OCC states that the action of the Commission was not needed and the Commission should not waive rules on its own initiative without public comment. OCC argues in its application that the waiver resulted in a *de facto* rulemaking procedure. Finally, the OCC's application for rehearing presents an alternative argument that, if any change is needed to respond to the statutory changes, the Commission should adopt alternate language relating to OCC in a rulemaking. In the interim, NOPEC and OCC ask the Commission to issue a finding that requires utilities to continue providing OCC's contact information as it now appears on consumer bills and other written materials.
- (10) OCC's and NOPEC's position that the Commission waiver was ordered without notice or due process and that the Commission should change the rule language related to OCC is misplaced. The waiver was ordered pursuant to the Commission's continuing oversight of its rules (see, e.g., Rules 4901:1-5-02(B), 4901:1-10-02(C), and 4901:1-18-08, O.A.C.). If legislative action results in the Commission's rules being inconsistent with state law, the Commission may grant waivers of the rules either on the Commission's own initiative or in response to a motion filed on the issue until the rules can be formally changed through the rulemaking process. The Commission stated in its September 28, 2005, entry that it would revisit this issue in a future rulemaking case, which is

where the alternative arguments presented by OCC should be made. The final two grounds for rehearing raised by OCC and NOPEC should be denied.

- (11) In its application for rehearing, LICA asserts that: (a) the statutory changes do not require the Commission to waive all requirements to provide customers with OCC contact information; and (b) the provisions of the Ohio Administrative Code that are the subject of the waivers included in the waiver entry do not relate to the filing of complaints with the Commission.
- (12) In support of its first ground for rehearing, LICA states that the statutory changes in H.B. 66 do not eliminate OCC's statutory requirement to represent residential consumers before the Commission (see Section 4911.15, Revised Code), nor do they limit the ability of OCC to perform its statutory responsibilities to represent the interests of residential customers in cases before the Commission (see Section 4911.02, Revised Code). In addition, LICA points out that OCC still has the statutory authority to make an inquiry to a public utility on behalf of a residential customer (see Section 4911.19, Revised Code). LICA also states that providing consumers with adequate notice regarding the availability of these services from OCC is contemplated by the statute. While LICA recognizes that the General Assembly has eliminated the ability of OCC to take complaints through its call center, LICA points out that the OCC can still operate a call center to provide other functions like consumer education and assisting consumers with utility inquiries. LICA presumes that the General Assembly intends that for actual consumer complaints, customers work directly with OCC attorneys rather than through the call center. This analysis leads to LICA's claim that the statutory changes only relate to formal complaints filed with the Commission. According to LICA, because many consumers do not make a distinction between issues which require inquiries with utilities and those which rise to the level of complaints, there should be a clear statement in the residential bill message that complaints should be directed to the Commission and all other inquiries can be directed to either the PUCO call center or the OCC call center.

- (13) The Commission agrees with some of the points made in the LICA application for rehearing. OCC still has a role as the residential utility advocate in Ohio. It may continue to provide consumer education and answer consumer questions. It may also represent consumers before the Commission in docketed complaint cases filed pursuant to Section 4905.26, Revised Code, and other formal cases open before the Commission. Nothing in the waiver entry does anything to remove those options from OCC. The Commission merely issued the waiver to ensure that its rules were not in conflict with the statutory changes. Whether modifications to the waived rules can be made to reflect existing statutes is an issue for the rulemaking case, discussed below.
- (14) The Commission can not agree with LICA's position declaring formal complaints as the only complaints contemplated by the statutory changes. The waiver did not deal with formal complaints filed pursuant to Section 4905.26, Revised Code. The statutory changes require the Commission to have a call center to handle consumer complaints. LICA's reading would establish that call center as an extension of the official docketing division, escalating every issue to a level subject to a formal Commission ruling. The waiver dealt with the handling of consumer complaints by call centers. Prior to the legislation, both agencies operated a call center handling informal complaints. At that time, consumers did not call the OCC call center to perform the administrative task of filing a formal complaint at the Commission. Nor is that the intended outcome of the statutory changes. LICA's interpretation also removes any meaning from Section 4905.261, Revised Code, which requires the Commission's call center to provide the OCC with the information received from consumer complaints. If LICA's analysis were correct, all that data would be available in the public docket system and there would be no need to create a special duty to provide the information. The statutory changes dictate that call center complaints are now handled by the Commission and prohibits the OCC from operating for that purpose. The only reasonable interpretation is that consumer complaints are informal disputes that have not yet risen to the level of a formal complaint. LICA's application should be denied.


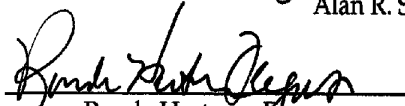
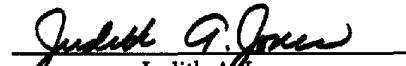
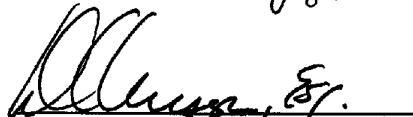
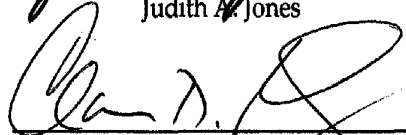
- (15) In an effort to provide more specific guidance to utility companies and to avoid customer confusion, the Commission finds it appropriate to expedite the process of reviewing the affected rules. The Commission stated in the September 28, 2005, entry that we would revisit the affected rules when each rule came up for review as part of the Joint Committee on Agency Rule Review process. Upon further consideration, the Commission concludes that a piecemeal approach might not provide an opportunity for all interested persons to participate equally and fairly. As a result, we have opened a new rulemaking case (Case No. 05-1350-AU-ORD) and note that the Commission issued an entry today in that case that establishes a comment period concerning the proper application of the statutory changes to the affected Commission rules. In the rulemaking case, the Commission will take comments on any appropriate language needed to effectuate the new duties and prohibition mandated by the General Assembly.
- (16) In the interest of decreasing the costs associated with bill format changes, the Commission will process the rulemaking case expeditiously. However, until the rulemaking process is complete, the waiver authorizing the removal of OCC contact information for the resolution of complaints will stay in place given that some companies may already have made changes on their bills to insure compliance with the statute. Companies with an interest in the appropriate language should keep in mind that a docket is open which could necessitate additional changes in the near future.

It is, therefore,

ORDERED, That the applications for rehearing filed by OCC, NOPEC and LICA are denied. It is further,

ORDERED, That a copy of this entry be docketed, for notice purposes, in each of the following dockets: 00-1265-TP-ORD, 01-1371-GA-ORD, 01-2775-WS-ORD, 02-564-EL-ORD, 02-565-EL-ORD, 03-888-AU-ORD, and served upon all gas, electric, telecommunications, water, and sewer utilities, Ohio Consumers' Counsel, Ohio Telephone Association, Northeast Ohio Public Energy Council and Ohio Partners for Affordable Energy.

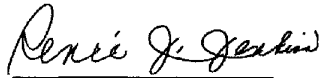
## THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman  
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MJS:ct

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Renee J. Jenkins  
Secretary