ORIGINAL

IN THE SUPREME COURT OF OHIO

NANCY S. TOLIVER

Appellant

V.

THE PUBLIC UTILITY
COMMISSION OF OHIO

Appellee

CASE NO. 13-1807

Appeal from the Public Utility
Commission of Ohio Case
No. 12-3234-GA-CSS

NOTICE OF APPEAL OF
APPELLANT NANCY S. TOLIVER

Nancy S. Toliver
Appellant
614 Kenilworth Avenue
Dayton, Ohio 45405
In Proper Person

FILED
NOV 15 2013
CLERK OF COURT
SUPREME COURT OF OHIO

Ohio Attorney General Office
Michael DeWine

William Wright, Public Utilities
Section
180 E. Broad Street 6th Fl.
Columbus, Ohio 43215
Counsel of Appellees
Public Utilities Commission of Ohio

NOTICE OF APPEAL OF
NANCY S. TOLIVER

Appellant Nancy S. Toliver pursuant to RC 4903.11, RC 4903.13 and Sup.Ct.R.2 (B) and hereby gives Notice of Appeal to the Supreme Court of Ohio and to the Public Utilities Commission of Ohio ("Appellees" or "Commission") from the Opinion and Order filed on July 17, 2013 dismissing Appellant Complaint, in Case No. 12-3234-GA-CSS. This case is entitled *In the Matter of Nancy S. Toliver v. VECTREN Energy Delivery of Ohio Inc.* Copies of which are attached hereto.

Appellant Nancy S. Toliver was the complainant and is a party of the record in this proceeding. Appellant timely filed the Application for Rehearing of Appellees' Opinion and Order and the Second Application for Rehearing accordance with RC 4903.10.

Appellant Application for Rehearing was denied with respect to the issues on appeal herein by the Appellees' Entry on Rehearing filed August 21, 2013. Appellant Second Application for Rehearing was denied with respect to the issues on appeal herein by the Appellees' Entry on Rehearing dated October 2, 2013.

Appellant files this Notice of Appeal complaining and alleging that the Appellees' Opinion and Order filed July 17, 2013, and its Entry on Rehearing

filed August 21, 2013 and its Second Entry on Rehearing filed October 2, 2013 resulted in a final order that is unlawful and unreasonable.

The errors complained of and probable issues for review upon appeal are:

1. The Commission erred in finding that the Appellant HEAP application mailed July 23, 2013 does not require enrollment in the weatherization and PIP program; the Commission abused it discretion when the ordered VECREN to terminate Appellant services and failed to consider the zero account balance, failed to take into consideration the Ohio Developmental Service Agency determination of eligibility and re verification of Appellant participation from August 16, 2013-August 16, 2014; failed to consider or recognize pursuant to OAC 4903.082 that Appellant acted in good faith and sent VECTREN the documentation prior to submission to the Commission, who arbitrarily Ordered Appellant to pay VECTREN $594.74 for alleged in past due minimum payment to VECTREN by September 30, 2103 and subsequently Ordered VECTREN to reverse incentive credits of $130.74 received on the Appellant for paying on time into a debt on the account causing the Appellant to be disconnected for service in violation of OAC 4901:1-18-14, OAC 4901:1-18-12(D)(2)(b), OAC 4901:1-18-12(C)(1)(2), UCC, Title 13 and public policy, whose ORDERS are inconsistent with its Energy Assistance Resource Guide 2012-2013 namely No.3, 9, 10, 15 and is inconsistent with No. 23 , 63, 66, and 71 whose ORDERS must be stricken, vacated and reversed because Appellant has a total account balance of zero.

(O&O pg. 16, sect, B; ER pg.8, #17) (O&O, pg. 14 Sec. V) (O&O pg. 21) (ER pg.9 No. 20)

2. The Commission erred in finding that the Appellant failed to meet the burden in violation of ORC 4905.26 when the Commission set a settlement conference in February 2013 based on the Appellant Complaint and recognized that the Appellant has a total account balance of zero and failed to award damages against VECTREN for its discriminatory and peonage actions against Appellant.

3. The Commission erred and ignored the determination made by the Ohio Development Services Agency on August 16, 2013 that re verified Appellant participation in the PIP plus program through August 16, 2014 sent VECTREN in good faith in a letter dated August 16, 2013, and is evidence to support Appellant contention that the agency did not calculate or contribute to the Appellant any alleged past minimum payment due to VECTREN a corporation when the Appellant usage, past arrearages, balance forward and total account balance in ZERO.

4. The Commission Order and Entries on Rehearing is inconsistent with the Resource Guide and violates OAC 4901:1-18-12 (D) (2) (b) which states in pertinent part; the PIP payment due shall not exceed the amount of the customer arrearages which is zero. Pursuant to #15 of the Energy Assistance Resource Guide, the customer must pay up to the amount of the PIP default amount *up to the amount of the arrears, which is zero,* when the

Commission unlawfully denied Appellant Complaint and two Applications of Rehearing. (O&O pg. 16, Section B; ER pg. 8 #17)

5. The Commission erred when it failed to sanction the respondents procedural rule violations pursuant to OAC 401-1-08(F) and Civil Rule 37 for the Appellees Counsels' failure to make a proper appearance before the Commission or submit the Notice of Substitution of Attorney as required by law.

6. The Commission erred when it failed to properly apply ORC4903.082, OAC 4901.26, Civil Rules of Evidence 701 and 702 and Civil Rules of Procedure 37, when the Commission overruled Appellant Motion to Strike VECTREN direct expert testimony for violation of OAC4901:1-26(A)(3) and OAC 4901:1-26 (A) (1) (b) and overruled the Examiner own conclusion on the record that VECTREN (Ms. Bell) witness could give her layperson opinion in response to Complainant questions; when the Motion to Strike was filed on March 21, 2013 and was addressed in the hearing held on March 21, 2013 and as not held in abeyance. (Trans. filed 4/4/13, pp.148, Lines 1-4; O&O, pgs. 5-6 and ER pgs.4-5)

7. The Commission erred when it granted VECTREN Motion to Strike a portion of the Appellant brief filed on May 6, 2013 along with the evidence that was submitted to VECTREN in good faith by letter prior to its submission to the Commission with Appellant brief pursuant to the Civil

Rules of Procedure and the documentation was accessible to VECTREN as the sender of the documentation in violation of ORC4903.082

8. The Commission erred when it failed to recognize, consider and apply OAC 4901:1-18-12(D)(2)(b) and OAC 4901:1-18-12(D)(4) that states that the amount of the PIP payment due shall not exceed the amount of customer and failed to consider that the Appellant arrearage balance is zero when the Commission arbitrarily, unconscionable, erroneously Ordered Appellant to pay VECTREN incentive credits in the amount 130.74. (O&O pg.14, Section V)

9. The Commission erred and issued inconsistent Orders when it requested the Appellant voluntary withdrawal from the PIP plus program that she is income and other wise eligible to participate (O&O dated 7/17/13) and unlawfully and unreasonably Ordered VECTREN to terminate Appellant participation in the PIP plus program and reverse PIP benefits received on Appellant account in the account of 130.74 effective with the next bill issued and in violation of #10 of the Resource Guide, which states that incentive credits are the difference between the required installment payment and the current monthly utility charges. (Comp. Ex. No. 14); (ER dated August 21, 2013, pg.9) and subsequently concluded that Appellant may reenroll in PIP plus, that the July 14, 2014 dated stated in the Order at 19-20 is no longer relevant date to consider in calculating the 12-month stay out period. (SER dated October 2, 2013 pg. 6) subjecting the Appellant to the same situation by

allowing VECTREN to request default minimum payments not due to corporation discriminatory subjected Appellant to erroneously Notice of Disconnection with an account balance of zero.

10. The Commission erred when it dismissed Appellant Complaint and request for damages and concluded that VECTREN met its burden, when VECTREN only defense in this case has been that the respondents are following the Commission rules and guidelines set out in the Energy Assistance Resource Guide 2012-2013 which is inconsistent with the Ohio Administrative and Ohio Revised Code restated herein.

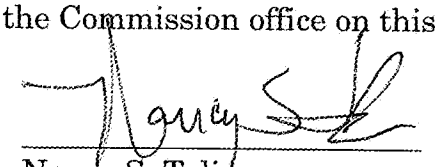
WHEREFORE, Appellant respectfully submits that Appellees' July 17, 2013 Opinion and Order, and its August 21, 2013 Entry on Rehearing and the October 2, 2013 Entry on Rehearing are unlawful, unjust, inconsistent and unreasonable and must be reversed with this matter remanded to Appellees' with instruction to grant Appellants' Complaint and the relief sought.

Respectfully Submitted

Nancy S. Toliver
ALL RIGHTS RESERVED
614 Kenilworth Avenue
Dayton, Ohio 45405
937.278.4407
Appellant
In Proper PERSON

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal of Appellant Nancy S. Toliver has been served upon all parties in this proceeding before the Public Utilities Commission of Ohio, listed below pursuant to S.Ct. Prac. R. 14.2(B) (1) by personal service and pursuant to ORC 4903.13 served a copy of the Notice of Appeal on the Public Utilities Commission Chairman by leaving a copy at the Commission office on this 15th day of November, 2013.



Nancy S. Toliver
Appellant
614 Kenilworth Avenue
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937.278.4407

On behalf of the Ohio Attorney General Michael DeWine
The Public Utilities Commission of Ohio
William Wright, Public Utilities Section
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Counsel for the PUCO

On behalf of the Chairman of the Public Utilities Commission
Attention: Docketing Division of the PUCO
180 East Broad Street, 11th Floor
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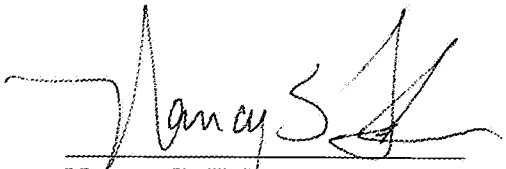
On behalf of the VECTREN Energy Delivery of Ohio
Mr. Andrew J. Campbell
Gregory L. Williams
Counsel for VECTREN Energy Delivery of Ohio Inc
Whitt Sturtevant LLP
The Key Bank Building
88 East Broad Street, Suite 1590
Columbus, Ohio 43215

CERTIFICATE OF FILING

I certify that the Notice of Appeal of Appellant Nancy S. Toliver has been filed with the docketing division of the Public Utilities Commission in accordance with 4903.13 of the Ohio Revised Code and Sup.Ct.R.14.2(2) and 14.2(C)2.



Nancy S. Toliver
Appellant
614 Kenilworth Avenue
Dayton, Ohio 45405
937.278.4407

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Nancy S. Toliver,	)	
Complainant,	)	
v.	)	Case No. 12-3234-GA-CSS
Vectren Energy Delivery of Ohio, Inc.,	)	
Respondent.	)	

OPINION AND ORDER

The Public Utilities Commission of Ohio (Commission or PUCO), considering the complaint filed by Nancy S. Toliver and the evidence admitted into the record at the hearing held in this matter, and having determined that the matter should proceed to opinion and order, hereby issues its Opinion and Order.

APPEARANCES:

Nancy S. Toliver, 614 Kenilworth Avenue, Dayton, Ohio 45405, on her own behalf.

Whitt Sturtevant LLP, by Gregory L. Williams, 88 East Broad Street, Suite 1590, Columbus, Ohio 43215, on behalf of Vectren Energy Delivery of Ohio, Inc.

OPINION:

I. History of Proceeding

On December 17, 2012, Nancy Toliver (complainant) filed a complaint with the Commission against Vectren Energy Delivery of Ohio, Inc. (Vectren or respondent). In the complaint, Ms. Toliver states that, as of March 2012, she was enrolled in the Percentage of Income Payment Plan (PIPP)[1] program but subsequently terminated her participation in the program. Ms. Toliver explains that, in the summer of 2012, she applied, and was approved for, the Home Energy Assistance Program (HEAP), as well as PIPP, and received a HEAP credit of $226. However, Ms. Toliver states that Vectren immediately applied her new PIPP payment due of $72.00 to her account. The complainant alleges she has been overcharged, is being forced to get off of PIPP, although she is income eligible, and that she is being discriminated against as a low-income customer.

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1 PIPP and PIPP Plus will be used interchangeably throughout this Order.

On January 7, 2013, Vectren filed its answer to the complaint. Respondent confirms that, in April 2012, Ms. Toliver was removed from the PIPP program. Vectren further states that, prior to Ms. Toliver's decision to end her participation in the PIPP program, Vectren advised Ms. Toliver that, if she wanted to reenroll in PIPP, she would be required to pay the difference between the amount of her PIPP installment payments that would have been due and the actual customer payments received. With Ms. Toliver's reenrollment in PIPP, Vectren calculates the difference between the missed PIPP installment payments and the payments received to be $304.03. Vectren denies that it is discriminating against Ms. Toliver, forcing her to get off PIPP or requiring her to make payments or charging amounts that are not due. Further, Vectren states that the company has at all times acted in compliance with Chapter 49, Revised Code, applicable rules, regulations, and orders of the Commission, and Vectren's tariff.

By entry issued January 22, 2013, the complaint was scheduled for a settlement conference on February 12, 2013, at the office of the Commission, in Columbus, Ohio. The settlement conference was held, as scheduled; however, the parties were unable to resolve the dispute informally.

By entry issued February 14, 2013, this matter was scheduled for a hearing on March 21, 2013. On March 14, 2013, Vectren filed the written direct testimony of Sherri Bell. At the hearing, Ms. Toliver testified on her own behalf and Vectren presented the testimony of Ms. Bell (Vectren Ex. 1). During the hearing, the Attorney Examiner requested that Vectren file copies of Ms. Toliver's Vectren bills. On March 27, 2013, Vectren filed copies of Ms. Toliver's bills for the period January 2010 through March 2013 (Late-filed Vectren Ex. 3). The parties recommended, and the Attorney Examiner agreed, that briefs would be due to the Commission by May 10, 2013. On May 6, 2013, Ms. Toliver filed her brief with four attached documents: (a) a letter dated April 9, 2013, from Vectren to Ms. Toliver, with PIPP participation details; (b) a letter dated April 18, 2013, from Ms. Toliver to Gregory L. Williams, counsel for Vectren, informing counsel about the PIPP participation letter; (c) Ms. Toliver's Vectren bill dated April 24, 2013; and (d) Ms. Toliver's transcript from Sinclair Community College dated March 4, 2008. Vectren filed its brief on May 10, 2013.

II. Procedural Issues

A. Ms. Toliver's motion to strike

At the hearing, Ms. Toliver presented to the bench and Vectren a copy of a motion to strike Vectren witness Bell's testimony, which was filed on that same day. In support of her motion, Ms. Toliver argues that the filing of Ms. Bell's written testimony violates Rules 4901-1-16, and 4901-1-26, Ohio Administrative Code (O.A.C.). Further, noting Section

4903.082, Revised Code,[2] Ms. Toliver also asserts that the submission of Ms. Bell's testimony is a violation of the Civil Rules of Procedure 16 and 26, and the Civil Rules of Evidence 701 and 702. Ms. Toliver also cites Rule 4901-1-17, O.A.C., as requiring the Commission to establish a time period for discovery. At the hearing, the Attorney Examiner ruled that the complainant's motion to strike should be held in abeyance. (Tr. at 5-8.)

On April 4, 2013, Vectren filed a memorandum contra the complainant's motion to strike. Vectren reasons that Ms. Toliver's motion is, in essence, a list of alleged discovery violations, which is insensible, given that neither Ms. Toliver nor Vectren sought discovery in this matter. Further, Vectren avers that the motion to strike fails to state any substantive or procedural issue with Vectren witness Bell's written testimony. The respondent offers that Ms. Toliver was not denied a right to discovery, as the discovery procedures outlined in the rules were available to her like any other party to a Commission proceeding under Rule 4901-1-16(B), O.A.C. Further, Vectren notes that, pursuant to Rule 4901-1-17(A), O.A.C., discovery may begin immediately after a proceeding is commenced and be completed expeditiously by the commencement of the hearing. In this instance, Vectren calculates Ms. Toliver had more than 90 days to conduct discovery.

Further, according to Vectren, the Commission is not required, as Ms. Toliver asserts, to establish a time period for discovery in a pretrial entry. Vectren offers that Ms. Toliver had the opportunity to raise discovery issues prior to the hearing day and failed to do so. Similarly, Vectren argues that the complainant misunderstands Rule 4901-1-26, O.A.C., when she claims that Vectren failed to comply with Rule 4901-1-26(A)(3), O.A.C., because the company did not identify the witness to be presented and the subject matter of the testimony. Vectren argues that, absent a request for discovery, a Rule 4901-1-26, O.A.C., prehearing conference, or a Commission order, Vectren has no legal obligation to disclose its witnesses or the subject matter of their testimony. In any event, Vectren states that it did disclose its witness and the subject of her testimony in advance with its prefiled direct testimony. Vectren contends that Ms. Bell's testimony is relevant, admissible, and properly presented at the hearing and, therefore, it should be considered by the Commission. On April 11, 2013, Ms. Toliver filed a reply to Vectren's memorandum contra.

The Commission finds that the complainant's motion to strike is without merit. Initially, we note that, in the motion, Ms. Toliver states:

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2 Section 4903.082, Revised Code, states:

> All parties and intervenors shall be granted ample rights of discovery. The present rules of the public utilities commission should be reviewed regularly by the commission to aid full and reasonable discovery by all parties. Without limiting the commission's discretion the Rules of Civil Procedure should be used wherever practicable.

> Complainant initially contacted the respondent by and through their counsel in early January 2013 regarding the need for using the available discovery tools. The parties participated in two or three informal telephone conferences in January 2013 in an attempt to settle the case. *The parties agreed there would be no exchange of discovery in the case* and the case would proceed to the settlement conference scheduled for February 12, 2013. (*Emphasis added.*)

Based on Ms. Toliver's statement, it was her understanding that the parties agreed not to exchange discovery. If that was indeed the case, Ms. Toliver elected to forgo her opportunity to issue an interrogatory requesting Vectren's list of witnesses and the subject matter of each witness' testimony.

Further, the Commission considered each of the rules the complainant alleges are violated by the submission of Vectren witness Bell's written testimony and we find that none of the Commission rules cited by the complainant are adequate justification to grant the request to strike Vectren's written testimony. Specifically, Ms. Toliver alleges that Rules 4901-1-16 and 4901-1-17, O.A.C., are violated with the submission of Ms. Bell's testimony. Taken together, Rules 4901-1-16(C), and 4901-1-17(A), O.A.C., allow a party to a Commission proceeding to commence discovery, in this instance, immediately upon the filing of the complaint, including the propounding of interrogatories which may include a request to identify witnesses and the subject matter of their testimony. Pursuant to Rules 4901-1-16(C) and 4901-1-17, O.A.C., Ms. Toliver could have issued an interrogatory to Vectren requesting the name of any witness and the subject matter of the testimony. We also note that Ms. Toliver states in the motion that she contacted counsel for Vectren regarding the use of "the available discovery tools." While it is clear that Ms. Toliver is aware of the administrative rules and testified that she is a trained paralegal (Tr. at 39), she admits that discovery was not exchanged. If Ms. Toliver wanted this information, it was her responsibility to utilize the discovery rules to obtain the information from Vectren. The fact that Ms. Toliver did not avail herself of the discovery tools is not a reason to strike the testimony of Vectren witness Bell.

Ms. Toliver also argues that Vectren's submission of written testimony violates Rule 4901-1-26(A), O.A.C., to the extent Vectren failed to identify the witness or witnesses to be presented at the hearing and the subject matter of their testimony. The Commission finds that Ms. Toliver misinterprets Rule 4901-1-26(A)(1)(b), O.A.C., as requiring the Commission to schedule a prehearing conference. That is incorrect. The language of Rule 4901-1-26(A), O.A.C., is permissive, in that it states, in pertinent part:

> In any proceeding, the commission, the legal director, the deputy legal director, or an attorney examiner *may*, upon

> motion of any party or upon their own motion, hold one or more prehearing conferences ... (3) Identifying the witnesses to be presented in the proceeding and the subject matter of their testimony. (*Emphasis added.*)

Ms. Toliver had the option of requesting a prehearing conference; however, the complainant did not file a motion or contact the Attorney Examiner to request a prehearing conference. Accordingly, we can not find that Ms. Toliver was denied the opportunity for a prehearing conference.

Ms. Toliver also cites Rule 4901-1-26(F), O.A.C., as a provision that required Vectren to name Ms. Bell as a witness at the settlement conference. The Commission does not agree with the complainant's interpretation of Rule 4901-1-26(F), O.A.C., to include any such requirement. Rule 4901-1-26, O.A.C., states:

> If a conference is scheduled to discuss settlement of the issues in a complaint case, the representatives of the public utility shall investigate prior to the settlement conference the issues raised in the complaint and all parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues.

The purpose of Rule 4901-1-26(F), O.A.C., is to direct the representatives of the public utility to investigate the allegation raised in the complaint prior to the settlement conference, in order to facilitate a knowledgeable discussion of the allegations and possibly the resolution of the complaint without a hearing. Nothing in Rule 4901-1-26(F), O.A.C., suggests, as Ms. Toliver alleges, that the public utility is required to know the witness or witnesses the company expects to present at hearing.

The Commission finds that the provisions of the O.A.C. cited by the complainant do not support her request to strike the written testimony of Vectren witness Bell and, therefore, the motion to strike is denied. Likewise, the Commission finds that the complainant's arguments citing the Civil Rules of Procedure and Civil Rules of Evidence are unpersuasive and without merit. Accordingly, Ms. Toliver's motion to strike should be denied.

B. Vectren's motion to strike

On May 21, 2013, Vectren filed a motion to strike the documents attached to Ms. Toliver's brief and the portions of the brief which reference the documents. Vectren argues that Ms. Toliver had the opportunity to introduce evidence into the record of this proceeding at the hearing and the opportunity to introduce evidence concluded at the close of the hearing. Vectren notes that the Attorney Examiner specifically explained that

the brief was not an opportunity to introduce new exhibits in the case (Tr. at 179, 181). Further, Vectren emphasizes that Ms. Toliver testified that she is a trained paralegal familiar with legal proceedings and, therefore, she should not be allowed to disregard this aspect of the legal proceedings as a pro se complainant (Tr. at 39-41). Accordingly, Vectren requests that the documents and related select portions of the complainant's brief be stricken.

On May 30, 2013, Ms. Toliver filed a memorandum contra Vectren's motion to strike. In the memorandum contra, Ms. Toliver states, among other things, that she sent a letter to counsel which included the documents attached to her brief prior to submitting her brief to the Commission. Ms. Toliver notes that Vectren did not object to the submission of the documents in its brief filed on May 10, 2013. Further, the complainant contends the documents attached to her brief should be admitted into the record because the documents substantiate her testimony offered at hearing, confirms her participation in the PIPP program, and substantiates Vectren's continued threats to disconnect her service. Ms. Toliver also attached to the memorandum her Vectren bill dated May 24, 2013, which the complainant refers to as Exhibit 9, and discusses the bill in her memorandum contra.

On June 6, 2013, Vectren filed a reply and reiterated the arguments made in its motion to strike. In its reply, Vectren also requests that Ms. Toliver's Vectren bill dated May 24, 2013, and references thereto in her memorandum contra be stricken for the same reasons that the company requests that the documents attached to Ms. Toliver's brief be stricken.

With regard to Ms. Toliver's college transcript that was attached to her brief, the Commission notes that she could have sought the admission of this document during the hearing or made a request to submit the document as a late-filed exhibit, but failed to do so. We note that the remaining documents and bills attached to her May 6, 2013, brief were generated after the hearing and, therefore, not available at the hearing. However, we find no basis to admit any of these items into the record. The Commission's consideration of the documents, at this stage of the proceeding, would deny Vectren the opportunity to cross examine Ms. Toliver on the documents or allow Vectren to introduce evidence to rebut the information in the documents, denying Vectren its right to due process. For this reason, the Commission finds that Vectren's motion to strike should be granted; therefore, the documents and any all reference thereto in Ms. Toliver's brief filed May 6, 2013, should be stricken from the record. For that same reason, the Commission, *sua sponte*, also finds that the Vectren bill dated May 24, 2013, attached to Ms. Toliver's memorandum contra filed May 30, 2013, and all references thereto should be stricken.

As a final matter regard this motion, on June 14, 2013, Ms. Toliver filed a reply to Vectren's reply to the complainant's memorandum contra Vectren's May 21, 2013, motion to strike. On June 20, 2013, Vectren filed a motion to strike Ms. Toliver's June 14, 2013,

filing stating that the filing constitutes a surreply and surreplies are not authorized under Rule 4901-1-12, O.A.C. On June 28, 2013, Ms. Toliver filed a reply to Vectren's June 20, 2013, motion to strike and requests an oral hearing. The Commission finds that Vectren's motion to strike Ms. Toliver's June 14, 2013, surreply is well-made and should be granted and accordingly, Ms. Toliver's request for an oral hearing is moot.

III. Applicable Law

Vectren, is a public utility and natural gas company, as defined in Sections 4905.02 and 4905.03, Revised Code. As such, Vectren is subject to the jurisdiction of this Commission.

Section 4905.26, Revised Code, requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any rate charged or demanded is in any respect unjust, unreasonable, or in violation of law, or that any practice affecting or relating to any service furnished is unjust or unreasonable. The Commission also notes that the burden of proof in complaint proceedings is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, it is the responsibility of a complainant, in this instance, Ms. Toliver, to present evidence in support of the allegations made in her complaint.

The Commission's gas PIPP program rules are set forth in Rule 4901:1-18-12, O.A.C., through Rule 4901:1-18-17, O.A.C.

IV. Summary of the Testimony and Evidence

Ms. Toliver testifies that Vectren has been threatening her with disconnection, although she has an actual account balance of zero. Ms. Toliver admits that, in April 2012, she terminated her participation in PIPP Plus because the Staff of the Commission (Staff) and Vectren informed her that she had to make her PIPP payment irrespective of the actual account balance. Ms. Toliver reasons that, rather than fight with Vectren, she got off of PIPP and paid the current balance due on her Vectren bill. (Tr. at 9-12.)

The complainant states that, in August or September 2012, she applied for HEAP which requires that the applicant apply for all other assistance for which the customer is eligible, including weatherization and PIPP. According to Ms. Toliver, when she was approved for HEAP, she was also approved for PIPP Plus and her PIPP installment payment was calculated to be $72 per billing cycle. Ms. Toliver testifies that, once Vectren received her approval for HEAP and PIPP, in September 2012, Vectren immediately applied the PIPP installments accrued on her account since the time she terminated participation in PIPP Plus. The witness claims that her intent was to only apply for HEAP but the application required her to apply for all assistance for which she was eligible, including PIPP. She also admits that she assumed the new PIPP installment payment

amount would apply beginning in calendar year 2013, because she had previously terminated her participation in PIPP. Ms. Toliver states that she planned to reenroll in PIPP Plus after her year was up. (Tr. at 9-12, 14-15.)

Ms. Toliver states that, in October 2012, after learning that she was expected to make the PIPP installment payments due since she terminated participation, she contacted Catherine in Vectren's PIPP department. The complainant asserts that Vectren told her that was how the program was set up. In the complainant's words "they [Vectren] were not going to honor the fact that my account balance was zero... ." Ms. Toliver states that, after discussion with Vectren, by letter dated November 20, 2012, Staff informed her that the PIPP Plus program required the PIPP participant to pay the missed PIPP payments. (Complainant Ex. 2; Tr. at 10-11, 17-18.)

Ms. Toliver avers that she has been discriminated against as a low-income customer. Ms. Toliver states that she has two sick kids in her household and it is their income that makes her eligible for PIPP. Ms. Toliver offers that her home includes a gas stove, hot water heater, and heat and, therefore, she can not afford to have her gas service disconnected. (Tr. at 19, 93, 101.)

The complainant makes several arguments that Vectren's request for the missed PIPP payments is unreasonable, unlawful, discriminatory, and arbitrary. First, Ms. Toliver argues that she did not have to make her PIPP installment payment due, irrespective of her account balance in 2011. She notes that her bill dated July 25, 2011, lists a PIPP payment due of $14.80, although the bill states an actual account balance credit of $33.90 and a monthly PIPP installment due of $76.00. (Complainant Ex. 1; Tr. at 9-10.)

Second, Ms. Toliver argues that, in February 2012, Vectren filed an application to revise its accounting methods in *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval to Implement a Capital Expenditure Program,* Case No. 12-530-GA-UNC, et al. (12-530), and on May 13, 2012, filed an application to adjust its PIPP rider in *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Adjustment of its Percentage of Income Payment Plan Rider,* Case No. 12-1720-GA-PIPP (12-1270). Ms. Toliver states that, prior to the filing of the aforementioned Vectren applications, the amount of the PIPP Plus installment payment was reduced. The complainant claims that, as a result of 12-530 and 12-1720, Vectren now requires a PIPP customer to pay the PIPP installment amount, irrespective of the actual account balance due. Ms. Toliver contends that this policy is arbitrary, erroneous, and harmful, as it causes her to be continuously threatened with disconnection in violation of Sections 4905.35 and 4905.37, Revised Code. (Tr. at 19-23.)

Third, Ms. Toliver reasons that Vectren, as a corporation, has a duty to her as a customer and can not arbitrarily change the rules without filing an application with the Commission. The complainant further argues that, under the Uniform Commercial Code

(UCC), as a customer or citizen of any state, all she is obligated to pay is the actual account balance. However, Ms. Toliver did not cite any specific UCC section which applied to Vectren as a corporation or a specific provision which Vectren violated under the UCC. (Tr. at 21-22, 41-43, 66-67.)

Next, Ms. Toliver argues that the Energy Assistance Resource Guide (Resource Guide) does not provide Vectren a defense, because the information in the Resource Guide is not true, as Vectren has harmed and continues to harm the complainant as a PIPP program participant. Ms. Toliver alleges she would be harmed if she is required to make payments not due and be subject to the disconnection of her gas service if she does not pay. She also notes that, under Rule 4901:1-18-12(D)(2)(b), O.A.C., PIPP payments shall not exceed the amount of the customer's arrearage. (Tr. at 19-20, 21-22; Vectren Ex. 1 Att. A.) Further, Ms. Toliver argues the explanations offered in the Resource Guide are contradictory (Vectren Ex. 1 at Att. A; Tr. at 61).

In addition, referring to Complainant Ex. 2, Ms. Toliver notes that, according to Staff, PIPP Plus is a 12-month program that is not designed for customers to go on and off of the program. The complainant contends that, because PIPP Plus has reverification dates, anniversary dates, and calendar dates, PIPP can not be a 12-month program. Ms. Toliver reasons that there are "too many different dates that have to be - that can be changed for them to say that the 12 months is locked in stone..." The witness further reasons that, if you are a PIPP participant and your income changes, the Ohio Development Services Agency (ODSA) wants you to come in immediately with the new income information and not wait until a new 12-month period begins. (Tr. at 23-25, 45; Complainant Ex. 2.)

Ms. Toliver admits that, in her complaint, she states that, on or about March 2012, "I was told by the PUCO that I needed to get off of the PIPP Plus program because the rule is that the payment is required regardless of the balance owed on the account in order to be eligible to stay on the program." (Tr. at 34; Vectren Ex. 2.)

Further, Ms. Toliver claims that Vectren "forced" her to terminate her participation in the PIPP program by only giving her the option to make the PIPP installments to avoid disconnection, or to utilize one of the other payment plans, the one-fourth, one-sixth, or one-tenth plans. Ms. Toliver asserts that the one-fourth, one-sixth, or one-tenth payment plans would have required her to go into some kind of debt. The complainant states that she informed Vectren that she could not be disconnected and she was not going on any other program. (Tr. at 34-35, 37-38; Vectren Ex. 2 at 1)

Ms. Toliver recognizes, as noted on the Vectren monthly bill, that participation in the PIPP program does not relieve the PIPP participant of his/her legal responsibility for the actual account balance. However, when questioned as to her monthly payment

responsibility, Ms. Toliver testifies that she is responsible for the lesser of the actual monthly current charges and the PIPP installment payment. The complainant accepts that the PIPP rules apply to all PIPP participants and she does not expect to be treated differently. (Tr. at 71-79, 84-85.)

Vectren offered the testimony of Sherri Bell, Customer Relations Manager for Vectren Utility Holdings, Inc. (Vectren Ex. 1).[3] As Customer Relations Manager, Ms. Bell is responsible for customer service compliance, including PIPP administration compliance, customer complaint management, submission of reports to regulatory commissions, and keeping and maintaining records for court and regulatory proceedings. (Vectren Ex. 1 at 1; Tr. at 121-122, 125.)

In her prefiled testimony, Ms. Bell contends that the PIPP Plus program requires year-round participation and that her interpretation is confirmed by the Resource Guide. Vectren witness Bell explains that the Resource Guide is a layperson's explanation of the PIPP program which is jointly published annually by the Commission and ODSA.[4] Ms. Bell states that Ms. Toliver was removed from PIPP, at Ms. Toliver's request, on May 8, 2012. Contrary to the claims of Ms. Toliver, Ms. Bell states that Vectren did not "force" Ms. Toliver to get off of PIPP. According to Ms. Bell, after being removed from PIPP in May 2012, Ms. Toliver maintained natural gas service at the same address. Vectren records reveal that the complainant subsequently applied to be reenrolled in the PIPP program in September 2012, was determined to be eligible, and was reinstated to PIPP Plus in November 2012. Vectren witness Bell argues that, pursuant to Rule 4901:1-18-12(D)(2)(b), O.A.C., Vectren is required to collect the missed PIPP installment payments. Further, Ms. Bell testifies that, prior to the termination of her participation in the PIPP program, Vectren informed Ms. Toliver that, if she subsequently reenrolled in PIPP, she would be responsible for the missed PIPP installments minus any customer payments made. (Vectren Ex. 1 at 3-5, 7, Att. A at 13.)

Ms. Bell states that, as of the filing of her written testimony, Ms. Toliver's account balance was $0. Further, the witness testifies it is her understanding, based on discussions with Staff and reviewing the Resource Guide, that Vectren may attempt to collect, and the customer's service is subject to disconnection for, the outstanding PIPP installments, irrespective of Ms. Toliver's actual account balance due. Ms. Bell argues that, if the complainant refuses to pay the outstanding PIPP installments due, pursuant to Vectren's tariff, the company has the right to disconnect her gas utility service. The witness reasons that, although a customer's account balance may be less than his/her PIPP Plus default amount at some point, the situation will likely change during the heating season. Ms. Bell recommends that, if a PIPP customer's installment payment under the PIPP Plus program

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3 Vectren Utility Holdings, Inc. is the holding company of Vectren.

4 ODSA administers the electric PIPP program.

consistently exceeds his/her actual usage charges, the PIPP participant should reconsider his/her enrollment in the program, as PIPP participation is not mandatory. According to Ms. Bell, Ms. Toliver's budget payment would be less than her PIPP installment payment. (Vectren Ex. 1 at 5-7, Att. A at 16; Tr. at 177.)

Ms. Bell denies that Vectren is discriminating against Ms. Toliver. The witness argues that Vectren does not have the authority to unilaterally change any Commission rule for PIPP or to require Ms. Toliver to terminate her PIPP enrollment. Vectren witness Bell reasons that Vectren has not applied the Commission's PIPP rules differently to Ms. Toliver as compared to any other PIPP program participant. Ms. Bell avers, as Ms. Toliver admits in her complaint, that the Commission's informal investigation confirmed Vectren's interpretation and application of the PIPP rules. For these reasons, Ms. Bell states that she is unaware of any basis for Vectren to be subject to damages associated with Ms. Toliver's complaint. (Vectren Ex. 1 at 7-8.)

In reviewing the letter from Staff to Ms. Toliver regarding her informal complaint, Ms. Bell offers that there is a 12-month period where the PIPP participant is not permitted to go on and off the PIPP program. Ms. Bell reasons that the 12-month period is consistent with the requirement that a PIPP participant verify his/her income every 12 months and the fact that the PIPP participant's income-based payment is based on the annual household income. (Complainant Ex. 2; Tr. at 131.)

Ms. Bell disagrees with Ms. Toliver's claim that Vectren reduced her PIPP installment due during the summer of 2011. Ms. Bell testifies that Vectren experienced a billing defect on bills issued in July 2011 that caused the PIPP Plus installments to be incorrect. Ms. Bell submits that neither Ms. Toliver nor any other affected customer was charged a greater amount due as a result of the billing error. The witness avers that Vectren did not expressly state or otherwise assure Ms. Toliver that her PIPP installment amount would be reduced as a result of the billing error or during the summer of any year. Ms. Bell admits that Vectren did not explain the billing error to customers on a subsequent bill or send a notice to affected customers, but informed Staff of the billing error. (Tr. at 123-124, 162-165, 170-172.)

V. Discussion

A. History of PIPP Plus program and current PIPP Plus rules

In 1983, the Commission commenced what has evolved into the current PIPP Plus program in *In the Matter of the Investigation into Long-Term Solutions Concerning Disconnection of Gas and Electric Service in Winter Emergencies,* Case No. 83-303-GE-COI. Subsequently, pursuant to amended Senate Bill 3, ODAS, then known as the Ohio Department of Development, commenced administration of the electric PIPP program.

Most recently, the rules for the gas PIPP program were evaluated, revised, and the program renamed PIPP Plus to more clearly outline eligibility requirements, participant obligations and program benefits in *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 (2008 Rule Review). The Commission's goals in the 2008 Rule Review were to, among other things, contain the escalating costs of the gas PIPP program, create more affordable payments for participants, improve payment patterns and encourage responsible behavior, interrupt the seasonal cycle of disconnection, and encourage PIPP customers' successful migration from the PIPP program.[5] The current gas PIPP Plus rules became effective on November 1, 2010.[6]

Significantly, we note that, since the commencement of the PIPP program, a customer's eligibility to participate has been and continues to be based on the household income, established at 150 percent of the federal poverty guidelines. Currently, Rule 4901:1-18-12(B), O.A.C., states:

> A customer is eligible for PIPP if the customer meets one of the following criteria:
>
> (1) The household income for the past three months, if annualized, would be less than or equal to 150 percent of the federal poverty guidelines.
>
> (2) The annualized household income for the past three months is more than 150 percent of the federal poverty guidelines, but the customer has a household income for the past 12 months which is less than or equal to 150 percent of the federal poverty guidelines.

Thus, the PIPP participant's eligibility and the monthly PIPP installment payment are based on *annualized* household income.

Notably, under the current PIPP Plus rules, the percentage of household income billed by the jurisdictional gas utility each billing cycle (generally monthly) was reduced from 10 percent to six percent (Rule 4901:1-18-13(A)(1), O.A.C). The Commission's rationale for reducing the income percentage was to improve the average number of PIPP installment payments made per year by PIPP customers from slightly more than six to at

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5 2008 Rule Review, Entry at 6 (June 25, 2008).

6 We note that current electric PIPP Plus rules in Chapter 122:5-3, O.A.C., were also effective on November 1, 2010.

least 10 but preferably 12 payments annually, without imposing a financial strain on PIPP participants.[7]

As an incentive for PIPP participants to make timely payments each month, to break the cycle of seasonal disconnection, and facilitate PIPP participants with significant accrued arrearages an opportunity to transition off of PIPP, the Commission enacted an on-time payment incentive. To balance the benefits of the on-time payment incentives, the Commission required the PIPP participant to submit the PIPP installments due but not paid to continue participation or reenroll in the PIPP program. To that end, Rule 4901:1-18-12, O.A.C., states, in relevant part:

> (D) In addition to the requirements set forth in paragraphs (B) and (C) of this rule, a PIPP customer must also periodically reverify his/her eligibility.
>
> (1) All PIPP customers must provide proof of eligibility to the Ohio department of development of the household income at least once every twelve months at or about the customer's PIPP anniversary date. The customer shall be accorded a grace period of sixty days after the customer's PIPP anniversary date to reverify eligibility.
>
> (2) Except as provided in this paragraph, *the PIPP customer must be current on his/her income-based PIPP payments at the customer's PIPP reverification date to be eligible to remain on PIPP for the subsequent twelve months.* The customer will have one billing cycle after the PIPP reverification date to pay any missed PIPP payments before being removed from the program. Missed PIPP payments include:
>
> (a) Any delayed payments as a result of the customer's prior use of a medical certificate in accordance with paragraph (C) of rule 4901:1-18-06 of the Administrative Code.
>
> (b) *Any missed payments, including PIPP payments which would have been due for the months the customer is disconnected from gas utility service.* These missed PIPP payments must be paid prior to the restoration of

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7 2008 Rule Review, Entry on Rehearing at 28 (April 1, 2009), Order at 62 (December 17, 2008).

> utility service. The amount of the PIPP payments due shall not exceed the amount of the customer's arrearage.
>
> ...
>
> (4) PIPP customers who have been dropped from the PIPP program due to nonpayment may re-enroll in the program *after all missed PIPP payments, from the time of enrollment or the PIPP reverification date, up until re-enrollment, have been cured.* This includes payments for any months in which the customer was disconnected. The amount due shall not exceed the amount of the customer's arrearage.

(*Emphasizes added*).

Further, the Commission notes that, in accordance with Rule 4901:1-18-16(D), O.A.C., even PIPP participants, who voluntarily elect to terminate participation in the PIPP program, and enroll in the transitional Graduate PIPP program, must pay any missed PIPP installments to be eligible to participate in Graduate PIPP. We also note that Rule 4901:1-18-17(B), O.A.C., provides that, after removal from PIPP for failure to timely reverify eligibility, the former PIPP customer may reenroll in PIPP and must make any missed income-based payments to bring the account current.

Moreover, we note that PIPP eligible customers are put on notice and current PIPP participants are continuously reminded of their monthly payment obligations under the PIPP program. Even the HEAP/PIPP application specifically states "PIPP Plus is a special payment plan that requires eligible customers to pay a portion of their household income each month to maintain utility service. PIPP Plus protects customers from disconnection of service, as long as they follow the program's rules about monthly payments."

B. PIPP requirements and the Commission decision

The Commission's reason for establishing the PIPP program is to balance the need for low-income customers to maintain their gas utility service against the low-income customer's ability to pay for their utility service. However, the Commission is intensely mindful that the cost of the PIPP program, not covered by the PIPP participant's monthly installment, is borne by the utility's ratepayers.

PIPP participants must reverify their income at least annually. Annualized income is used to determine the monthly PIPP installment due to maintain gas utility service and to continue participation in the program. Ms. Toliver's desire to pay the lesser of the actual account charges or her PIPP installment payment would circumvent the PIPP participant's full contribution to maintaining utility service (Tr. at 79). A PIPP participant

similarly circumvents his/her obligation to PIPP if the PIPP participant is allowed to go on PIPP when it benefits the participant and off PIPP when it does not. That is one of the primary reasons the Commission incorporated the requirement to have PIPP participants make up any missed PIPP payments into the PIPP program rules.

Ms. Toliver argues that, prior to 2012, she did not have to make her PIPP installment payment due without regard to the actual account balance. The complainant submits that her bill, dated July 25, 2011, lists a PIPP payment due of $14.80, despite the PIPP installment due of $76.00. Ms. Toliver testifies that her bills for August and September 2011 also reflect a reduced PIPP installment due. (Complainant Ex. 1; Tr. at 110 -111.) Vectren, on the other hand, submits that the company experienced a billing defect, as reflected on Ms. Toliver's bill dated July 25, 2011. The company states that the billing defect incorrectly reduced the current amount due for PIPP and non-PIPP customers. However, Vectren states the company did not administer the gas PIPP program any differently in the summer of 2011 than in the summer of 2012. Ms. Bell contends that Staff was notified of the billing defect. More importantly, according to Vectren witness Bell, neither Ms. Toliver nor any other customer, was, as a result of the billing error, expressly assured that his/her PIPP installment amount would be reduced for the remainder of the summer of 2011 or any other summer period of any year. (Tr. at 123-124.)

The Commission was aware that Vectren experienced some billing issues beginning in July 2011. We also note that consistent with the testimony of Ms. Toliver, the August through November 2011 bills reflect a reduction in the PIPP Plus installment amount due shown on each bill. The Commission notes, however, the PIPP Plus detail section of those same bills continues to state that Ms. Toliver's PIPP Plus installment amount is $76.00. The Commission understands that the July through November 2011 Vectren bills could have caused some confusion, particularly among PIPP participants, regarding the PIPP installment due during the summer, given that it was the first summer of the new PIPP Plus program. Nonetheless, Vectren's past billing issues can not justify Ms. Toliver's assertion that she, as a PIPP participant, expected her PIPP installment payments to be less than the amount stated on the annual reverification letter. Ms. Toliver does not present any evidence to support her assumption that her PIPP installment would be reduced in the summer months. No evidence was presented that Vectren or Staff represented to Ms. Toliver that her PIPP installment would be reduced during the summer. In fact, the record evidence supports that Ms. Toliver was told just the opposite. Vectren, as well as Staff, informed Ms. Toliver that her monthly PIPP installment was due. As such, we find Ms. Toliver's assumption, based on Vectren's billing errors in 2011, to be unreasonable and therefore, she has failed to support her claims in the complaint.

The complainant argues that, in 12-530 and 12-1720, Vectren applied for approval to require PIPP customers to pay the PIPP installment amount irrespective of the actual account balance and the amount due. However, the Commission notes that 12-530 was an

application for authority to implement a capital expenditure program for the period October 1, 2011, through December 31, 2012; thus, contrary to the complainant's assertions, 12-530 is unrelated to the PIPP program and does not support the claims alleged by the complainant. In 12-1720, Vectren received approval from the Commission to decrease its PIPP Rider rate. Thus, while the rate proposed in 12-1720 results from the PIPP program, the application in 12-1720 to revise Vectren's PIPP rider rates did not affect the PIPP installment payments due from PIPP participants, as Ms. Toliver alleges, and does not support the allegations made by Ms. Toliver. Therefore, neither 12-530 nor 12-1720 have any relevance with regard to the issues presented by the complainant in the instant case.

The complainant makes general assertions that Vectren violated the UCC. However, Ms. Toliver fails to cite any specific provision of the UCC applicable to Vectren or to the circumstances at issue. Accordingly, the complainant has failed to sufficiently develop her arguments against Vectren based on the UCC for the Commission's consideration.

The testimony offered establishes that Ms. Toliver elected to terminate her participation in the PIPP program effective with the April 2012 billing. While Ms. Toliver at one point argues she was not given any other option, given Vectren's request for the PIPP installment due on or about April 2012, the option to continue PIPP participation, or not, was ultimately her choice. We note that Ms. Toliver admits that she made the choice to terminate her participation in PIPP (Tr. at 35, 37-38). The record also reveals that Ms. Toliver reenrolled in PIPP, via her application for HEAP, effective with the September 2012 billing.

Furthermore, the Resource Guide is not contradictory, as the complainant claims. In fact, the Resource Guide is on point and addresses the circumstance of this complaint. The Resource Guide addresses the circumstances when Ms. Toliver elected to terminate her participation in PIPP, stating, in pertinent part, that:

> [to] remain on PIPP Plus and avoid disconnection, the customer would be required to pay the PIPP Plus default amount. If the customer no longer wants to be on PIPP Plus but wants to avoid disconnection, he/she can pay the total account balance and be removed from PIPP Plus or the customer can bring the PIPP Plus installments current and request to be moved to Graduate PIPP Plus.

(Vectren Ex. 1 at Att. A at 16.) The Resource Guide also addresses the more significant issue presented in this complaint, stating that "[t]he customer must pay the difference between the amount of PIPP Plus installments and customer payments before re-joining PIPP Plus" (Vectren Ex. 1 at Att. A at 13). The Commission finds that, to allow a PIPP participant to do otherwise would circumvent the PIPP participant's responsibility to the

PIPP program. If a PIPP participant is only responsible for the PIPP installment during the months when actual monthly charges are more than the PIPP installment and responsible for the actual monthly current charges when the charges are less than the PIPP installment, the PIPP participant exploits the benefits of the PIPP program and avoids the full scope of the PIPP participant's obligations to the program. The same is true if a PIPP participant is permitted to go on and off the program at will.

In this case, the Commission finds that the complainant has failed to show that Vectren incorrectly applied the Commission's rules for administration of the gas PIPP program. In fact, the record reflects that, consistent with the gas PIPP Plus rules, as explained in the Resource Guide, Vectren applied the missed PIPP installments to Ms. Toliver's account upon her reinstatement in the PIPP program as of the September 2012, billing where the complainant reenrolled in PIPP less than 12 months after her request to terminate participation in the PIPP program.

The complainant does not challenge Vectren's calculation of the difference between the missed PIPP installments and the customer payments made on her account while she was not enrolled in PIPP in 2012. However, based on the bills issued on Ms. Toliver's account for the period April through September 2012, the amount appears to be reasonable and in compliance with the Commission's requirements to make up the difference between any missed PIPP installments and customer payments made for the same period.[8] (Tr. at 37; Vectren Ex. 3.)

Further, as a result of Ms. Toliver's failure to pay the difference between the missed PIPP installments and the amount she paid while not enrolled in PIPP, Ms. Toliver's account was delinquent and properly subject to disconnection. Pursuant to Rule 4901:1-18-05(F), O.A.C., Vectren notified Ms. Toliver of the possibility of the disconnection of her gas service including the amount necessary to avoid the disconnection of her service. We note that non-PIPP customers and PIPP participants are subject to the disconnection of their gas utility service for failure to pay under Rule 4901:1-18-05(F), O.A.C. Thus, we find no merit to the complainant's claims that Vectren acted in a discriminatory manner regarding the notice to disconnect her account for failure to pay the PIPP installment charges due.

Further, the Commission finds no basis for Ms. Toliver's assertion that Vectren violated Section 4905.35, Revised Code. Section 4905.35(A), Revised Code, directs that a public utility shall not make or give any undue or unreasonable preference or advantage to any person or subject any person to any undue or unreasonable prejudice or disadvantage. Based on the record, very little evidence has been presented to support Ms.

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8 April through September 2012 [6 mos. x $77.00 = $462.00], [462.00 + $30.87 (PIPP installment balance due for April 2012) - $183.59 (total customer payments made) = $309.28], in comparison to $304.03 on the September 2012 bill.

Toliver's claim that Vectren has imposed any undue or unreasonable prejudice or disadvantage. When Vectren's bills, as a result of a billing defect, listed a reduction in the PIPP installment due July through November 2011, Vectren did not reissue recalculated bills requesting the correct amount due. No Vectren customer, including Ms. Toliver, was put in a financially precarious position for the correct payment due as a result of the billing defect. Nor do we find that Vectren's administration of the PIPP Plus program unduly or unreasonably prejudiced, or disadvantaged Ms. Toliver. As a PIPP customer, in exchange for the program benefits, Ms. Toliver is obligated to make her PIPP installment payment each month. In exchange, Ms. Toliver, as a PIPP participant, receives gas utility service based on her income as opposed to the actual charges incurred based on consumption like Vectren's other ratepayers. Further, for on-time payment of the PIPP installment due, PIPP participants receive arrearage forgiveness and forgiveness of the actual charges due in excess of the PIPP installment. The record evidence does not demonstrate, as Ms. Toliver claims, undue or unreasonable prejudice or disadvantage.

Further, Section 4905.35(B), Revised Code, requires a natural gas company that is a public utility to offer its regulated services or goods to all similarly situated consumers under comparable terms and conditions. Ms. Toliver does not assert that she has been treated adversely as compared to other similarly situated PIPP customers. In fact, Ms. Toliver testifies that she does not expect to be treated differently than any other PIPP participant. However, the complainant repeatedly argues that Vectren cannot charge her account for payments not due or for PIPP installments irrespective of her actual balance. (Tr. at 20-22, 91.)

However, the complainant's reasoning overlooks the fact that, as a PIPP participant, she is not paying in-full for the gas utility services received. PIPP Plus participants are on a payment plan which allows the PIPP customer to receive gas utility service and avoid the threat of disconnection of their service, as long as the PIPP participant complies with the program requirements, which includes making the required PIPP installment payment. As explained in great detail above, the PIPP installment is based on the PIPP customer's annual household income not the actual charges for the gas utility services consumed. Therefore, PIPP participants are expected to contribute the expected annual portion of their income as determined to be reasonable to maintain their utility service. Thus, the PIPP participant's PIPP installment is due irrespective of the actual account charges due. Without, the submission of the PIPP installment, the PIPP participant is subject to the disconnection of his/her gas utility service like any other utility customer.

Accordingly, upon consideration of the record in this case, as discussed in detail above, the Commission concludes that the complainant has failed to sustain her burden to prove that: Vectren's administration of the PIPP program is discriminatory to her, as a PIPP participant; Vectren's administration of the PIPP program is unreasonable or unlawful; Vectren arbitrarily administered the PIPP program as to the complainant;

and/or that Vectren violated its tariff, any Commission rule, or any provision of Title 49, Revised Code. Therefore, this case should be dismissed and closed of record.

Finally, the Commission notes that the complainant cites Section 4905.37, Revised Code, in support of the allegations against Vectren. Section 4905.37, Revised Code, grants the Commission the authority to prescribe the practices of a public utility where the Commission determines, after a hearing, that such utility practices are unjust or unreasonable. Given that we have found that the complainant has failed to sustain her burden to prove that Vectren's administration of the gas PIPP program as applied in this case is unjust or unreasonable, the Commission has no basis to utilize the authority granted to us by Section 4905.37, Revised Code.

The Commission recognizes that, based on our finding that the complainant has not sustained her burden of proof that Vectren acted inconsistent with the rules for the administration of the gas PIPP program, Ms. Toliver's account may be immediately subject to disconnection for the missed PIPP payments. The Commission directs that Vectren shall not disconnect Ms. Toliver's gas utility service unless and until the Commission or the assigned Attorney Examiner orders otherwise. Vectren is directed to file with the Commission in this docket, by July 24, 2013, a statement, including monthly detail and supporting documentation, to the extent it is not already included in the record, the total amount due from Ms. Toliver as a result of her reenrollment in PIPP on or about September 2012. Further, the Commission notes that the Vectren bills reflect that Ms. Toliver continues to receive the benefits of the PIPP Plus program. Accordingly, Vectren shall also provide the total amount of the PIPP Plus benefits received by Ms. Toliver since her reenrollment in PIPP on or about September 2012, including the monthly amount of the arrearage forgiveness and difference between the on-time PIPP installment and actual charges incurred.

On or before July 31, 2013, Ms. Toliver shall notify the Commission by letter to be filed in this docket clearly stating whether she wishes to continue her participation in the PIPP Plus program or not. If Ms. Toliver elects to continue participation in the PIPP Plus program, she shall submit the missed PIPP payments to Vectren by September 20, 2013.

On the other hand, if Ms. Toliver elects to terminate her participation in PIPP Plus, or fails to notify the Commission by July 31 2013, Vectren shall, with the next bill issued, reverse the PIPP Plus benefits received on Ms. Toliver's account. If Ms. Toliver is not on PIPP Plus, she may enter into a mutually agreeable payment plan or a Commission-ordered payment plan as set forth in Rule 4901:1-18-05(B), O.A.C., with Vectren to bring the account current. We remind Ms. Toliver that, should she elect to terminate her participation in the PIPP program at this time, and subsequently reenrolls in PIPP on or before July 17, 2014, consistent with the gas PIPP rules and as explained in Complainant

Ex. 2, she will be required to pay the difference between any missed PIPP installments and the customer payments made during the same period.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) Vectren is a public utility, as defined in Sections 4905.02 and 4905.03, Revised Code, and, as such, is subject to the jurisdiction of the Commission.

(2) Rules 4901:1-18-12 through 4901:1-18-16, O.A.C., set forth the requirements of the gas PIPP Plus program, effective as of November 1, 2010.

(3) On December 17, 2012, Ms. Toliver filed a complaint against Vectren.

(4) A settlement conference was held on February 12, 2013.

(5) The hearing on the issues raised in the complaint was held on March 21, 2013.

(6) In a complaint case, the burden of proof is on the complainant. *Grossman v. Public Utilities Commission* 5 Ohio St.2d 189, 214 N.E.2d. 666 (1966).

(7) Ms. Toliver failed to sustain her burden of proof to demonstrate that Vectren's administration of the PIPP program is discriminatory to her, as a PIPP participant.

(8) Ms. Toliver failed to sustain her burden of proof to demonstrate that Vectren's administration of the PIPP program is unreasonable or unlawful.

(9) Ms. Toliver failed to sustain her burden of proof to demonstrate that Vectren arbitrarily administered the PIPP program as to the complainant.

(10) Ms. Toliver failed to sustain her burden of proof to establish that Vectren violated its tariff, any Commission rule, or any provision of Title 49, Revised Code, and, therefore, the complaint should be dismissed.

ORDER:

It is, therefore,

ORDERED, That the complainant's motion to strike Vectren's testimony is denied. It is, further,

ORDERED, That Vectren's motion to strike the attachments to and portions of Ms. Toliver's brief filed on May 6, 2013, is granted. It is, further,

ORDERED, That the attachment to complainant's memorandum contra filed May 30, 2013, is stricken. It is, further,

ORDERED, That Vectren's motion to strike the complainant's surreply filed on June 14, 2013, is granted. It is, further,

ORDERED, That Ms. Toliver's request for an oral hearing is moot. It is, further,

ORDERED, That the complaint be dismissed. It is, further,

ORDERED, That Vectren file with the Commission, by July 24, 2013, the information regarding Ms. Toliver's account. It is, further,

ORDERED, That Ms. Toliver file with the Commission, by July 31, 2013, a letter clearly stating whether or not she wishes to continue her participation in PIPP Plus program. It is, further,

ORDERED, That, if Ms. Toliver elects to continue participation in the PIPP Plus program, she shall submit the missed PIPP payments to Vectren by September 20, 2013. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

GNS/vrm

Entered in the Journal
JUL 17 2013

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Nancy S. Toliver,	)	
Complainant,	)	
v.	)	Case No. 12-3234-GA-CSS
Vectren Energy Delivery of Ohio, Inc.,	)	
Respondent.	)	

ENTRY ON REHEARING

The Commission finds:

(1) On December 17, 2012, Nancy Toliver (complainant) filed a complaint with the Commission against Vectren Energy Delivery of Ohio, Inc. (Vectren or respondent) asserting, among other things, that she had been overcharged, was being forced to get off of the Percentage of Income Payment Plan (PIPP) Plus program, although she was income eligible, and that she was being discriminated against as a low-income customer. On January 7, 2013, Vectren filed its answer, denying the substantive allegations in the complaint.

(2) A hearing was held on March 21, 2013. Ms. Toliver and Vectren filed their briefs on May 6, 2013 and May 10, 2013, respectively.

(3) On July 17, 2013, the Commission issued its Opinion and Order (Order) concluding that Ms. Toliver had failed to sustain her burden of proof to demonstrate that Vectren's administration of the PIPP program was discriminatory to her as a participant, that Vectren's administration of the PIPP program was unreasonable, unlawful or arbitrarily administered as to the complainant, or that Vectren violated its tariff, any Commission rule or provision or Title 49, Revised Code. Accordingly, the Commission dismissed the complaint.

(4) Further, recognizing that Ms. Toliver's gas service would be subject to disconnection as a result of the Commission's

conclusions in the Order, the Commission directed Vectren to file a statement, including monthly details, with the total amount due to bring the complainant's PIPP account current and the PIPP benefits received by Ms. Toliver since her reenrollment. The Order also directed Ms. Toliver to file a letter by July 31, 2013, clearly stating whether she wishes to continue her participation in the PIPP Plus program or not. The Order also informed Ms. Toliver of her payment plan options and the consequences of terminating her participation in PIPP.

(5) As directed, on July 24, 2013, Vectren filed a statement and copies of Ms. Toliver's bills for April through June 2013. According to Vectren, Ms. Toliver's account has accrued $594.73 in PIPP installment payments due since terminating her participation in PIPP in April 2012, and reenrolling in September 2012. Since reenrolling in the PIPP program, Ms. Toliver has received PIPP benefits of $130.74.

(6) On July 26, 2013, Ms. Toliver filed an "answer and reply" to the Order. In the filing, Ms. Toliver contends that by filing her objection and reply to the Order, she preserves her right to be on PIPP. However, she does not clearly state, as requested, whether she wishes to continue her participation in the PIPP Plus program or not. Further, in the filing, Ms. Toliver reasserts many of the allegations made in her complaint and argues that the Order is unreasonable, unlawful, without merit and in violation of Ohio law in numerous respects. Each argument is addressed in more detail below.

(7) On August 7, 2013, Vectren filed a response to Ms. Toliver's reply. Vectren contends that Ms. Toliver's filing fails to comply with the Order, as it does not clearly state whether she wishes to continue to participate in the PIPP program. Vectren requests that the Commission clarify what actions Vectren should take in the event that Ms. Toliver refuses to clarify her intentions.

(8) On August 20, 2013, Ms. Toliver filed a reply to Vectren's response essentially reiterating the allegations she made in the complaint, her brief, and in her July 26, 2013, filing.

(9) In accordance with Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code (O.A.C), any party to a Commission proceeding may apply for rehearing with respect to any matter determined, within 30 days of the entry upon the Commission's journal.

(10) The Commission finds that, in light of the fact that the complainant's July 26, 2013, filing includes arguments addressing our Order, as opposed to merely stating whether she wishes to continue her participation in the PIPP program, the filing must be considered an application for rehearing of the Order and will be addressed accordingly.

(11) Ms. Toliver's arguments on rehearing regarding the status of her PIPP account are as follows:

(a) Ms. Toliver argues that her PIPP installments due in April 2012, her anniversary date, were set to zero and claims the PIPP installments the Order directs be paid by September 20, 2013, "ended at the beginning of the new reverification year starting May 2012 thru April 2013."

(b) Ms. Toliver asserts she only received incentive credits for timely payment for February 2013, for $72.00; April 2013, for $41.24; and May 2013, for $16.64. Thus, she received total PIPP benefits in the amount of $129.88, since her reenrollment in September 2012. Ms. Toliver reasons that on-time incentive credits were not accrued in the months her account balance was less than the minimum PIPP payment.

(12) In regards to the complainant's argument as to the effect of reverification on PIPP installments due and incentive credits on her account, the Commission finds these arguments should be rejected. Contrary to Ms. Toliver's assertions, the past due PIPP installments were not forgiven as a result of the passing of her annual reverification date; thus, Ms. Toliver's interpretation of reverification and the implications thereof are incorrect.

Thus, we find the complainant's assertion regarding the new reverification year does not support the complainant's request for rehearing of the Order.

Further, the record reflects that Ms. Toliver made her PIPP installment payment on time in February, April, and May 2012. Therefore, the total delta and arrearage incentive credits received on Ms. Toliver's account equals $130.74. Accordingly, the Commission finds that Ms. Toliver's arguments on rehearing as to her PIPP account status should be denied.

(13) Ms. Toliver's raised two issues on rehearing regarding the procedural rulings in the Order. The arguments are as follows:

(a) Ms. Toliver states that the Order is harmful, unreasonable, and unlawful to the extent that the Order grants Vectren's motion to strike the documents attached to the complainant's brief and the related portions of the brief.

(b) Ms. Toliver reiterates the arguments she made in her motion to strike the testimony of Vectren's witness stating that: the Attorney Examiner ruled that Vectren's witness, Sherri Bell, could not act as an expert witness because Vectren stated at the settlement conference that it would not be calling any witnesses; a prehearing conference was not scheduled; the denial of the motion to strike Vectren's written testimony, violates Rules 4901-1-16(D)(1), and 4901-1-21(G), O.A.C., and is inconsistent with the Attorney Examiner's ruling at the hearing; and she requested to have witnesses testify at the March 21, 2013, hearing.

(14) Vectren submits that Ms. Toliver's claim that the Attorney Examiner ruled that Ms. Bell could not act as an expert witness is refuted by the hearing transcript. Vectren notes that the transcript specifically provides that the Attorney Examiner stated as follows: "As the Attorney Examiner assigned to this case, I will be looking at this motion [complainant's motion to strike], but at this time it will be held in abeyance, so we can proceed today." (Tr. at 8.) Where upon, Vectren states, Ms. Bell was allowed to testify and the merit of the motion to strike was addressed in the Order.

(15) In the Order, the Commission thoroughly considered the arguments of the parties regarding Vectren's motion to strike.

On rehearing, none of the arguments presented by the complainant persuades the Commission that reconsideration of this aspect of the Order is justified. Accordingly, the request for rehearing should be denied.

Likewise, the Commission thoroughly considered and rejected Ms. Toliver's arguments to strike Vectren's written testimony. At the hearing, the Attorney Examiner ruled that the complainant's motion to strike would be held in abeyance for consideration by the Commission, and the hearing allowed to proceed (Tr. at 8). Furthermore, it is well within the purview of the Commission to reconsider and reverse or affirm the procedural ruling of the Attorney Examiner. Accordingly, the complainant's request for rehearing of this aspect of the Order should be denied.

In the reply, Ms. Toliver asserts, for the first time, that she requested to have witnesses testify at the hearing. The Commission notes that nothing in the transcript indicates that Ms. Toliver had any witness, other than her self, present at the hearing who wished to offer testimony and was denied an opportunity to do so. Accordingly, the Commission finds Ms. Toliver's application for rehearing as to the procedural rulings should be denied.

(16) Ms. Toliver's remaining arguments on rehearing and Vectren's responses thereto may be summarized as follows:

(a) Ms. Toliver submits that the Order is unreasonable, unlawful, unjust, arbitrary, unconscionable, in violation of Rules 4901:1-18-12, 4901:1-18-17, and 4901:1-18-05(B), O.A.C., and against public policy, where the Order directs Ms. Toliver to clearly state whether or not she wishes to continue her participation in the PIPP program. Ms. Toliver asserts that the Order is inconsistent with Rules 4901:1-18-12(D)(2)(b), O.A.C., the Uniform Commercial Code (UCC) and Vectren's rules and policies under the bill message.

Vectren replies that Ms. Toliver mischaracterizes the Order. The respondent reasons that the Order did not direct or suggests that the complainant

get off of PIPP but rather gave Ms. Toliver the opportunity to make an informed decision regarding her continued participation in PIPP. Nor did the Order, according to Vectren, suggest how Ms. Toliver should exercise her discretion. Further, Vectren continues, the complainant has failed to offer any explanation why filing a letter with the Commission indicating whether or not she wishes to continue her participation in PIPP is unreasonable, unlawful, unjust, arbitrary or unconscionable. As Vectren contends the directive is logistically feasible, given that Ms. Toliver has made eight filings in this case, and the content reasonable.

(b) Ms. Toliver argues the Order fails to recognize that she qualifies for PIPP Plus under the income guidelines and fails to acknowledge that, as a PIPP customer, she is required to apply for the Home Energy Assistance Program (HEAP) and Home Weatherization Assistance Program as noted in the Energy Assistance Resource Guide (Resource Guide). Further, Ms. Toliver contends that she has no arrears and pursuant to the Resource Guide, she can only be required to pay her PIPP Plus default amount up to the amount of the arrears.

(c) Ms. Toliver reiterates her arguments made in the brief, that certain provisions of the Resource Guide are contradictory. Ms. Toliver also argues that, as a PIPP participant, she is required to apply for PIPP and the public energy assistance and weatherization for which she is eligible.

(d) Ms. Toliver claims that Vectren violated Section 4905.37, Revised Code, to the extent the bill issued June 24, 2013, states a PIPP amount due of $624.29 where the actual account balance due is zero.

(e) Ms. Toliver argues that, because the Order directs Vectren not to disconnect her gas utility service

unless and until the Commission or the assigned Attorney Examiner orders otherwise, it supports that the complainant met her burden of proof that Vectren discriminated against her as a low-income customer as a result of her participation in the PIPP program. Ms. Toliver reasons that Vectren discriminated against her by continuously threatening disconnection of her utility service.

Vectren retorts that the purpose of the section of the Order referenced by Ms. Toliver is to preserve the status quo while the final details of the case are resolved and to allow Ms. Toliver time to make an informed decision whether to stay on PIPP. Vectren notes that, had Ms. Toliver sustained her burden of proof to support the claims in her complaint, the Order would not have stated otherwise in four separate conclusions of law.

(f) Ms. Toliver argues that the Order is unreasonable, unlawful, without merit, and in violation of Section 4905.26, Revised Code, in numerous respects, and asserts that, by filing her objection and reply to the Order, she preserves her right to be on PIPP.

(17) On rehearing, Ms. Toliver has not presented any new arguments for the Commission's consideration in regards to the UCC, Resource Guide, Vectren's alleged violation of Section 4905.37, Revised Code, or Vectren's alleged discrimination against her in its administration of the PIPP program. The complainant also fails to develop any argument for the Commission's consideration in regards to Vectren's rules and policies under the bill message. For these reasons, the Commission finds the related requests for rehearing should be denied.

The Commission, likewise, finds that Ms. Toliver's remaining arguments on rehearing should be denied. A PIPP customer is obligated to comply with the requirements of the program, including, but not limited to, making the monthly PIPP

installment payment and to pay any missed PIPP payments by the participant's reverification date. As to HEAP, we note that when Ms. Toliver applied for HEAP, she was not a PIPP participant and HEAP assistance is not contingent upon PIPP participation. Therefore, in accordance with the rules governing PIPP, since Ms. Toliver failed to make up her monthly PIPP installments due as a result of reenrollment, her participation in PIPP may be terminated and her gas utility service disconnected.

(18) For all of the reasons presented above, the Commission finds that Ms. Toliver's application for rehearing fails to persuade the Commission that the Order is unjust, unreasonable, or in violation of Ohio law. Accordingly, we find that the complainant's request for reconsideration of the Order, in any respect should be denied.

(19) On a final matter, Vectren notes in its August 7, 2013, reply that it can not discern from Ms. Toliver's July 26, 2013, filing whether or not she wishes to terminate her participation in PIPP and, therefore, requests clarification how to address the complainant's account. Vectren proposes that, since Ms. Toliver's last affirmative decision was to join PIPP, if she fails to state or fails to timely notify the Commission whether she wishes to continue on PIPP or not, the Commission should presume her continued participation in PIPP, and the consequences thereof be as set forth in the Order.

(20) Based on Ms. Toliver's July 26, 2013, filing, the Commission agrees that it is unclear whether Ms. Toliver wishes to continue her participation in PIPP. While the complainant's filing indicates her disagreement with the Commission's authority to request that she state whether she wishes to continue her participation in PIPP, the filing does not clearly indicate her choice. We recognize that, if Ms. Toliver continues as a PIPP participant, she will be obligated to pay $594.73 in outstanding PIPP installments. If Ms. Toliver discontinues her participation in PIPP, the PIPP benefits received of $130.74 will be reversed on Ms. Toliver's account.

While the Commission recognizes that Ms. Toliver's last affirmative election was to rejoin PIPP in the summer of 2012, she has not met her obligation to remain on PIPP. Should the

> Commission presume her continued enrollment in PIPP, the complainant would be subject to immediate disconnection based on the outstanding PIPP installments due of $594.73. Therefore, we find it best to reverse the PIPP benefits received since Ms. Toliver's reenrollment, which will result in $130.74 being added to the complainant's account balance. As a non-PIPP customer, Ms. Toliver can use the other payment options available in accordance with Rule 4901:1-18-05, O.A.C., to cure the account balance. Since PIPP is a payment plan based on household income, no other payment plan options are available to PIPP participants. Given, the lack of clarity regarding the complainant's wishes, terminating the complainant's participation in PIPP results in a payment due that is substantially less than would be due if she continues as a PIPP participant.
>
> Accordingly, consistent with the Commission's findings in the Order, we find that, effective with the next bill issued, Vectren should terminate Ms. Toliver's participation in the PIPP program and reverse the PIPP benefits received on Ms. Toliver's account since her reenrollment in September 2012, which is $130.74.

It is, therefore,

ORDERED, That the complainant's application for rehearing is denied, as discussed above. It is, further,

ORDERED, That Vectren terminate Ms. Toliver's participation in the PIPP program and reverse the PIPP benefits received on Ms. Toliver's account in the amount of $130.74, effective with the next bill issued. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all persons of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

GNS/vrm

Entered in the Journal

AUG 21 2013

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Nancy S. Toliver,	)	
Complainant,	)	
v.	)	Case No. 12-3234-GA-CSS
Vectren Energy Delivery of Ohio, Inc.,	)	
Respondent.	)	

SECOND ENTRY ON REHEARING

The Commission finds:

(1) On July 17, 2013, the Commission issued its Opinion and Order (Order) concluding that Ms. Toliver had failed to sustain her burden of proof to demonstrate that Vectren's administration of the Percentage of Income Payment Plan (PIPP) Plus program was discriminatory to her as a participant, that Vectren's administration of the PIPP program was unreasonable, unlawful or arbitrarily administered as to the complainant, or that Vectren violated its tariff, any Commission rule or provision or Title 49, Revised Code. Accordingly, the Commission dismissed the complaint.

(2) Further, recognizing that Ms. Toliver's gas service would be subject to disconnection as a result of the Commission's conclusions in the Order, the Commission directed Vectren to file a statement, by July 24, 2013, including monthly details, with the total amount due to bring the complainant's PIPP Plus account current, and the PIPP Plus benefits received by Ms. Toliver since her reenrollment. In the Order, the Commission also directed that Vectren not disconnect Ms. Toliver's service until the Commission or the assigned Attorney Examiner directed otherwise. The Order also directed Ms. Toliver to file a letter, by July 31, 2013, clearly stating whether she wishes to continue her participation in the PIPP Plus program.

(3) As directed, on July 24, 2013, Vectren filed a statement and copies of Ms. Toliver's bills for April through June 2013.

(4) In accordance with Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code (O.A.C), any party to a Commission proceeding may apply for rehearing with respect to any matter determined, within 30 days of the entry upon the Commission's journal.

(5) On July 26, 2013, Ms. Toliver filed an "answer and reply" to the Order; however, the filing did not clearly state, as requested, whether she wished to continue her participation in the PIPP Plus program. In the filing, Ms. Toliver reasserted many of the allegations made in her complaint and argued that the Order was unreasonable, unlawful, without merit, and in violation of Ohio law in numerous respects. Accordingly, the Commission determined that the filing must be considered an application for rehearing of the Order and addressed the claims accordingly.

(6) On August 21, 2013, the Commission issued its Entry on Rehearing (EOR) denying each of the arguments raised by the complainant. Further, the EOR, in light of Ms. Toliver's failure to timely inform the Commission regarding her PIPP participation, directed Vectren to reverse the PIPP benefits received in the amount of $130.74, with the next bill issued on Ms. Toliver's account.

(7) On September 6, 2013, Ms. Toliver filed objections to the EOR and an application for rehearing. In the complainant's September 6, 2013, application for rehearing, Ms. Toliver restates many of the arguments previously raised regarding discovery and evidentiary issues, PIPP participation rights, participation requirements, and the PIPP benefits received on her account September 2012 through July 2013. In our EOR, the Commission thoroughly considered and rejected each of these arguments raised by Ms. Toliver. Therefore, further rehearing and consideration of those issues is not appropriate and those issues will not be addressed in this entry. However, in her September 6, 2013, application for rehearing, Ms. Toliver also raises issues regarding new determinations made by the Commission in our EOR, that warrant review in accordance with Section 4903.10, Revised Code.

(8) On September 16, 2013, Vectren filed a memorandum contra to the issues raised by the complainant in the September 6, 2013 filing regarding the new determinations in the EOR.

(9) Ms. Toliver objects to the Commission's directive in the EOR instructing Vectren to terminate the complainant's participation in the PIPP program and to reverse the PIPP benefits received in the amount of $130.74. The complainant asserts that the directive violates her statutory right to participate in PIPP Plus. Further, Ms. Toliver contends that Vectren immediately complied with the Commission's EOR and failed to wait the 30 days required by law. The complainant contends that the EOR violated her substantive rights, statutory law, public policy, and is an abuse of the Commission's discretion.

(10) In its reply, Vectren notes that the Supreme Court has previously determined that the Commission's statutory authority for the PIPP program is well established. In *Montgomery County Bd. of Comm'rs v. Pub. Util. Comm.*, 28 Ohio St. 3d 171, 174, 503 N.E.2d 167 (1986), the Supreme Court found "... it is clearly within the [Commission's] emergency powers under [Section] 4909.16 [Revised Code] to fashion such relief as that provided by the PIP plan and we find the plan of the commission to be manifestly fair and reasonable...." Thus, Vectren contends that, where the Commission has the authority to create PIPP Plus, implies the authority to regulate the PIPP Plus program. Without the authority to regulate the gas PIPP program, including the authority to reverse PIPP Plus incentive credits, Vectren reasons that the Commission would not be able to effectively enforce the PIPP Plus rules. On that basis, Vectren contends that the Commission has the authority to reverse the PIPP incentive credits received on Ms. Toliver's account.

Vectren submits that the Commission's decision to terminate Ms. Toliver's participation in PIPP and the reversal of the PIPP benefits was not unreasonable, arbitrary or unconscionable. Vectren notes that, after deciding the primary issues in the complaint, the Order gave Ms. Toliver an opportunity to make an informed decision regarding her continued participation in PIPP Plus. Respondent notes that the Order specifically stated the consequences if Ms. Toliver failed to notify the

Commission, "Vectren shall, with the next bill issued, reverse the PIPP Plus benefits received on Ms. Toliver's account." Further, Vectren argues that the decision in the EOR to terminate PIPP participation and reverse the PIPP benefits was made in an effort to protect Ms. Toliver financially. For these reasons, Vectren submits that the EOR was not an abuse of the Commission's discretion.

Vectren states that, pursuant to Sections 4903.10 and 4903.15, Revised Code, the EOR was effective immediately. Further, Vectren submits that, pursuant to Section 4903.25, Revised Code, Vectren, its officers, agents, and employees were under a duty to comply with the directives of the EOR. Vectren explains that Ms. Toliver's ability to file an application for rehearing has no effect on Vectren's duty and obligations to comply the Order and EOR.

(11) Initially, the Commission points out that, in her September 6, 2013, application for rehearing, Ms. Toliver again fails to indicate, as required by our Order, whether she wishes to continue her participation in the PIPP Plus program. Instead, it appears that the complainant ignores the fact that she was given a deadline by which to file her preference and argues that, absent her input, the Commission does not have the authority to make the determination on how the utility should proceed with collecting the debt owed. After thoroughly considering the issues raised in the complaint and the Commission's conclusion in the Order and the EOR, nothing raised by Ms. Toliver persuades the Commission to reconsider its decision to terminate the complainant's participation in PIPP Plus and reverse the PIPP Plus benefits received. Vectren's arguments opposing the complainant's request for rehearing are on point on this issue and, for the reasons stated, the Commission finds that Ms. Toliver's application for rehearing should be denied.

(12) The complainant also argues that the EOR is inconsistent with the Order which directed Ms. Toliver to pay $594.74 by September 20, 2013.

(13) The Commission believes that Ms. Toliver misinterprets the Order. The Order states, "[I]f Ms. Toliver elects to continue participation in the PIPP Plus program, she shall submit the

missed PIPP payments to Vectren by September 20, 2013." As discussed above, Ms. Toliver filed a document objecting to the request to notify the Commission but failed to clearly state, as requested by the Commission, whether she wished to continue her participation in the PIPP program. Therefore, it was left to the Commission to direct Vectren on how to proceed with its collection of the debt owed. Accordingly, the EOR is consistent with the Order and the complainant's request for rehearing of this matter should be denied.

(14) On September 4, 2013, Vectren filed a motion for clarification of the Order and EOR, on two issues. Ms. Toliver filed a reply to the motion for clarification on September 18, 2013, to which Vectren filed a reply on September 26, 2013.

(15) First, Vectren requests clarification whether it is authorized to disconnect Ms. Toliver's utility service, if necessary. In regards to the disconnection of service, Vectren submits that the Order specifically directed that Vectren not disconnect Ms. Toliver's gas utility service, unless and until the Commission or the assigned Attorney Examiner orders otherwise (Order at 19). However, Vectren contends that the EOR ruled that Ms. Toliver failed to make up her missed PIPP payments and, therefore, her participation in PIPP may be terminated and her gas service disconnected (EOR at 8).

(16) The Commission clarifies that, with the issuance of the EOR, the Commission intended that Vectren be permitted to pursue the disconnection of Ms. Toliver's gas utility service, without any further action from the Commission, consistent with the applicable provisions of the O.A.C., including Rules 4901:1-18-04, 4901:1-18-05, and 4901:1-18-06, O.A.C.

(17) Vectren also requests clarification regarding the payment required of Ms. Toliver in order to participate in PIPP Plus. Vectren submits that, despite Ms. Toliver's failure to clearly state to the Commission whether she wished to continue her participation in PIPP, on or about July 23, 2013, Ms. Toliver applied for Home Energy Assistance Program (HEAP) assistance and expressed her intent to reverify her income to continue participation in the PIPP Plus program. Vectren contends that, by failing to disclose her intentions to continue on PIPP Plus to the Commission in this docket, Ms. Toliver

effectively ensured her termination in the PIPP Plus program and, as she was warned in the Order, if she elects to terminate her participation in PIPP Plus and subsequently reenrolls in PIPP Plus on or before July 17, 2014, she will be required to pay the difference between any missed PIPP installments and the customer payments made during the same period. Vectren cited the portion of the Order that referred to July 17, 2014, as the date by which Ms. Toliver may reenroll in PIPP (Order at 19-20).

(18) The Commission agrees that, absent a reversal of the PIPP benefits, if Ms. Toliver reenrolled in PIPP Plus before 12 months from the date of the Order had passed, she would be required to pay the difference between any missed PIPP installments and the customer payments made during the same period. However, the PIPP benefits received on Ms. Toliver's account since her reenrollment in September 2012, have been reversed consistent with the EOR. On that basis, the July 17, 2014, date set forth in the Order is no longer the relevant date to consider in calculating the 12-month PIPP Plus stay-out period. Rather, the Commission finds that, with the reversal ordered in the EOR, Ms. Toliver was last effectively enrolled in PIPP as of April 2012, and may reenroll in PIPP Plus.

It is, therefore,

ORDERED, That Ms. Toliver's application for rehearing is denied. It is, further,

ORDERED, That the Order and EOR are clarified as set forth in findings (16) and (18). It is, further,

ORDERED, That a copy of this Second Entry on Rehearing be served upon all persons of record in this case and the Ohio Development Services Agency.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

GNS/vrm

Entered in the Journal
OCT 02 2013

Barcy F. McNeal
Secretary