

ORIGINAL

IN THE SUPREME COURT OF OHIO

NANCY S. TOLIVER

Supreme Court Case No. 2013-1807

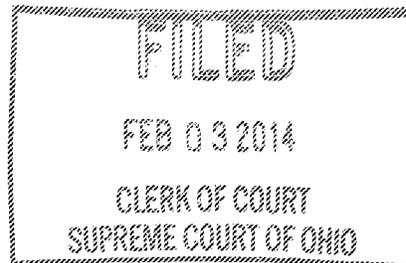
Appellant

v.

On Appeal In the Matter of the  
Complainant Nancy S. Toliver vs.  
VECTREN Energy for unjust  
billing practices  
**Case No. 12-3234-GA-CS**

THE PUBLIC UTILITY  
COMMISSION OF OHIO

Appellees



---

**MERIT BRIEF OF APPELLANT NANCY S. TOLIVER**

---

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

Ohio Attorney General Office  
Michael DeWine

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

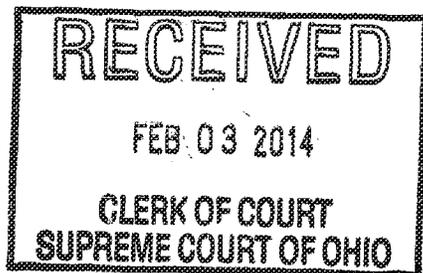


TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	4
STATEMENT OF FACTS.....	7
ARGUMENTS	
Proposition of Law No.1: HEAP requires an application to apply for both PIP plus and HWAP in order to receive the credit on a customer account.....	13
Proposition of Law No. 2: The Commission Order and Entries on Rehearing are inconsistent with its Resource Guide and violates OAC 4901:1-18-12 (D) (2) (b) when the Commission does not have jurisdiction to reverse incentive Credits already paid to the Appellant.....	15
Proposition of Law No. 3: The Commission pursuant to ORC 4903.082 failed to apply the Ohio Civil Rules of Procedure when it overruled Appellant Motion to Strike VEDO expert witness testimony and failed to sanction VEDO pursuant to Ohio Civil .R 37.....	18
Proposition of Law No. 4: The Commission abused its discretion when it unreasonable and unlawfully granted VEDO Motion to Strike Appellant exhibited evidence submitted in good faith to VEDO counsel prior to its submission to the Commission in Appellant pleadings.....	20
Proposition of Law No. 5: OAC4901-1-08(F), requires VEDO counsel to file a Notice of Appearance, Notice of Withdrawal and Notice of Substitution with the Commission.....	21
CONCLUSION.....	22
PROOF OF SERVICE.....	23

APPENDIX	<u>App. Page</u>
Notice of Appeal to the Ohio Supreme Court (November 15, 2013).....	1
Opinion and Order of the Public Utility Commission (July 17, 2013).....	10
Entry on Rehearing (August 21, 2013).....	32
Second Entry of Rehearing (October 2, 2013).....	42
Ohio Supreme Court Entry granting Extension of Time To file Appellant Merit Brief (January 17, 2014).....	49

TABLE OF CONTENTS (cont'd)

	<u>App. Page</u>
<b>CONSTITUTIONAL PROVISIONS: STATUTES</b>	
OAC 4901:1-18-07.....	50
OAC 4901-1-08.....	51
ORC 4905.26.....	52
ORC 4905.37.....	53
ORC 4905.61.....	54
Civil Rule 26(a)(2)(B).....	55
Rule 37(c)(1).....	55
Federal R. Evidence 701.....	55
Civil Rule of Evidence 702.....	55

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES</u>	
Walker v. Holland (1997), 117 Ohio App.3d 775.....	9
Lucas County Comm’rs v. Public Utilities Comm’n of Ohio 80 Ohio St.3d 344.....	9
In the Matter of the Investigation into Long-Term Solutions Concerning Disconnection of Gas and Electric; Case No. 83-303-GE-COI at pp. 3, pp. 2(B).....	11
In the Matter of the Commission’s Review of Chapters 4901:1-17, 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 4901-1-29-17 Of the Ohio Administrative Code, Case No. 08-723-AU-ORD And 13-274-AU-ORD.....	13
Montgomery County Bd. Of Comm’rs v. Public Util. Comm., 28 Ohio St. 3d 171, 174, 503 N.E.2d 167 (1986).....	16, 17 & 18
Waterville Gas Co. v. Mason (1994), 93 Ohio App.3d 798	16 & 17
State ex rel. Cooper v. Savord (1950), 153 Ohio St. 367, 41 O.O. 396, 92 N.E.2d 390.....	17
In the Matter of the Investigation into Long-Term Solutions Concerning Disconnection of Gas and Electric, Case No. 83-303-GE-COI (10/10/96).....	22
<u>CONSTITUTIONAL PROVISIONS; STATUTES</u>	
ORC 4905.26.....	8
OAC 4901-1-16.....	9

OAC 4901-1-29.....	9
Ohio Civil Rule of Procedure 16.....	9
Ohio Civil Rule of Procedure 26.....	9
Ohio Civil Rules of Evidence 701.....	9
Ohio Civil Rules of Evidence 702.....	9
ORC 4903.082.....	9
OAC 4901-1-26(A).....	9
OAC 4901-1-26(A)(3).....	9
Civil Rule 26 (E) (1) (b).....	9
Fed R. Civil P. 37.....	9
Civil Rule of Procedure 26 (a).....	9
Civil Rule 16.....	9
OAC 4901:1-18-04(B)(5).....	11
OAC 4901:1-08(F).....	12
OAC 4901:1-18-12 (C)(1)(2).....	13
OAC 4901:1-18-14 (A)(1).....	14
OAC 4901:1-18-12(D)(2)(b).....	15
OAC 4901:1-18-14.....	15
OAC 4901-18-04.....	16
OAC 4901:1-18-05.....	16
OAC 4901:1-18-06.....	16
OAC 4901:1-18-01(B).....	16

ORC 4909.16.....	16
ORC 4933.12.....	17
ORC 4933.122.....	17
OAC 4901-1-26(A)(3).....	19
OAC 4901-1-26(A)(1)(b).....	19
OAC 4901-1-29(h).....	19
Ohio Civil Rules of Evidence 701.....	19
Ohio Civil Rules of Evidence 702.....	19
Ohio Civil Rule of Procedure 26.....	19
OAC 4901-1-26.....	20
OAC 4901:1-18-01 (B).....	20
OAC 4901:1-18-12(D)(2)(b).....	20
ORC 4905.22.....	21
OAC 4901-1-08(F).....	21
 <b>OTHER PROVISION:</b>	
Energy Resource Guide No. 3.....	13
Energy Resource Guide No. 15.....	15

### STATEMENT OF FACTS

This case arises from Appellant Nancy S. Toliver formal complaint filed against VECTREN Energy Delivery of Ohio Inc. (aka VEDO) with the Public Utility Commission of Ohio (aka PUCO) on December 17, 2012 for the unjust, unlawful, unreasonable and discriminatory practices against the Appellant who is income and otherwise eligible to participate in the PIPP plus program in Ohio.

VEDO required the Appellant whose total account balance is zero to pay the difference between the amount of the PIPP installments that would have been due and the actual customer payments received in the amount of 304.03 and continuously threatened with Disconnection of Services after the Appellant apply for HEAP in August 2012. Appellant was subsequently re enrolled in the PIP Plus program with the minimum payment of \$72.00 by the Ohio Development Service Agency after Appellant terminate her participation in the PIP Plus program in March 2012 after unsuccessfully attempts to get VEDO to stop charging payments not due them. In April 2012, the minimum payment due was set to zero and VEDO only charge Appellant what was used for the month. (O&O 7/17/13, Pg. 1, No.1)

On January 7, 2013, VEDO filed its answer to the Appellant Complaint. VEDO acknowledge that the Appellant did receive the HEAP

credit of 226.00 which resulted in the Appellant being re enrolled in the PIP program in September 2012.

Appellant in the previous year was not subjected to disconnection of service or forced to make payments not due VEDO to remain on the PIP plus program. In fact, the PIP plus payment had been reduced because of the credit balance on the Appellant account. (See VEDO Exhibit No. 3, pp. 35 filed 3/27/13)

Pursuant to ORC 4905.26 upon complaint in writing against a public utility by any person, firm or corporation, or upon the initiative or complaint of the public utility commission that any rat, fare, charge, toll, rental schedule, classification or service.....if it appears that reasonable grounds for complaint are stated, the commission shall fix a time for hearing and shall notify complainants and the public utility thereof.

The Examiner assigned to the Complaint found good cause to schedule a settlement conference with VEDO for February 12, 2012 based on Appellant zero balance in the entry filed January 22, 2013 (See ICN No. 5)

After the settlement conference on February 12, 2012, VEDO counsel and Ms. Bell stated to the examiner that it did not intent to call any expert witnesses and the examiner set the hearing based on VEDO statements for March 21, 2013.

On March 21, 2013 Appellant filed a Motion to Dismiss Ms. Bell direct expert testimony filed on VEDO on March 14, 2013 (VEDO EXHIBIT 1.0) as

it violated discovery rules pursuant to OAC 4901-1-16, OAC 4901-1-29, Civil Rule R. 16, Civil Rule 26, Civil R of Evidence 701 and 702. Complainant cited ORC 4903.082; Right of Discovery.....without limiting the commissions discretion, the Rules of Civil Procedure should be used whenever practicable and it failed to do so pursuant to OAC 4901-1-26(A)(1)(b); VEDO failed to identify the witness to be presented in the proceeding and the subject matter of their testimony pursuant to OAC 4901-1-26(A)(3).

The purpose of Civ.R.26(E) (1) (b) is to prevent “trial by ambush” See *Walker v. Holland* (1997), 117 Ohio App.3d 775. Appellant made a good faith effort and contacted the VEDO on March 18, 2013 regarding the intent to file an objection and Motion to Strike the direct expert testimony as being inadmissible before the commission prior to filing the Motion. Comp. Motion on March 21, 2013; ICN No.8; pps.2 &4)

Rule 37 states “A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(E) (1) (b) shall not, unless such failure is harmless be permitted to use as evidence at trial, at a hearing or on a motion, any witness or information not so disclosed. Fed. R. Civ. P. 37

This Court seems to have also adopted the rule that Complaints filed in the PUCO are governed by the rules and principles of the Ohio Rules of Civil Procedure. *Lucas County Comm’rs v. Public Utilities Comm’n of Ohio*, 80 Ohio St.3d 344. Civil rule 16 provides in relevant part: “A court may adopt rules concerning pretrial procedures to accomplish the following objectives:

(5) the exchange of reports of expert witnesses expected to be called by each party.

On March 21, 2013, the scheduled hearing was held at the PUCO. VEDO counsel and Ms. Bell attended along with the Appellant and her friend Kristi Rhino who also attended the unsuccessful settlement conference on February 21, 2013. At the hearing on March 21, 2013, the examiner stated on the record that Ms. Bell could not testify as an expert witness in the case. Respondents witness Ms. Bell was directed to give her layperson opinion in response to complainant question(s) (Trans filed 4-4-13, pp. 148, Line 5-11).

VEDO counsel as a delay tactic requested that post briefs be filed in the case and was granted by the examiner at the hearing on March 21, 2013. The parties brief were due on May 10, 2013. Appellant filed the post brief on May 6, 2013 and included evidence as exhibits 6, 7 and 8 that supports Appellant claims against VEDO. Appellant acted in good faith and sent the evidence to the VEDO on April 18, 2012 (See VEDO Motion to Strike filed May 21, 2013; ICN NO. 13)

Both parties filed Objection and Memorandums in support of the objection until the PUCO issued its first Opinion and Order dismissing Appellant case, granting VEDO motion to strike and Overruling Appellant motion to Strike filed on July 17, 2013. The Commission ordered Appellant to write a letter that required Appellant to voluntarily terminate participation in the PIP plus program even though she is income and

otherwise eligible to participate. The Commission also ordered VEDO to file a statement including monthly detail and supporting documentation of the total amount due from Ms. Toliver (O&O at 19).

On July 26, 2013, Appellant filed the reply and answer as requested by the PUCO and sent evidence to that Appellant had applied for HEAP on July 23, 2013 that requires Appellant to apply for PIP plus and the HWAP in order to get the HEAP payment. (See *In the Matter of the Investigation into Long-Term Solutions Concerning Disconnection of Gas and Electric*; Case No. 83-303-GE-COI pp. 3) which states in pertinent part: Rule 4901:1-18-04(B)(5), OAC requires anyone applying for the percent of income payment plan to also apply, inter alia, for all weatherization programs for which he/she is eligible. The Commission entry also states the Customer must apply for the regular Home Energy Assistance Program as a requirement to participate in the PIP program. (See *In the Matter of the Investigation into Long-Term Solutions Concerning Disconnection of Gas and Electric*; Case No. 83-303-GE-COI pp.2 (B)

On August 16, 2013, Appellant acted in good faith and sent VEDO a letter and copy of the Ohio Development Service Agency re verification of Appellant eligibility and participation in the PIP plus program with a zero arrearage balance.

On August 20, 2013, VEDO counsel filed an objection to Appellant reply to respondents that include exhibits 13, 14, 15 and 15a that was also

filed on August 20, 2013. VEDO counsel violated *OAC 4901:1-08(F)* and failed to file a Notice of Withdrawal for Counsel Gregory Williams and failed to file a Notice of Substitution for Counsel Andrew J Campbell or give notice to the Complainant who is not represented by a licensed attorney. (Comp. Ex. No. 13; *Case No. 12-1682-EL-AIR dated 8-20-12*). PUCO failed to exclude the pleadings filed in the case by VEDO as required by law and must be reversed by this Court.

On August 21, 2013, the Commission denied Appellant application for rehearing. On September 4, 2013, VEDO filed a Motion for Clarification with the PUCO who ordered VEDO to terminate Appellant participation in the PIP plus program. On September 6, 2013, Appellant objection to the PUCO Order and filed a second application request for rehearing. On September 16, 2013 VEDO filed Memorandum Contra to Complainant filing on September 6, 2013. On September 18, 2013, Appellant filed a reply to respondent Motion for Clarification filed on September 4, 2013. On September 25, 2013 VEDO filed a Reply in Support of it Motion for Clarification filed on September 4, 2013. On October 2, 2013, PUCO denied Appellant second application for rehearing but did clarifying #16 and #18 set forth in findings.

The Commission actions are unlawful and unreasonable and in violation of ORC, OAC and public policy when it order that VEDO reverse the incentive credits in the total amount of 130.74 Appellant received for making

the minimum payment before the due date in every month that the arrearage balance was more than the minimum PIP payment due.

On November 15, 2013 Appellant properly filed the Notice of Appeal with the Ohio Supreme Court and personally serviced the PUCO Commissioner as required by law and the other parties to the case by ordinary U.S. mail.

Appellant acted in good faith and sent a copy of the Ohio Development Agency determination on January 15, 2014 that applies a \$235.00 credit for HEAP to all parties involved in this appeal.

#### ARGUMENT

Proposition of Law No 1: HEAP requires an application to apply for both PIP plus and HWAP in order to receive the credit on a customer account.

Pursuant to 4901:1-18-12 (C) (1) (2) and #3 of the Resource Guide, PIPP Plus customers must apply for the regular Home Energy Assistance Program (HEAP) and the Home Weatherization Assistance Program (HWAP). *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 4901:1-29-17 of the Ohio Administrative Code*, Case No. 08-723-AU-ORD and 13-274-AU-ORD states in pertinent part Customers remain responsible for the dollar difference between their PIPP payment and their actual bill; this accumulating difference in dollar amount is referred to as the customer's arrearage. Also as a part of the PIPP program, customers have been required to apply for energy assistance Id at page No. 1. Comparison of

the Gas and Electric PIPP plus Program No. 3 states customers must pay their PIPP plus installment by the billing due date to be eligible for arrearage crediting (OAC 4901:1-1814(A)(1)..... Overpayment of monthly installment No.5 requires excess installment payments be applied directly to the customers' arrearage balance. The Commission abused its discretion when it overlooked Appellant account balance of zero and ordered VEDO to reverse incentive credits of 130.74 to payments due and withdrawing the alleged past PIPP minimum payments VEDO alleged were due after Appellant was re-enrolled in the PIPP plus program in September 2013 after applying for HEAP credit.

The Commission concluded in the entry filed August 21, 2013, that HEAP assistance is not contingent upon PIPP participation is arbitrary, unconscionable, unreasonable and in violation of its own public policy. The Commission failed to consider that Complainant completed the HEAP assistance application in August 2012 and was subsequently re-enrolled in the PIPP Plus program by the State of Ohio eligibility guidelines. (Entry on Rehearing, pp.17, No. 18)

Appellant applied for HEAP on July 23, 2013 and forwarded in good faith the information letter dated August 11, 2013 from the Ohio Development Services Agency to VEDO counsel showing the agency re-verified Appellant participation in the PIPP program. (ICN No. 29, pp. 3) The Commission's Opinion and Order and Entries on Rehearing is unlawful, unreasonable,

unconscionable and violation the ORC, OAC and public policy and must be reversed.

Proposition of Law No. 2: The Commission Order and Entries on Rehearing are inconsistent with its Resource Guide and violates OAC 4901:1-18-12 (D) (2) (b) and does not have jurisdiction to reverse incentive credit already paid to the Appellant.

Pursuant to 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 arrearage. Appellant arrearages were/is zero. Pursuant to #15 of the Energy Assistance Energy Resource Guide, the customer must pay up to the amount of the PIP default amount up to the amount of arrears, which is zero, when the Commission unlawfully denied Appellant Complaint and both Application of Rehearing.

The Commission failed to considered that it also concluded that the amount due shall not exceed the amount of the customers arrearage. The emphasized add after all missed PIPP payments, from the time of enrollment or the PIPP re verification date, up until re enrollment has been cured is inconsistent with its order to arbitrarily reverse the on time incentive credits of 130.74 to payments due and owing VEDO further subjecting Appellant to wrongful disconnection of services and must be reversed. Pursuant to OAC 4901:1-18-14 which states in pertinent part: the incentive credit is based on the timeliness of the PIPP payments. (O&O pg.14 No.4; ER pg.8, #17)

The Commission acted unlawfully and unreasonably when it order VEDO to terminate Appellant participation in the PIPP plus program after

the Ohio Development Service Agency re verified Appellant participation on August 16, 2013 and Ordered that VEDO be permitted to disconnect Appellant services without further action from the Commission consistent with the applicable provision of the OAC 4901:1-18-04, 4901:1-18-05 and 4901:1-18-06 and failed to considered the account, usage or arrearage balance of the Appellant which is zero pursuant to OAC 4901:1-18-12(D)(2)(b).....the amount of the PIPP payments due shall not exceed the amount of the customers' arrearage when VEDO claimed Appellant owed more the 594.74 in past PIP payments.

The Commission in its Order stated that Appellant must pay the difference between any missed PIPP installments and the customer payments made during the same period and acted inconsistently when it changed the re enrolled date from July 14 2014 to April 12, 2012 failing to considered that the Ohio Development Service Agency as jurisdiction to determine these issues. (Second Entry of Rehearing pp. 5 No. 16, 17 pp. 16 No. 18) Pursuant to Ohio 4901:1-18-01(B) arrearages does not include past due monthly PIPP payments. The Commission Order and Entries are unlawfully and unreasonable and must be reversed.

VEDO relied on *Montgomery County Bd. Of Comm'rs v. Public Util. Comm.*, 28 Ohio St.3d 171,174, 503 N.E.2d 167 (1986) that this Court gave the Commission emergency powers under ORC 4909.16 to reverse incentive credits of \$130.74 to payment owed to VEDO is misplaced. *In Waterville Gas*

*Co. v. Mason* (1994), 93 Ohio App.3d 798; the appellate Court stated that the actual bill for the amount of energy used by the customer may also be lower than the amount the customer pays under the PIPP plan; in that instance the excess amount paid is applied toward any arrearage which has accrued citing *Montgomery Cty. Bd. Of Commrs v. Pub. Util. Comm.*, 28 Ohio St.3d at 176, 28 OBR at 266-267, 503 N.E.2d at 171, fn.4. This Court agrees with the assessment of the trial judge in this case, that the plan is designed to operate like a “revolving open account payable on an installment basis with no credit limit.”

The Supreme Court of Ohio has ruled: The General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequence. It is the duty of courts, if the language of a statute fairly permits or unless restrained by the clear language thereof, so to construe the statute as to avoid such a result. *State ex rel. Cooper v. Savord* (1950), 153 Ohio St.367., 41 O.O. 396, 92 N.E.2d 390, paragraph one of the syllabus.

Keeping this maxim in mind, this court has no choice but to find that R.C.4933.12 and 4933.122 prohibits a collection action and judgment in favor of a utility company for that amount of arrearage accrued by a customer who is eligible for and participating in the PIP plan. Any other interpretation would lead to an absurd result; *Waterville Gas Co. v. Mason* (1994) 93 Ohio App.3d at 805.

The PUCO, following the directive of the legislature, has adopted rules which established the extended payment program known as PIP. The express purpose of the plan is to prevent utilities from discontinuing service during the winter months, leaving low income individuals with no heat. *Montgomery Cty. Bd. of Commrs v. Pub. Util. Comm.* (1986), 28 Ohio St.3d 171, 171-172, 28 OBR 262, 263, 503 N.E.2d 167, 168. The PUCO is a creature of statute, and may not exercise jurisdiction beyond that conferred by statute *Montgomery Cty. Bd. Of Commrs v. Pub. Util. Comm*, 28 Ohio St.3d at 176, 28 OBR at 266, 503 N.E.2d at 171 as cited in *Waterville Gas Co v. Mason* (1994), 93 Ohio App.3d at 806. VEDO PIP rider is discriminatory against low income customer and must be considered a subtle type of peonage, in that the credit card company does not requires a customer to make payment not due an owing but the actual amount of the charges in an installment type fashion.

The Commission has failed to consider Appellant account balance of ZERO and has given preferential treatment to VEDO a corporation with stakeholders trading on the open market. The Commission does not jurisdiction to reverse incentive credit received by the Appellant. The Commission Order and Opinion and Entries denying Rehearing are unlawful and unreasonable and must be reversed.

Proposition of Law No. 3: The Commission pursuant to ORC 4903.082 failed to apply the Ohio Civil Rules of Procedure when it overruled Appellant Motion to Strike VEDO expert witness testimony and failed to sanction VEDO pursuant to Ohio Civil .R 37.

In its Entry on Rehearing at No. 15 the Commission states that the examiner held the Motion to Strike in abeyance at the hearing and that the Commission is well within the purview to reconsider and reverse or affirm the procedural ruling of the Attorney Examiner. The Commission abused its discretion and failed to properly apply OAC 4901-1-26(A) (3). VEDO failed to identify any law or expert witness to be presented in the proceedings and the subject matter of their testimony nor was a schedule established for the completion of discovery pursuant to OAC 4901-1-26(A) (1) (b) prior to its submission to the Commission pursuant to OAC 4901-1-29(h) (Comp. Obj. to Motion to Strike pp.5 ICN No. 8)

The Commission abused its discretion and acted unlawfully and unreasonably and failed to properly apply Civil Rules of Procedure and Rules of Evidence 701 and 702, when it overruled the Examiner's decision that states in pertinent part: You're here to offer testimony for Vectren, but you are not, however, an attorney, are you? THE WITNESS: No, I am not. EXAMINER SEE: Therefore, you are incapable of giving a legal opinion using those terms, correct? THE WITNESS: Correct. EXAMINER SEE: Then you will provide Ms. Toliver (Appellant), in response to her question, your lay opinion and your opinion as a layperson.

Examiner See correctly applied Ohio Civil Rule of Evidence 701 and 702 and Ohio Civil Rule of Procedure 26 in the hearing held on March 21, 2013 which was the same day that the Motion was filed with the Commission. The

Commission failed to consider OAC 4901:1-26 which states that the Commission must set pre trial order to establish dates of discovery to disclose lay and expert witness. VEDO counsel and Ms. Bell did state after the settlement conference on February 12, 2013 that it did not intend to call any expert witness and therefore the hearing was set for March 21, 2013 without the preparation of the pretrial order as required by law. The Commission Order and Entries on Rehearing and must be reversed.

Proposition of Law No. 4: The Commission abused its discretion when it unreasonably and unlawfully granted VEDO Motion to Strike Appellant exhibited evidence submitted in good faith to VEDO counsel prior to its submission to the Commission in Appellant pleadings.

Appellant acted in good faith and sent VEDO a copy of the Vectren Care Letter for Customer Care dated April 9, 2013. This letter confirmed Appellant enrollment in the PIPP Plus program with VEDO (Comp. Exhibit No. 6). The letter from VEDO is further evidence that Appellant as a customer has a current arrearage balance of zero. Appellant will also receive a 1/24<sup>th</sup> credit amount of zero for the timeframe of May 2012 thru April 2013.

VEDO is also in direct violation of its own public policy and contractual agreement which states that Participation in the PIPP Program does not relieve you of your legal responsibility for the actual account balance which was zero. The OAC is clear that pursuant to 4901:1-18-01(B)Arrearages.....does not include past due monthly PIPP payments and 4901:1-18-12(D)(2)(b).....the amount of the PIPP payments due shall not

exceed the amount of the customers arrearage. See Complainant Exhibit No.14)

The Commission granted VEDO Motion to Strike Appellant Exhibits filed with the Post Brief on May 6, 2013 and other exhibited evidence sent to VEDO throughout the case in good faith is an abuse of discretion. Pursuant to ORC 4905.22 which states every public utility shall furnish necessary and adequate service and facilities..... All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable and not more than the charges allowed by law.

The Appellant met her burden as the non moving party and as the Complainant in the case and acted in good faith by submitting to moving party any evidence prior to submission to the Commission as required by law. VEDO filed the Motion to Strike on May 21, 2013 when the evidence was sent to VEDO in the letter dated April 18, 2013 in good faith. The Commission Order and Opinion and Entries of Rehearing must be reversed.

Proposition of Law No. 5: OAC 4901-1-08(F), require VEDO counsel to file a Notice of Appearance, Notice of Withdrawal and Notice of Substitution with the Commission.

VEDO counselors are not relieved of their ethical and legal duty to properly withdraw and substitute counsel with the Commission pursuant to OAC 4901-1-08(F). (Complainant Objection to Commission Order filed August 21, Exhibit No.13) On August 20, 2013, Andrew J Campbell filed the Motion to Strike. Gregory Williams filed the answer in January 2013, attended the settlement conference with Ms. Bell in February 2013, and

attended the hearing with Ms. Bell on March 21, 2013 and failed to withdrawal from the case before the Commission prior to Mr. Campbell filing of the pleading on August 20, 2013.

The Commission failed to consider Exhibit 13 filed on September 6, 2013(ICN27) which is evidence of a previous filing by Andrew Campbell on August 20, 2012 that the Commission must be notified of any withdrawal or substitution on Counsel on all cases before the Commission. Mr. William had a duty to request any extension of time to file the Motion to Strike filed on August 20, 2013. The Commission failure to sanction VEDO is an abuse of discretion and is unreasonable, unlawfully and must be reversed.

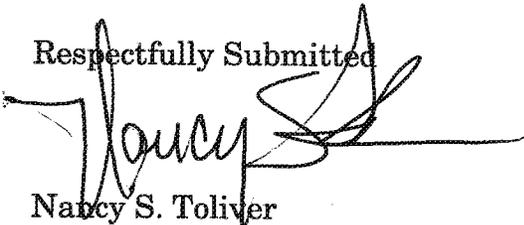
#### CONCLUSION

This Court must remember why the Commission implemented the PIP program in the first place. Customers in Ohio with limited financial resources have had their gas and or electric utility service disconnected because they are unable to pay their bills..... a number of Ohio citizens will enter the winter without utility service, *In the Matter of the Investigation into Long Term Solutions Concerning Disconnection of Gas and Electric*; Case No. 83-303-GE-COI 10/10/96. The Commission has abused it discretion and given preferential treatment to VEDO and has issued Orders and Entries on Rehearing that unlawfully and unreasonable. Only this Court can rule on the inconsistency in the Commission arbitrary, unconscionable and

discriminatory Opinions against the Appellant when it dismissed the case against VEDO.

WHEREFORE, Appellant respectfully submits that the Commissions' 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 with instruction to grant Appellants' Complaint and the relief sought.

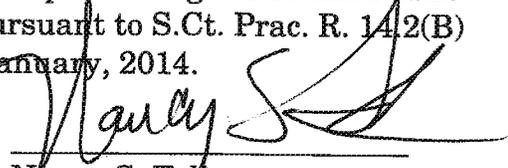
Respectfully Submitted



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

### PROOF OF SERVICE

I hereby certify that a copy of the Merit Brief 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 regular U.S. mail on this 31st day of January, 2014.



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

On behalf of the Ohio Attorney General Michael DeWine  
The Public Utilities Commission of Ohio  
William Wright, Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> floor  
Columbus, Ohio 43215  
Counsel for the PUCO

On behalf of the Chairman of the Public Utilities Commission  
Attention: Docketing Division of the PUCO  
180 East Broad Street, 11<sup>th</sup> Floor  
Columbus, Ohio 43215

On behalf of the VECTREN Energy Delivery of Ohio  
Mr. Andrew J. Campbell  
Mr. 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

APPENDIX

App. Page

Notice of Appeal to the Ohio Supreme Court  
(November 15, 2013)..... 1

ORIGINAL

IN THE SUPREME COURT OF OHIO

NANCY S. TOLIVER

CASE NO.

13-1807

Appellant

V.

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

THE PUBLIC UTILITY  
COMMISSION OF OHIO

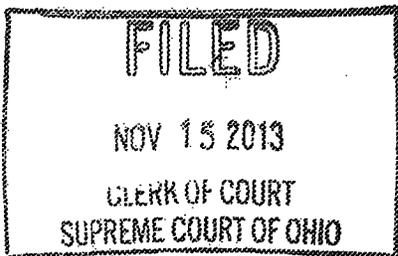
Appellee

NOTICE OF APPEAL OF  
APPELLANT NANCY S. TOLIVER

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

Ohio Attorney General Office  
Michael DeWine

William Wright, Public Utilities  
Section  
180 E. Broad Street 6<sup>th</sup> 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 its discretion when it 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 amount 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.

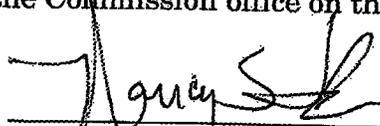
Respectfully Submitted



Nancy S. Toliyer  
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 15<sup>th</sup> day of November, 2013.

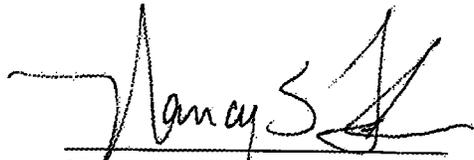


Nancy S. Toliver  
Appellant  
614 Kenilworth Avenue  
Dayton, Ohio 45405  
937.278.4407

- On behalf of the Ohio Attorney General Michael DeWine  
The Public Utilities Commission of Ohio  
William Wright, Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> floor  
Columbus, Ohio 43215  
Counsel for the PUCO
- On behalf of the Chairman of the Public Utilities Commission  
Attention: Docketing Division of the PUCO  
180 East Broad Street, 11<sup>th</sup> Floor  
Columbus, Ohio 43215
- 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.

A handwritten signature in black ink, appearing to read "Nancy S. Toliver", written over a horizontal line.

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

APPENDIX

App. Page

Opinion and Order of the Public Utility Commission (July 17, 2013).....	10
----------------------------------------------------------------------------	----

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)<sup>1</sup> 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.

<sup>1</sup> 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,<sup>2</sup> 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:

---

<sup>2</sup> 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).<sup>3</sup> 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.<sup>4</sup> 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

---

<sup>3</sup> Vectren Utility Holdings, Inc. is the holding company of Vectren.

<sup>4</sup> 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.<sup>5</sup> The current gas PIPP Plus rules became effective on November 1, 2010.<sup>6</sup>

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

---

<sup>5</sup> 2008 Rule Review, Entry at 6 (June 25, 2008).

<sup>6</sup> 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.<sup>7</sup>

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

---

<sup>7</sup> 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. Toliyer'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.<sup>8</sup> (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.

---

<sup>8</sup> 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,

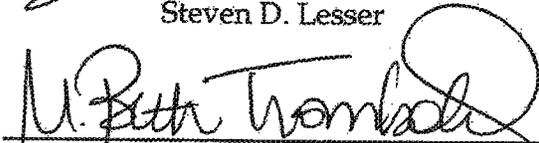
ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

  
Lynn Slaby

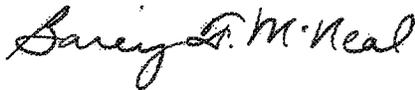
  
M. Beth Trombold

  
Asim Z. Haque

GNS/vrm

Entered in the Journal

**JUL 17 2013**



Barcy F. McNeal  
Secretary

APPENDIX

App. Page

Entry on Rehearing (August 21, 2013).....	32
----------------------------------------------	----

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

11/24  
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,

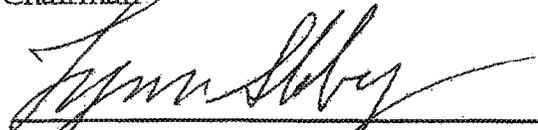
ORDERED, That Vectren terminate Ms. Toliver's participation in the PIPP program and reverse the PIPP benefits received on Ms. Toliver's account in the amount of \$130.74, effective with the next bill issued. It is, further,

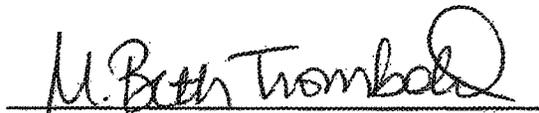
ORDERED, That a copy of this entry on rehearing be served upon all persons of record in this case.

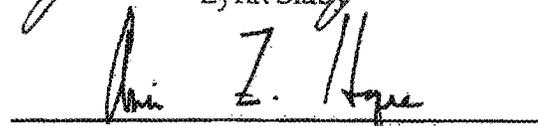
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

  
Lynn Slaby

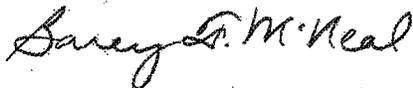
  
M. Beth Trombold

  
Asim Z. Haque

GNS/vrm

Entered in the Journal

**AUG 21 2013**



Barcy F. McNeal  
Secretary

APPENDIX

App. Page

Second Entry of Rehearing (October 2, 2013).....	42
-----------------------------------------------------	----

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.

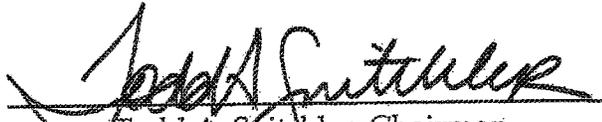
It is, therefore,

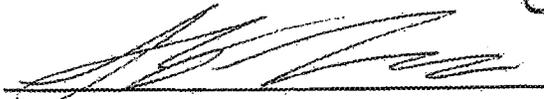
ORDERED, That Ms. Toliver's application for rehearing is denied. It is, further,

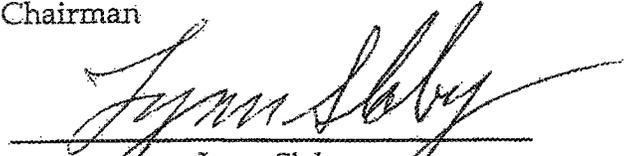
ORDERED, That the Order and EOR are clarified as set forth in findings (16) and (18). It is, further,

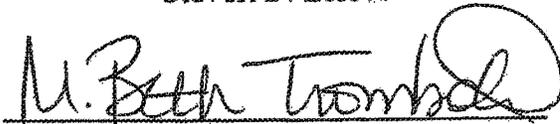
ORDERED, That a copy of this Second Entry on Rehearing be served upon all persons of record in this case and the Ohio Development Services Agency.

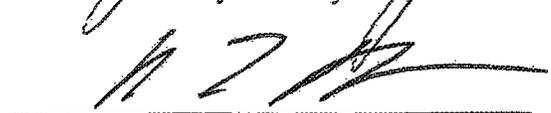
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

  
Lynn Slaby

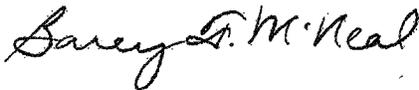
  
M. Beth Trombold

  
Asim Z. Haque

GNS/vrm

Entered in the Journal

**OCT 02 2013**



Barcy F. McNeal  
Secretary

**APPENDIX**

App. Page

<b>Ohio Supreme Court Entry granting Extension of Time To file Appellant Merit Brief (January 17, 2014).....</b>	<b>49</b>
--------------------------------------------------------------------------------------------------------------------------	-----------

# The Supreme Court of Ohio

FILED

JAN 17 2014

CLERK OF COURT  
SUPREME COURT OF OHIO

In the Matter of the Complaint of Nancy S.  
Toliver

Case No. 2013-1807

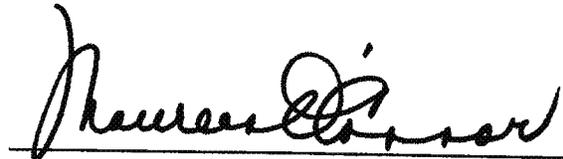
v.

ENTRY

Vectren Energy Delivery of Ohio, Inc.

On written request of appellant, it is ordered that the time for filing the merit brief is hereby extended to February 6, 2014.

(P.U.C.O.; No. 12-3234-GA-CSS)



Maureen O'Connor  
Chief Justice

CONSTITUTIONAL PROVISIONS: STATUTES

APPENDIX

App. Page

OAC 4901:1-18-07.....	50
OAC 4901-1-08.....	51
ORC 4905.26.....	52
ORC 4905.37.....	53
ORC 4905.61.....	54

## **4901:1-18-07 Reconnection of service.**

(A) Upon payment or proof of payment of the delinquent amount as stated on the disconnection notice, or of an amount sufficient to cure the default on an extended payment plan or the percentage of income payment plan (PIPP), applicable reconnection charge, the utility company shall reconnect service that has been disconnected for nonpayment pursuant to the following provisions:

(1) For customers disconnected from service for ten business days or less, the utility company may assess a reconnection charge and shall reconnect service by the close of the following regular utility company working day. Pursuant to rule [4901:1-18-05](#) of the Administrative Code, the amount sufficient to cure the default for customers on extended payment plans shall include all amounts that would have been due and owing under the terms of the applicable extended payment plan, absent default, on the date that service is reconnected. Under paragraph (D)(2)(b) of rule [4901:1-18-12](#) of the Administrative Code, the amount sufficient to cure the default for PIPP customers includes all amounts that would have been due for any missed PIPP payments, but not more than the arrearage balance.

(2) For customers disconnected from service for more than ten business days, the utility company may treat the customers as new customers and connect service consistent with the timeframes in rules [4901:1-10-09](#) , [4901:1-13-05](#) and paragraph (C) of rule [4901:1-17-04](#) of the Administrative Code. In addition, the utility company may assess the customer a reconnection charge in accordance with approved tariffs. Pursuant to paragraph (D)(2)(b) of rule [4901:1-18-12](#) of the Administrative Code, PIPP customers shall be required to pay any missed PIPP payments but not more than the arrearage balance. PIPP customers shall not be required to pay a deposit pursuant to rule [4901:1-18-15](#) of the Administrative Code.

(B) If service is disconnected for nonpayment for no more than ten business days and the customer wishes to guarantee the reconnection of service the same day on which payment is rendered:

(1) The customer must provide proof of payment, as required in paragraph (A)(1) of this rule to the utility company no later than twelve-thirty p.m.

(2) If the customer requests that reconnection occur after normal business hours, and such service is offered by the utility company, the utility company may require the customer to pay or agree to pay the utility company's approved tariff charges for after-hours reconnection. The utility company may collect this fee prior to reconnection or with the customer's next monthly billing.

(C) The utility company shall not assess a reconnection charge unless the utility company has actually disconnected the service. The utility company may, however, assess a collection charge if the collection charge is part of the utility company's approved tariff. A collection charge shall not be assessed more than once per billing cycle.

(D) If the utility company accepts a guarantor in order to reestablish service, it shall follow all of the requirements of paragraph (A)(5) of rule [4901:1-17-03](#) of the Administrative Code.

Replaces: [4901:1-18-06](#)

[Click to view Appendix](#)

[Click to view Appendix](#)

## **4901-1-08 Practice before the commission, representation of corporations, and designation of counsel of record.**

(A) Except as otherwise provided in section 4901.14 of the Revised Code and paragraphs (B), (C), (D), and (E) of this rule, each party not appearing in propria persona shall be represented by an attorney-at-law authorized to practice before the courts of this state. Corporations must be represented by an attorney-at-law.

(B) Persons authorized to practice law in other jurisdictions may be permitted to appear before the commission in a particular proceeding, upon motion of an attorney of this state.

(C) Certified legal interns may appear before the commission under the direction of a supervising attorney, in accordance with rule II of the "Supreme Court Rules for the Government of the Bar" of Ohio. No legal intern shall participate in a commission hearing in the absence of the supervising attorney without the written consent of the supervising attorney and the approval of the commission or the presiding hearing officer.

(D) If a prehearing conference is scheduled to discuss settlement of the issues in a complaint case, any person with the requisite authority to settle the issues in the case may represent a party at the conference.

(E) In cases involving complaints filed under section 4905.26 of the Revised Code, where there are numerous complainants who are not represented by counsel and whose interests are substantially similar, the commission, the legal director, the deputy legal director, or the attorney examiner assigned to the case may permit or require the designation of a spokesperson who shall examine witnesses, enter objections, and file all pleadings or papers on behalf of the complainants or petitioners.

(F) Where a party is represented by more than one attorney, one of the attorneys shall be designated as the "counsel of record," who shall have principal responsibility for the party's participation in the proceeding. The designation "counsel of record" shall appear following the name of that attorney on all pleadings or papers submitted on behalf of the party.

(G) No attorney shall withdraw from a commission proceeding without prior written notice to the commission and serving a copy of the notice upon the parties to the proceeding.

Effective: 05/07/2007

R.C. 119.032 review dates: 02/20/2007 and 09/30/2010

Promulgated Under: 111.15

Statutory Authority: 4901.13

Rule Amplifies: 4901.13 , 4901.18

Prior Effective Dates: 3/1/81, 12/25/87, 4/4/96, 7/7/97, 4/20/01

## **4905.26 Complaints as to service.**

Upon complaint in writing against any public utility by any person, firm, or corporation, or upon the initiative or complaint of the public utilities commission, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained, and, upon complaint of a public utility as to any matter affecting its own product or service, if it appears that reasonable grounds for complaint are stated, the commission shall fix a time for hearing and shall notify complainants and the public utility thereof. The notice shall be served not less than fifteen days before hearing and shall state the matters complained of. The commission may adjourn such hearing from time to time.

The parties to the complaint shall be entitled to be heard, represented by counsel, and to have process to enforce the attendance of witnesses.

Amended by 128th General Assembly File No.43, SB 162, §1, eff. 9/13/2010.

Effective Date: 09-29-1997

## **4905.37 Commission may change rules and regulations of public utilities.**

Whenever the public utilities commission is of the opinion, after hearing had upon complaint or upon its own initiative or complaint, served as provided in section 4905.26 of the Revised Code, that the rules, regulations, measurements, or practices of any public utility with respect to its public service are unjust or unreasonable, or that the equipment or service of such public utility is inadequate, inefficient, improper, insufficient, or cannot be obtained, or that a telephone company refuses to extend its lines to serve inhabitants within the telephone company operating area, the commission shall determine the regulations, practices, and service to be installed, observed, used, and rendered, and shall fix and prescribe them by order to be served upon the public utility. After service of such order such public utility and all of its officers, agents, and official employees shall obey such order and do everything necessary or proper to carry it into effect. This section does not give the commission power to make any order requiring the performance of any act which is unjust, unreasonable, or in violation of any law of this state or the United States.

Effective Date: 10-01-1953

## **4905.61 Treble damages.**

If any public utility or railroad does, or causes to be done, any act or thing prohibited by Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4927. of the Revised Code, or declared to be unlawful, or omits to do any act or thing required by the provisions of those chapters, or by order of the public utilities commission, the public utility or railroad is liable to the person, firm, or corporation injured thereby in treble the amount of damages sustained in consequence of the violation, failure, or omission. Any recovery under this section does not affect a recovery by the state for any penalty provided for in the chapters.

Amended by 128th General Assembly File No. 43, SB 162, §1, eff. 9/13/2010.

Effective Date: 10-01-1953

**APPENDIX**

App. Page

Civil Rule 26(a)(2)(B).....	55
Civil Rule 37(c)(1).....	55
Federal R. Evidence 701.....	55
Civil Rule of Evidence 702.....	55

Pursuant to Rules of Evidence 701 on testimony by a lay witness, testimony must be in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue

Federal R. Evidence 701 provides that if the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Pursuant to Civil Rule of Evidence 702, a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

Civil Rule of Procedure 26 (a) (2) (B) which requires that the disclosure of expert witnesses be accompanied by a signed report from that expert where the expert was retained specifically to provide the expert testimony, or where providing expert testimony is a regular part of the expert's employment with the party.

Rule 26, Federal Rules of Civil Procedure, requires an expert witness to provide a written report which includes all opinions, the basis for the opinions and the information that was considered in coming to the opinions. The report must include exhibits, such as photographs or diagrams that will be used. Along with the basic qualifications of the witness, education, training and experience, a listing of all publications authored by the witness for the preceding ten years must be provided.

The written report must include the amount paid for the expert's efforts for the matter and a listing of all other cases in which the individual has testified, in trial and deposition as an expert, for the preceding four years. This does not include cases where the individual acted as a consultant and did not provide expert testimony; it is only those cases where the expert has testified.

The Court noted that Rule 26(a)(2)(B) requires that the disclosure of expert witnesses be accompanied by a signed report from that expert where the expert was retained specifically to provide the expert testimony, or where providing expert testimony is a regular part of the expert's employment with the party.

Rule 37(c)(1) provides that when such a report is not submitted, exclusion of the expert testimony is an appropriate sanction.