Business Impact Analysis

Agency, Board, or Commission Name: **_Ohio Development Services Agency (Development)**

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

__Chapter 122:5-3 Percentage of Income Payment Plan (PIPP) Program____________

Rule Number(s): 122:5-3-01, 122:5-3-02, 122:5-3-03, 122:5-3-04, 122:5-3-05, 122:5-3-06, 122:5-3-07, 122:5-3-08, 122:5-3-09, 122:5-3-10

Date of Submission for CSI Review: ___11/25/20_____

Public Comment Period End Date: _____12/30/20___

Rule Type/Number of Rules:

New/___ rules | **No Change/__X__ rules (FYR? X__)**

Amended/___X_ rules (FYR? _X__) | **Rescinded/___X_ rules (FYR? _X__)**

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies

should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

   Which adverse impact(s) to businesses has the agency determined the rule(s) create?

   The rule(s):

   a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**

   b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

   c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**

   d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

   The Percentage of Income Payment Plan Plus (PIPP Plus) program is a low-income customer assistance program whereby income-eligible customers of gas and electric utilities subject to the jurisdiction of the Public Utilities Commission of Ohio (PUCO) can retain or restore service by paying a specified percentage of their household monthly income each month to the gas and/or electric utility instead of their current monthly utility bill.

   Historically, the utilities were made whole for the difference between the amounts billed to PIPP Plus customers and the amounts paid by PIPP Plus customers by means of a PUCO-approved tariff rider (the PIPP rider) that was designed to recover this difference through a rate charged to of all their customers. However, Amended Substitute Senate Bill 3 (SB 3), the 1999 legislation that restructured Ohio's electric distribution utilities (EDU) industry, transferred responsibility for the administration of various low-income customer assistance programs, including the electric PIPP Plus program, from the state's EDUs to Development (Ohio Revised Code (ORC) Section 4928.53), thereby changing the manner in which EDUs are compensated for the cost of the PIPP Plus program.

With the initial PIPP regulations, there were differences between the electric PIPP rules and the gas PIPP rules. In addition, the costs of these programs continued to increase as did the arrearages that the participants owed to the utility companies. The percentage of payments made on time was low. Because of these issues, Development, in collaboration with the PUCO, obtained input from stakeholder groups and the EDUs to revise and align the PIPP rules. PIPP Plus was the result of these initiatives. The revised rules were adopted in 2009 and implemented on November 1, 2010. These revised rules provided incentives for the participant to make regular, timely payments (arrearage credits) and disincentives for not following the rules (being dropped from the program and having to make up missed payments). The PUCO and Development continued to align their rules during the 2015 rule making process with those rules taking effect in November 2015.

The proposed changes are outlined below:

122:5-3-01

NN: Added "was first" enrolled in PIPP plus to indicate that is when the anniversary date should be determined.

Added definition OO: OO "Removed for non-payment" If the customer has not made 3 or more consecutive payments, the electric distribution utility will issue a notice on the customer's bill, and the customer will have one billing cycle after the date of the notice to pay past due monthly PIPP plus installment amounts. If such amounts are not timely paid, the electric distribution utility will drop the customer from the PIPP plus program, and such customer will cease to be an active PIPP plus customer.

122:5-3-02

(a) After being dropped, a customer is only responsible for missed PIPP plus (up to their arrearage, less any payments made) payments while active on PIPP and for any months while not active but service is maintained. They no longer are required to pay current usage.

(b) If a dropped customer is disconnected, the same rule as above applies, they do not have to pay for the months they did not have service.

(c) Added language to clarify to remain eligible the customer must not only be current by their anniversary date but also make payments on time and in full.

Added (i): If the customer has not made 3 or more consecutive payments, the electric distribution utility will issue a notice on the customer's bill, and the customer will have one billing cycle after the date of the notice to pay past due monthly PIPP plus installment amounts. If such amounts are not timely paid, the electric distribution utility will drop the customer from the PIPP plus program, and such customer will cease to be an active PIPP plus customer.

(ii): Added language that clarified being not current by anniversary date means they missed 1-2 payments or have made partial payments.

<u>122:5-03-03</u>

(C)(1): Ensured re-enrollment language matched 122:5-3-01

<u>122:5-3-04</u>

(A)(1) Changed PIPP plus installment amount from 6% to 5%

(A)(5)(a): Changed graduate PIPP from 12 months to 14 months

<u>122:5-3-05 No changes</u>

<u>122:5-3-06</u>

Removed aggregation provision

<u>122:5-3-07-122:5-3-10 No changes</u>

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

   ORC 4928.53

4. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
   If yes, please briefly explain the source and substance of the federal requirement.

   No

5. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   N/A

6. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

Amended Substitute Senate Bill 3 (SB 3), the 1999 legislation that restructured Ohio's electric distribution utilities (EDU) industry, transferred responsibility for the administration of various low-income customer assistance programs, including the electric PIPP Plus program, from the state's EDUs to Development (Ohio Revised Code (ORC) Section 4928.53)

In October of 2020, the number of Ohioans enrolled in electric PIPP Plus was 239,846 with $23,983,622 in arrearage credits applied. Energy costs create a burden on income-challenged citizens to pay for the necessary utilities in addition to paying for basic needs, e.g. food, water, rent, prescriptions, etc. The PIPP Plus program provides an opportunity for income-eligible Ohioans to maintain electric service at an affordable price. The EDUs benefit through the guaranteed payment of the difference between the amount the PIPP Plus participant must pay and the amount of the current monthly billing. This secure revenue helps to reduce the utilities' uncollectable costs. In addition, because bills are paid and service is maintained, the EDU's credit and collection costs are lowered and it maintains its customer base which lowers costs to all ratepayers.

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Success will be determined by the following metrics:

1. Increase in the number of PIPP Plus participants who make their payments in-full and on-time;
2. Increase in the number of PIPP Plus participants who have had their arrearages reduced to $0.00;
3. Decrease in arrearages owed to the utilities or to the Universal Service Fund;
4. Decrease in the number of PIPP Plus participants' electric service disconnections due to non-payment;
5. Decrease in the number of PIPP Plus participants receiving disconnection notices for their electric bills;
6. Decrease in the number of PIPP Plus participants using the Winter Reconnect Order; and
7. Decrease in the number of PIPP Plus participants using the winter crisis funds.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?
If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

N/A

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.
If applicable, please include the date and medium by which the stakeholders were initially contacted.

Stakeholders provided Development feedback on the rules at a February 5, 2019 joint workshop with the PUCO, and an April 12, 2019 listening session at Development prior to changes being made to the rules. For members of the public who were unable to attend, the workshop was webcast and is available to view on the PUCO webpage. Further, the rules were discussed with the Energy Assistance Process Improvement Group on May 13, 2019 at Development. The rules were also up for comment during the most recent Public Benefits Advisory Board held on May 21, 2019. An initial draft of the proposed rules was posted on Development's website and sent out to local Energy Assistance Providers on July 16, 2019 and comments were received through email from various groups including; utility companies, Legal Aid, Citizen Coalition, Citizen's Group, Energy Assistance Providers, and Ohio Partners for Affordable Energy. Feedback was considered as Development staff reviewed proposed rule revisions with the PUCO staff.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The stakeholders described participants in the PIPP Plus program having issues rejoining the program once they leave, due to large account balances that the individuals are required to pay before rejoining the PIPP Plus program. As a result, edits were made to the rules to only include past due monthly PIPP Plus installments while active on PIPP Plus and while service was maintained. Stakeholders also proposed a change to the percentage paid per utility when the household's main heat is not electric. Accordingly, the monthly PIPP Plus installment amount was reduced to five percent of customers' monthly household income instead of six percent. For Graduate PIPP, stakeholders wanted to extend the time period from 12-months to 18-months. The rules were changed to extend the time period to 14-months. Other comments made included deleting the definition related to anniversary date, establishing a maximum dollar amount to get back on the program, creating a separate PIPP Plus application and changing the reverification date. The rules were not further modified based on those comments.

11. **What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

    The PUCO metrics report and Development's monthly customer information report provide utility data on payment and disconnection frequencies. This data was reviewed to determine how to best achieve the goals of the program.

12. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

    No alternative regulations were considered; however, depending on the filed comments and any replies thereto, Development will further consider revising the proposed regulations.

13. **Did the Agency specifically consider a performance-based regulation? Please explain.** ***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

    A performance-based regulation is not appropriate in this instance. The rules must be designed to ensure compliance with the PIPP Plus program.

14. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

    The original regulation for the PIPP program was implemented in 1983 and administered by the Public Utilities Commission of Ohio. In 1999 the Ohio legislature in Senate Bill 3, moved the administration of the electric PIPP Plus program to the Ohio Department of Development, now known as the Ohio Development Services Agency. Since that time the PUCO has administered the gas PIPP Plus program rules (Chapter 4901:1-18) and Development administered the electric PIPP Plus rules. Development worked with the PUCO to ensure that the two sets of rules aligned as much as possible to afford more consistency to the programs.

15. **Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

    Development's Office of Community Assistance will implement the rules in a consistent and predictable application of the regulation for both utility customers and electric utility companies. Development will work to ensure the EDUs and local Energy Assistance

Providers are aware of the changes and follow the processes accordingly to reinstate eligible PIPP plus customers.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community; and

The provisions apply to regulated electric utility "EDU" companies, and the rates that are paid into the USF are paid for by Ohio's regulated electric utility ratepayers. In 2020, 51 agencies administered PIPP Plus for 239,846 (as of October 2020) electric customers.

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and

As this rule chapter prescribes the relationship between residential customers and the utility companies serving them, the primary identified business community is the electric utility companies. The proposed revisions may impact the identified business community to the extent that there is a time cost involved in compliance with the rules if the utility companies need to program their billing systems to incorporate the proposed rule revisions. Further, there are recovery procedures, if the utility company determines the proposed rule revision impacts the utility company's recovery of expenses. Also, the identified business community may be impacted, if the utility companies need additional storage to retain additional customer record information based on the proposed revisions. In addition, while unlikely, there may be nominal costs associated with updates to revise bill inserts or messages to residential utility bills.

c. Quantify the expected adverse impact from the regulation.
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

The impact in terms of time will, in most instances, be minimal, as utility companies already adhere to OAC Chapter 122:5-3 and the proposed revisions are unlikely to add any additional significant burden on businesses.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

These changes will have a long-term positive impact on the regulated business community and its customers. The alignment of the rules between Development and PUCO will make the rules easier for participants and businesses to understand and follow.

Annually, Development compiles the cost of the PIPP Plus program, the cost of the administration of the program, the cost of the energy efficiency component, the utility rate increase, the balances of the fund's accounts, and deficiencies in the funding for the most recent year, to adjust the rider on the electric utility bills that pay for the program. This is done to ensure that the USF rider is properly collecting funds to administer the program.

By aligning and using the most effective rules, the intent is to streamline the process as much as possible for the utilities, the ratepayers of regulated gas and electric companies, and the individuals who utilize the PIPP Plus program.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. Development will work with affected businesses to ensure compliance with the rules. In the joint workshop with the PUCO, stakeholders and the public, including small businesses, were invited to discuss potential revisions to the rules that could decrease or eliminate any adverse effects on businesses. Small businesses may comment on the proposed rule changes either through the PUCO Entry 19-52-AU-ORD or by emailing Development at Rule.Comment@development.ohio.gov.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

N/A

20. What resources are available to assist small businesses with compliance of the regulation?

Development will meet with and provide educational materials on the rule changes to agencies that provide services to the affected population.