

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's	)	
Consideration of Solutions Concerning the	)	Case No. 15-1460-GE-UNC
Disconnection of Gas and Electric Service	)	
in Winter Emergencies for the 2015-2016	)	
Winter Heating Season.	)	

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**APPLICATION FOR REHEARING  
BY  
COMMUNITIES UNITED FOR ACTION,  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,  
AND PRO SENIORS, INC.**

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In the fall of 1982 and upon a directive from Governor James Rhodes, the Public Utilities Commission of Ohio ("PUCO") acted with humanity and compassion to order certain protections for Ohioans in need. The PUCO should grant rehearing to ensure that customers of Duke Energy Ohio ("Duke") – and any other affected customers – are protected this winter heating season by the ensuing regulations that resulted from that humanity and compassion.

In 1982, the PUCO ordered a total moratorium on disconnections of natural gas and electric services to residential consumers for nonpayment.<sup>1</sup> The PUCO also established a special winter reconnection policy to protect essential services needed by Ohioans for heating during cold Ohio winters.<sup>2</sup> The PUCO has issued an order setting forth a similar special winter reconnection policy every year since.

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<sup>1</sup> *In the Matter of the Investigation into Special Arrangements for Reconnection of Gas and Electric Service*, Case No 82-1304-GE-COI, Entry on Rehearing (November 24, 1982).

<sup>2</sup> *Id.*

In a commendable Finding and Order (“Winter Reconnect Order”) in this case issued on September 2, 2015, the PUCO set out the special winter reconnection policy for 2015-2016. The Winter Reconnect Order established special procedures that will be in effect during the 2015-2016 winter heating season, i.e., between October 19, 2015 and April 15, 2016.<sup>3</sup>

There is the potential for the consumer protections in the Winter Reconnect Order to be at risk, based upon statements by Duke. These statements are with respect to protections in the PUCO’s winter disconnection rules (Ohio Adm. Code 4901:1-18-06).<sup>4</sup>

In this vein, Communities United for Action (“CUFA”),<sup>5</sup> the Office of the Ohio Consumers’ Counsel (“OCC”), and Pro Seniors, Inc. (“Pro Seniors”)<sup>6</sup> (collectively, “Consumer Parties”) ask the PUCO to rehear the Winter Reconnect Order.<sup>7</sup> The Winter Reconnect Order should be reheard to explicitly prohibit Duke (and other utilities) from disregarding the Winter Reconnect Order (and the winter rules) given Duke’s assertions that the special winter reconnection and disconnection procedures do not apply to charges resulting from usage prior to the winter heating period. The Consumer Parties think

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<sup>3</sup> See Winter Reconnect Order at 2.

<sup>4</sup> *Pitzer v. Duke Energy Ohio, Inc.*, Case No. 15-298-GE-CSS (“*Pitzer* Complaint Case”), Answer of Duke Energy Ohio, Inc. (February 27, 2015) at 4. The case was formerly known as *Lykins v. Duke Energy Ohio, Inc.* The case caption was amended by Entry dated July 10, 2015, at 2.

<sup>5</sup> CUFA is a nonprofit corporation based in Cincinnati, Ohio. CUFA is a multi-issue community organization that brings together organizations and communities representing a variety of cultural and ethnic backgrounds and economic levels, with particular emphasis on working class neighborhoods in Cincinnati’s Millcreek Valley. Many of the individuals CUFA serves will be affected by the Winter Reconnect Order.

<sup>6</sup> Pro Seniors is a non-profit organization that provides free legal and long-term care advice and information to older adults, many of whom will be affected by the Winter Reconnect Order.

<sup>7</sup> The Consumer Parties file this Application for Rehearing pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35(A).

Duke's position is obviously wrong and not intended by the PUCO's reconnect orders, but Duke's stated positions compel us to seek this rehearing.<sup>8</sup>

Therefore, the PUCO's Winter Reconnect Order should be reheard to be made reasonable and lawful in the following respect:

1. The Winter Reconnect Order should explicitly prohibit Duke (and other utilities) from disregarding the special winter reconnection procedures that protect consumers between October 19, 2015 and April 15, 2016, in the circumstance where customer arrearages giving rise to a winter disconnection issue were incurred prior to the 2015-2016 winter heating season.

The PUCO should modify its Order as discussed herein.

The grounds for this Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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<sup>8</sup> See also *Office of the Ohio Consumers' Counsel and Communities United for Action v. Duke Energy Ohio, Inc.*, Case No. 15-1588-GE-CSS, Complaint (September 15, 2015). Pending in this complaint case is a Motion to Protect Duke's Consumers Against Wrongful Disconnection During the Winter Heating Season filed by OCC and CUFA on September 15, 2015.

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## I. INTRODUCTION

But, given what is known about Duke's position regarding the PUCO's winter rules,<sup>10</sup> the current order should be reheard to explicitly prohibit Duke (and other utilities) from disregarding the Winter Reconnect Order on a theory that it does not apply to charges resulting from usage prior to the winter heating period. As discussed, at least one utility (Duke) believes that winter disconnection procedures apply only if the arrearages

<sup>10</sup> Ohio Adm. Code 4901:1-18-06.

were incurred during the winter heating season.<sup>11</sup> The special winter reconnection procedures are about protecting Ohioans when temperatures are cold, and therefore they apply even if a consumer's arrearages occurred outside the winter heating season.

## **II. STANDARD OF REVIEW**

Applications for rehearing are governed by R.C. 4903.10. The statute allows that “in any uncontested proceeding ... any affected person, firm, or corporation may make an application for a rehearing within thirty days after the entry of any final order upon the journal of the commission.” The Consumer Parties are affected by the Winter Reconnect Order and may file an application for rehearing in this uncontested proceeding. CUFA is a nonprofit corporation based in Cincinnati, Ohio. CUFA is a multi-issue community organization that brings together organizations and communities representing a variety of cultural and ethnic backgrounds and economic levels, with particular emphasis on working class neighborhoods in Cincinnati's Millcreek Valley. Many of the individuals CUFA serves will be affected by the Winter Reconnect Order. OCC is the statutory representative of residential utility customers who will be affected by the Winter Reconnect Order.<sup>12</sup> Pro Seniors is a non-profit organization that provides free legal and long-term care advice and information to older adults, many of whom will be affected by the Winter Reconnect Order.

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute

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<sup>11</sup> See, e.g., *Pitzer* Complaint, Answer of Duke Energy Ohio, Inc. (February 27, 2015) at 4.

<sup>12</sup> R.C. Chapter 4911.

also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” The statutory standard to modify the Winter Reconnect Order is met here.

**III. THE WINTER RECONNECT ORDER SHOULD EXPLICITLY PROHIBIT DUKE (AND OTHER UTILITIES) FROM DISREGARDING THE SPECIAL WINTER RECONNECTION PROCEDURES THAT PROTECT CUSTOMERS BETWEEN OCTOBER 19, 2015 AND APRIL 15, 2016, IN THE CIRCUMSTANCE WHERE CUSTOMER ARREARAGES GIVING RISE TO A WINTER DISCONNECTION ISSUE WERE INCURRED PRIOR TO THE 2015-2016 WINTER HEATING SEASON.**

The Winter Reconnect Order should explicitly prohibit Duke (and other utilities) from disregarding the special winter reconnection procedures that protect consumers between October 19, 2015 and April 15, 2016, in the circumstance where customer arrearages giving rise to a disconnection issue were incurred prior to the 2015-2016 winter heating season. A consumer’s home where electric or natural gas service has been disconnected in the winter months can be cold, dark and a threat to the occupants’ well-being. This threat to consumers’ health and safety exists because the weather is cold, regardless of whether the arrearages that led to disconnection accrued during the winter heating season or at some earlier time.

To state the obvious, the Winter Reconnect Order is needed to protect the health and welfare of Ohioans in winter because it gets cold in Ohio during the winter. The PUCO stated “in order to prevent injury and support the public interest, we direct utility companies under our jurisdiction for the 2015-2016 winter heating season to reconnect the services of those who have had their services disconnected for nonpayment or to

maintain services in accordance with the directives set forth in this Order.”<sup>13</sup> In addition, “the Commission expects the utilities to err on the side of maintaining service when there is a doubt as to the applicability or the interpretation of a rule.”<sup>14</sup> Further, “the Commission expects that the utility companies under our jurisdiction will assist customers in every way possible to maintain their service for heating purposes.”<sup>15</sup> Well said.

The Winter Reconnect Order supplements the winter rules found in Ohio Adm. Code 4901:1-18-06. The Winter Reconnect Order sets forth special procedures that natural gas and electric utilities must follow in reconnecting or maintaining service to residential customers during the winter heating season. But, because of a peculiar and unfortunate interpretation of the winter rules by Duke, the Winter Reconnect Order should be reheard to prohibit Duke (and other utilities) from disregarding these special procedures where the customer incurred the arrearages outside the winter heating season. This may seem simplistic and obvious. (It is.) But to at least one utility (Duke) it apparently is neither.

The PUCO has before it the *Pitzer* Complaint alleging unlawful disconnection of residential electric service by Duke in November 2011 that may have led to the deaths of two consumers. In its Answer to the complaint, Duke wrongly argued that the procedures in the winter rules do not apply because the arrearages were incurred outside the winter heating season. Duke stated:

Duke Energy Ohio denies that the 10-day notice requirement under O.A.C. 4901:1-18-06(B) applied to the subject disconnection of

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<sup>13</sup> Winter Reconnect Order at 3.

<sup>14</sup> Id. at 2.

<sup>15</sup> Id.



electric service at the Property because the electric service was disconnected only for the non-payment of utility services incurred during August, September and October 2011, and relevant late fees, and *not* for the nonpayment of charges incurred during the winter heating season.<sup>16</sup>

Duke has stated this view a number of times, which we recount by footnote.<sup>17</sup>

The application of the winter rules and the Winter Reconnect Order is not limited to arrearages incurred only during the winter heating season. In fact, the PUCO's ordering clauses in the Winter Reconnect Order make clear that utilities are to follow the special disconnection procedures beginning on the first day of the winter heating season:

ORDERED that **effective no later than October 19, 2015**, each utility company under the Commission's jurisdiction shall restore the service of those customers whose gas or electric utility service has been disconnected for nonpayment, in accordance with the terms set out in this Order. It is, further,

ORDERED that **effective no later than October 19, 2015**, each utility company under the Commission's jurisdiction shall maintain the service of those customers who have received a notice

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<sup>16</sup> *Pitzer* Complaint, Answer of Duke Energy Ohio, Inc. at 4 (emphasis in original). Duke claims that it nevertheless followed the process in the winter rules. *Id.*

<sup>17</sup> See *id.* at 5 ("Duke Energy Ohio denies that O.A.C. 4901:1-18-06(B)(3) applies to the Company's disconnection of the electric service at the Property on November 4, 2011, because (a) the Company did not disconnect Estill Easterling's electric service for any unpaid bills which included usage occurring during November first to April fifteenth of each year,..."); *id.* at 7 ("the customer's services were not subject to disconnection for nonpayment of charges incurred during the winter heating season"); *id.*, Duke's Memorandum Contra OCC's Motion to Intervene (May 22, 2015) at 4 ("The Duke Energy Ohio bills for the Account attached to the Complaint demonstrate that the Company disconnected the electric service to the Account for the non-payment of electric services provided to the Account from August 3 through September 1, 2011. ... Therefore, the allegations *in* the Complaint are contradicted by the utility bills attached *to* the Complaint because the Account was not disconnected for the non-payment of any bills including usage during the winter heating season"); *id.* at 8 ("the Account was not disconnected for unpaid bills including electric charges incurred during the winter heating season"); *id.*, Duke's Memorandum in Opposition to Complainant Jeffrey Pitzer's Second Motion to Compel (August 27, 2015) at 4 ("Moreover, the Duke Energy Ohio bills for the Account attached to the Complaint demonstrate that the Company disconnected the electric service to the Account for the non-payment of electric services provided to the Account from August 3 through September 1, 2011. ... Therefore, the allegations *in* the Complaint are contradicted by the utility bills attached *to* the Complaint because the Account was not disconnected for the non-payment of any bills including usage during the winter heating season.")

that their service is to be disconnected for nonpayment, in accordance with the terms set out in this Order.<sup>18</sup>

For example, customer amounts in arrears on October 19 would have had to be for charges incurred before the winter heating season (that begins on October 19). Because the special procedures of the Winter Reconnect Order go into effect on October 19, the above example shows that the Winter Reconnect Order requires utilities to follow the special procedures for charges incurred before the winter heating season begins.

There would be an absurd result from disregarding the special disconnection procedures in the Winter Reconnect Order (or the winter rules, for that matter) on the basis that the arrearages were incurred outside the winter heating season. If that basis were applied, the special winter procedures would almost never be available to Ohioans during October or November. If consumers could not utilize the special procedures until charges for utility service incurred during the winter heating season became an issue threatening disconnection, then consumers would be without the protections of the Winter Reconnect Order until months after the procedures take effect. Basing the protection of the special procedures on when the arrearages accrued would thwart the purpose of having the winter heating season begin in mid-October under the Winter Reconnect Order (or even November 1 under the winter rules).

Further, the PUCO's policy in the Winter Reconnect Order supports prohibiting Duke (and other utilities) from disregarding the special disconnection procedures for arrearage incurred outside the winter heating season. The PUCO stated that the purpose of the Winter Reconnect Order is to do everything possible to keep Ohioans from losing the heating in their homes, even at the start of the winter heating season:

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<sup>18</sup> Winter Reconnect Order at 10 (emphasis added).

We continue to be concerned about those residential customers who have had their gas and/or electric utility service disconnected because of limited financial resources or who have a disconnection notice because they are unable to pay their bills. While the Commission believes the residential service rules have substantially assisted customers to keep energy service, in spite of their financial situation, we are aware of the fact that **a number of Ohio citizens will enter the winter season without utility service for heating purposes. We find this constitutes a continuing emergency.** Accordingly, the Commission issues this Order to effectuate the special reconnection procedures for the 2015-2016 winter heating season.<sup>19</sup>

The PUCO should protect the health and well-being of Ohioans. Duke (and other utilities) should not be allowed to disregard the special procedures in the Winter Reconnect Order based on when the arrearages occurred. What controls is that it is cold outside during Ohio winters, which means that Ohioans without heating will be cold inside their homes during the winter.

#### **IV. CONCLUSION**

The special disconnection procedures in the winter rules and the Winter Reconnect Order apply regardless of when the customer's arrearages were incurred. Before the 2015-2016 winter heating season begins, the PUCO should modify the Winter Reconnect Order to prohibit (Duke and other utilities) from disregarding the special disconnection and reconnection procedures on a claimed basis that the customer incurred the arrearages prior to the winter heating season.

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<sup>19</sup> Winter Reconnect Order at 3 (emphasis added).

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served by electronic mail or First Class United States Mail to the persons listed below, on this 2<sup>nd</sup> day of October 2015.

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Summary: App for Rehearing Application for Rehearing by Communities United for Action, the Office of the Ohio Consumers' Counsel and Pro Seniors, Inc. electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.