

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of                    )   Case No. 16-1096-EL-WVR  
Duke Energy Ohio, Inc. for a Waiver.            )

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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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April 7, 2017

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This case involves a request – by the utility with highest rate in the state for disconnecting electric residential consumers for nonpayment<sup>1</sup> – to nullify the rights of thousands of Ohioans to be personally notified if electric service is to be disconnected for nonpayment. The Public Utilities Commission of Ohio (“PUCO”) requires electric utilities to provide residential consumers with in-person notice on the day their service is to be disconnected for nonpayment.<sup>2</sup> If the customer (or an adult consumer) is not at home, electric utilities must attach a written notice to the customer’s home in a conspicuous place prior to disconnection.<sup>3</sup>

The in-person notice requirements are essential to customers and their families because the requirements provide them with a last and best opportunity to avoid disconnection of electric service. And in-person notice is important in ascertaining whether shutting off the electricity could cause tragic consequences for consumers in the home.

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<sup>1</sup> See OCC Motion to Intervene and Objections (June 17, 2016) at 11.

<sup>2</sup> Ohio Adm. Code 4901:1-18-06(A)(2).

<sup>3</sup> *Id.*

Duke Energy Ohio, Inc. (“Duke”) seeks to avoid complying with the in-person notification requirements in the PUCO’s rules. Instead, Duke wants to use text messages and/or automated telephone calls (“robocalls”) to notify residential electric customers whose homes are equipped with advanced metering infrastructure (“advanced meters”) that their electric service is about to be terminated.<sup>4</sup> This would apply to nearly all Duke residential electric customers.<sup>5</sup> With the waiver, Duke could utilize the remote disconnection function of its advanced meters to disconnect residential electric customers for nonpayment by remote control, without making personal contact with customers.<sup>6</sup>

On March 8, 2017, the PUCO issued a Finding and Order (“Order”) in this case. The Order approved Duke’s waiver request, as a pilot program to begin May 1, 2017 and end on May 1, 2019, unless the PUCO orders otherwise.<sup>7</sup>

Communities United for Action, the Office of the Ohio Consumers’ Counsel, and Pro Seniors, Inc. (collectively, “Consumer Parties”) file this Application for Rehearing of the PUCO’s Order. The PUCO’s Order is unjust, unreasonable, and unlawful in the following respects:

1. It was unlawful and unreasonable for the PUCO to find that text messages and robocalls, which consumers might not receive, constitute reasonable prior notice of disconnection under R.C. 4933.122.
2. It was unlawful and unreasonable for the PUCO to approve the waiver without retaining the in-person notice requirement for consumers who do

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<sup>4</sup> See Application for a Waiver by Duke Energy Ohio, Inc. (“Application”) (May 13, 2016); Amended Application for a Waiver by Duke Energy Ohio, Inc. (“Amended Application”) (July 22, 2016). Duke did not explain the reason for amending the Application.

<sup>5</sup> As of October 15, 2015, only about 105 Duke residential customers have traditional meters, rather than advanced meters. See *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Grid Modernization Opt-Out Tariff and for a Change in Accounting Procedures Including a Cost Recovery Mechanism*, Case No. 14-1160-EL-UNC, Hearing Transcript at 35. In addition, approximately 400 other residential customers may still have traditional meters. See *id.* at 48-49.

<sup>6</sup> See Application at 1-2; Amended Application at 1.

<sup>7</sup> Order at 9.

not have telephone service or whose telephone number listed in Duke's records is no longer in service.

3. It was unjust and unreasonable for the PUCO to approve the waiver despite the weight of the record showing that more residential consumers in Duke's service area are likely to lose their electric service because of the reduced consumer protections in the Order.
4. It was unjust and unreasonable for the PUCO to deprive customers of the protection of reasonable notice of disconnection for a two year period under a pilot program.

The PUCO should abrogate the Order as requested by Consumer Parties.

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

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

This case is about whether Ohioans in Duke's service territory will keep consumer protections that include receiving personal notice of disconnection on the day service is scheduled to be disconnected for nonpayment. This important consumer protection should not be lost even for a couple of years while the PUCO studies the impact.

Ohio Adm. Code 4901:1-18-06(A)(2) requires electric, gas, and natural gas utilities to provide a residential customer with in-person notice on the day the customer's service is to be disconnected for nonpayment. If the customer is not at home, the utility must give the in-person notice to an adult consumer at the premises. If neither the customer nor an adult consumer is at home, the utility must attach written notice to the premises in a conspicuous location before disconnecting service.

The rule is meant to give residential consumers face-to-face contact with personnel from the utility on the day service is to be disconnected for nonpayment. This affords residential consumers whose electric service is about to be disconnected one last opportunity to keep their utility service on by making a payment and/or payment arrangements. Personal notice also provides the opportunity for the consumer to inform



the utility of any serious health or safety issues that may be exacerbated by the disconnection of service.

Duke sought to eliminate this basic consumer protection for those Ohioans in its service territory who have advanced meters.<sup>8</sup> Duke apparently sought the waiver to take advantage of “technologies that enable remote disconnections of electric service...”<sup>9</sup> Consumers paid for these technologies through Duke’s smart grid project.

Under Duke’s proposed remote disconnection process, residential consumers would receive the 14-day disconnection notice required under Ohio Adm. Code 4901:1-18-06(A). Consumers would also receive a ten-day disconnection notice by mail, a text or phone message two business days before disconnection, and a text or automated phone message on the day of disconnection.<sup>10</sup> Duke proposed to send a one-time bill insert informing customers of the change in process.<sup>11</sup>

In their filings in this proceeding, Consumer Parties identified numerous problems with the proposed alternative to in-person notice. Consumer Parties noted that granting the waiver will undermine critical consumer protections because the notice provisions Duke proposed are inadequate and fail to comply with Ohio law and PUCO precedent.<sup>12</sup> In addition, consumers would likely be harmed because the number of residential customers whose service will be disconnected would likely increase, due to advanced meters making it easier for Duke to disconnect service.<sup>13</sup> Consumer Parties also pointed

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<sup>8</sup> See Application at 4.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> *Id.* at 5.

<sup>12</sup> See Consumer Parties Initial Comments at 3-9.

<sup>13</sup> See *id.* at 7-9.

out that Duke’s application lacked supporting documentation regarding the effectiveness of the proposed alternatives to in-person notification.<sup>14</sup> And Consumer Parties noted that the PUCO Staff’s comments do not provide a valid basis for Duke’s proposal.<sup>15</sup>

On March 8, 2017, the PUCO issued the Order in this case. The Order rejected all the arguments by Consumer Parties and approved the alternative customer notice proposed by Duke. The waiver will be in effect beginning May 1, 2017 and will continue until May 1, 2019 or until otherwise ordered by the PUCO.<sup>16</sup>

As discussed below, the PUCO’s Order unlawfully and unreasonably found that Duke’s proposed disconnection process constitutes reasonable prior notice of disconnection under R.C. 4933.122. In addition, the Order unreasonably approved the waiver despite the weight of the record showing that the number of disconnections of residential customers for nonpayment in Duke’s service area would increase. The Order also unreasonably takes away residential customers’ ability to make last-minute payments and/or payment arrangements to avoid disconnection or to identify health and safety issues that may be exacerbated as a result of the disconnection. The PUCO should abrogate the Order.

## **II. STANDARD OF REVIEW**

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect

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<sup>14</sup> See *id.* at 16-17.

<sup>15</sup> Consumer Parties Reply Comments (September 2, 2016) at 3-7.

<sup>16</sup> Order at 9.

to any matters determined in the proceeding.” Consumer Parties are intervenors in this proceeding,<sup>17</sup> and participated by filing objections, comments and reply comments.

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 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.” As shown herein, the statutory standard to abrogate the Order is met here.

### **III. RECOMMENDATIONS**

#### **A. It was unlawful and unreasonable for the PUCO to find that text messages and robocalls, which consumers might not receive, constitute reasonable prior notice of disconnection under R.C. 4933.122.**

R.C. 4933.122(A) prohibits disconnection of a residential customer’s electric service for nonpayment unless “[r]easonable prior notice is given to such consumer....” In implementing this statute, the PUCO has determined that reasonable notice includes the requirement that an electric utility must make an attempt to notify the customer in person, at the customer’s residence:

On the day of disconnection of service, the utility company shall provide the customer with personal notice. If the customer is not at home, the utility company shall provide personal notice to an adult consumer. If neither the customer nor an adult consumer is at home, the utility company shall attach written notice to the premises in a conspicuous location prior to disconnecting service.<sup>18</sup>

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<sup>17</sup> Consumer Parties’ motions to intervene were granted in the Order, at 3.

<sup>18</sup> Ohio Adm. Code 4901:1-18-06(A)(2).

In-person notice is necessary because any other type of notice does not ensure that the customer *actually receives* the final notice to avoid disconnection of vital electric service. As the PUCO previously stated, “Without personal notification, or the display of notice, it is possible that **customers may be unaware of the pending disconnection, or may believe that the lack of service is the result of an outage.**”<sup>19</sup>

Despite this finding in a previous case, the PUCO’s Order eliminated this essential consumer protection for Duke’s residential customers. The process allowed by the Order is not reasonable prior notice, and thus is unlawful under R.C. 4933.122(A).

A robocall two business days before disconnection and on the day service is to be disconnected – what the PUCO allowed instead of the required personal notice – is not a reasonable substitute for in-person notice on the day of disconnection. The Order does not require that the customer actually *receive* the call before disconnection may occur. The Order contains no provision for in-person notice in case customers do not have an answering machine or voice mail. A customer who does not receive the message that service is about to be disconnected will not be aware of the need to act immediately.

Many customers have also become accustomed to hanging up on robocalls or deleting them from answering systems without listening to them. Robocalls are used by a wide range of interests, including pollsters, bill collectors, candidates for public office, telemarketers, and con artists, among many others. Robocalls have come to be viewed as an annoyance, and many consumers hang up on robocalls, ignore them, or delete them from answering systems the instant they recognize the call is a robocall.

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<sup>19</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for a Waiver of Certain Sections of the Ohio Administrative Code for SmartGrid Pilot Programs*, Case No. 10-249-EL-WVR, Entry (June 2, 2010) at 7 (emphasis added).

Further, the PUCO ignored the fact that customers have been victimized by scams involving imposters claiming to be from a utility.<sup>20</sup> The imposter will call a customer and threaten disconnection unless the customer pays the imposter. Consumers – including Duke’s residential customers – have been advised not to respond to such calls, and to contact law enforcement agencies instead.<sup>21</sup> Because of this, customers might ignore the robocalls from Duke and lose their electric service. Duke has provided no answer for this concern with its proposal.

The process approved in the Order is not reasonable prior notice as required by R.C. 4933.122(A). Thus, the Order is unlawful. The PUCO should abrogate the Order and deny Duke’s waiver request.

**B. It was unlawful and unreasonable for the PUCO to approve the waiver without retaining the in-person notice requirement for consumers who do not have telephone service or whose telephone number listed in Duke’s records is no longer in service.**

The Order does not address those instances where the customer does not have a working telephone number to be contacted regarding disconnection of electric service. It should.

Many consumers in Ohio do not have telephone service. According to the Federal Communications Commission (“FCC”), 96.3 percent of Ohioans had telephone service as of September 2016.<sup>22</sup> In other words, 3.7 percent of Ohioans had no telephone service of

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<sup>20</sup> See, e.g., “Attorney General DeWine Warns of Utility Scams,” Press Release (July 26, 2013) (available at <http://www.ohioattorneygeneral.gov/Media/News-Releases/July-2013/Attorney-General-DeWine-Warns-of-Utility-Scams>).

<sup>21</sup> See “Fraud Alert!” (<https://www.duke-energy.com/ohio/billing/fraudalert.asp>).

<sup>22</sup> Universal Service Monitoring Report, 2016 (released January 13, 2017) at 51 (Table 6.8) (available at <https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports>).

any kind – from landline, wireless, or any other source.<sup>23</sup> The phoneless rate for Ohioans making less than \$10,000 per year is nearly double the state percentage – 6.5 percent of these consumers do not have a phone.<sup>24</sup> Although the FCC does not have data specific to Duke’s service territory, it is logical that the percentage of Duke residential customers who do not have phones is similar to the statewide percentage.

Thus, approximately 3.7 percent of Duke residential electric customers would not receive the text messages or phone calls warning them that their electric service is about to be disconnected, because they do not have phones. The percentage may be much higher for the poorest of the poor among Duke’s electric customers. But the Order does not require Duke to make an in-person visit to the homes of customers who do not have phone service on the day electric service is to be disconnected.

In addition, the telephone number Duke has on file for some customers may no longer be in service. The customer’s telephone service may be disconnected, or the customer’s number may be changed, shortly before the electric service became subject to disconnection. But the Order does not require Duke to make an in-person visit to the homes of customers who no longer have a working telephone number on the day electric service is to be disconnected.

The PUCO-approved alternative to in-person notice at the homes of consumers without phone service on the day service is to be disconnected is inadequate notification under R.C. 4933.122(A). It is also an unreasonable substitute for in-person notice at such customers’ homes on the day service is to be disconnected.

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<sup>23</sup> *See id.* at 46.

<sup>24</sup> *See id.* at 51 (Table 6.8).

The PUCO's Order is unlawful and unreasonable. The PUCO should abrogate the Order.

**C. It was unjust and unreasonable for the PUCO to approve the waiver despite the weight of the record showing that more residential consumers in Duke's service area are likely to lose their electric service because of the reduced consumer protections in the Order.**

In allowing Duke to disconnect consumers' electric service without in-person notice on the day of disconnection, the PUCO unreasonably ignored the weight of the record showing that more consumers would be disconnected for nonpayment in Duke's service territory. This was unreasonable.

Duke claimed that the waiver would not increase the number of "eligible" disconnections.<sup>25</sup> But Consumer Parties showed that the waiver would likely increase the number of *actual* customers whose electric service is disconnected for nonpayment. In opposing the waiver request, the Consumer Parties referred to actual sworn testimony that AEP Ohio customers with advanced meters are being disconnected for nonpayment at a significantly higher rate than AEP Ohio customers who have traditional meters.<sup>26</sup>

The Consumer Parties cited the testimony of OCC witness James D. Williams in the gridSMART Phase 2 case.<sup>27</sup> There, Mr. Williams compared data regarding the number of consumers disconnected for nonpayment in the Phase 1 area (where consumers have advanced meters) with the number of consumers disconnected for nonpayment data for the rest of AEP Ohio's service territory (where there are no

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<sup>25</sup> See Order at 2.

<sup>26</sup> Consumer Parties' Initial Comments (August 19, 2016) at 5-6.

<sup>27</sup> *In the Matter of the Application of Ohio Power Company to Initiate Phase 2 of Its gridSMART Project and to Establish the gridSMART Phase 2 Rider*, Case No. 13-1939-EL-RDR.

advanced meters).<sup>28</sup> Mr. Williams noted that between June 1, 2015 and May 31, 2016,<sup>29</sup> AEP Ohio disconnected 135,872 residential customers for nonpayment.<sup>30</sup> Of that number, 40,299 were residential customers in the Phase 1 area.<sup>31</sup>

Therefore, Mr. Williams showed, approximately 29.7 percent of AEP Ohio customers disconnected for nonpayment were in the Phase 1 area.<sup>32</sup> AEP Ohio residential customers who have advanced meters comprise approximately ten percent of the 1.3 million residential customers in AEP Ohio's service territory.<sup>33</sup> Hence, 29.7 percent of disconnections for nonpayment in AEP Ohio's service territory were in the area where only ten percent of AEP Ohio's customers reside. As the Consumer Parties noted, these customers are also the only residential customers in AEP Ohio's service territory who have advanced meters.<sup>34</sup> The disconnection data provided by the Consumer Parties was actual data, supplied in a publicly available document by the utility.

Duke, on the other hand, provided only unsubstantiated statistics regarding the cancellation of service disconnections where consumers receive day of disconnection texts or robocalls, *in addition to* the day of disconnection visit.<sup>35</sup> This information was unverified, and thus the PUCO should have rejected it.

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<sup>28</sup> AEP Ohio serves customers in 61 of Ohio's 88 counties.

<sup>29</sup> AEP Ohio's waiver became effective August 1, 2015. Case No. 13-1938-EL-WVR, Entry (March 18, 2015) at 13.

<sup>30</sup> Case No. 13-1939-EL-RDR, Direct Testimony of James D. Williams (July 22, 2016) at 19, citing *In the Matter of the Annual Report of Service Disconnections for Nonpayment Required by Section 4933.123, Revised Code*, Case No. 16-1224-GE-UNC, Ohio Power Company's Report (June 30, 2016).

<sup>31</sup> *Id.* at 20.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Consumer Parties' Initial Comments at 6.

<sup>35</sup> Amended Application at 2, n. 7.



The experience so far with AEP Ohio's disconnection pilot program is that installation of advanced meters inexorably leads to an increase in the number of residential customers who are disconnected. The combination of advanced meter technology and curtailment of personal customer notice on the day of disconnection makes it possible to disconnect more customers in a day than were previously disconnected. Eliminating the important consumer protection of in-person notice on the day of disconnection will only exacerbate the situation by making it easier for Duke to disconnect residential customers.

Reducing consumer protections for residential customers who have advanced meters will lead to an increase in the number of residential customers who will lose their electric service. It was unjust and unreasonable for the PUCO to eliminate the in-person notice for residential customers with advanced meters. The PUCO should abrogate the Order and deny Duke's request for waiver of the in-person notice requirement.

**D. It was unjust and unreasonable for the PUCO to deprive customers of the protection of reasonable notice of disconnection for a two year period under a pilot program.**

The PUCO approved Duke's waiver as a pilot program, to begin May 1, 2017 and end May 1, 2019, unless the PUCO rules otherwise or Duke asks for an extension of the pilot.<sup>36</sup> But AEP Ohio's disconnection pilot is scheduled to end on August 1, 2017 – just three months after Duke's pilot is to begin. The data being gathered through AEP Ohio's pilot should be available shortly thereafter.

However, we *do* know that consumers in the Phase 1 area covered by AEP Ohio's pilot program are being disconnected from their electric service at a much higher rate

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<sup>36</sup> Order at 9.

than consumers who are not in the pilot program, as discussed above. Thus, it was unjust and unreasonable for the PUCO to approve a pilot for Duke that will reduce consumers' protection against disconnection for the next two years. The PUCO should have waited until all the results from AEP Ohio's pilot program have been gathered.

The PUCO should not subject Duke residential customers to the increased likelihood that they will lose their electric service. The Order should be abrogated.

#### **IV. CONCLUSION**

Consumers have paid hundreds of millions of dollars for Duke's smart grid. The advanced meters installed during the smart grid project make it easier for Duke to disconnect customers' electric service for nonpayment. Electric service may now be disconnected by remote control rather than by sending Duke personnel to consumers' homes. Ironically, Duke's customers have paid dearly for technology that could circumvent consumer protections found in the PUCO's disconnection rules.

The PUCO-approved process for notifying Duke's customers that their service will be disconnected for nonpayment is a poor substitute for the consumer protections in R.C. 4933.122 and the PUCO's rules. The PUCO's decision is unjust, unreasonable, and unlawful. To protect consumers, the PUCO should abrogate the Order.

Respectfully submitted,

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I hereby certify that a copy of the foregoing Application for Rehearing was served by electronic mail to the persons listed below, on this 7<sup>th</sup> day of April 2017.

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