

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for a Waiver)

Case No. 16-1096-EL-WVR

**DUKE ENERGY OHIO INC.'S MEMORANDUM CONTRA
THE APPLICATION FOR REHEARING OF THE COMMUNITIES UNITED FOR
ACTION, THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND PRO SENIORS, ETC.**

I. Introduction

On March 8, 2017, the Public Utilities Commission of Ohio (Commission) issued an Opinion and Order granting Duke Energy Ohio, Inc.'s (Duke Energy Ohio or Company) request for waiver from the requirement of O.A.C. 4901:1-18-06-(A)(2) to conduct a premises visit on the scheduled day of disconnection of a residential account and permitting Duke Energy Ohio to commence a pilot program using an alternative notification process.¹ Notwithstanding the Commission's appropriately detailed and narrowly tailored decision, the Office of the Ohio Consumers' Counsel, Communities United for Action and Pro Seniors, Inc. (collectively, Intervenor) now seek rehearing of the decision. But the arguments raised by the Intervenor have already been fully and fairly evaluated by the Commission and they cannot now provide a proper basis for rehearing. And as discussed herein, the Commission's decision does not violate controlling law or regulation. Instead, as confirmed by the facts on which it is based, the decision provides for appropriate notification processes, incorporates customer protection, and allows for benefits to customers. The Intervenor's request for rehearing must therefore be denied.

¹ Finding and Order at pg. 10 (March 8, 2017).

II. Discussion

A. **The Intervenor's request for rehearing is deficient as it fails to provide a legitimate basis on which rehearing can be considered.**

In seeking rehearing, Intervenor's admit that their concerns have already been raised and addressed by the Commission during the pendency of this proceeding.² Notwithstanding this admission, Intervenor's assert here the very same concerns and rely upon them as providing a basis for rehearing. But they err in this regard as merely restating that which has already been thoroughly evaluated by the Commission is not a proper basis upon which to seek rehearing³ and the request can summarily be denied. Despite this procedural flaw, Duke Energy Ohio addresses below the Intervenor's stale substantive arguments, thereby confirming that their request should be rejected.

B. **The Commission lawfully and reasonably found that Company's alternative methods of communication constituted reasonable prior notice of a potential disconnection of service for nonpayment as required under applicable law and Commission regulation.**

Intervenor's contend that the Commission erred in allowing Duke Energy Ohio to implement communications protocol that exceeds the present requirements because, in their view, such notices might not be received.⁴ In other words, Intervenor's contend that the Company's notification protocol, as approved by the Commission, is inadequate. But in doing so, Intervenor's ignore the increased communication attempts the Company will initiate and the additional protections ordered by the Commission when it authorized the pilot. To appreciate the shortcomings in the Intervenor's arguments, Duke Energy Ohio first observes the notices

² Application for Rehearing, at pp. 2-3.

³ *In the Matter of the Petition of Elmer H. Parke and the Louisville Subscribers of the Ohio Bell Telephone Company*, Case No. 90-1473-TP-PEX, Entry on Rehearing at pg. 17 (March 12, 1992).

⁴ Application for Rehearing, at pp. 4-6.

currently required in connection with a residential electric account that is eligible for disconnection.

Outside of the winter heating season, the Commission's regulations require only two notices to a residential customer advising that their account may be eligible for disconnection. These notices include a written notice of the earliest day on which disconnection may occur and a premises visit on the scheduled day of disconnection.⁵ During the winter heating season, Commission regulations also impose upon the utility company the obligation to provide a final notice, which may be delivered personally or via mail or telephone.⁶ This final notice, mandated only during the winter heating season follows the disconnection notice but precedes the day-of-disconnection premises visit.⁷

Importantly, a utility company, such as Duke Energy Ohio, is not obligated to ensure that the customer receives actual notice at the time of the premises visit. Rather, the Commission's regulations make express provision for leaving a notice at the premises, which notice could not be discovered until after the customer returned to their property and/or took affirmative actions to retrieve the posted notice. It is thus readily apparent that the Commission, when promulgating its regulations regarding disconnection notices, reasonably considered a variety of real-life circumstances that would necessarily prevent actual notice to the customer at the time of the premises visit (*e.g.*, the customer may be away from their home tending to personal or professional demands, engaged in other activities that rendered them unable to answer the door, or simply unwilling to answer the door). It is disingenuous for the Intervenor to now recast the Commission's regulations as mandating actual notice that can only be achieved through a premises visit.

⁵ O.A.C. 4901:1-18-06(A) and O.A.C. 4901:1-18-06 (A)(2).

⁶ O.A.C. 4901:1-18-06 (B)(1).

⁷ *Id.*

The controlling regulations against which the Company's pilot was considered pertain to attempted contact and clearly do not impose actual, in-person notice to a customer immediately before their service is disconnected for nonpayment. And as an alternative means of compliance, Duke Energy Ohio proposed to implement a communications protocol that expands upon required notices, as further detailed below. The Commission, as was in its purview to do, found these alternative methods of communication to be reasonable, in compliance with R.C. 4933.122, and consistent with Commission policy.⁸

Notably, several years ago, when discussing the requirement of a premises visit, the Commission identified the possibility that a customer might assume that their disconnection of service resulted from outage when such premises visit does occur.⁹ The Intervenor's focus solely on this one comment as purported justification for a different outcome here. But more recent information contained in the record of this proceeding confirms that customers respond to a premises visit only 7 percent of the time.¹⁰ Such premises visits, therefore, cannot be characterized as the sole, effective means of informing customers that their residential electric account is eligible for disconnection. But to further mitigate any possibility for confusion, Duke Energy Ohio is significantly increasing its communications attempts in an effort to engage with its customers who are confronting a possible loss of electric service so that these customers may explore sources of assistance and arrangements to avoid disconnection.

Notably, Duke Energy Ohio will provide a final notice throughout the year and not just during the winter heating season. It will also initiate text and telephone messages two days prior the anticipated date of disconnection. And it will further initiate text and telephone messages on

⁸ Opinion and Order, at pg. 8.

⁹ *In the Matter of the Application of Duke Energy Ohio, Inc. for a Waiver of Certain Sections of the Ohio Administrative Code for SmartGrid Programs*, Case No. 10-249-EL-WVR, Entry at pg. 7 (June 2, 2010).

¹⁰ Reply Comments of Duke Energy Ohio, Inc. at pg. 9 (September 2, 2016) and Amended Application, at pg. 2 (July 22, 2016).

the morning of the scheduled disconnection of service. Customer protections, therefore, have been enhanced and not eliminated.

The Commission found these alternate and additional communication efforts to be an appropriate and reasonable alternative to its existing regulations. There is nothing unlawful about the Commission's decision in this regard – customers will receive more notifications under the pilot than are required by law and Commission regulation.

Notwithstanding the legality of the Commission's decision, the Intervenors suggest, without any substantiation, that customers will reject "robocalls" or otherwise fall prey to utility scams. As to the former, the record in this proceeding is devoid of any basis on which to advance such an assertion. Indeed, even Intervenors fail to justify this claim with a reference to the record. And as the Commission's decisions must be based upon the record before it, these unsubstantiated arguments do not warrant rehearing and they must be rejected.¹¹

And, as to the latter, the Commission has thoughtfully addressed this circumstance in its decision and imposed upon the Company the requirement to work with Commission Staff and "consider the potential for scams" when reviewing message content.¹² Thus, the Commission has sufficiently and reasonably made provision for these concerns, expressly in response to the Intervenors' prior concerns¹³ and rehearing is inappropriate.

In its Opinion and Order, the Commission concluded that the communications protocol to be implemented under the approved pilot provides reasonable notice to customers, meets the requirements of applicable law and Commission regulation and, further, is consistent with the Commission's policies to prevent injury to residential customers by helping customers maintain their utility service. In arriving at this conclusion, the Commission reviewed the record,

¹¹ Application for Rehearing, at pp. 5-6.

¹² Opinion and Order, at pg. 9.

¹³ Id.

evaluated the Intervenor's arguments, examined the evidence, and rendered its decision. The Intervenor offers nothing new in connection with their request for rehearing for the Commission to review.

C. The Commission lawfully and reasonably approved the waiver and pilot that incorporates adequate alternatives to the requirement of a premises visit.

The Commission approved Duke Energy Ohio's proposed alternative communications protocol, which increases the communication attempts to be undertaken by the Company prior to actually disconnecting a residential electric service for nonpayment. The Intervenor continues to oppose this determination, now citing extraneous information that is not part of the record and thus outside the scope of review.¹⁴ Further, even Intervenor admits that the information they hope to improperly introduce into this proceeding is not relevant and does not provide any data pertinent to Duke Energy Ohio or its customers.¹⁵ As a consequence, they urge the Commission to engage in speculation and guesswork, to formulate assumptions predicated upon unrelated and inapplicable information. But the Commission does not and cannot render decisions based on conjecture¹⁶ and the Intervenor's urgings must be rejected.

Further, it is noteworthy that the Intervenor's arguments here fail to consider the entire scope of the approved communications protocol. Prior to the initiation of any text or telephone call, a residential customer whose electric account is eligible for disconnection due to nonpayment will have received both a disconnect notice and final notice and they will have not taken action in response to either to cure the deficiencies in their account. Additionally, and as ignored by the Intervenor, Duke Energy Ohio continually updates its systems to include current

¹⁴ Application for Rehearing, at pg. 6, footnote 22 (citing to information from 2017 that is not evidence in this proceeding).

¹⁵ *Id.* at pg. 7.

¹⁶ R.C. 4903.09.

contact information for all of its customers.¹⁷ Thus, the sheer speculation on which the Intervenor seeks to justify rehearing must be rejected in favor of the evidentiary record on which the Commission's decision is based. The Intervenor has failed to provide a valid basis for rehearing, as the Commission's decision to authorize alternative and additional forms of communication reasonably and lawfully complies to existing authority.

D. The Commission lawfully and reasonably approved the waiver on the weight of the record, which is devoid of any legitimate evidence tending to show that more residential electric customers in Duke Energy Ohio's service area will be eligible for disconnection under the approved pilot.

Citing to their own testimony in an unrelated proceeding, the Intervenor argues that, without the premises visit, more residential electric customers in the Duke Energy Ohio service territory will be disconnected.¹⁸ But the Commission, as the fact finder, properly considered the record in this proceeding and, in this regard, rightfully rejected the misplaced attempts to infer conclusions based upon testimony in an unrelated proceeding in which Duke Energy Ohio was not a party and from a witness whom Duke Energy Ohio could not cross examine. In weighing the evidence in this proceeding, the Commission observed the critical distinctions in those proceedings it had been asked to compare, finding that "AEP and Duke are separate utilities, serving different customers, in different geographic regions of Ohio, offering different pilot programs."¹⁹ The Commission thus properly reviewed the evidence and ascertained the weight it was to be given. There was nothing unlawful or unreasonable about the Commission's actions in this regard or its decision to reject attempts to base a decision in this proceeding on irrelevant commentary from another.

¹⁷ Reply Comments of Duke Energy Ohio, Inc., at pg. 9 (September 2, 2016).

¹⁸ Application for Rehearing, at pg. 8.

¹⁹ Opinion and Order, at pp. 8-9.

The Intervenor's argument that more customers will be disconnected is a gross mischaracterization of the issues relevant to the pilot. As an initial matter, Duke Energy Ohio observes that the number of residential electric customers eligible for disconnection will not be affected by the manner in which such customers are informed of the delinquent nature of their account. Whether a residential customer is eligible for disconnection due to nonpayment is a determination separate and distinct from the process subsequently employed to notify that customer of their delinquent account status. Additionally and as overlooked by Intervenor, a critical aspect of the Company's pilot is the objective to engage with residential customers and encourage interaction so as to assist customers in making appropriate arrangements to avoid a disconnection of their service due to nonpayment. And this objective has several beneficial purposes: it enables an individual customer to avoid a loss of service and it reduces the amount of uncollectible expense recovered from all Duke Energy Ohio customers. To achieve this important objective, Duke Energy Ohio is increasing its communications efforts under the pilot program. Additionally, so as to protect residential electric customers with certain medical conditions, the Company is exempting critical customers from the scope of the pilot.

The Commission appropriately found, in approving the pilot, that it affords sufficient safeguards for and benefits to customers. The attempts of Intervenor to challenge this finding on the basis of arguments already evaluated must be rejected.

E. Residential electric customers are not being deprived of any customer protection under the pilot program.

As their final claim for rehearing, the Intervenor contends that the Commission erred in allowing the pilot program to run concurrently for a period of time with AEP Ohio's disconnection pilot program.²⁰ As the Commission properly found, the data collected from these

²⁰ Application for Rehearing, at pp. 10-11.

separate and distinct pilot programs would be “uniquely beneficial.”²¹ And there is nothing unlawful or unreasonable about the Commission authorizing pilot programs in different service territories, where the customers and criteria for the pilot programs are different. Indeed, these different programs will afford the Commission, through its Staff, with more data on which to evaluate effectiveness.


III. Conclusion

The Commission’s Opinion and Order was lawful and reasonable. The Commission properly found that the alternative notification protocol proposed by Duke Energy Ohio provides reasonable notice to customers, meets the requirements of R.C. 4933.122, and is consistent with the Commission’s policies to prevent injury to residential customers by helping customers maintain their utility service. And, as confirmed in its findings, the Commission arrived at this determination after having thoroughly reviewed and considered the evidence. The Intervenor’s mere disagreement with the outcome cannot alter this conclusion and their rehearing request must be denied.

²¹ Opinion and Order, at pp. 8-9.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 13th day of April 2017, by U.S. mail, postage prepaid, or by electronic mail upon the parties listed below.


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