

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio) Case No. 13-1938-EL-WVR
Power Company for a Limited Waiver of) Case No. 17-1380-EL-WVR
Ohio Adm. Code 4901:1-18-06(A)(2).)

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND
OHIO PARTNERS FOR AFFORDABLE ENERGY**

The Public Utilities Commission of Ohio (“PUCO”) has allowed Ohio Power Company (“AEP Ohio”) to continue disconnecting residential customers in its gridSMART Phase 1 service area, despite the fact that such notice is required under the PUCO’s rules.¹ In order to preserve the consumer protections afforded AEP Ohio’s residential customers under the PUCO’s rules, the Office of the Ohio Consumers’ Counsel (“OCC”) and Ohio Partners for Affordable Energy (“OPAE”) file this Application for Rehearing of the Extension Entry.²

The PUCO’s Extension Entry is unjust, unreasonable, and unlawful in the following respects:

1. The PUCO’s decision approving a continuation of the waiver pilot violates R.C. 4903.09 because the weight of the record evidence shows that the waiver has led to a substantial increase in the number of residential customers being disconnected for nonpayment and that consumers in the waiver pilot area have been disconnected at a disproportionately high rate.

¹ Entry (July 12, 2017) (“Extension Entry”), ¶22.

² OCC and OPAE file this Application for Rehearing pursuant to Ohio Adm. Code 4901-1-35. OCC and OPAE seek rehearing of only that portion of the Extension Entry that approved continuation of the waiver pilot. OCC and OPAE do not seek rehearing of the other portions of the Extension Entry.

2. The Extension Entry violates R.C. 4903.09 because the record evidence does not support the PUCO's decision to approve an indefinite continuation of a waiver that eliminates the right of 132,000 residential consumers to have an in-person visit on the day their electric service is to be disconnected.

The PUCO should abrogate or modify the Extension Entry as requested by OCC and OPAE.

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

I. INTRODUCTION

These cases are about protecting Ohioans on the day electric service to their homes is to be disconnected for nonpayment. Ohio Adm. Code 4901:1-18-06(A)(2) requires electric utilities to give a residential customer in-person notice on the day the customer's service is to be disconnected. If the customer is not at home, the utility must give the in-person notice to an adult consumer at the residence. If neither the customer nor an adult consumer is at home, the utility must attach a written notice to the residence in a conspicuous location before disconnecting service.

The rule is meant to afford residential customers one last opportunity to keep their utility service on by making a payment or making payment arrangements. Personal notice also gives the customer an opportunity to inform the utility of any serious health or safety issues that may be exacerbated by disconnection of the service.

Since August 2015, AEP Ohio has been exempt from providing this basic consumer protection in its gridSMART Phase 1 service territory.³ Instead of an in-person visit on the day of disconnection, the last contact AEP Ohio has with the customer is an automated telephone call approximately 48 hours prior to the scheduled service

³ Case No. 13-1938-EL-WVR, Entry (March 18, 2015), ¶34.

disconnection.⁴ The PUCO approved the waiver as a pilot program scheduled to end on August 1, 2017 unless the PUCO orders otherwise.⁵

On June 1, 2017, AEP Ohio filed a motion in Case No. 17-1380-EL-WVR to extend the waiver pilot beyond the scheduled end date. OCC and OPAE filed a Memorandum Contra AEP Ohio's motion on June 8, 2017. OCC and OPAE showed that the number of AEP Ohio residential customers who were disconnected for nonpayment drastically increased since the pilot began.⁶ OCC and OPAE also showed that AEP Ohio residential customers in the pilot area were disconnected for nonpayment at a considerably higher rate than AEP Ohio residential customers outside the pilot area.⁷ OCC and OPAE urged the PUCO to not extend the pilot beyond August 1, 2017.⁸

In the Extension Entry, the PUCO allowed AEP Ohio to continue the pilot until the PUCO specifically orders otherwise, i.e., for an indefinite period of time.⁹ The PUCO stated that continuing the pilot while it is being evaluated is needed to avoid customer confusion should the PUCO later determine that the pilot should be continued.¹⁰ However, the PUCO did not address the harm to consumers due to the disproportionate disconnection rate resulting from the pilot.

⁴ *See id.*, ¶ 19.

⁵ *Id.*, ¶ 34.

⁶ Memorandum Contra at 3-5.

⁷ *Id.* at 5-6

⁸ *See id.* at 8-9.

⁹ Extension Entry, ¶ 22.

¹⁰ *Id.*

As discussed below, the PUCO's continuation of the pilot is unjust, unlawful, unreasonable, and harmful to consumers. To prevent more harm to consumers, the PUCO should abrogate or modify the Extension Entry as recommended herein.

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 to any matters determined in the proceeding." OCC and OPAE are intervenors in this proceeding,¹¹ and filed a Memorandum Contra AEP Ohio's June 1 motion.

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 or modify the Extension Entry is met here.

¹¹ The motions to intervene were granted in the Extension Entry (¶ 13).

III. ASSIGNMENTS OF ERROR

Assignment of Error No. 1: The PUCO's decision approving a continuation of the waiver pilot violates R.C. 4903.09 because the weight of the record evidence shows that the waiver has led to a substantial increase in the number of residential customers being disconnected for nonpayment and that consumers in the waiver pilot area have been disconnected at a disproportionately high rate.

The PUCO approved extending the waiver beyond August 1, 2017 to facilitate an evaluation of the pilot and to avoid customer confusion.¹² But the PUCO failed to address the critical issue of the adverse impact the waiver has had on residential customers. Since the waiver pilot began, there has been a substantial increase in the number of AEP Ohio residential customers who have been disconnected for nonpayment. And residential customers in the gridSMART Phase 1 area have been disconnected for nonpayment at a considerably higher rate than AEP Ohio residential customers outside the gridSMART Phase 1 area. This has harmed residential customers.

Each June, electric distribution utilities must file a report with the PUCO showing, among other things, the number of residential customers disconnected for nonpayment during the period from June 1 of the previous year through May 31 of the year the report is filed. The Memorandum Contra presented a table showing AEP Ohio's disconnection data for reporting years 2010 through 2016. At the time the Memorandum Contra was filed, AEP Ohio had not yet filed its 2017 report. AEP Ohio filed its 2017 report on June 21, 2017. The following is an updated table from the Memorandum Contra that includes data from AEP Ohio's 2017 report.

¹² Extension Entry, ¶ 22.

AEP Ohio Disconnections for Non-payment (2010-2017)¹³

Year	Disconnections
2010	87,162
2011	68,526
2012	110,224
2013	98,917
2014	88,390
2015	96,456
2016	135,872
2017	118,447

The 2016 reporting year (June 1, 2015 to May 31, 2016) includes the first ten months of the waiver pilot. As shown above and in the Memorandum Contra, during the 2016 reporting year AEP Ohio disconnected 135,872 residential customers for nonpayment, compared to 96,456 during the previous reporting year – a 41 percent increase. Although AEP Ohio disconnected residential customers for nonpayment in 2017 than in 2016, the number was still 20 percent above the last pre-waiver year (2015).

In addition, the Memorandum Contra noted that disconnection data available from the gridSMART Phase 1 area show the adverse impact of the waiver on residential customers. According to the data, 29.7 percent of the total number of AEP Ohio customers who were disconnected for non-payment during the 2016 reporting year resided in the gridSMART Phase 1 area. But only ten percent of the total number of AEP Ohio residential customers reside in the gridSMART Phase 1 area. Thus, the data show that residential customers in the waiver pilot area were disconnected at a disproportionately high rate during the 2016 reporting year.

¹³ The table is comprised of data included in AEP Ohio’s annual reports filed in Case No. 10-1222-GE-UNC, Case No. 11-2682-GE-UNC, Case No. 12-1449-GE-UNC, Case No. 13-1245-GE-UNC, Case No. 14-846-GE-UNC, Case No. 15-882-GE-UNC, Case No. 16-1224-GE-UNC, and Case No. 17-1069-GE-UNC.

Data provided by AEP Ohio as a result of the PUCO's Extension Entry show similar results for the 2017 reporting year. In response to a directive in the Extension Entry,¹⁴ on July 17, 2017 AEP Ohio gave OCC and OPAE data for the September 2015 through June 2017 timeframe. This data was earlier provided to the PUCO Staff for evaluating the waiver pilot. OCC and OPAE did not have this data prior to July 17, 2017.

The new data show that 34,567 residential customers in the gridSMART Phase 1 area were disconnected for nonpayment between June 2016 and May 2017. This is about 29.2 percent of the total disconnections in AEP Ohio's service territory for the 2017 reporting year. Once again residential customers in the waiver pilot area were disconnected at a disproportionately high rate.

The disconnection data provided by AEP Ohio itself, in its annual reports and elsewhere, show that the disconnection waiver does not properly protect residential customers regarding disconnection of service for nonpayment. The PUCO must base its decisions on the record of the case.¹⁵ The Memorandum Contra demonstrated that continuing the waiver pilot would substantially harm residential consumers. The PUCO's decision to allow the waiver pilot to continue was against the weight of the record, and thus was unlawful.¹⁶ It was also unjust and unreasonable for the PUCO to allow the waiver pilot to continue, given the substantial harm to residential consumers as a result of the waiver. The PUCO should abrogate its decision to allow the waiver pilot to continue past August 1, 2017.

¹⁴ *Id.*, ¶ 21.

¹⁵ R.C. 4903.09.

¹⁶ *See, e.g., Indus. Energy Users-Ohio v. PUC*, 117 Ohio St. 3d 486, 2008-Ohio-990, 885 N.E.2d 195; *Elyria Foundry Co. v. PUC*, 114 Ohio St. 3d 305, 2007-Ohio-4164, 871 N.E.2d 1176; *Office of Consumers' Counsel v. Public Utilities Com.*, 58 Ohio St. 2d 449, 391 N.E.2d 311 (1979).

Assignment of Error No. 2: The Extension Entry violates R.C. 4903.09 because the record evidence does not support the PUCO’s decision to approve an indefinite continuation of a waiver that eliminates the right of 132,000 residential consumers to have an in-person visit on the day their electric service is to be disconnected.

In the Extension Entry, the PUCO approved continuation of the waiver pilot until it rules otherwise.¹⁷ In other words, the waiver pilot could continue indefinitely. The PUCO’s decision was unlawful under R.C. 4903.09 because there is no record support for an indefinite continuation of the waiver.

In its June 1 motion, AEP Ohio stated that “it would need up to six months to be able to re-staff the area and continue operations without remote disconnect capability.”¹⁸ That is, AEP Ohio would be able to resume in-person visits to residential customers in the gridSMART Phase 1 area on the day of disconnection within six months, i.e., by February 1, 2018. The record does not support an indefinite continuation of the waiver, and thus the Extension Entry violates R.C. 4903.09.

Further, an indefinite continuation of the waiver is unjust and unreasonable, given the procedural schedule established in the Entry. Comments and reply comments on the waiver pilot’s data are to be completed by October 2, 2017.¹⁹ A limited continuation of the waiver, rather than an indefinite continuation, should not disrupt the procedural schedule established in the Extension Entry. Limiting the waiver to no more than six months should give the PUCO ample time to evaluate the pilot.

The PUCO’s approval of an indefinite continuation of the waiver was unjust, unlawful, and unreasonable. If the PUCO does not abrogate its decision to continue the

¹⁷ Extension Entry, ¶ 22.

¹⁸ June 1 Motion at 4.

¹⁹ Extension Entry, ¶ 21.

waiver pilot past August 1, 2017, it should modify the Extension Entry and end the waiver pilot by February 1, 2018.

IV. CONCLUSION

When the PUCO approved AEP Ohio's request to avoid making in-person visits to residential customers in the gridSMART Phase 1 area on the day service is to be disconnected, it eliminated an important consumer protection for those customers. The result has been that AEP Ohio has disconnected substantially more customers for nonpayment than before the waiver. And residential consumers in the gridSMART Phase 1 area are being disconnected for nonpayment at a disproportionately high rate. Consumers have been harmed.

The PUCO's decision to continue the waiver indefinitely is unjust, unreasonable, and unlawful. To protect consumers, the PUCO should abrogate its decision to allow the waiver pilot to continue past August 1, 2017. Alternatively, the PUCO should modify the Extension Entry so that the waiver pilot ends by February 1, 2018.

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 to the persons listed below, on this 11th day of August 2017.

/s/ Terry L. Etter _____

Terry L. Etter

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Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel and Ohio Partners for Affordable Energy electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.