

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's	)	
Investigation of the Disconnection	)	Case No. 17-2089-GE-COI
Policies and Practices of Duke Energy	)	
Ohio, Inc.	)	

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**INITIAL COMMENTS OF THE CITY OF CINCINNATI IN RESPONSE TO  
NORTHSTAR'S AUDIT REPORT**

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**I. INTRODUCTION**

On August 30, 2017, the Public Utilities Commission of Ohio (the "Commission") issued an Opinion and Order in Case No. 15-298-GE-CSS finding that Duke Energy Ohio, Inc. ("Duke") failed to comply with the disconnection requirements of Ohio Adm. Code 4901:1-18-06(B). The Commission also ordered a comprehensive review of Duke's disconnection policies and procedures for both its electric and gas services. Accordingly, the Commission retained NorthStar Consulting Group, Inc. ("NorthStar") to audit and evaluate Duke's gas and electric disconnection practices and recommend any steps that Duke should take to improve its disconnection practices.

NorthStar filed its Compliance Audit and Review of the Disconnection Practices and Policies of Duke Energy Ohio, Inc. Final Report (the "Audit Report") on March 14, 2018. Importantly, NorthStar not only identified several areas for improvement, it also discovered that Duke had been engaging in potentially unlawful disconnection practices and violations. As the largest municipality in Duke's service territory, hundreds of thousands of residents of the City of Cincinnati (the "City") are directly impacted by Duke's failure to fully comply with these disconnection practices.

As shown in NorthStar's Audit Report, Duke's remote disconnection procedures and automated process fail to ensure that customers receive notice on the day of the disconnection. As

a result, the Commission should immediately terminate Duke's pilot program waiver of the in-person disconnection requirements under Ohio Adm. Code 4901:1-18-06(A)(2). Additionally, Duke's policy of disconnecting services for residential customers with a balance due of \$100 is far too low given that this balance could easily accrue during a single month. Finally, Duke's procedures related to customers with medical certificates and customers on active service duty for the military violate state regulatory requirements, thereby warranting immediate action from the Commission to correct and prevent any repeat violations in the future. Accordingly, the Commission should issue an order requiring Duke to modify its disconnect procedures to fully comport with its legal requirements, and the Commission should specifically consider and adopt the recommendations proposed by the City herein.

## **II. ARGUMENT**

### **A. Duke's Remote Disconnection Procedures and Automated Process Fail to Ensure that Customers Receive Adequate Notice of the Disconnection.**

Ohio Adm. Code 4901:1-18-06(A)(2) requires that "[o]n the day of disconnection of service, the utility company shall provide the customer with personal notice." Duke, however, sought (and was subsequently granted) a waiver from the Commission in Case No. 16-1096-EL-WVR to eliminate the in-person notification requirement on the day of disconnection and allow for remote disconnection.<sup>1</sup> Specifically, rather than providing an in-person notification, Duke provides the additional ten (10) day notice year-round, automated texts and/or phone calls to customers two (2) business days prior to disconnection, and automated texts and/or phone calls to customers on the day of disconnection."<sup>2</sup> Duke then disconnects services remotely.

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<sup>1</sup> Audit Report, p. II-3.

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

On the day of disconnection, Duke sends a text message to the customer “beginning two hours before the earliest time at which the disconnection of service could be completed on that day.”<sup>3</sup> Embedded in the text message is a hyperlink that allows the customer to make a payment online prior to service disconnection.<sup>4</sup> Duke also attempts to contact the customer via telephone to relay an automated message regarding the disconnection.<sup>5</sup> Again, the automated message is generated two hours before the earliest time the disconnection can occur.<sup>6</sup>

Although the Commission previously granted Duke a waiver from the in-person notification requirement in Case No. 16-1096-EL-WVR, Duke’s current reliance on automated text and phone messages is wholly inadequate to provide the intended notice to customers facing imminent disconnection. Text messages and/or automated phone calls are not a dependable means of reaching customers, especially low-income and vulnerable and elderly populations, with the urgent message that disconnection of electric service is imminent. Cell phone numbers change with frequency, especially the phone numbers of low-income customers who are more likely to be directly impacted by Duke’s disconnection practices. Moreover, at the time of disconnection, many low-income customers will not only be struggling to pay their utility bills, but they may have problems meeting other basic needs as well, including the cost of cell phone service. Thus, many low-income customers, who for reasons such as expired minutes, may not have adequate cell phone service at the very moment when utility service will be disconnected.

Moreover, Duke’s substitution of in-person or physical notice with a text message and/or an automated phone call is wholly inadequate to provide the intended notice because there is no

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

<sup>4</sup> *Id.*

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

<sup>6</sup> *Id.*

guarantee that 1) the intended customer will actually answer the automated phone call (presumably from an unrecognized and/or unlisted phone number); 2) the phone call will be answered by the customer of record; 3) if the phone call is not received, an automated message will be recorded on an operative voicemail box; and 4) customers will actually listen to a voicemail recording from an automated messenger. These concerns are substantiated by the finding that 10% of the delinquent customer accounts reviewed by NorthStar **never** received the two-day text message or automated phone call prior to disconnection.<sup>7</sup> Moreover, in the small sample of delinquent customer accounts reviewed, NorthStar discovered that Duke failed to send day-of automated text or phone call to customers facing imminent disconnection due to a system error.<sup>8</sup>

Given that disconnection can lead to severe, irreparable consequences for the customer (including, permanent injury or even death<sup>9</sup>), Duke cannot afford to make these kinds of avoidable mistakes. Blindly relying on technology alone - via text messages and/or automated phone calls – to notify customers of an imminent disconnection presents an unacceptable and avoidable risk to thousands of residents in the City. While reliance on technology might produce savings for Duke, corporate profits cannot justify the potential harm to customers.

The in-person notification requirement assures that customers are afforded uncomplicated and reliable methods for submitting payment to thwart the potentially disastrous effects of utility disconnection. Instead of relying on hyperlinks embedded in text messages or automated instructions from a robocall, in-person notification enables utility company personnel to offer straightforward, responsive advice on-site about how to avoid disconnection. Under Ohio Adm.

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<sup>7</sup> *Id.*, p. III-13.

<sup>8</sup> *Id.*

<sup>9</sup> *See* Pitzer Complaint, Case No. 15-298-GE-CSS.

Code 4901:1-18-06(A)(4), utility company employees/agents who make on-site visits can 1) accept payment in lieu of disconnection; 2) dispatch an employee to the premises to accept payment; or 3) make available to the customer another means to avoid disconnection. While the Duke employees who conduct on-site visits may not accept payment themselves, Duke employees are able to provide in-person advice to customers about how to contact the customer service group or how to make payment with an authorized agent. Thus, unlike the text message and/or automated phone call notification, in-person notification affords the customer straightforward, reliable instructions for payment to avoid the potentially ruinous consequences of disconnecting utility service. Moreover, in-person disconnection enables a Duke employee to identify whether a medical certification would be available for a delinquent customer. Relying only on technology to provide notice of disconnection would eliminate that possibility, and it increases the likelihood that a customer with an actual or potential medical certification would be disconnected.

There are also more practical concerns about Duke's reliance on automated text messages to make a payment online to avoid disconnection. In short, these text messages fail to provide the customer with a safe and secure method of payment to prevent disconnection. The threat of bad actors using text messaging to exploit and defraud consumers is real. As the Federal Trade Commission has warned, text message spam is often used by identity thieves to trick consumers into disclosing sensitive personal information, or it can be used to install harmful malware on consumers' phones.<sup>10</sup> Such concerns are particularly prevalent in the utility industry where consumers have seen utility-related scams soar to 109% as recently as last year.<sup>11</sup> Troublingly,

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<sup>10</sup> FEDERAL TRADE COMMISSION, CONSUMER INFORMATION: TEXT MESSAGE SPAM, <https://www.consumer.ftc.gov/articles/0350-text-message-spam>, (last visited April 10, 2018).

<sup>11</sup> CBS NEWS, MONEY WATCH, "Don't Get Financially Shocked by a Utility Scam," <https://www.cbsnews.com/news/dont-get-financially-shocked-by-a-utility-scam/> (last visited April 10, 2018).

many of these utility scams have been perpetuated in the name of Duke and/or its corporate affiliates.<sup>12</sup> Thus, there is empirical evidence to show that Duke's reliance on automated text message and/or phone call notification presents an unacceptable risk to customers by failing to provide a safe or reliable method of payment.

Accordingly, Duke should implement in-person notifications on the day of disconnection. If the customer is not at home, then Duke should "provide personal notice to an adult consumer," and "if neither the customer nor an adult consumer is at home," then Duke should "attach written notice to the premises in a conspicuous location prior to disconnecting service."<sup>13</sup> Even though Duke received a waiver from the in-person notification requirement notwithstanding the foregoing concerns, the Audit Report demonstrates that in practice, not all customers are not being properly notified on the day of disconnection. As a result, Duke's pilot program waiver must end, and the Commission should order Duke to immediately comply with existing rules concerning in-person notification requirements consistent with decades' long disconnection practices of utilities in Ohio.

**B. The Delinquent Amount for Disconnection is Far Too Low.**

Duke terminates service for all residential customers with a past due balance in excess of \$100.00.<sup>14</sup> Duke's practice of disconnecting service when the customer has a past due balance of \$100 is far too low to impose such a drastic, disproportionate response. With such a low disconnection monetary threshold, many Duke customers are exposed to unnecessary risk of disconnection. This is particularly concerning during the summer or winter months when many Duke customers will have a \$100+ balance from only one month's worth of electricity or gas

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<sup>12</sup> *Id.*

<sup>13</sup> Ohio Adm. Code 4901:1-18-06(A)(2).

<sup>14</sup> Audit Report, p. II-6.

usage. The Commission should take every necessary precaution to ensure that customers are not being disconnected for such small amounts of overdue utility bills. One obvious, straightforward way to address this concern would be to increase the minimum delinquent amount necessary to trigger the disconnection process.

**C. Duke Must be Ordered to Contact Customers with Medical Certifications Prior to Disconnecting Service.**

Pursuant to Ohio Adm. Code 4901:1-18-06(C), customers with medical issues may extend the date of disconnection for non-payment by thirty (30) days through obtaining certification from a health care professional. Initial certification may be made by telephone if written certification is forwarded to the utility company within seven (7) calendar days.<sup>15</sup> The customer may then renew the certification two additional times, for thirty (30) days each, by providing additional certification to the utility company.<sup>16</sup>

Customers that use a medical certification to avoid disconnection or to restore service are classified as having an “acceptable” credit status in Duke’s customer information system.<sup>17</sup> During the medical certificate time-period, these customers do not receive any delinquent notices or notices of disconnection.<sup>18</sup> Once the time-period expires, the customer may receive a bill with no 14-day notice on it, and “[i]f the customer has not paid the minimum amount required to avoid disconnection or entered into a payment arrangement, they become immediately subject to disconnection upon expiration of their medical certificate.”<sup>19</sup> In other words, if the customer with the medical certification is still delinquent and subject to disconnection after the medical

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<sup>15</sup> Ohio Adm. Code 4901:1-18-06(C)(3)(c).

<sup>16</sup> Ohio Adm. Code 4901:1-18-06(C)(3)(h).

<sup>17</sup> Audit Report, p. III-13.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

certification period expires, Duke can proceed with disconnecting the customer without sending that customer the requisite 14-day written notice. This arrangement is unreasonable and unfair to customers with legitimate medical certifications.

In response to this problem, NorthStar recommended that Duke implement “text messages or phone calls to remind customers using medical certificates that the certificate is approaching expiration and arrangements must be made or their service will be disconnected.”<sup>20</sup> Given the foregoing problems with automated text messages and/or robocalls being used as instruments of customer notification, the City believes NorthStar’s recommendation does not go far enough. The Commission should clarify that Duke is still obligated to send customers whose medical certification has expired the required fourteen (14) (and 10-day notice if the disconnection occurs between November 1 and April 15 per Ohio Adm. Code 4901:1-18-06(B)) written notice under Ohio Adm. Code 4901:1-18-06. Customers with medical issues should not become immediately subject to disconnection upon the expiration of their medical certificate. Given that many customers with medical certifications may find themselves in a weak and vulnerable condition, Duke should be required to re-issue the required written notifications of disconnection after the expiration of the medical certification. In so doing, the Commission will reduce the risk of subjecting medically vulnerable customers to further hardship.

**D. Duke’s Active Duty Servicemember Procedures Violates R.C. 4933.12(F) and 4933.121(E).**

Gas and electric utilities may not disconnect services for non-payment from residential consumers deployed with the military on active duty. The Ohio Revised Code protects active duty servicemembers, and provides that no company shall stop gas or shut off electricity to the

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<sup>20</sup> Audit Report, p. III-15.

“residential premises of any residential consumer who is deployed on active duty for nonpayment” for gas or electricity provided to the premises.<sup>21</sup>

According to the Audit Report, Duke suspends collection once it is notified of the active duty servicemember’s absence due to military obligations and will advise the servicemember to fax proof of the deployment to Accounts Receivable.<sup>22</sup> Once military orders are received, “Accounts Receivable will waive all late charges and security deposit, set payment agreement, postpone disconnection or restore service, and send the customer confirmation of the Military Deferred Payment Program.”<sup>23</sup> The servicemember will then receive an “extended payment plan on a past due balance they may have accumulated, equal to the length of their deployment.”<sup>24</sup>

Critically, however, the military servicemember is not provided this information *unless* the servicemember proactively contacts Duke’s customer service center.<sup>25</sup> Duke does not provide *any* information related to servicemembers on its website or on its bills.<sup>26</sup> Absent a process to proactively identify and flag customers that are deployed on active duty, active servicemembers could be terminated for non-payment in violation of R.C. 4933.12(F) and 4933.121(E). Such an outcome is patently unlawful, unreasonable, and disrespectful to the men and women who bravely put their lives on the line in defense of this country. At a minimum, the City agrees with NorthStar’s recommendation that Duke must “develop marketing materials targeted to active duty military or include [the policy] on an existing bill insert.”<sup>27</sup> Additionally, the City believes that

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<sup>21</sup> R.C. 4933.12(F); R.C. 4933.121(E).

<sup>22</sup> Audit Report, p. III-14.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*, p. III-15.

Duke must be ordered to demonstrate that it has taken affirmative steps to rectify this glaring deficiency in its disconnection procedures to ensure our military servicemen/women receive the minimum notifications required by law.

**E. Duke Should Implement Cash Kiosks to Provide Customers Real Time Access to Accounts.**

In its Audit Report, NorthStar identified the implementation of cash kiosks as a key practice and recommendation for Duke. The City agrees with this recommendation. According to NorthStar, Detroit Edison has installed over thirty (30) cash kiosks in the greater Detroit area and Pontiac, Michigan.<sup>28</sup> These kiosks give real time account access to customers who do not have access to a computer or the internet.<sup>29</sup> Many customers, especially low-income customers who are most susceptible to Duke's disconnection practices, rely on and take advantage of cash kiosks to tender payment for utility service. As such, the Commission should order Duke to install and maintain cash kiosks at appropriate, publicly accessible places. These cash kiosks would ensure real time access to all of Duke's customers, including those without regular access to the internet, which likely comprises a substantial portion of delinquent customers facing disconnection. In so doing, all stakeholders will benefit as fewer customers will be subject to disconnection and Duke will receive additional revenue it needs to operate as a financially viable utility.

**III. CONCLUSION**

WHEREFORE, the City respectfully requests that the Commission, in issuing an order concerning Duke's disconnection practices and procedures as part of this case, specifically consider and adopt its foregoing comments and concerns.

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<sup>28</sup> *Id.*, p. IV-1.

<sup>29</sup> *Id.*

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 27th day of April, 2018. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Mark T. Keaney  
One of the Attorneys for the City of Cincinnati

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Summary: Comments Initial Comments of the City of Cincinnati in Response to NorthStar's Audit Report electronically filed by Mr. Mark T Keaney on behalf of City of Cincinnati