

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Duke Energy Ohio, Inc. for Approval)	
of its Temporary Plan and Waiver of)	Case No. 20-599-GE-UNC
Tariffs and Rules Related to the)	
COVID-19 State of Emergency.)	

In the Matter of the Application of)	
Duke Energy Ohio, Inc. for Approval)	Case No. 20-856-EL-AEC
of a Reasonable Arrangement.)	

In the Matter of the Application of)	
Duke Energy Ohio, Inc. to Modify its)	Case No. 20-857-EL-RDR
Economic Competitiveness Fund)	
Rider and Request for Waivers.)	

**COMMENTS FOR CONSUMER PROTECTION
REGARDING DUKE’S TEMPORARY PLAN TO ADDRESS
THE CORONAVIRUS EMERGENCY
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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I. INTRODUCTION

Ohio consumers are facing perilous times – a health crisis and an ensuing personal-finance crisis. The harm to Ohioans from these crises will persist for some time, potentially years, after the formal health emergency ends. In the city of Cincinnati, even before the crisis, residents already were at risk with poverty at 28.7% of the population. In Hamilton County, before the crisis, residents were at risk with food-insecurity at 17.2%. These already dire circumstances are now greatly magnified for people. Unemployment in the country is now considered the worst since the Great Depression.

Against this backdrop of human suffering, the Public Utilities Commission of Ohio (“PUCO”) rightfully ordered public utilities to file plans for the protection of their customers.

Duke then filed proposals on March 19, April 16, and May 4 for assisting its 718,000 electric customers and 432,000 natural gas customers during the health emergency.

Duke's proposals are appreciated. But additional protections are needed for Cincinnati-area consumers during the formal health crisis and for a reasonable time after the formal crisis ends. In these Comments, the Office of the Ohio Consumers' Counsel ("OCC") will describe additional consumer protections that the PUCO should adopt. The PUCO is addressing and should further address the fact that, for a great many Ohio families and businesses, their money is gone.

This point was well made by The New York Times in its recent editorial under the headline, "Stop Dawdling. People Need Money."¹ The Times editorial included the following words about the current suffering of Americans:

The economic shutdown caused by the coronavirus has left a growing number of American families desperately short of money. Images of hundreds of cars waiting in long lines at food banks across the country have become a symbol of the crisis, a contemporary equivalent of the old black-and-white images of Americans standing in bread lines during the Great Depression.

To ease the pain, at least a little, Congress voted in late March to send \$1,200 each to most American adults. In this era of high-speed trading, digital wallets and instant payments, one might have imagined that the federal stimulus payments would be distributed quickly, too.

Instead, the first large wave of payments is only landing in bank accounts on Wednesday.

And tens of millions of Americans won't get their stimulus payments until May — or later.²

¹ <https://www.nytimes.com/2020/04/15/opinion/coronavirus-stimulus-check-payment.html>

² *See id.*

If Duke seeks to collect any costs associated with the emergency from consumers, then the PUCO should only approve such costs for charging to consumers if, at a minimum, the costs are associated with Duke's actions taken during the coronavirus emergency and the costs meet Ohio ratemaking standards, including that they are prudent and necessary. This important standard is not found in Duke's application. But the PUCO did affirm in AEP's emergency case that any cost recovery would be subject to ratemaking standards, "including, but not limited to, issues such as prudence, proper computation, proper recording, reasonableness, and any potential double-recovery,"³

Additionally, Duke's emergency plan should be in effect to protect consumers during the emergency and in some instances for a reasonable timeframe thereafter. In this regard, Duke has not specified how long its plan is in effect. And the PUCO has not established a set time for emergency measures to remain in place, other than to state that measures should be taken for the "duration of the emergency."⁴ The emergency for customers may last far beyond any declared emergency.

Further, added costs due to the emergency should be offset by costs the utility avoids during the emergency, with any charges to consumers reflecting that netting. Duke's plan does not include identifying costs it will avoid during the emergency. Nor does Duke propose to offset the increased cost of the emergency with its avoided costs.

³ See Case No. 20-602-EL-UNC, Finding and Order at 22-23.

⁴ Regarding disconnections, the PUCO did say in AEP's emergency case that the issue needed to be considered, and ordered AEP to file a plan for how long measures should stay in place. See *id.* at 7.

Additionally, the PUCO should not permit cost allocations or revenue shifting from one class of customers to another.⁵ It remains to be seen if Duke’s plan will involve cost allocations or revenue shifting.

During this state of emergency, the PUCO should consider additional measures to protect consumers that are not included in Duke’s plan. Money owed by Duke to consumers should be returned as soon as possible. Pending increases in Duke’s charges to consumers should be put off until a reasonable time after the emergency (or the PUCO decides otherwise). And all “non-essential” services that Duke provides should be suspended until a reasonable time after the emergency (or the PUCO decides otherwise).

II. BACKGROUND

On March 9, 2020, Governor DeWine responded to the terrible threat of the coronavirus pandemic by declaring a state of emergency to protect the health and safety of Ohioans.⁶ Governor DeWine’s strong leadership for rallying Ohioans to fight back against the virus led to, among other things, the PUCO’s invocation of R.C. 4909.16 and declaration of an emergency for protecting Ohioans from utility disconnections, door-to-door energy sales, and more.

On March 12, 2020, the PUCO opened a docket and ordered utilities to “ensure that utility service to customers is maintained during the state of emergency.” The PUCO directed all utilities to review their service disconnection policies, practices, and tariffs and promptly seek approval to suspend requirements that may “impose a service continuity hardship on residential

⁵ The PUCO rejected parts of AEP’s emergency plan that involved cost shifting, such as AEP’s proposed reasonable arrangement and contribution to OHA. *See id.* at 13-14; 16-17.

⁶ *See* Executive Order 2020-01D.

and non-residential customers” or “create unnecessary COVID-19 risks associated with social contact.”⁷

On March 13, 2020, the PUCO issued another Entry directing all utilities to review their service reconnection policies, practices, and tariffs and to promptly seek approval to suspend requirements that may “impose a service restoration hardship on customers or create unnecessary risk of social contact.”⁸ And then on March 17, 2020, the PUCO issued an Entry ordering that marketers “immediately suspend, for all customer classes, all door-to-door and in-person marketing to customers in this state for the duration of the emergency, unless otherwise ordered by the [PUCO].”⁹

Duke filed its initial temporary plan to respond to the emergency on March 19, 2020. Duke filed a related application for a reasonable arrangement on April 16, 2020, and Duke filed a Second Motion to Suspend Payment Plan Options on May 4, 2020. Collectively, these three filings are Duke’s “Emergency Plan,”

Duke has proposed suspending disconnections of consumers for the duration of the formal emergency. And Duke proposed deferring or eliminating the collection of certain fees from consumers such as reconnection fees, late fees, and credit card fees, and proposed encouraging social distancing techniques.¹⁰ Further, Duke has proposed reducing charges to commercial and industrial customers during the formal emergency and then collecting the charges from those same customers later.¹¹ And Duke has asked the PUCO for permission to be

⁷ See March 12, 2020 Entry at ¶ 6(a).

⁸ See March 13, 2020 Entry at ¶ 6(a).

⁹ See March 17, 2020 Entry at ¶ 9.

¹⁰ See Case No. 20-599-GE-UNC Application (March 19, 2020).

¹¹ See Case No. 20-856-EL-AEC Application (April 16, 2020).

flexible in its dealings with customers to enter into payment plans for paying past-due amounts for utility bills.¹²

III. RECOMMENDATIONS

As the PUCO reviews Duke's Emergency Plan, it should consider that, in the coming months and potentially years, many Ohioans will struggle to pay their utility bills, among other financial difficulties. Those Ohioans with financial challenges will include customers who have historically paid their bills in full and on time but who may be unable to continue doing so following the economic fallout of the coronavirus pandemic. Ohio businesses and families will face financial burdens that were unforeseeable just a few months ago. As a result of lost wages, unemployment, and other financial hardships from the coronavirus, the need to make sure that all customers pay no more than fair, just, and reasonable rates is especially heightened.

A. To protect consumers, the PUCO should require Duke to suspend all disconnections of customers for non-payment until a reasonable period after the coronavirus state of emergency has ended.

Duke has properly suspended its disconnections of customers related to non-payment during the health emergency.¹³ When it comes to disconnections due to non-payment, there should be more certainty. The PUCO should be clear in its Order in this case (and in all other emergency cases) that no customer may be shut off due to non-payment beginning at least as of March 9, 2020. Further, the PUCO should extend the suspension of disconnections for nonpayment for a reasonable period of time *after* the declared coronavirus emergency has ended. As the PUCO said in its decision regarding AEP's emergency plan, "how to responsibly return to

¹² See Case No. 20-599-GE-UNC Second Motion to Suspend Payment Plan Options (May 4, 2020).

¹³ See Duke's Application at 4.

otherwise applicable protocols related to maintenance and restoration of service – requires further consideration and should be addressed.”¹⁴

The suffering of consumers who have been touched by a coronavirus tragedy or who face financial ruin will likely continue for months or years after the formal emergency is ended by the state Administration. The PUCO has the authority to suspend disconnections and to order other consumer protections under, among other things, its emergency powers per R.C. 4909.16. The emergency statute enables the PUCO to act when it “deems it necessary to prevent injury to the business or interests of the public....”

The suspension of disconnections for a reasonable period after the formal health emergency ends should apply to all of Duke’s electric and gas customers. That especially includes at-risk consumers such as those participating on the Percentage of Income Payment Plan (“PIPP”).

Disconnections of consumers during this state health emergency would be dangerous for Duke’s customers, especially when those customers will be spending more time at home, putting social distancing into practice. Duke’s Emergency Plan addresses many concerns that this state of emergency has created, such as suspending disconnections. But it is essential that Duke’s customers are not protected for the long term, in addition the short term. Therefore, the PUCO should not approve Duke’s charges to consumers unless, at a minimum, the charges are for costs that are prudent, necessary, and meet other ratemaking standards.

¹⁴ See Case No 20-602-EL-UNC, Finding and Order (May 6, 2020) at 7.

B. To protect consumers, the PUCO should require Duke to implement a “look-back period” and reconnect customers, without charge, that it disconnected for non-payment within a time period of thirty days prior to the Governor’s March 9, 2020 declaration of a health emergency.

Duke’s plan provides for reconnections of customers who have been recently disconnected for non-payment, under certain limited circumstances.¹⁵ But the PUCO’s Entries and Duke’s plan do not make accommodations for consumers who were disconnected for non-payment within a time period of thirty days prior to the state’s March 9th declaration of an emergency. They should.

Duke should be ordered to reconnect customers, without charge, that it shut off due to non-payment within a time period of thirty days prior to the state’s declaration of an emergency.¹⁶ The 30-day “look-back period” will, in essence, extend to those consumers the major protection against disconnection of their electric and gas services.

Additionally, the PUCO should order that all reconnection fees, deposits, and accumulated late fees during the emergency, including any look-back period, be waived.

C. The PUCO should require Duke to extend additional consumer protections for low-income consumers enrolled in the Percentage of Income Payment Plan.

Duke properly proposes suspending termination of PIPP plus customers during the emergency.¹⁷ But the PUCO should give PIPP customers additional protections. It should expressly Order that Duke’s PIPP participants will not be disconnected for non-payment and will receive the benefit of collection trip waivers.

¹⁵ See Duke Application at 4.

¹⁶ See, e.g., Duke Application at 4.

¹⁷ See Duke Application at 8.

Further, PIPP participants in the Duke service area should not be dropped from the PIPP program if their re-verification is disrupted during the declared state of emergency. And PIPP participants should be provided the opportunity to avoid building up debt to Duke through waiving requirements that payments should be made in full and on time before arrearage credits are given.

As stated, the financial impact of the health emergency will likely continue for some time after the declared state of emergency ends. PIPP customers are the neediest of the needy in our society. They are especially vulnerable at this time. These additional protections for PIPP customers should continue for a reasonable period after the declared emergency ends when the extent of circumstances of the emergency and the financial hardships consumers are facing are better understood. As the PUCO said in its decision regarding AEP's emergency plan, "how to responsibly return to otherwise applicable protocols related to maintenance and restoration of service – requires further consideration and should be addressed."¹⁸

The PUCO has the authority to order these protections for PIPP customers under, among other things, its emergency powers per R.C. 4909.16. The emergency statute enables the PUCO to act when it "deems it necessary to prevent injury to the business or interests of the public...."

D. The PUCO should require Duke to offer extended payment plans through 2021 or until the emergency is over (whichever is later).

Duke has offered to be "extremely flexible with customers who reach out to make payment arrangements."¹⁹ But Duke has not specified exactly what such flexibility means, or how reasonable payments will be determined. The OCC supports Duke's request for more

¹⁸ See Case No 20-602-EL-UNC, Finding and Order (May 6, 2020) at 7.

¹⁹ See Duke's Application at 4.

flexibility in creating payment plans with its customers, so long as consumer protection is enforced.

The PUCO should take the opportunity in this case to be specific. At a minimum, the PUCO should require Duke to allow customers to enter into payment plans for paying back any past-due amounts caused during the state of emergency through 2021 or until the emergency is over (whichever is later).

The PUCO should also require Duke to offer payment plans that allow consumers more time (than the traditional three-, six- and nine-month payment plans) to pay the past due balances back to Duke. This will provide some much-needed relief to Duke customers who have lost income due to the coronavirus emergency while still allowing Duke to collect revenues for utility service over a longer period of time while consumers are fighting to get back on their feet.²⁰

E. To protect consumers, Duke should not be permitted to lessen safety standards when person-to-person contact is unlikely.

Duke's Emergency Plan takes steps to limit person-to-person interactions, such as suspending meter testing.²¹ When reasonable, such steps should be incorporated into any PUCO Order addressing the state of emergency. That should include, but not be limited to, avoiding in-person payments whenever possible and deterring meter reading at a home whenever possible.

But repairs necessary to maintain the reliability of Duke's system should continue unless they involve unnecessary person-to-person interaction with customers. Duke has requested a long list of waivers that may impact reliability, such as voltage requirements, minimum service standards, and consumer-requested meter reads.²² As the PUCO Staff stated in its Staff Report

²⁰ See R.C. 4928.02 (L).

²¹ See Duke Application at 5, 9.

²² See, e.g., Staff Report at 1-2.

in this case: “most field inspections do not necessarily require social contact, however, Staff recognizes that some inspections may lead to social contact. Staff recommends that the Company record, track and proactively provide to Staff the inspections that that have been delayed [due to requiring social contact] and a time for when the inspection has been rescheduled on a monthly basis.”²³ The PUCO should adopt the Staff’s recommendation as a part of Duke’s Emergency Plan. In ruling on the AEP emergency plan, the PUCO is not allowing a reduction in safety.²⁴

F. The PUCO should require Duke to make publicly available, on its website and elsewhere, the details of its Emergency Plan information for transparency and the protection of their interests as customers.

The PUCO’s Emergency Entries and Duke’s plan do not include requirements for informing consumers about their rights as they exist during the emergency. In the PUCO’s ruling in the AEP emergency plan, the PUCO stated that consumers should be informed.²⁵ Information regarding Duke’s Emergency Plan must be effectively communicated to its customers.

Duke’s customers have a right to know about the emergency plan, including what are their rights and options during the State of Emergency. The PUCO should develop a plan to educate and inform customers of their rights during this emergency. All reasonable methods of communication should be used. For example, Duke should use bill inserts, public service announcements, social media, posting of PUCO, OCC and other government hotline numbers, and work with social service agencies.

²³ See *Id.*, Staff Report at 2 (April 28, 2020).

²⁴ See Case No. 20-602-EL-UNC, Finding and Order at 25.

²⁵ See *id.* at 18.

IV. FOR CONSUMER PROTECTION, THE PUCO SHOULD NOT APPROVE DUKE'S CHARGES TO CONSUMERS UNLESS, AT A MINIMUM, DUKE'S PROPOSED CHARGES ARE FOR COSTS THAT ARE PRUDENT, NECESSARY, AND MEET OTHER RATEMAKING STANDARDS.

- A. To protect consumers, the PUCO should order Duke to track costs that it avoids due to the general health emergency -- and later use such cost savings to offset other emergency costs associated with Duke's emergency plan, if any.**

The PUCO should make Duke track its cost *savings* resulting from the general health emergency. Those savings should be incorporated as offsets into any later Duke proposal for rate increases to consumers as a result of the health emergency. In its recent decision in AEP's emergency case, the PUCO agreed and ordered AEP to do just this.²⁶

Consistent with this recommendation, the PUCO should Order Duke to track expenses that were *not* incurred during this State of Emergency. Such avoided expenses should be used to offset expenses associated with its emergency plan that Duke is later allowed to collect from customers, if any. Certain postponed actions and deferred activities will no doubt occur and actually reduce Duke's overall expenses. Specifically, some of these activities include, but are not limited to, any furloughs or reduction in salaries, reductions in employee numbers, meter readings, reduced travel expenses, and maintenance items. It is only reasonable that the expenses that Duke *does not* incur due to the emergency should be tracked so that they can use such savings as an offset to the expenses that Duke *does* incur due to the emergency.

Additionally, the PUCO should recognize that certain costs that Duke will incur during the emergency may already be included in Duke's base rates.²⁷ Staff pointed to one such example of costs already included in AEP's base rates involving AEP's IT employees.²⁸

²⁶ See Case No. 20-602-EL-UNC, Finding and Order at 23.

²⁷ See *id.* at 4.

²⁸ See *id.*

Another example could be labor and fleet expenses required to do disconnections that will no longer be done during the emergency. These expenses are duplicative because this same labor and fleet will be used to perform the reconnections mentioned earlier. Obviously, consumer protection requires that duplicative collections from customers should be prohibited.

B. To protect consumers, the PUCO should not permit Duke to shift expenses and charges from non-residential customers to residential customers.

Duke's residential customers should not be asked to subsidize any costs Duke incurs or benefits it provides to commercial and industrial customers during this emergency. The PUCO agreed with this principle when it denied AEP's request to use consumers' money to make a donation to the Ohio Hospital Association.²⁹ This is especially applicable when Duke's residential customers are experiencing the deleterious economic impacts of the coronavirus emergency.

Duke is requesting that minimum demand charges on commercial and industrial customers be temporarily reduced. Duke's proposal to temporarily reduce minimum demand charges and to collect the charges later from those very same business customers is fair. Under Duke's approach, the customers that benefit from the temporary proposal (commercial and industrial) are the customers that should eventually pay for that temporary benefit.³⁰ Passing such costs instead onto Duke's residential customers would injure residential customers and burden them when they do not receive the benefit. The PUCO should make sure that this does not happen. The PUCO did so in AEP's emergency plan case by limiting the recovery of any foregone revenue under AEP's proposed reasonable arrangement to those that benefit

²⁹ See Case No. 20-602-EL-UNC, Finding and Order at 17.

³⁰ See *In re the Application of Duke Energy Ohio, Inc., Under the Commission's Proceedings During the Declared State of Emergency, for a Reasonable Arrangement with Customers Served Under Rates DS, DP, and TS*, Case No. 20-856-EL-AEC, et. al. at 9-10 (April 16, 2020) ("Duke Reasonable Arrangement").

(commercial and industrial customers),³¹ and the PUCO should do so here with Duke's proposed reasonable arrangement. If Duke waives minimum demand charges for commercial and industrial customers, then the PUCO should order that those customers must pay for that temporary benefit.

Other utilities' emergency plans have stated that waived and suspended fees should be consolidated (aggregated) and that they should be able to collect those fees from customers at a later date.³² For example, AEP has proposed simply adding all of the waived fees on to the customer's bill once the State of Emergency has passed.³³

However, Duke has not made such a proposal in its Emergency Cases. That is good for consumers. Such actions will only extend the economic damage felt by those customers most harmed by the coronavirus emergency. Further, such requests contain too many unknowns and present opportunities for abuse (such as shifting costs between customer classes). As the PUCO Staff has pointed out elsewhere, the exact amount of incremental costs and lost revenues, if any, to be deferred is unknown.³⁴ Such requests also ignore the fact that the PUCO usually disfavors the use of regulatory assets unless they pass stringent scrutiny.³⁵ These actions are harmful to customers and could lead to cost shifting between or among customer classes. Also, any utility proposals for rate increases should not be adopted when it is unclear how other PUCO actions

³¹ See Case No. 20-602-EL-UNC, Finding and Order at 13-14.

³² See AEP Application at 4, 7-8.

³³ See *id.* at 4.

³⁴ Staff Report at 3.

³⁵ See *In re Joint Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co., & The Toledo Edison Co.*, Case No. 05-704-EL-ATA, Opinion & Order at 8-9 (Jan. 4, 2006) ("Although the granting of such deferral authority is within the discretion of the Commission, we believe that to approve such a measure requires that we find there to be both exigent circumstances and good reason demonstrated before such amounts should be treated differently from ordinary utility expenses.").

could minimize any potential losses to the utilities due to the emergency (such as permitting reasonable arrangement with commercial and industrial customers).

C. The PUCO should order Duke to adopt additional consumer protections in its emergency plan.

The PUCO's Emergency Entries and Duke's plan should address a number of other consumer protections. In addition to causing severe health concerns, the coronavirus emergency has had a devastating impact on consumers' finances. Jobs have been lost, unemployment has increased, and wages have been reduced. In light of that devastating impact, the PUCO should add more consumer protections to Duke's emergency plan.

1. To help consumers with their need for money, the PUCO should promptly resolve pending and future cases where consumers are owed rate decreases.³⁶

There are cases where it is apparent that Duke has made filings at the PUCO intended to modify its charges such that it will result in bill credits to its customers and these bill reductions are awaiting PUCO action. In its tree trimming charge case, Duke has proposed reducing its charge.³⁷ In its decoupling charge case, Duke is also proposing to reduce its charge.³⁸ The PUCO should make its decisions quickly in those cases so that Duke can reduce the current charges to consumers who need money now. The PUCO recognized this in AEP's emergency case, where it said in response to OCC's similar recommendation there: "the Commission has already taken steps to either fully resolve or advance toward resolution . . . the cases noted by OCC."³⁹

³⁶ For example, Cases 20-0051-EL-RDR and 20-574-EL-RDR involving Duke are known to be awaiting bill credits.

³⁷ See *In re the Application of Duke Energy Ohio, Inc. to Adjust Rider ESRR for Recovery of Vegetation Management Services*, Case No. 20-0051-EL-RDR (January 29, 2020).

³⁸ See *In re the application of Duke Energy Ohio, Inc. for Approval to adjust Rider DDR*, Case No. 20-574-EL-RDR (March 17, 2020).

³⁹ See Case No. 20-602-EL-UNC, Finding and Order at 17.

2. Work on, and charges for, “non-essential” utility services should be suspended (and associated costs should be saved and used to offset costs Duke incurs because of the emergency) until the emergency ends (or the PUCO determines otherwise).

Maintaining essential utility service to consumers in this emergency is crucial. Equally as important is helping consumers deal with the financial hardships they are facing as a result of the emergency. While making sure that essential utility service is maintained must be done, “non-essential” utility services (and charges for them) should be suspended. Essential utility services are those necessary to make sure that Duke has necessary and adequate facilities to provide basic reliable service to customers. Non-essential services are those not needed to provide basic utility services to customers.⁴⁰ Suspending “non-essential” utility services during the emergency will help consumers dealing with the financial hardships they are facing because consumers would not be paying charges associated with those “non-essential” utility services.

One such opportunity lies within the energy efficiency subsidies collected by Duke. Energy efficiency programs are not essential to the provision of reliable electric service to consumers. In fact, the Ohio General Assembly recently passed legislation (H.B. 6, codified at R.C. 4928.66) that repealed the energy efficiency mandates and terminated electric energy efficiency programs as of December 31, 2020. Duke is winding down its electric energy efficiency program, which is to end December 31, 2020. Under the PUCO’s emergency authority in R.C. 4909.16, the “wind-down” of Duke’s energy efficiency program should be accelerated.⁴¹ Such an Order will assist tens of thousands of individuals in paying their utility bills during and after the declared state of emergency.

⁴⁰ See R.C. 4905.22.

⁴¹ See Case No. 16-0574-EL-POR, Order (February 26, 2020).

Additionally, Duke's work on, and charges to consumers for, the PowerForward Rider radio and billing system upgrades,⁴² the PowerForward Rider customer information system, land mobile radio, and smart street-light pole upgrades,⁴³ battery storage,⁴⁴ and seamless move activities⁴⁵ should be suspended until after the emergency ends (or the PUCO decides otherwise) without interrupting Duke's delivery of essential electric service. Such non-essential activities should be suspended, as "non-essential" services, to protect consumers from paying charges related to these non-essential activities until some future time the PUCO determines the activities are warranted.

3. Consumers' personal information should be protected.

During this emergency and for a reasonable time thereafter Duke's gas utility should implement additional safeguards to protect consumers' personal information. There are few, if any, gas marketer offers that are better than Duke's gas cost recovery mechanism. As consumers deal with the emergency, they should not be forced at the same time to field cost-ineffective solicitations from gas marketers. Accordingly, Duke's gas utility should not disclose to gas marketers consumers' personal contact information unless the consumers affirmatively consent to share their information.

⁴² See *In re the Application of Duke Energy Ohio, Inc. for Authority to Adjust Rider DDR*, Case No. 20-0666-EL-RDR (March 31, 2020).

⁴³ See *In re the Application of Duke Energy Ohio, Inc. for Authority to Adjust its PowerForward Rider*, Case No. 19-1750-EL-RDR (September 24, 2019).

⁴⁴ See *In re the Application by Duke Energy Ohio, Inc., for Approval of Its McMann Battery Storage Project*, Case No. 19-2223-EL-UNC (December 20, 2019).

⁴⁵ See *In re the Application of Duke Energy Ohio, Inc., for Approval of an Operational Plan for Seamless Move*, Case No. 19-2151-EL-EDI (December 13, 2019).

4. In this time of crisis, Duke's tariffs should be modified to include subject to refund language, to protect consumers.

Ohioans are facing not only a health crisis, but a financial crisis. The PUCO should exercise its emergency power under R.C. 4909.16 to help. It should do so regarding refunds. Duke's tariffs, should be modified to include subject to refund language (if not already included), thereby giving consumers the ability (and protection) to receive money for Duke charges that are later declared unlawful. OCC previously made this recommendation to the PUCO in its review of its rules in Case No. 18-276-AU-ORD.

Just since the advent of the 2008 energy law that favors electric utilities in ratemaking, Ohioans have lost \$1.2 billion in denied refunds for electric charges after Supreme Court reversals of PUCO orders.⁴⁶ In this time of emergency, consumers should be provided refunds for charges later declared unlawful.

5. Other consumer protection considerations.

The National Consumer Law Center has published a one-page list of recommendations for consumer protection, "Coronavirus Crises: How States Can Help Consumers Maintain Essential Utility Services." The publication is attached hereto as Attachment B. As the PUCO reviews Duke's Emergency Plan, the consumer protections in the National Consumer Law Center's publication should be implemented.

V. CONCLUSION

Ohio consumers are facing perilous times – a health crisis and an ensuing personal-finance crisis. For many Ohioans, the personal and family crises will remain long after the

⁴⁶ *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, ¶ 17-20 (\$63 million); *In re: Columbus S. Power Co.*, 138 Ohio St.3d 448, ¶ 56 (\$368 million); *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166 (\$330 million); *In re Application of Ohio Edison Co.*, Slip Opinion No. 2019-Ohio-2401, ¶ 23 (\$456 million collected through June 2019).

government declares a formal end to the health crisis. In the city of Cincinnati, even before the crisis, residents already were at risk with poverty at 28.7% of the population. In Hamilton County, before the crisis, residents were at risk with food-insecurity at 17.2%. These dire circumstances are now greatly magnified for people. Unemployment in the country is now considered the worst since the Great Depression.

Against this backdrop of human suffering, the PUCO and Ohio EPA, with leadership from the Governor, and the FCC and utilities have taken steps to avoid piling on even more troubles for Ohio utility consumers. In these Comments the Ohio Consumers' Counsel, the state voice for residential consumers, makes recommendations for additional protections needed for utility consumers in the Cincinnati and surrounding areas.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments have been served via electronic transmission upon the following parties of record this 7th day of May 2020.

/s/ William Michael
William Michael
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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National
Consumer Law
Center

Coronavirus Crisis: How States Can Help Consumers Maintain Essential Utility Services

March 2020

KEEP RESIDENTIAL UTILITY SERVICE ON DURING THE CRISIS

Access to affordable electric, gas, water, sewer, and telecommunications (including internet) services is essential at all times, but especially during a worldwide pandemic and shelter-at-home orders. Throughout the COVID-19 emergency, states should take the following steps to ensure that consumers stay connected to essential utility networks and reduce the need for public interaction:

- Issue an emergency declaration through gubernatorial action banning all regulated and unregulated utility service shut offs, including electric, gas, water/sewer, and telecommunications services, due to inability to pay, during the crisis;
- Order all regulated and unregulated utilities to reconnect customers who were previously disconnected due to inability to pay;
- Ban all in-person marketing and sales of alternative energy supply and distributed energy products during the length of the emergency declaration;
- Encourage low-income households to apply for the federal Lifeline phone and broadband program for free or discounted voice and data service;
- Adjust state Low Income Home Energy Assistance Program (LIHEAP) application deadlines, enrollment access and eligibility certification processes; and

ENSURING THAT UTILITY SERVICE IS AFFORDABLE FOR ALL

After emergency orders have been lifted, states should ensure that utility arrearages incurred during the crisis do not trigger disconnections. States should require all utility service providers, both regulated and unregulated, to adopt more flexible credit and collections practices than currently required by state regulations and unregulated utility policies. Such protections should:

- Eliminate any customer deposit requirements;
- Eliminate down payment requirements on deferred payment arrangements (DPAs);
- Allow flexible, reasonable DPAs that are based on the customer's ability to pay;
- Eliminate any requirement that disconnected customers pay the full arrearage in order to reconnect, thereby permitting reconnection upon issuance of an affordable DPA;
- Eliminate minimum balance requirements for prepaid utility service customers;
- Require utilities to write off debt for consumers who certify that they are eligible for LIHEAP, but are unable to receive LIHEAP due to insufficient LIHEAP funds; and
- Prohibit utilities from imposing late fees and engaging in negative credit reporting

Questions? Contact National Consumer Law Center advocates Jen Bosco (jbosco@nclc.org), Charlie Harak (charak@nclc.org), John Howat (jhowat@nclc.org), Karen Lusson (klusson@nclc.org) or Olivia Wein (owein@nclc.org).

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Summary: Comments Comments for Consumer Protection Regarding Duke's Temporary Plan to Address the Coronavirus Emergency by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.