

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Motion of The East)
Ohio Gas Company d/b/a Dominion)
Energy Ohio to Suspend or Modify) Case No. 20-600-GA-UNC
Certain Procedures During the COVID-)
19 State of Emergency and Related)
Matters.)

**APPLICATION FOR REHEARING OF THE PUCO'S ORDER ON
THE TEMPORARY CONSUMER EMERGENCY PLAN
OF DOMINION ENERGY OHIO
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The coronavirus emergency and the ensuing economic emergency have led to much suffering this year for many Ohioans. That especially includes at-risk populations in Dominion's service area where, for example, before the pandemic poverty in Cleveland was already high at 35% and food insecurity in Cuyahoga County was already high at 18.6%. Recent pandemic-related data show food insecurity *statewide* at 23%,¹ and food insecurity among mothers with children under twelve years old in Cleveland at 41%.² Also, according to a study, 503,500 renters in Ohio were unable to pay their rent in June.³ And given social disparities, black Americans tend to be included in at-risk groups

¹ <http://ohiofoodbanks.org/files/2019-20/Press-Release-OAF-urges-SNAP-increase-6.15.20.pdf>. See also <https://www.msn.com/en-us/money/markets/coronavirus-food-insecurity-has-doubled-locally-across-ohio/ar-BB161LqN>.

² <https://www.news5cleveland.com/rebound/coronavirus-money-help/with-food-insecurity-on-the-rise-greater-cleveland-food-bank-continues-to-provide>.

³ See <https://www.census.gov/data/tables/2020/demo/hhp/hhp8.html>, Housing Table 1(b), Ohio tab; Also <https://cohhio.org/9561-2/>.

(such as low-income) at a disproportionately greater level than their percentage representation in the general population. In other words, people need protection and people need money during the crises, among other things.

The PUCO acted, in its June 3, 2020 Finding and Order (“Order”), to protect Dominion’s consumers. Those actions included suspending disconnections and encouraging Dominion to establish additional extended payment plans to assist customers in paying their bills. Separately, door to door energy marketing was suspended (but recently resumed).

But many utility consumers need more from their government (PUCO) because, among other things, the coronavirus crisis is (again) hurting them more.⁴ For one thing, the PUCO should have extended the consumer protections in its Order to include timeframes both before and after the declared emergency. Also, the PUCO should have fully adopted the recommendations of the National Consumer Law Center (“NCLC”) to establish a comprehensive, uniform set of consumer protections throughout the pandemic.

The PUCO’s order was unreasonable and unlawful in the following errors. It should be abrogated or modified to give consumers the protection under R.C. 4909.16 that is “necessary to prevent injury to the business or interests of the public...in case of any emergency...”

ASSIGNMENT OF ERROR NO. 1: The PUCO erred by failing to require reconnections needed by consumers, especially for at-risk populations, that Dominion disconnected during the time period beginning thirty days before the Governor’s declaration of the state of emergency, pursuant to R.C. 4909.16 and R.C. 4903.09.

⁴ <https://www.fox19.com/2020/06/25/watch-live-gov-dewine-give-update-states-coronavirus-response/>.

ASSIGNMENT OF ERROR NO. 2: The PUCO erred by failing to continue the consumer protection of suspending utility disconnections, especially for at-risk populations, for a reasonable period of time after its declared emergency has ended, pursuant to R.C. 4909.16.

ASSIGNMENT OF ERROR NO. 3: The PUCO erred by failing to order that its declared emergency will continue indefinitely consistent with the threat (that is now escalating again) of the coronavirus to the health and finances of Ohioans and especially for at-risk Ohioans, pursuant to R.C. 4909.16.

ASSIGNMENT OF ERROR NO. 4: The PUCO erred by failing to adopt all the consumer protection recommendations of the National Consumer Law Center as proposed by OCC, pursuant to R.C. 4909.16 and R.C. 4903.09.

The reasons in support of this application for rehearing are set forth in the accompanying Memorandum in Support. The PUCO should grant rehearing and abrogate or modify its Order as proposed by OCC.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE APPLICATION FOR REHEARING
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I. INTRODUCTION

The coronavirus emergency and the ensuing economic emergency have led to much suffering this year for many Ohioans, including among at-risk populations already in need of protection. As stated, consumers already suffer from high levels of poverty and food insecurity in Dominion’s service area. In the absence of a vaccine, a cure and/or broad immunity, there is no end in sight for the coronavirus pandemic.⁵ Indeed, the coronavirus crisis is again escalating, and a financial crisis is looming for consumers, many of whom have lost their jobs. The PUCO should act to further protect utility customers during these perilous times.

⁵ See The Columbus Dispatch, “DeWine ponders county-by-county approach as Ohio coronavirus cases rise” (June 28, 2020) <https://www.dispatch.com/news/20200628/dewine-ponders-county-by-county-approach-as-ohio-coronavirus-cases-rise>.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10, which provides 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 entered an appearance through its Motion to Intervene in this case, and the PUCO granted OCC’s Motion.

R.C. 4903.10(B) also requires that an application for rehearing be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” Further, Ohio Adm. Code 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support . . . which shall be filed no later than the application for rehearing.” In considering an application for rehearing, R.C. 4903.10(B) 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: “[i]f, 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.”

The statutory standard for abrogating or modifying some portions of the Finding and Order is met here. The PUCO should grant and hold rehearing on the matters specified in this Application for Rehearing and abrogate or modify the Finding and Order consistent with OCC’s Recommendations herein.

III. MATTERS FOR RECONSIDERATION

ASSIGNMENT OF ERROR NO. 1: The PUCO erred by failing to require reconnections needed by consumers, especially for at-risk populations, that Dominion disconnected during the time period beginning thirty days before the Governor’s declaration of the state of emergency, pursuant to R.C. 4909.16 and R.C. 4903.09.

In its comments, OCC recommended that the PUCO order Dominion to protect consumers by reconnecting those that were disconnected thirty days before March 9, 2020, the date Governor DeWine declared the coronavirus state of emergency.⁶ The PUCO found OCC’s suggested “look-back” period “unnecessary.”⁷

But to disconnected consumers (including at-risk consumers) who are facing the health crisis and financial crisis without Dominion’s service – such as for heating water now and later for winter heating – reconnecting service is quite necessary. Reconnecting service of disconnected Ohio utility consumers is a fit under the state’s emergency statute, R.C. 4909.16. The emergency statute provides for the PUCO to act when “necessary to prevent injury to the business or interests of the public...in case of any emergency....”

Moreover, R.C. 4903.09 expressly states:

In all contested cases heard by the public utilities commission, a complete record of all the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decision arrived at, based upon said findings of fact. (emphasis added).

⁶ See OCC’s Comments for Additional Consumer Protections Regarding the Temporary Plan of Dominion Energy Ohio to Address the Coronavirus Emergency (May 13, 2020) (“OCC Comments”), at 7.

⁷ See Finding and Order at ¶30.

The PUCO summarily rejected without explanation OCC’s recommendation that Dominion should be required to protect consumers by reconnecting those customers disconnected thirty days prior to March 9, 2020.⁸ R.C. 4903.09 requires more consideration or at least explanation. Thus, the PUCO should grant rehearing.

Consumers who had the misfortune to be disconnected by Dominion only a short time prior to the emergency are worthy of protection just as those consumers who were disconnected after the emergency. Under the circumstance of the crisis, they should be protected by the PUCO with an order for reconnection pursuant to the PUCO’s authority under R.C. 4909.16. As stated, that statute provides for the PUCO to take action “necessary to prevent injury to the business or interests of the public...in case of any emergency...” The PUCO should order Dominion to reconnect consumers who were disconnected due to non-payment in the thirty days before the emergency was declared.

ASSIGNMENT OF ERROR NO. 2: The PUCO erred by failing to continue the consumer protection of suspending utility disconnections, especially for at-risk populations, for a reasonable period of time after its declared emergency has ended, pursuant to R.C. 4909.16.

OCC recommended that the PUCO should continue to suspend disconnections for a reasonable time after the coronavirus emergency.⁹ The PUCO rejected OCC’s proposal. It instead directed Dominion to file a transition plan regarding “the resumption of activities and operations previously prohibited by the *Emergency Case* in furtherance of a safe return to pre-COVID-19 operations.”¹⁰

⁸ *Id.*

⁹ *See* OCC’s Comments at 6-7.

¹⁰ Finding and Order at ¶49.

Dominion has filed a transition plan which stated that it would resume sending 10-day disconnection notices on July 13, 2020, and resume service disconnections beginning August 3, 2020.¹¹ But the coronavirus emergency has not ended, making Dominion's proposal woefully premature. In fact, the coronavirus crisis is *escalating*.¹²

To consumers (including at-risk consumers) who could be disconnected and then face the health crisis and financial crisis without Dominion's service – such as for heating water now and later for winter heating – the continuation of the moratorium against disconnections is essential. Protecting Ohio utility consumers from disconnection is a fit under the state's emergency statute, R.C. 4909.16. The emergency statute provides for the PUCO to act when “necessary to prevent injury to the business or interests of the public...in case of any emergency....”

The PUCO should use its emergency authority to act to protect the public now. The PUCO should order Dominion to continue the moratorium against disconnection for nonpayment, for a reasonable time *after* the formal declared emergency ends.

ASSIGNMENT OF ERROR NO. 3: The PUCO erred by failing to order that its declared emergency will continue indefinitely consistent with the threat (that is now escalating again) of the coronavirus to the health and finances of Ohioans and especially for at-risk Ohioans, pursuant to R.C. 4909.16.

The dire plight of many Ohioans and the emergency statute that exists for addressing such a plight compel continuing the PUCO's declared emergency indefinitely. The coronavirus crisis is not ending, it is *escalating*. As has been reported, utility

¹¹ See Dominion Transition Plan (June 18, 2020) at 2.

¹² See e.g. The Columbus Dispatch, “DeWine ponders county-by-county approach as Ohio coronavirus cases rise” (June 28, 2020), <https://www.dispatch.com/news/20200628/dewine-ponders-county-by-county-approach-as-ohio-coronavirus-cases-rise>.

consumers could face another related wave of pain – looming utility shut-offs.¹³ Other pain includes but is not limited to a half million Ohioans being unable to pay June rent, according to reports (cited above). In addition, as customers spend more time at home because of the pandemic, they are using more utility service and their bills are increasing.¹⁴ These reflect some of the additional pressures on customers already facing financial hardships.

Dominion has proposed abandoning or discontinuing the consumer protections that the PUCO has implemented.¹⁵ Instead, the PUCO should further protect consumers by continuing its emergency jurisdiction indefinitely, or at least until an end to the coronavirus emergency is officially declared and for some reasonable time thereafter.

The emergency statute that the Ohio General Assembly enacted in the 20th Century exists for the PUCO to use to protect Ohioans in the 21st Century, regarding such a once-in-a-lifetime health disaster as the coronavirus. The PUCO should take more action now because people need more help now.

ASSIGNMENT OF ERROR NO. 4: The PUCO erred by failing to adopt all the consumer protection recommendations of the National Consumer Law Center as proposed by OCC, pursuant to R.C. 4909.16 and R.C. 4903.09.

OCC recommended adopting protections listed by the National Consumer Law Center (“NCLC”), titled “Coronavirus Crises: How States Can Help Consumers Maintain Essential Utility Services.” The PUCO declined OCC’s recommendation to adopt all of

¹³ See Energy Wire, “A second wave of pain: Looming utility shutoffs” (May 21, 2020), <https://www.eenews.net/energywire/2020/05/21/stories/1063189771>.

¹⁴ See The Columbus Dispatch, “Consumers face higher utility bills during coronavirus outbreak” (June 14, 2020) <https://www.dispatch.com/business/20200614/consumers-face-higher-utility-bills-during-coronavirus-outbreak>.

¹⁵ See Dominion Transition Plan (June 18, 2020).

the NCLC’s consumer protection guidelines, finding that consumer protection issues are already being “adequately addressed” through each utility’s emergency plan.¹⁶

In its Order, the PUCO did not provide the reasons for its decision to reject the OCC (NCLC) recommendations. That is insufficient to meet the standard in R.C. 4903.09 for explaining decisions. The PUCO’s order in this respect is unreasonable and should be modified.

The PUCO should establish a uniform set of requirements applicable to all utilities – which is to say applicable to protecting all Ohio utility consumers, consistent with those published by the NCLC.¹⁷ The uniform requirements should protect customers throughout the state of emergency and for a reasonable time afterwards.

Unfortunately, Dominion has already proposed through its Transition Plan to resume disconnecting customers for non-payment and to resume imposing the strict eligibility requirements for participation in the PIPP program beginning August 3, 2020.¹⁸ Dominion intends to resume these pre-COVID-19 operations, *even as the coronavirus cases are escalating in Ohio*. The PUCO should modify and improve Dominion’s plan, as would be called for under the NCLC guidelines (and OCC’s recommendations).

Therefore, the PUCO should protect consumers by abrogating or modifying its Order. The PUCO should adopt the NCLC’s recommendations (as proposed by OCC) to give consumers the protection under R.C. 4909.16 that is “necessary to prevent injury to the business or interests of the public...in case of any emergency...”

¹⁶ Finding and Order at ¶46.

¹⁷ See NCLC guidelines attached to OCC’s Comments.

¹⁸ See Dominion’s Transition Plan (June 18, 2020) at 2, 5.

IV. CONCLUSION

For the health and economic security of Dominion's customers, the PUCO should grant rehearing on OCC's assignments of error and modify or abrogate its Order as described above. Granting rehearing is necessary for the protection of Dominion's consumers and their families.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing by the Office of The Ohio Consumers' Counsel was served on the persons stated below via electric transmission this 6th day of July 2020.

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Summary: App for Rehearing Application for Rehearing of the PUCO's Order on the Temporary Consumer Emergency Plan of Dominion Energy Ohio by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of O'Brien, Angela D