

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE MOTION OF THE
EAST OHIO GAS COMPANY DBA
DOMINION ENERGY OHIO TO SUSPEND
OR MODIFY CERTAIN PROCEDURES AND
PROCESSES DURING THE COVID-19
STATE OF EMERGENCY AND RELATED
MATTERS.

CASE NO. 20-600-GA-UNC

ENTRY ON REHEARING

Entered in the Journal on July 29, 2020

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by Ohio Consumers' Counsel of the Commission's June 3, 2020 Finding and Order, granting, in part, the motion of The East Ohio Gas Company dba Dominion Energy Ohio for waiver of certain provisions of the Ohio Administrative Code and corresponding provisions of its tariff during the COVID-19 state of emergency.

II. DISCUSSION

A. *Procedural History*

{¶ 2} The East Ohio Gas Company dba Dominion Energy Ohio (DEO or Company) is a natural gas company and a public utility as defined by R.C. 4905.03 and R.C. 4905.02, respectively. As such, DEO is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4909.16 provides, in part, that, in the event of an emergency, when the Commission finds it necessary to prevent injury to the business or interests of the public or of any public utility, it may temporarily alter, amend, or suspend any existing rates or schedules.

{¶ 4} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department

of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 5} Pursuant to R.C. 3701.13, the Ohio Department of Health has supervision of “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation.” On March 12, 2020, the Director of the Ohio Department of Health issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.” On March 22, 2020, and as amended on April 2, 2020, the Director of the Ohio Department of Health issued an Order directing that from March 23, 2020, until May 1, 2020, with certain outlined exceptions, “all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence except as allowed in [the] Order. * * * All persons may leave their homes or place of residence only for Essential Activities, Essential Governmental Functions, or to participate in Essential Businesses and Operations,” as defined in the Order.

{¶ 6} On March 12, 2020, the Commission initiated Case No. 20-591-AU-UNC and directed all utility companies in this state to review their disconnection procedures in light of the state of emergency. *In re the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC (*Emergency Case*), Entry (Mar. 12, 2020) at ¶ 7. On March 13, 2020, the Commission extended its winter reconnection order through May 1, 2020, and directed all utility companies in this state to review their reconnection procedures. *Emergency Case*, Entry (Mar. 13, 2020) at ¶ 6. In the March 12, 2020, and March 13, 2020 Entries, the Commission also directed all utility companies to promptly seek any necessary approval, for the duration of the emergency, to suspend otherwise applicable disconnection or

reconnection requirements that may impose a service continuity or service restoration hardship on residential and non-residential customers or create unnecessary COVID-19 risks associated with social contact. The Commission determined that such filings shall be deemed approved on an emergency basis for a period of at least 30 days effective as of the filing date or until such date as the Commission may otherwise specify, which shall not be less than 30 days.

{¶ 7} On March 17, 2020, in the above-captioned case, DEO filed a motion for authority to suspend and modify various policies and practices and for waivers of related Commission rules due to the COVID-19 pandemic.

{¶ 8} On March 20, 2020, in the *Emergency Case*, the Commission directed all utility companies to suspend in-person, actual meter readings in circumstances where a meter is located inside a customer's home or similar location, as well as all other non-essential functions that may create unnecessary COVID-19 risks associated with social contact, including, but not limited to, in-home energy efficiency audits, weatherization programs, in-premises inspections not prompted by an identified safety-related concern, and other similar initiatives. The Commission also clarified that requests for accounting authority or incremental cost recovery related to the emergency will be addressed in each utility's individual case by subsequent entry. *Emergency Case*, Entry (Mar. 20, 2020) at ¶¶ 10-11, 13.

{¶ 9} On April 8, 2020, in the *Emergency Case*, the Commission, among other things, extended the 30-day automatic approval period for filings to suspend otherwise applicable disconnection requirements for an additional 30 days, unless otherwise ordered by the Commission. *Emergency Case*, Finding and Order (Apr. 8, 2020) at ¶ 9.

{¶ 10} Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE) were granted intervention in this matter.

{¶ 11} On May 5, 2020, Staff filed its review and recommendations of DEO's motion to suspend provisions of the Ohio Administrative Code and corresponding provisions of its tariff.

{¶ 12} By Entry issued May 6, 2020, to assist the Commission with its review of DEO's motion, the attorney examiner established a procedural schedule, directing parties to file motions to intervene and comments by no later than May 13, 2020. OCC timely filed comments.

{¶ 13} On May 13, 2020, DEO filed a motion for extension of the rule and tariff suspension requested in its motion filed on March 17, 2020. By Entry dated May 14, 2020, the attorney examiner granted DEO's motion for extension of the rule and tariff suspension until the Commission specifically ordered otherwise.

{¶ 14} By Finding and Order dated June 3, 2020, the Commission granted, in part, DEO's motion for waiver of certain provisions of the Ohio Administrative Code and corresponding provisions of the Company's tariff, consistent with Staff's recommendations and modifications, and consistent with the Finding and Order. Further, in recognition of the state's relaxation of social distancing restrictions, the Commission directed DEO to work with Staff to develop a single, comprehensive plan to resume activities and operations, including timelines, and file the plan at least 45 days prior to resuming such activities and operations. Interested persons were directed to file comments within ten days after the filing of the plan.

{¶ 15} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 16} On July 6, 2020, OCC filed an application for rehearing of the June 3, 2020 Finding and Order, asserting four assignments of error.

{¶ 17} DEO and OPAE filed memoranda contra OCC's application for rehearing on July 16, 2020.

{¶ 18} The Commission has reviewed and considered all of the arguments raised in OCC's application for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

B. Consideration of the Application for Rehearing

1. FIRST ASSIGNMENT OF ERROR: 30-DAY LOOK-BACK PERIOD

{¶ 19} In its first assignment of error, OCC submits that the Commission unreasonably failed to require, pursuant to R.C. 4909.16, the reconnection of service for customers, particularly at-risk consumers, that DEO disconnected during the time period beginning 30 days before the governor declared a state of emergency on March 9, 2020. Further, OCC asserts that the Commission summarily rejected, without explanation, OCC's recommendation to implement the proposed look-back period, in violation of R.C. 4903.09. OCC notes that customers whose service was disconnected by DEO immediately prior to the declaration of the emergency are no less worthy of protection than customers that experienced a disconnection of service after the declaration of the emergency. OCC contends that reconnecting the service of disconnected customers, who need DEO's services now to heat water and will need them later for winter heating, fits under the Commission's emergency authority granted pursuant to R.C. 4909.16. OCC requests that the Commission, pursuant to its emergency authority, abrogate the June 3, 2020 Finding and Order, and direct DEO to reconnect the service of customers who were disconnected for non-payment in the 30-day period prior to the declaration of the emergency.

{¶ 20} In response to OCC's argument that the Commission "summarily rejected" OCC's 30-day look-back period proposal, DEO notes that the Commission did, in fact, provide an explanation, finding the proposal "unnecessary" and "overly strict." June 3, 2020 Finding and Order at ¶ 30. DEO further states that adoption of OCC's proposal was unnecessary because residential customers previously disconnected due to non-payment are able to contact DEO for assistance reconnecting service, regardless of when the disconnection occurred, pursuant to the Finding and Order. Moreover, DEO indicates that,

under its transition plan, which the Commission approved on July 15, 2020, DEO is implementing the Commission's guidance to work with its customers and agree on terms to reconnect service, regardless of when disconnection occurred, and to temporarily forego the collection of deposits and fees, where it is reasonable to do so under the circumstances. Consequently, DEO believes OCC has not offered anything new to justify the Commission reconsidering its prior determination.

{¶ 21} OPAE reasons that the Commission's decision to decline to adopt a recommendation of a party does not amount to an error worthy of rehearing. OPAE elaborates that R.C. 4903.09 requires the Commission to provide a written opinion setting forth the reasons for its decision, which OPAE claims the Commission did by finding OCC's suggestion overly strict and unnecessary. OPAE contends that OCC's alleged error is simply a rehash of its arguments that were previously denied and requests the Commission to deny this first assignment of error.

{¶ 22} We once again decline to adopt OCC's restrictive and unnecessary 30-day look-back period. Adopting OCC's arbitrary look-back period would not ensure that all customers who may have been affected by the initial phase of the declared emergency are protected. In lieu of an overly prescriptive date which would trigger reinstatement of service due to the emergency, we encouraged DEO to work with its customers, especially at-risk customers, to agree on terms to reconnect service, regardless of when the service disconnection occurred, and to temporarily forego the collection of fees and deposits, where it was reasonable to do so under the circumstances. Further, we encouraged DEO to be flexible in its deferment of delinquent charges, deposits, and fees, as well as its acceptance of extended payment plans and terms as a result of the pandemic, and consider each customer's unique circumstances. June 3, 2020 Finding and Order at ¶¶ 30, 31. Recognizing that reconnection of disconnected service was the most important issue during the pandemic, irrespective of the time of service disconnection, our approach provides DEO and its customers appropriate flexibility. By encouraging DEO and customers to work together, this approach provided DEO customers immediate bill relief, while affording DEO

and each customer that requests to do so the opportunity to enter into an extended payment plan that includes the payment of the charges, fees, and/or deposit at a later date. OCC has raised no new argument on this issue which persuades the Commission that its decision should be abrogated or amended and, therefore, the Commission finds that OCC's request for rehearing of this matter should be denied.

2. SECOND AND THIRD ASSIGNMENTS OF ERROR: SUSPENSION OF DISCONNECTIONS AND DECLARED STATE OF EMERGENCY

{¶ 23} In its second assignment of error, OCC notes that, in its comments, it requested that the Commission order DEO to suspend the disconnection of service for a reasonable time after the declared state of emergency has ended. OCC submits that the Commission unreasonably rejected OCC's proposal and failed to sufficiently protect consumers, especially at-risk consumers. OCC notes that the Commission, through the June 3, 2020 Finding and Order, directed DEO to file a plan to resume pre-COVID-19 operations. Pursuant to the transition plan DEO filed on June 18, 2020, DEO will resume sending ten-day disconnection notices on July 13, 2020, and will resume service disconnections beginning August 3, 2020. OCC argues that DEO's plan to restart disconnections is woefully premature because the pandemic is escalating. According to OCC, DEO's customers continue to struggle financially amid health concerns associated with COVID-19 and the continuation of the moratorium against disconnections is essential. Therefore, OCC urges the Commission to use its emergency authority under R.C. 4909.16 to protect Ohioans from the disconnection of their utility service.

{¶ 24} In response, DEO argues that, as with OCC's first assignment of error, the Commission considered but ultimately rejected OCC's proposal. Further, DEO believes the Commission provided an adequate explanation for this rejection, noting that, "even in light of the emergency, service disconnections for non-payment cannot be suspended indefinitely." June 3, 2020 Finding and Order at ¶ 29. Though DEO intends to resume disconnections for non-payment on or around August 3, 2020, under its transition plan, the Company asserts that the advance notice provided by its plan, along with expanded

payment plan terms and flexible down payments, additional customer outreach, the availability of assistance programs, and DEO's efforts to enter into reasonable payment arrangements with any customer facing disconnection, all allow DEO to appropriately resume disconnections. DEO surmises that, without its transition plan in place, unpaid balances may continue to grow for customers that are simply not taking action, becoming a larger, less manageable problem over time. Given the requirement that DEO work with Staff to develop the conditions in its transition plan, pursuant to the June 3, 2020 Finding and Order, DEO states that it was not unreasonable for the Commission to reject OCC's proposal for an indefinite suspension. Finally, DEO argues that OCC's application repeats its prior recommendation that the Commission already rejected and does not offer any basis for the Commission to change course.

{¶ 25} In its third assignment of error, OCC contends that the Commission failed to order, pursuant to R.C. 4909.16, that the declared emergency will continue indefinitely, consistent with the threat of the virus to Ohioans and the consequences of its financial impact, particularly for at-risk consumers. OCC notes that the number of coronavirus cases is escalating, and Ohioans continue to face the financial impacts as a result of the pandemic. Once again, OCC urges the Commission to protect consumers by continuing its emergency jurisdiction indefinitely or at least until an end to the emergency is officially declared and for a reasonable time after.

{¶ 26} Disagreeing with OCC, DEO states that the evident purpose of the June 3, 2020 Finding and Order was to encourage DEO to develop additional protocols and practices which would allow the Company to safely resume suspended activities. DEO believes its transition plan, which was approved by the Commission on July 15, 2020, sets forth those additional protocols and practices. DEO does not find that the Commission abdicated its responsibilities to protect consumers pursuant to R.C. 4909.16 or ceased taking necessary actions in response to the pandemic in its June 3, 2020 Finding and Order. Because the Commission has already considered and rejected OCC's argument that it is not doing enough to address COVID-19, DEO believes this assignment of error should be denied.

{¶ 27} With regard to OCC's second and third assignments of error, while OPAE agrees with OCC that the pandemic is an ongoing concern, requiring close monitoring and potential further action from the Commission, OPAE does not support blanket, indefinite suspensions of disconnections. Such indefinite suspensions, according to OPAE, are not the best option to protect customers and, in the long term, can make it harder for customers to get back on track with their utility. Further, OPAE explains that the issues raised in OCC's second and third assignments of error are premature and should be decided as part of the Commission's consideration of DEO's transition plan to resume pre-emergency operations and activities. OPAE notes that DEO filed its transition plan on June 18, 2020, and OCC availed itself of the opportunity to file comments and the Commission can properly decide the issues raised in OCC's second and third assignments of error when it considers DEO's transition plan. Therefore, OPAE requests the Commission to deny OCC's second and third assignments of error as premature.

{¶ 28} Reviewing OCC's second and third assignments of error together, the Commission notes, as acknowledged in the June 3, 2020 Finding and Order, that the state has taken steps to responsibly rescind the requirements of the Department of Health's Amended Stay at Home Order. In the Finding and Order, we further noted that the issue of DEO's responsible return to otherwise applicable activities and operations requires further consideration by the Commission. The Commission recognizes, as OPAE acknowledges, that disconnections for non-payment cannot be suspended indefinitely and, for that reason, the Commission directed DEO to work with Staff to develop a plan to resume suspended activities, including disconnections, and to offer extended payment plans, including flexible custom payment plans, for customers. We also specified that DEO's transition plan to return to operations previously precluded by the Commission's directives in the *Emergency Case* would be a matter for comment by OCC and other interested stakeholders. June 3, 2020 Finding and Order at ¶¶ 29, 49.

{¶ 29} The alleged errors raised in OCC's second and third assignments of error pertain to the duration of the suspension of disconnections and other emergency measures.

Consistent with the June 3, 2020 Finding and Order, OCC's recommendations with respect to the proper timeframe for resuming disconnections and other activities which were temporarily suspended due to the emergency were offered for the Commission's consideration in response to the filing of DEO's transition plan. DEO filed its transition plan on June 18, 2020, to which OCC filed comments on June 29, 2020, which the Commission again considered and rejected. July 15, 2020 Supplemental Finding and Order at ¶¶ 26, 40. OCC fails to offer any arguments on rehearing for the Commission's consideration which have not already been repeatedly considered and denied. Accordingly, OCC's second and third assignments of error should be denied.

**3. FOURTH ASSIGNMENT OF ERROR: ADDITIONAL RECOMMENDATIONS
PROPOSED BY OCC**

{¶ 30} Finally, in its fourth assignment of error, OCC argues that the June 3, 2020 Finding and Order unreasonably failed, pursuant to R.C. 4909.16 and 4903.09, to adopt all of the recommendations developed by the National Consumer Law Center (NCLC) as proposed by OCC to protect consumers. Further, OCC claims that the Commission did not provide the reasons for its decision to reject the NCLC recommendations, which is insufficient to meet the standard in R.C. 4903.09 for explaining decisions. OCC submits that the Commission should establish a uniform set of guidelines applicable to all utilities, consistent with those published by NCLC, to protect customers and provide much needed certainty as to utility services during the state of emergency and for a reasonable time afterwards.

{¶ 31} DEO argues that the Commission did, in fact, consider the NCLC recommendations and found uniform adoption unnecessary, given the actions already being taken by the Commission and each utility. DEO believes OCC raises nothing new to justify the Commission to revisit that determination. Similarly, OPAE notes that, while OCC argues that the June 3, 2020 Finding and Order unreasonably rejected the NCLC recommendations, OCC provides no non-policy justification for its claim. In OPAE's view, OCC simply disagrees with the Commission's decision and rehashes its arguments, which

have already been considered and rejected, in an attempt to achieve a different outcome. OP&E concludes that the rehashing of these arguments does not present a basis for modification of the Commission's decision in the Finding and Order and, therefore, OCC's fourth assignment of error should be denied.

{¶ 32} The Commission notes that, in the *Emergency Case* and DEO's motion for suspension, and as discussed in the June 3, 2020 Finding and Order, consumer protection issues, including the disconnection of service for non-payment, the reconnection of service, the deferral of fees and deposits, extended payment plans, and payment assistance have been thoughtfully addressed. It is not necessary, as OCC asserts, that all utilities under the Commission's jurisdiction follow a uniform set of guidelines as presented by NCLC. While OCC may disagree with the Commission's decision, the application for rehearing fails to present any new arguments which persuade the Commission to reconsider its decision. Accordingly, OCC's request for rehearing should be denied.

III. ORDER

{¶ 33} It is, therefore,

{¶ 34} ORDERED, That the application for rehearing filed by OCC be denied. It is, further,

{¶ 35} ORDERED, That a copy of this Entry on Rehearing be served upon all interested persons and parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

AS/kck

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Case No(s). 20-0600-GA-UNC

Summary: Entry denying the application for rehearing filed by Ohio Consumers' Counsel of the Commission's June 3, 2020 Finding and Order, granting, in part, the motion of The East Ohio Gas Company dba Dominion Energy Ohio for waiver of certain provisions of the Ohio Administrative Code and corresponding provisions of its tariff during the COVID-19 state of emergency. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio