

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE PROPER
PROCEDURES AND PROCESS FOR THE
COMMISSION'S OPERATION AND
PROCEEDINGS DURING THE DECLARED
STATE OF EMERGENCY AND RELATED
MATTERS.

CASE NO. 20-591-AU-UNC

ENTRY ON REHEARING

Entered in the Journal on September 23, 2021

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by the Ohio Consumers' Counsel, Legal Aid Society of Columbus, Ohio Poverty Law Center, and Southeastern Ohio Legal Services on August 27, 2021.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} Pursuant to R.C. 4905.02 and 4905.03, telephone companies, electric light companies (except regional transmission organizations), heating or cooling companies, natural gas companies, pipeline companies, and water-works and sewage disposal system companies (collectively, utility companies) are public utilities and, as such, are subject to the jurisdiction of the Commission. In accordance with R.C. 4928.16 and R.C. 4929.24, providers of competitive retail electric service and competitive retail natural gas service in this state are also subject to the Commission's jurisdiction.

{¶ 3} Pursuant to R.C. 4905.04, the Commission is vested with the power and jurisdiction to regulate railroads and to promulgate and enforce all orders relating to the protection, welfare, and safety of railroad employees and the traveling public. Further, R.C. 4907.02 states that all duties required of a railroad are required and imposed upon water transportation companies and that the Commission has the power of supervision and control of water transportation companies to the same extent as the railroads.

{¶ 4} 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.

{¶ 5} 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 were 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 were 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 was intended to 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/.

{¶ 6} 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 “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.”

{¶ 7} On March 12, 2020, the Commission opened this proceeding and directed all utility companies under its jurisdiction to review their service disconnection policies, practices, and tariff provisions and to promptly seek any necessary approval to suspend otherwise applicable requirements that may impose a service continuity hardship on residential and non-residential customers or create unnecessary COVID-19 risks associated with social contact. Similarly, on March 13, 2020, the Commission directed all utility companies to review their reconnection procedures, while also extending its winter

reconnection order through May 1, 2020. By Entry issued on March 20, 2020, 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. Such activities were suspended for the duration of the emergency, unless otherwise ordered by the Commission.

{¶ 8} Through subsequent orders and entries in this docket, the Commission issued additional emergency directives intended to avoid unnecessary COVID-19 risks associated with social contact. Most recently, on March 24, 2021, the Commission extended until June 30, 2021, certain waivers for registered water transportation companies that are reasonably necessary to enable or accommodate responsible actions to adopt and implement protocols to mitigate COVID-19 risks or respond to recommendations or directives from state or local public health authorities.

{¶ 9} On June 18, 2021, the governor signed Executive Order 2021-08D, which took effect immediately and declared that, based upon the current circumstances surrounding the response to COVID-19, the state of emergency is no longer required.

{¶ 10} By Entry dated July 28, 2021, the Commission determined that the emergency directives issued in this docket, to the extent that they had not already expired, should be lifted. Further, the Commission ordered that all utility companies that had not already been expressly authorized to do so should be permitted to proceed with resuming activities that were previously found to be in conflict with the Executive Order and the March 12, 2020 Order of the Director of the Ohio Department of Health. Finally, the Commission directed that the electronic filing of confidential documents may continue in accordance with the requirements set forth in the April 8, 2020 Entry issued in this case, until otherwise ordered by the Commission.

{¶ 11} 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.

{¶ 12} On August 27, 2021, the Ohio Consumers' Counsel (OCC), Legal Aid Society of Columbus (LASC), Ohio Poverty Law Center (OPLC), and Southeastern Ohio Legal Services (SEOLS) (collectively, Consumer Advocates) filed an application for rehearing of the July 28, 2021 Entry. Memoranda contra the application for rehearing were filed on September 7, 2021, by The Dayton Power and Light Company d/b/a AES Ohio (AES Ohio) and jointly by Columbia Gas of Ohio, Inc., The East Ohio Gas Company d/b/a Dominion Energy Ohio, Duke Energy Ohio, Inc., Vectren Energy Delivery of Ohio, Inc. d/b/a CenterPoint Energy Ohio, and Ohio Power Company d/b/a AEP Ohio (collectively, Joint Companies).

B. Consideration of the Application for Rehearing

{¶ 13} The Consumer Advocates raise two grounds for rehearing. First, the Consumer Advocates contend that the Commission erred by prematurely ending the emergency that it invoked. According to the Consumer Advocates, the Commission should have instead suspended utility disconnections for non-payment until the pandemic ends, or at least throughout the upcoming winter heating season, in light of worsening health and financial circumstances for Ohioans resulting from the delta variant. The Consumer Advocates assert that a moratorium on disconnections would be consistent with the Commission's authority to prevent injury to the business or interests of the public under R.C. 4909.16.

{¶ 14} In their second ground for rehearing, the Consumer Advocates argue that the Commission erred by not acting to assure energy justice for consumers during the ongoing pandemic. More specifically, the Consumer Advocates contend that the Commission should order the gas and electric utilities to report information about the impacts of their disconnections and other utility issues on at-risk and minority communities and the working poor and then address any inequities. The Consumer Advocates maintain that at-

risk and low-income populations have been disproportionately affected by the pandemic, both financially and physically, and will continue to need assistance. The Consumer Advocates note that the gas and electric utilities provide monthly disconnection data to Staff and publicly file annual disconnection reports. Asserting that the reported data is insufficient to enable an understanding of the demographics of Ohioans that face disconnection and the associated negative impacts, the Consumer Advocates recommend, in particular, that the electric and gas utilities be required to report the number of disconnections by zip code.

{¶ 15} In response, the Joint Companies assert that the application for rehearing does not satisfy the basic standards for seeking rehearing of the July 28, 2021 Entry. More specifically, the Joint Companies claim that it is not clear that any of the Consumer Advocates, which have not sought or been granted intervention in this case, are proper parties under R.C. 4903.10 to file an application for rehearing. Aside from this issue, the Joint Companies also contend that the Consumer Advocates have failed to demonstrate that the July 28, 2021 Entry is unlawful or unreasonable, as required by R.C. 4903.10. The Joint Companies emphasize that the application for rehearing makes little mention of the July 28, 2021 Entry, with the only connection to it being that the Consumer Advocates asserted that the Commission should not have ended the emergency at this time. On that point, the Joint Companies note that the declarations of both the initiation and conclusion of the state of emergency in Ohio were made by the governor, not the Commission. Additionally, the Joint Companies argue that the clear purpose of the application for rehearing is to seek future affirmative relief. According to the Joint Companies, there are other proceedings that are better suited for the consideration of the Consumer Advocates' requests, such as the docket for the winter reconnect order for the upcoming winter heating season or rulemakings involving disconnection procedures and payment assistance programs.

{¶ 16} As to the first ground for rehearing, AES Ohio argues that, if the Commission elects to suspend disconnections, it should be done under the same terms and conditions set forth in AES Ohio's own emergency docket, Case No. 20-650-EL-AAM, et al., where AES

Ohio was afforded the ability to defer increased uncollectible expenses associated with the prior suspension of disconnections. In addition, AES Ohio asserts that the Consumer Advocates' second ground for rehearing lacks the specificity required for an application for rehearing under R.C. 4903.10. AES Ohio contends that, while the Consumer Advocates appear to be seeking more detailed disconnection information, the exact nature of their request is unclear. AES Ohio adds that it does not have information regarding the socioeconomic status of its customers, although disconnection information by zip code could be tracked and reported.

{¶ 17} Initially, the Commission finds that the Consumer Advocates' application for rehearing is procedurally deficient. R.C. 4903.10 states that, after any order has been made by the Commission, any "party" who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing with respect to any matters determined in the proceeding. The Consumer Advocates have not sought party status and, therefore, have not been deemed parties to this proceeding. Ohio Adm.Code 4901-1-10 enumerates the persons or entities that are or may be designated parties to a Commission proceeding, including any person granted leave to intervene, and R.C. 4903.221 and Ohio Adm.Code 4901-1-11 establish criteria for intervention. OCC, LASC, OPLC, and SEOLS did not seek and have not been granted intervention in this case. R.C. 4903.10 also provides that an affected person, firm, or corporation may file an application for rehearing with respect to any final order in an uncontested proceeding or by leave of the Commission in any other proceeding. However, this case is not an uncontested proceeding, and OCC, LASC, OPLC, and SEOLS did not seek leave from the Commission to file an application for rehearing. We, therefore, find that the application for rehearing should be denied on procedural grounds.

{¶ 18} Even if the application for rehearing had been properly filed, Consumer Advocates have not shown that the July 28, 2021 Entry is unlawful or unreasonable in any respect. As the Commission noted, the directives in the Executive Order, which required, among other things, state agencies to implement procedures to prevent or alleviate the public health threat, ended on June 18, 2021. Accordingly, we found that, because the

declared state of emergency had expired, the emergency directives issued by the Commission in this docket, to the extent that they had not already ended, should likewise be lifted. July 28, 2021 Entry at ¶ 12. As the Consumer Advocates recognize, the Commission is authorized, pursuant to R.C. 4909.16, to order certain specified emergency relief and, in accordance with that statutory authority, we will continue to monitor the evolving circumstances during the pandemic and take steps, as deemed necessary, to assist and protect utility consumers. The Commission has already directed the gas and electric utilities to implement special disconnection and reconnection procedures for the 2021-2022 winter heating season. *In re the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2021-2022 Winter Heating Season*, Case No. 21-750-GE-UNC, Finding and Order (Sept. 8, 2021). In that Finding and Order, we determined that the designated special procedures are necessary and appropriate to assist residential customers in maintaining their utility service in the coming winter. Finally, we note that the Consumer Advocates' requested relief has already been sought by OCC and OPLC through a joint motion filed in Case No. 21-548-GE-UNC, in which the gas and electric utilities filed their most recent annual reports on service disconnections for non-payment. That motion, along with the pleadings filed in response by Staff and other interested stakeholders, will provide an opportunity for consideration of the relief requested by the Consumer Advocates.

III. ORDER

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That the application for rehearing filed by the Consumer Advocates be denied. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

SJP/kck

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9/23/2021 2:45:20 PM

in

Case No(s). 20-0591-AU-UNC

Summary: Entry on Rehearing, denying the application for rehearing filed by the Ohio Consumers' Counsel, Legal Aid Society of Columbus, Ohio Poverty Law Center, and Southeastern Ohio Legal Services on August 27, 2021. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio