

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission's |) | |
| Consideration of Solutions Concerning |) | Case No. 21-750-GE-UNC |
| the Disconnection of Gas and Electric |) | |
| Service in Winter Emergencies for the |) | |
| 2021-2022 Winter Heating Season. |) | |

**COMPANIES' MEMORANDUM CONTRA
CONSUMER PARTIES' APPLICATION FOR REHEARING**

On September 8, 2021, the Public Utilities Commission of Ohio (the "Commission") set forth reconnection procedures for the 2021-2022 Winter Heating Season¹ ("Winter Reconnect Order" or "the Order").² On October 8, 2021, Advocates for Basic Legal Equality, Inc., The Legal Aid Society of Columbus, Office of The Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Legal Services ("Consumer Parties") filed an Application for Rehearing.

In accordance with Ohio Adm.Code 4901-1-35(B), 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, The Dayton Power and Light Company d/b/a AES Ohio, and Ohio Power Company (collectively, the Companies) file this memorandum contra the Consumer Parties' application for rehearing.

¹ Defined as the period between October 18, 2021 through April 15, 2022.

² Case No. 21-750-GE-UNC, Finding & Order (Sept. 8, 2021).

I. INTRODUCTION

The Consumer Parties' application raises five assignments of error. Each is without support, and without merit. Their alleged "errors" do not demonstrate that the Order is unlawful or unreasonable, a fundamental element of any application for rehearing. Instead, the Consumer Parties attempt to use the Order as yet another avenue to litigate their policy positions concerning the Companies' disconnect and reconnect procedures.³

The Companies sympathize with the difficulties that consumers may face, whether as a result of the COVID-19 Pandemic or any other cause, and they continue to support the important interests served by the various payment-assistance and consumer-relief programs offered under the Commission's supervision, such as the annual Winter Reconnect Order. The Companies also appreciate the Consumer Parties' intention to help customers and, indeed, have offered numerous avenues of relief throughout the pandemic and otherwise. Nevertheless, the Companies do not believe that the specific additional demands requested by the Consumer Parties' application for rehearing are appropriate. For the reasons outlined below, the Commission should deny their application for rehearing.⁴

³ See Case No. 20-591-AU-UNC, Entry (Sept. 23, 2001); Case No. 21-548-GE-UNC, Entry (Oct. 6, 2021).

⁴ See, e.g., Case No. 20-1252-GE-UNC, Entry on Reh'g (Oct. 7, 2020) (denying Consumer Parties' application for rehearing concerning reconnection procedures for the 2020-2021 Winter Heating Season).

II. ARGUMENT

For the Commission to grant rehearing, the applicant must demonstrate that the Order is unreasonable or unlawful. The Consumer Parties have failed to make such a showing here. Rather, the purpose of their application is to make new, unfounded requests for future relief, and also regurgitate failed previous requests. The Order sets forth the Commission's annual special reconnection procedures for the 2021-2022 winter heating season. The Consumer Parties have not established that it was unlawful or unreasonable for the Order not to impose additional restrictions and requirements for disconnections on all electric and gas utilities. Because of this failure, the Consumer Parties' application for rehearing should be denied.

A. The Consumer Parties' first assignment of error fails to demonstrate that the Order is unreasonable or unlawful in not extending the effective dates for the Winter Reconnect Order, and the requested relief is effectively impossible to satisfy.

In their first assignment of error, the Consumer Parties argue that the Commission acted unreasonably in failing to begin the Order earlier and extend further its effective date, suggesting that the Commission did not consider such factors as food insecurity and at-home schooling. While these issues are important, and the Companies each provide bill assistance to help Ohioans in need to alleviate such concerns, they are not specifically tied to the winter months or any special circumstance that arose during the pandemic. Moreover, the Consumer Parties neither demonstrate that the

Commission did not weigh such concerns when deciding on the Order's effective dates, nor explain why the effective dates do not sufficiently address these concerns.⁵

For example, the Consumer Parties provide no support for the argument that the Commission should extend the expiration of the Winter Reconnect Order "no earlier than April 30, 2022." The Consumer Parties offer no information related either to average temperatures during the final two weeks of April compared to the first two weeks, or customers' desires or demand for energy during this extended period.

Further, part of this assignment of error is raised too late for the Commission to even act. The Consumer Parties advocate that the Commission should extend "the effective dates for the Winter Reconnect Order sooner than October 18, 2021." However, despite the fact that the Commission's Order was issued on September 8, 2021, the Consumer Parties' request was made only ten days prior to that effective date. Ohio Adm.Code 4901-1-35(B) provides the opportunity for memoranda contra to be filed within ten days of any application for rehearing. As a result, there is no earlier date that the Order could be made effective. Thus, the Consumer Parties must know that their delay in filing has rendered it practically impossible for the Commission to act upon this request prior to October 18, 2021. If this kind of relief was so urgent, it should not have taken the Consumer Parties 30 days to file the application for rehearing. The

⁵ See, e.g., Case No. 20-1252-GE-UNC, Entry on Reh'g (Oct. 7, 2020) ¶ 15 (finding that the concerns of the Consumer Groups were already factored into the decision concerning the WRO effective date).

Commission would be more than entitled to reject this particular request based solely on its untimeliness.

For these reasons, the Consumer Parties' first assignment of error should be denied.

B. The Consumer Parties' second assignment of error, which has already been addressed by the Commission, fails to demonstrate that the Order is unreasonable or unlawful in not amending PIPP eligibility.

In their second assignment of error, the Consumer Parties request that the Commission suspend, again, reverification and anniversary requirements of the PIPP program that were previously suspended during Ohio's state of emergency. The Commission has already weighed and addressed this issue, on a case-by-case basis, in prior proceedings devoted to the Companies' COVID-19 transition plans. In those cases, the Commission temporarily suspended the PIPP reverification and anniversary requirements, specified and supported dates on when these suspensions were to conclude, and rejected OCC's position that such suspensions should remain in effect essentially indefinitely.⁶ Here, the Consumer Parties have neither demonstrated that the Commission should reimpose these suspensions during the 2021-2022 winter heating

⁶ See, e.g., Case Nos. 20-599-GE-UNC, 20-600-GA-UNC, 20-602-EL-UNC, 20-637-GA-UNC, and 20-649-GA-UNC.

season, nor explained why the protections already afforded under the Winter Reconnect Order do not sufficiently address concerns about disconnections of PIPP customers.

For these reasons, the Commission should reject the second assignment of error.

C. The Consumer Parties' third assignment of error fails to demonstrate that the Order is unreasonable or unlawful in not requiring an earlier effective date for Ohio Adm.Code 4901:1-18-13, and the requested relief is effectively impossible to satisfy.

In their third assignment of error, the Consumer Parties argue that the Order was unreasonable because it did not change the effective date for Ohio Adm.Code 4901:1-18-13, from November 1, 2021, to October 18, 2021. Not unlike part of the Consumer Parties' first assignment of error, this requested relief is untimely and for all intents and purposes impossible to grant. As noted above, the Winter Reconnect Order is already effective as of the date of this filing.

Moreover, any material changes in PIPP eligibility requirements, such as the change to lower the required income-based PIPP installment from six percent to five percent of household income, ordinarily require several time-consuming adjustments to a utility's internal information and billing systems. In recognition of this necessary implementation time, it was reasonable for the Commission to provide sufficient notice to stakeholders of the effective date of the revisions to the Chapter 17 and Chapter 18

rules, after the Commission's entry on rehearing in that rulemaking was issued and the Joint Committee on Agency Rule Review (JCARR) process was complete.⁷

In any event, any issues with the effective date of Ohio Adm.Code 4901:1-18-13 should have been properly raised in that proceeding, not here. Finally, the Consumer Parties fail (again) to show why the Order does not sufficiently address concerns with disconnections of PIPP customers without OCC's requested relief.

For these reasons, the Commission should reject the third assignment of error.

D. The Consumer Parties' fourth assignment of error, already addressed by the Commission several times, fails to demonstrate that the Order is unreasonable or unlawful in not requiring all gas and electric utilities to provide personal notice of disconnection.

In their fourth assignment of error, the Consumer Parties essentially request that the Commission end all previously granted waivers of Ohio Adm.Code 4901:1-18-06(A)(2) (personal notice of disconnection) during the 2021-2022 winter heating season. This collateral attack on prior Commission orders seeks to relitigate policy considerations that the Commission already considered in granting such waivers.⁸

In its recent Entry in Case No. 21-548-GE-UNC, the Commission continued to

⁷ *In re Commission's Review of Ohio Adm.Code Chapters 4901:1-17 and 4901:1-18*, Case No. 19-52-AU-ORD, Entry on Reh'g (Apr. 21, 2021); *see also* Entry (Sept. 23, 2021) (finding that the effective date of the amended rules will be November 1, 2021).

⁸ *See, e.g., In re Ohio Power Co.*, Case No. 13-1938-EL-WVR, *et al.*, Entry (Mar. 18, 2015) at 4-7, Second Entry on Reh'g (Sept. 9, 2015), Finding and Order (Apr. 11, 2018) ¶¶ 16-18, Second Entry on Reh'g (June 28, 2018) ¶¶ 17-19.

permit remote disconnections because namely “the standard by which a residential account is determined to be delinquent, and, therefore, subject to disconnection has not changed in 30 years” and “[a]ll the consumer protections for a customer to avoid disconnection continue to be available, in addition to the payment assistance currently available.”⁹ The Commission should likewise reject the Consumer Parties’ attempt to resurrect this issue.

Moreover, the Consumer Parties do not offer any rationale for why the 2021-2022 winter heating season suddenly changes the dynamics of that decision. In addition, continuing to highlight AEP Ohio’s rates of disconnection does not support their cause, as the Commission already recently decided.¹⁰ They provide no reason as to why the Order is unreasonable or unlawful in failing to require personal notice, during the winter, prior to disconnection, if remote disconnect procedures are available and properly followed. This argument also undermines the Consumer Parties’ concerns related to the spread of COVID-19, since remote disconnection provides safety (and cost savings) to customers, while also allowing for remote reconnection of customers to their utility service quicker during the winter months.

For these reasons, the Commission should reject the fourth assignment of error.

⁹ *In re Annual Report Required by R.C. 4933.123 Regarding Service Disconnections for Nonpayment*, Case No. 21-548-GE-UNC, Entry (Oct. 6, 2021) ¶ 31.

¹⁰ *Id.* ¶29 (noting that “Consumer Groups’ motion fails to assert that AEP Ohio violated any applicable statute or Commission disconnection or credit rule or order; instead, they merely assert that AEP Ohio’s rate of disconnection is higher than any other EDU.”).

E. The Consumer Parties' fifth assignment of error fails to demonstrate that the Order is unreasonable or unlawful in not requiring utilities to report disconnection and reconnection data by zip code, and the requested relief is unlawful.

In their fifth assignment of error, the Consumer Parties purport that the Order is unreasonable because it did not require utilities to report disconnections and reconnections by zip code. This too is offered without support. In the two sentences spent on this allegation that the Commission acted unreasonably, the Consumer Parties merely state that 1) the information is "important for understanding the demographics of Ohioans who face disconnection" and 2) it is important for resource planning.¹¹ The application provides no insight as to how this information furthers those two conclusionary statements.

R.C. 4933.123(B) sets forth the detailed reporting requirements for the disconnection annual report and does not include a requirement that disconnections be reported by zip code. In addition, public utility companies already provide monthly data and detailed annual reporting on disconnections in compliance with this statute's requirements.¹² The Consumer Parties effectively ask the Commission to revise and expand upon these statutory requirements.

¹¹ (Reh'g App. at 8.)

¹² See Case No. 20-1252-GE-UNC, Entry on Reh'g (Oct. 7, 2020) ¶ 19.

Last, the Commission rejected a similar recommendation in Case No. 21-548-GE-UNC. The Commission declined to impose an additional data reporting requirement to provide disconnection data by zip code, citing to a lack of evidence offered by the same Consumer Parties “that any of the energy companies requested to file a report pursuant to R.C. 4933.123 acted in an intentionally discriminatory manner.”¹³ The Consumer Parties again offer insufficient evidence here, and as a result, the Commission should reject this final assignment of error.

III. CONCLUSION

The Consumer Parties have not demonstrated that the Commission’s Finding and Order is unreasonable or unlawful. For these reasons, the Commission should deny their application for rehearing.

Dated: October 18, 2021

Respectfully submitted,

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¹³ *Id.* at 25.

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Summary: Memorandum Companies' Memorandum Contra Consumer Parties' Application for Rehearing electronically filed by Christopher T. Kennedy on behalf of The East Ohio Gas Company d/b/a Dominion Energy Ohio and Vectren Energy Delivery of Ohio, Inc. d/b/a CenterPoint Energy Ohio