**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| The Office of the Ohio Consumers’ Counsel, and  Communities United for Action  Complainants,  v.  Duke Energy Ohio, Inc.  Respondent. | ) ) ) ) )  )  )  )  )  )  )  ) | Case No. 15-1588-GE-CSS |

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**REPLY TO DUKE’S MEMORANDUM CONTRA**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

**AND COMMUNITIES UNITED FOR ACTION**

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**I. INTRODUCTION**

The Office of the Ohio Consumers’ Counsel (“OCC”) and Communities United for Action (“CUFA”) (collectively, “Consumer Parties”) filed a complaint to protect residential customers from Duke Energy Ohio, Inc.’s (“Duke”) unlawful and unreasonable disconnection practices. Concurrently with the Complaint, we filed a Motion asking the Public Utilities Commission of Ohio (“PUCO”) to protect consumers against Duke’s disconnection practices during the upcoming winter heating season.

The Complaint and Motion were prompted by a concerning position advanced several times by Duke that the PUCO’s rules governing winter disconnection of customers do not apply if the arrearages leading to the disconnection were incurred prior to the winter heating season.[[1]](#footnote-2) This position is contrary to the plain language of the PUCO’s winter heating rules and its Winter Reconnect Orders.[[2]](#footnote-3) The Motion was made against a backdrop of Duke disconnecting, for nonpayment, by far the highest percentage of residential customers among Ohio’s electric utilities.

On September 29, 2015, Duke filed a memorandum contra the Motion. Instead of addressing our arguments, Duke focused on the facts of the *Pitzer* Complaint Case.[[3]](#footnote-4) Duke reargued various positions from its opposition to OCC’s intervention in the *Pitzer* Complaint Case, all of which the PUCO rejected in granting OCC’s intervention in that case. And Duke tries to divert the PUCO’s attention away from the real issue in the Motion.

The real issue for PUCO action is to protect residential customers who enter the winter heating season without utility service for heating purposes, as well as to protect those customers who are at risk of disconnection from unpaid bills for service provided prior to the winter heating season. Duke contends that PUCO directives deterring disconnection (and requiring reconnection) of customers in cold weather do not apply if the arrearages leading to the disconnection were incurred before the winter heating season. Duke’s mistaken and illogical approach reaffirms the importance of the Motion and why the PUCO should grant it.[[4]](#footnote-5)

**II. DISCUSSION**

**A. Duke has mischaracterized the relief sought in the Motion for protecting consumers.**

Duke claims that the Consumer Parties ask for a complete halt to disconnection of residential customers’ gas and electric service during the winter. That is not the case.

Our Motion plainly stated, “In light of the alleged violations by Duke, and until the Consumer Parties’ and *Pitzer* Complaints are heard and decided, the PUCO should provide relief for residential natural gas and electric consumers this winter by protecting consumers against disconnection in violation of the Winter Orders.”[[5]](#footnote-6) In other words, Consumer Parties seek to prohibit Duke, while the complaint is pending, from disconnecting customers during the winter heating season for arrearages that arose prior to the heating season. Additionally, Consumer Parties ask that the PUCO require Duke to reconnect customers (consistent with the special provisions of the Winter Reconnect Order) who may enter into the heating season with no heat (due to prior disconnections).

Duke’s characterization of the relief sought in the Consumer Parties’ Motion is flawed. The PUCO should grant the Motion.

**B. Duke’s statements that the PUCO’s winter disconnection procedures protect customers only if the charges leading to disconnection are incurred during the winter heating season reaffirm why the PUCO should grant our Motion.**

In an effort to divert the PUCO’s attention away from the issues in the Consumer Parties’ Complaint, Duke focuses its memorandum contra on the facts of the *Pitzer* Complaint Case. Duke asserts that “the lone support for the single issue underlying the Motion is a complaint case that, as OCC is undeniably aware, concerns discrete events occurring in 2011.”[[6]](#footnote-7) Duke is wrong. The only fact from that case relevant to the present motion is Duke’s admission that it does not apply the procedural protections of the winter disconnect rule when the customer’s delinquent bill includes charges for services received before winter heating period.

Our Motion is prompted by Duke’s own statements, made in various documents in the *Pitzer* Complaint Case and now in this case, that demonstrate Duke’s erroneous view regarding the special protections regarding disconnection and reconnection in the winter. In the *Pitzer* Complaint Case, Duke has repeatedly contended that the special procedures contained in the winter rules apply only if the customer incurred the charges

leading to disconnection during the winter heating season.[[7]](#footnote-8) Duke made a similar statement in its memorandum contra our Motion when it claimed that the winter rules are not implicated in the *Pitzer* Complaint Case because “the partial payment was made three weeks prior to the commencement of the winter heating season….”[[8]](#footnote-9)

Duke fails to address the fact that the Winter Reconnect Order provides otherwise. The Winter Reconnect Order makes no distinction as to when arrearages arise. Rather it focuses on the fact that customers need special protection during the winter heating season, regardless of when the usage occurred.

The language contained in the Winter Reconnect Order bears this out. For instance the PUCO in its Winter Reconnect Order finds a “continuing emergency” under R.C. 4901.16 based on “a number of Ohio citizens [who] will enter the winter season without utility service for heating purposes.”[[9]](#footnote-10) This finding can only make sense if the PUCO’s Winter Reconnect Order applies to customers who are disconnected for arrearages that exist prior to the winter heating season.

Consistent with this application, the PUCO’s Winter Reconnect Order has special reconnection procedures for those who have had their service disconnected. For reconnection, there is no requirement for the disconnection to have occurred during the winter heating season or relate to charges for service during the winter heating season.[[10]](#footnote-11) The PUCO also addresses special reconnection procedures for customers when they make a payment of less than $175 which cures “any default previously owed to the utility in order to maintain service, or requests reconnection of service.”[[11]](#footnote-12) Again there is no requirement in the Winter Reconnect Order, for purposes of reconnecting customers, that the service or disconnection have occurred during the winter season.

Moreover, accepting Duke’s viewpoint would contravene the PUCO’s directive in the Winter Reconnect Order and the PUCO’s instruction to “err on the side of maintaining service when there is a doubt as to the applicability or the interpretation of a rule.”[[12]](#footnote-13) Duke’s belief is also inconsistent with the PUCO’s expectation that, for the 2015-2016 winter heating season, “utility companies under our jurisdiction will assist customers in every way possible to maintain their service for heating purposes.”[[13]](#footnote-14)

Duke’s responses in the *Pitzer* Complaint Case specifically addressed only the winter rules. But the Consumer Parties are concerned that Duke would similarly misapply the Winter Reconnect Order.

And it is irrelevant that the winter rules and the Winter Reconnect Order involve different periods of time, as Duke discusses.[[14]](#footnote-15) The timeframe covered by the Winter Reconnect Order includes the entire period covered by the winter heating rules, with the addition of 12 days in October.

The PUCO should not be swayed by Duke’s arguments against the Motion. Consumers are at risk of losing necessary protections, protections the PUCO has ordered time and time again. The PUCO should protect consumers by granting the Motion.

**C. The consumer protection sought in the Motion would not harm Duke’s other customers.**

Duke claims that the relief sought in the Motion would harm other residential customers because it would prevent Duke from disconnecting any and all residential customers for nonpayment during the pendency of the *Pitzer* and Consumer Parties’ complaints.[[15]](#footnote-16) As discussed above, that is not the relief sought in the Motion and the relief sought is, in fact, narrowly focused.

The Motion does not seek a moratorium. It asks only that the PUCO stay Duke from depriving customers of the winter protections because the default amounts precede the winter. Customers who have arrearages would not be absolved from paying the charges. Instead, by granting the Motion the PUCO would ensure that customers receive all the protections contained in the Winter Reconnect Order, even if the arrearages at issue were incurred prior to the winter heating season.

**III. CONCLUSION**

The PUCO should ensure that Duke’s residential customers do not unlawfully lose the source for heating their homes – their electric and/or natural gas service – during the upcoming winter heating season. The PUCO should order Duke to follow the special procedures in the Winter Reconnect Order even if the customer faces disconnection because of arrearages that occurred before the winter heating season.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoingReply to Duke’s Memorandum Contra was served by electronic mail to the persons listed below, on this 6th day of October 2015.

*/s/ Terry L. Etter*

Terry L. Etter

Assistant Consumers’ Counsel

**SERVICE LIST**

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1. Duke apparently confuses the winter heating season payment plan rule (Ohio Adm. Code 4901:1-18-05(B)(3)), which specifies that usage must occur during the winter heating season to qualify for a payment plan, with the winter disconnect rule (Ohio Adm. Code 4901:1-18-06(B)), which does not specify that the winter disconnection procedures apply only when the usage occurs during the winter heating season. [↑](#footnote-ref-2)
2. The PUCO has annually issued orders to help protect consumers from losing utility service that provides heat to their homes during Ohio’s cold winters. See, e.g., *In the Matter of the Commission’s Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for 2015-2016 Winter Heating Season*, Case No. 15-1460-GE-UNC, Finding and Order (September 2, 2015). [↑](#footnote-ref-3)
3. *Pitzer v. Duke Energy Ohio, Inc*., Case No. 15-298-GE-CSS (“*Pitzer* Complaint Case”), Answer of Duke Energy Ohio, Inc. (February 27, 2015) at 4. The case was formerly known as *Lykins v.* *Duke Energy Ohio, Inc*. The case caption was amended by Entry dated July 10, 2015, at 2. [↑](#footnote-ref-4)
4. If the Consumer Parties do not address a given argument in Duke’s memorandum contra, that should not be construed as the Consumer Parties acquiescing to the argument. [↑](#footnote-ref-5)
5. Motion, Memorandum in Support at 6. See also Motion at 2. [↑](#footnote-ref-6)
6. Duke’s Memorandum Contra at 2. [↑](#footnote-ref-7)
7. *Pitzer* Complaint Case, Answer of Duke Energy Ohio, Inc. at 4 (“Duke Energy Ohio denies that the 10-day notice requirement under O.A.C. 4901:1-18-06(B) applied to the subject disconnection of electric service at the Property because the electric service was disconnected only for the non-payment of utility services incurred during August, September and October 2011, and relevant late fees, and *not* for the nonpayment of charges incurred during the winter heating season”) (emphasis in original); id. at 5 (“Duke Energy Ohio denies that O.A.C. 4901:1-18-06(B)(3) applies to the Company’s disconnection of the electric service at the Property on November 4, 2011, because (a) the Company did not disconnect Estill Easterling’s electric service for any unpaid bills which included usage occurring during November first to April fifteenth of each year,….”); id. at 7 (“the customer’s services were not subject to disconnection for nonpayment of charges incurred during the winter heating season”); id., Duke’s Memorandum Contra OCC’s Motion to Intervene (May 22, 2015) at 4 (“The Duke Energy Ohio bills for the Account attached to the Complaint demonstrate that the Company disconnected the electric service to the Account for the non-payment of electric services provided to the Account from August 3 through September 1, 2011. … Therefore, the allegations *in* the Complaint are contradicted by the utility bills attached *to* the Complaint because the Account was not disconnected for the non-payment of any bills including usage during the winter heating season”) (emphasis in original); id. at 8 (“the Account was not disconnected for unpaid bills including electric charges incurred during the winter heating season”); id., Duke’s Memorandum in Opposition to Complainant Jeffrey Pitzer’s Second Motion to Compel (August 27, 2015) at 4 (“Moreover, the Duke Energy Ohio bills for the Account attached to the Complaint demonstrate that the Company disconnected the electric service to the Account for the non-payment of electric services provided to the Account from August 3 through September 1, 2011. … Therefore, the allegations *in* the Complaint are contradicted by the utility bills attached *to* the Complaint because the Account was not disconnected for the non-payment of any bills including usage during the winter heating season.”) (emphasis in original). [↑](#footnote-ref-8)
8. Duke’s Memorandum Contra at 5. [↑](#footnote-ref-9)
9. Winter Reconnect Order at 3 (emphasis added). [↑](#footnote-ref-10)
10. Id. at 3-4. [↑](#footnote-ref-11)
11. Id. at 8. [↑](#footnote-ref-12)
12. Id. at 2. [↑](#footnote-ref-13)
13. Id. [↑](#footnote-ref-14)
14. See Duke’s Memorandum Contra at 6, n. 10. [↑](#footnote-ref-15)
15. See Duke’s Memorandum Contra at 11. [↑](#footnote-ref-16)