**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Motion of Vectren Energy Delivery of Ohio, Inc. to Suspend Certain Procedures and Process During the Declared State of Emergency and Related Matters. | )  )  )  )  ) | Case No. 20-649-GA-UNC |

**APPLICATION FOR REHEARING OF THE PUCO’S ORDER ON THE TEMPORARY CONSUMER EMERGENCY PLAN OF**

**VECTREN ENERGY DELIVERY OF 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 difficulty this year for many Ohioans. That includes at-risk populations in Dayton where poverty is high at about 32% (pre-pandemic) and in Montgomery County where food insecurity is high at about 17% (pre-pandemic). Recent pandemic-related data show food insecurity *statewide* at 23%,[[1]](#footnote-2) so circumstances no doubt are worsening for Dayton-consumers. According to a study, 503,500 renters in Ohio were unable to pay their rent in June.[[2]](#footnote-3) And given social disparities, black Americans tend to be included in at-risk groups (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 now, among other things.

The PUCO acted, in its June 3, 2020 Finding and Order (“Order”), to protect Vectren’s consumers during this time of the coronavirus emergency. But the PUCO should have done more for utility consumers because they need more from their government and because the coronavirus is again hurting them more.[[3]](#footnote-4) The PUCO should have extended protections to utility consumers for both before and after the declared emergency. The PUCO should also have required Vectren to repurpose funds it uses for non-essential weatherization programs to provide consumers with bill payment assistance they need now. Further, the PUCO should have fully adopted the recommendations of the National Consumer Law Center (“NCLC”), as proposed by OCC, 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 use its emergency powers under R.C. 4909.16 to require Vectren to repurpose low-income weatherization funds (that benefit only about 334 low-income consumers annually) to instead provide utility bill payment assistance (that can benefit about 12,000 low and lower income customers who need money *now*).

ASSIGNMENT OF ERROR NO. 2: The PUCO erred by failing to require reconnections needed by consumers, especially for at-risk populations, that Vectren 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.

ASSIGNMENT OF ERROR NO. 3: 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. 4: 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. 5: 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**

**BY**

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

# 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. That includes at-risk populations in Dayton where poverty is high at about 32% (pre-pandemic) and in Montgomery County where food insecurity is high at about 17% (pre-pandemic). Recent pandemic-related data show food insecurity *statewide* at 23%,[[4]](#footnote-5) so circumstances no doubt are worsening for Dayton-consumers. In the absence of a vaccine, a cure and/or broad immunity, there is no end in sight for the coronavirus pandemic.[[5]](#footnote-6) Indeed, the health crisis is again escalating, with a financial crisis looming for consumers, many of whom have lost their jobs. The PUCO should act to further protect utility customers during these perilous times.

# 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.

# Matters for reconsideration

## **ASSIGNMENT OF ERROR NO. 1:** The PUCO erred by failing to use its emergency powers under R.C. 4909.16 to require Vectren to repurpose low-income weatherization funds (that benefit only about 334 low-income consumers annually) to instead provide utility bill payment assistance (that can benefit about 12,000 low and lower income customers who need money *now*).

The New York Times recently editorialized that the “economic shutdown caused by the coronavirus has left a growing number of American families *desperately short of money*.”[[6]](#footnote-7) There is no question that customers need help right now.

The PUCO acknowledged in its Order that “there is likely to be an increased need for bill payment assistance for Vectren’s customers.”[[7]](#footnote-8) But the PUCO deferred addressing OCC’s solution for more bill payment assistance now. OCC has proposed that Vectren repurpose the energy efficiency funds that it collects from its customers for the remainder of 2020 (as well as the $2.1 million in consumer funding that Vectren proposes to collect in 2021) to provide immediate bill payment assistance to customers. The PUCO deferred the issue to another case (Case 19-2084-GA-UNC) with an unknown timeline for resolution.

Ohioans need financial assistance, and especially so in the Dayton and Montgomery County areas. The challenges of poverty and food insecurity are high, adding more trouble during the health pandemic. The emergency statute (R.C. 4909.16) enables the PUCO to “prevent” this “injury” to the public.

Arizona has implemented repurposed financial assistance for those in need, and the PUCO should do the same for Vectren’s customers. The Arizona Corporation Commission recently approved a plan to repurpose non-essential energy efficiency program funds to provide residential unemployment energy support and bill forgiveness. The approved plan will provide $36 million in refunds to customers during this time when they are experiencing financial hardship and need immediate relief.[[8]](#footnote-9)

Repurposing Vectren’s energy efficiency funds would also assist financially strained customers who would not otherwise qualify for primary assistance programs such as the federal Low-Income Home Energy Assistance Program (“LIHEAP”) and the Percentage of Income Payment Plan (“PIPP”). These programs are generally available only to customers with incomes below 175% of the federal poverty guidelines.

But customers who do not qualify for these programs need bill payment assistance too due to financial hardships as a result of the pandemic.[[9]](#footnote-10) Further, even those customers who do qualify for primary assistance programs may need additional bill payment assistance.

All of these customers could benefit from a repurposed and higher use of the consumer funds that Vectren now uses for its weatherization program. That program, while helpful, is non-essential and benefiting far fewer people than what OCC is proposing for use of the funds paid by Vectren’s consumers. People need their government to help them with financial assistance.

The PUCO should use the emergency statute (R.C. 4909.16) to implement OCC’s proposal. That will benefit about 12,000 consumers with financial assistance instead of only about 334 consumers who receive the current weatherization service.

## **ASSIGNMENT OF ERROR NO. 2:** The PUCO erred by failing to require reconnections needed by consumers, especially for at-risk populations, that Vectren 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 Vectren 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.[[10]](#footnote-11) The PUCO found OCC’s suggested “look-back” period “unnecessary.”[[11]](#footnote-12)

But to disconnected consumers (including at-risk consumers) who are facing the health crisis and financial crisis without Vectren’s service – such as for heating water now and later for winter heating – reconnecting service would be 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).

The PUCO summarily rejected without explanation OCC’s recommendation that Vectren should be required to protect consumers by reconnecting those customers disconnected thirty days prior to March 9, 2020.[[12]](#footnote-13) The PUCO’s failure to explain the reasons for its decision violated R.C. 4903.09. Thus, the PUCO should grant rehearing.

Consumers who had the misfortune to be disconnected by Vectren 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 Vectren to reconnect consumers who were disconnected due to non-payment in the thirty days before the emergency was declared.

## ASSIGNMENT OF ERROR NO. 3: 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 in its comments that the PUCO should continue to suspend disconnections for a reasonable time after the coronavirus emergency.[[13]](#footnote-14) The PUCO rejected OCC’s proposal. It instead directed Vectren 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.”[[14]](#footnote-15)

Vectren filed its Transition Plan on June 30, 2020. Among other things, Vectren proposes to begin disconnecting customers for nonpayment as early as August 15, 2020, and to fully resume pre-COVID-19 disconnection practices by October 1, 2020.[[15]](#footnote-16) But Vectren’s proposals are premature. The fact is that the coronavirus crisis is currently *escalating*.[[16]](#footnote-17) So Vectren is proposing to lessen public protection of utility consumers at the same time that the injury to the public is increasing. Injury to the public is what the emergency statute (R.C. 4909.16) enables the PUCO to “prevent.”

To consumers (including at-risk consumers) who could be disconnected and face the health crisis and financial crisis without Vectren’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 protect consumers now. The PUCO should order Vectren to continue the moratorium against disconnection for nonpayment, for a reasonable time *after* the formal declared emergency ends.

## **ASSIGNMENT OF ERROR NO. 4:** 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 indefinitely continuing the PUCO’s declared emergency. The coronavirus crisis is not ending; it is *escalating*. As has been reported, utility consumers could face a second wave of pain – looming utility shut-offs.[[17]](#footnote-18) 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.[[18]](#footnote-19) This creates additional pressures on customers already facing financial hardships.

Vectren proposed abandoning or discontinuing the consumer protections that the PUCO has implemented.[[19]](#footnote-20) 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 a reasonable time thereafter.

The “emergency statute,” R.C. 4909.16, exists to protect Ohio utility consumers, among others. 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 emergency statute that the Ohio General Assembly enacted in the 20th Century is the perfect fit for the PUCO to protect Ohioans in the 21st Century regarding this once-in-a-lifetime coronavirus health disaster. The PUCO should take more action now because people need more help now.

## ASSIGNMENT OF ERROR NO. 5: 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 made recommendations from a list developed by the National Consumer Law Center (“NCLC”), titled “Coronavirus Crises: How States Can Help Consumers Maintain Essential Utility Services.”[[20]](#footnote-21) The PUCO declined OCC’s recommendation to adopt all of the NCLC’s consumer protection guidelines, finding that consumer protection issues are already being “adequately addressed” through each utility’s emergency plan.[[21]](#footnote-22) In its Order, the PUCO did not provide reasons for its decision (to reject the OCC (NCLC) recommendations), sufficient to meet the standard in R.C. 4903.09 for explaining decisions. The PUCO’s order should be modified.

The PUCO should establish a uniform set of guidelines applicable to all utilities, consistent with those published by the NCLC, to protect customers throughout the state of emergency and for a reasonable time afterwards. Unfortunately, *the PUCO has already approved* Columbia Gas of Ohio’s plan to resume disconnecting customers for non-payment and to impose the strict eligibility requirements for participation in the PIPP program, beginning July 29, 2020.[[22]](#footnote-23) Dominion Energy Ohio has similarly proposed to resume disconnecting customers for nonpayment beginning August 3, 2020.[[23]](#footnote-24)

And as discussed above, Vectren proposes to begin disconnecting customers after August 15, 2020.[[24]](#footnote-25) Vectren intends to resume its usual pre-COVID-19 operations, *even as the coronavirus cases are escalating in Ohio*. Vectren’s, Columbia’s, and Dominion’s plans are all different and they all directly contradict the NCLC’s recommendation that all utilities be prohibited from disconnecting customers due to inability to pay during the crisis.[[25]](#footnote-26) The PUCO should modify and improve Vectren’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…”

# CONCLUSION

For the health and economic security of Vectren’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 Vectren’s consumers and their families.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Angela D. O’Brien*

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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 viaelectric transmission this 6th day of July 2020.

*/s/ Angela D. O’Brien*

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Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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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>. [↑](#footnote-ref-2)
2. *See* <https://www.census.gov/data/tables/2020/demo/hhp/hhp8.html>, Housing Table 1(b), Ohio tab. Also <https://cohhio.org/9561-2/>. [↑](#footnote-ref-3)
3. <https://www.fox19.com/2020/06/25/watch-live-gov-dewine-give-update-states-coronavirus-response/>. [↑](#footnote-ref-4)
4. <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>. [↑](#footnote-ref-5)
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>. [↑](#footnote-ref-6)
6. The New York Times, “Stop Dawdling. People Need Money.” (April 15, 2020) <https://www.nytimes.com/2020/04/15/opinion/coronavirus-stimulus-check-payment.html>. [↑](#footnote-ref-7)
7. Finding and Order at ¶46. [↑](#footnote-ref-8)
8. *See In the Matter of the Arizona Public Service Company’s Application for Approval of COVID-19 Emergency Relief Package for APS Customers Experiencing Financial Hardship Due to COVID-19 Pandemic*,Arizona Corporation Commission Docket No. E-01345A-20-0080, Decision No. 77631, (May 14, 2020). [↑](#footnote-ref-9)
9. *See In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval to Continue Demand Side Management Program for its Residential, Commercial and Industrial Customers*, Case No. 19-2084-GA-UNC, Reply Comments of the Office of the Ohio Consumers’ Counsel (April 3, 2020), at 5-7. [↑](#footnote-ref-10)
10. *See* OCC’s Comments for Additional Consumer Protections Regarding the Temporary Plan of Vectren Energy Delivery of Ohio to Address the Coronavirus Emergency (May 20, 2020) (“OCC Comments”), at 7-8. [↑](#footnote-ref-11)
11. *See* Finding and Order at ¶33. [↑](#footnote-ref-12)
12. *See* Finding and Order at ¶33. [↑](#footnote-ref-13)
13. *See* OCC’s Comments at 6-7. [↑](#footnote-ref-14)
14. Finding and Order at ¶54. [↑](#footnote-ref-15)
15. Vectren Transition Plan (June 30, 2020) at 7-8. [↑](#footnote-ref-16)
16. *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> . [↑](#footnote-ref-17)
17. *See* Energy Wire, “A second wave of pain: Looming utility shutoffs” (May 21, 2020), <https://www.eenews.net/energywire/2020/05/21/stories/1063189771>. [↑](#footnote-ref-18)
18. *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>. [↑](#footnote-ref-19)
19. *See* Vectren Transition Plan (June 30, 2020). [↑](#footnote-ref-20)
20. *See* OCC’s Comments at 17. [↑](#footnote-ref-21)
21. Finding and Order at ¶51. [↑](#footnote-ref-22)
22. *See In the Matter of the Motion of Columbia Gas of Ohio, Inc. to Suspend Certain Procedures and Process During the COVID-19 State of Emergency and Related Matters*, Case No. 20-637-GA-UNC, Supplemental Finding and Order (June 17, 2020), at ¶26. [↑](#footnote-ref-23)
23. *See In the Matter of the Operations of the East Ohio Gas Company d/b/a Dominion Energy Ohio During the Declared State of Emergency and Related Matters*. Case No. 20-600-GA-UNC, COVID-19 Transition Plan of Dominion (June 18, 2020), at 2. [↑](#footnote-ref-24)
24. Vectren Transition Plan, at 7. [↑](#footnote-ref-25)
25. *See* NCLC guidelines attached to OCC’s Comments. [↑](#footnote-ref-26)