**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission’s Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2022-2023 Winter Heating Season. | )  )  )  )  ) | Case No. 22-668-GE-UNC |

**MOTION FOR LEAVE TO FILE A REPLY INSTANTER TO OPAE’S “LIMITED REPLY IN SUPPORT” OF THE CONSUMER MOTION TO SUSPEND ELECTRIC AND NATURAL GAS UTILITY DISCONNECTIONS**

**AND**

**REQUEST FOR EXPEDITED RULING**

**BY**

**ADVOCATES FOR BASIC LEGAL EQUALITY**

**LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

**OHIO POVERTY LAW CENTER**

**PRO SENIORS, INC.**

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| Bruce Weston (0016973)  Ohio Consumers’ Counsel  Angela D. O’Brien (0097579)  Deputy Consumers’ Counsel  Counsel of Record  John Finnigan (0018689)  Assistant Consumers’ Counsel  **Office of the Ohio Consumers' Counsel**  65 East State Street, Suite 700  Columbus, Ohio 43215  Telephone: [O’Brien]: (614) 466-9531  Telephone [Finnigan]: (614) 466-9585  [angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)  [john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  (willing to accept service by e-mail)  David Manor (0100068)  **Advocates for Basic Legal Equality, Inc.**  525 Jefferson Avenue, Suite 300  Toledo, OH 45402  Telephone: (419) 255-0814  [dmanor@ablelaw.org](mailto:dmanor@ablelaw.org)  (willing to accept service by e-mail)  July 11, 2023 | Stephanie Moes (0077136)  Managing Attorney  **Legal Aid Society of Southwest Ohio**  215 East Ninth Street, Suite 500  Cincinnati, OH 45202  Telephone: 513-362-2807  Fax: 513-241-1187  [smoes@lascinti.org](mailto:smoes@lascinti.org)  (willing to accept service by e-mail)  Susan Jagers (0061678)  **Ohio Poverty Law Center**  1108 City Park Ave. Suite 200  Columbus, OH 43206  Telephone: (614) 824-2501  [sjagers@ohiopovertylaw.org](mailto:sjagers@ohiopovertylaw.org)  (willing to accept service by e-mail)  Michael Walters (0068921)  Legal Helpline Managing Attorney  **Pro Seniors, Inc.**  7162 Reading Road, Suite 1150  Cincinnati, Ohio 45237  Telephone: (513) 458-5532  Facsimile: (513) 345-4162  mwalters@proseniors.org  (willing to accept service by e-mail) |

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Consumer Advocates[[1]](#footnote-2) respectfully request leave to file the attached Reply Instanter to Ohio Partners for Affordable Energy’s “Limited Reply in Support” of Consumer Advocates’ June 5, 2023 motion to suspend electric and natural gas utility disconnections. Under the Ohio Administrative Code, OPAE’s “Limited Reply” should be deemed an untimely and improper *memorandum contra*, not a reply.

In fact, OPAE’s “Limited Reply” argues against and contradicts Consumer Advocates’ motion, more than it supports it. Under the Ohio Administrative Code, the Consumer Advocates are entitled to respond to OPAE’s arguments through its Reply Instanter, which is attached. OPAE’s filing as a reply denied Consumer Advocates the opportunity in our reply to address OPAE’s opposition. The PUCO should allow our reply to OPAE or strike OPAE’s purported reply.

Note that OPAE’s membership includes community action agencies. And note that our original Motion is addressing the issue of consumer protection when and if the agencies are not able to timely process consumer applications for low-income financial assistance.

Specifically, in accordance with O.A.C. 4901-1-12(B)(1), OPAE should have filed a memorandum contra on June 20, 2023, the same day AEP, Duke, and AES filed their memoranda contra. By waiting until June 27, 2023 (the day Consumer Advocates filed their reply to the utilities’ memoranda contra), OPAE prevented Consumer Advocates from responding to OPAE’s arguments. That is unfair and prejudicial to consumers on this issue of great consequence to them.

Indeed, the Ohio Association of Community Action Agencies recently reported that the poverty rate has increased from 12.7% to 13.4% and that “Ohio has consistently experienced a higher poverty rate than the nation as a whole since 2015.”[[2]](#footnote-3) And in Ohio, “[m]any households are one major expense, one unexpected job loss, or one crisis moment from experiencing poverty.”[[3]](#footnote-4) The PUCO should act to help Ohioans avoid disconnections.

The PUCO should grant Consumer Advocates’ motion for leave to file the Reply Instanter, which responds to OPAE’s arguments in opposition to the June 5, 2023 motion. The reasons for this motion are more fully explained in the following memorandum in support.

Also, given that the PUCO’s calendar shows a possible ruling on this matter tomorrow, the PUCO should grant this motion on an expedited basis in accordance with O.A.C. 4901-1-12(C). Consumer Advocates cannot certify whether any party objects to this motion or an expedited ruling.

Respectfully submitted,

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| Bruce Weston (0016973)  Ohio Consumers’ Counsel  */s/ Angela D. O’Brien*  Angela D. O’Brien (0097579)  Deputy Consumers’ Counsel  Counsel of Record  John Finnigan (0018689)  Assistant Consumers’ Counsel  **Office of the Ohio Consumers' Counsel**  65 East State Street, Suite 700  Columbus, Ohio 43215  Telephone: [O’Brien]: (614) 466-9531  Telephone [Finnigan]: (614) 466-9585  [angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)  [john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  (willing to accept service by e-mail)  */s/ David Manor*  David Manor (0100068)  **Advocates for Basic Legal Equality, Inc.**  525 Jefferson Avenue, Suite 300  Toledo, OH 45402  Telephone: (419) 255-0814  [dmanor@ablelaw.org](mailto:dmanor@ablelaw.org)  (willing to accept service by e-mail) | */s/ Stephanie Moes*  Stephanie Moes (0077136)  Managing Attorney  **Legal Aid Society of Southwest Ohio**  215 East Ninth Street, Suite 500  Cincinnati, OH 45202  Telephone: 513-362-2807  Fax: 513-241-1187  [smoes@lascinti.org](mailto:smoes@lascinti.org)  (willing to accept service by e-mail)  */s/ Susan Jagers*  Susan Jagers (0061678)  **Ohio Poverty Law Center**  1108 City Park Ave. Suite 200  Columbus, OH 43206  Telephone: (614) 824-2501  [sjagers@ohiopovertylaw.org](mailto:sjagers@ohiopovertylaw.org)  (willing to accept service by e-mail)  */s/ Michael Walters*  Michael Walters (0068921)  Legal Helpline Managing Attorney  **Pro Seniors, Inc.**  7162 Reading Road, Suite 1150  Cincinnati, Ohio 45237  Telephone: (513) 458-5532  Facsimile: (513) 345-4162  mwalters@proseniors.org  (willing to accept service by e-mail) |

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**MEMORANDUM IN SUPPORT**

On June 27, 2023, Ohio Partners for Affordable Energy (“OPAE”) filed an inaptly named “Limited Reply in Support” of Consumer Advocates’ motion. Our motion was to protect consumers from disconnection when and if there are delays in processing their financial assistance applications. OPAE’s Limited Reply is essentially an untimely memorandum contra, which by design or effect wrongly prevents our response. Especially given the gravity of the disconnection issues for consumers and their families, Consumer Advocates should have the opportunity to respond to OPAE’s arguments through the attached Reply Instanter.

OPAE’s “Limited Reply” provides very limited “support” for Consumer Advocates’ motion seeking relief for at-risk Ohioans. Indeed, OPAE claims that Consumer Advocates “have not demonstrated that . . . community action agencies, are failing to meet the needs of Ohioans in a timely manner.”[[4]](#footnote-5) (OPAE’s membership includes community action agencies.) OPAE states that it “does not expect that many, if any, customers, are being disconnected due to delays in processing or in meetings available from their energy assistance provider.”[[5]](#footnote-6) OPAE provides processing data from the Ohio Department of Development (about non-emergency HEAP applications) that purportedly support OPAE’s argument.[[6]](#footnote-7) OPAE further expresses its “significant concerns” about whether Consumer Advocates’ motion is “procedurally proper.”[[7]](#footnote-8)

What is procedurally improper is OPAE’s “Limited Reply in Support.” On one hand, OPAE states that it “would never want an Ohioan who is actively seeking help from an energy assistance provider to suffer because of a delay caused by the provider.”[[8]](#footnote-9) But on the other hand, OPAE opposes Consumer Advocates’ motion by seemingly denying that a problem has existed relating to the timeline for processing of financial aid for at-risk Ohioans.

OPAE’s arguments should have been filed in a memorandum contra within 15 days from Consumer Advocates’ motion (June 20, 2023) as required by O.A.C 4901-1-12(B)(1). But OPAE didn’t do that. Instead, OPAE filed its own “reply,” preventing Consumer Advocates’ ability to respond to OPAE’s arguments.

Consumer Advocates should have an opportunity to respond to OPAE’s arguments. The PUCO should grant this motion for leave to file. And it should consider our attached Reply Instanter. Consumer Advocates request that the PUCO grant this motion on an expedited basis in accordance with O.A.C. 4901-1-12(C). Consumer Advocates cannot certify whether any party objects to this motion for an expedited ruling.

Respectfully submitted,

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| Bruce Weston (0016973)  Ohio Consumers’ Counsel  */s/ Angela D. O’Brien*  Angela D. O’Brien (0097579)  Deputy Consumers’ Counsel  Counsel of Record  John Finnigan (0018689)  Assistant Consumers’ Counsel  **Office of the Ohio Consumers' Counsel**  65 East State Street, Suite 700  Columbus, Ohio 43215  Telephone: [O’Brien]: (614) 466-9531  Telephone [Finnigan]: (614) 466-9585  [angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)  [john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  (willing to accept service by e-mail)  */s/ David Manor*  David Manor (0100068)  **Advocates for Basic Legal Equality, Inc.**  525 Jefferson Avenue, Suite 300  Toledo, OH 45402  Telephone: (419) 255-0814  [dmanor@ablelaw.org](mailto:dmanor@ablelaw.org)  (willing to accept service by e-mail) | */s/ Stephanie Moes*  Stephanie Moes (0077136)  Managing Attorney  **Legal Aid Society of Southwest Ohio**  215 East Ninth Street, Suite 500  Cincinnati, OH 45202  Telephone: 513-362-2807  Fax: 513-241-1187  [smoes@lascinti.org](mailto:smoes@lascinti.org)  (willing to accept service by e-mail)  */s/ Susan Jagers*  Susan Jagers (0061678)  **Ohio Poverty Law Center**  1108 City Park Ave. Suite 200  Columbus, OH 43206  Telephone: (614) 824-2501  [sjagers@ohiopovertylaw.org](mailto:sjagers@ohiopovertylaw.org)  (willing to accept service by e-mail)  */s/ Michael Walters*  Michael Walters (0068921)  Legal Helpline Managing Attorney  **Pro Seniors, Inc.**  7162 Reading Road, Suite 1150  Cincinnati, Ohio 45237  Telephone: (513) 458-5532  Facsimile: (513) 345-4162  mwalters@proseniors.org  (willing to accept service by e-mail) |

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**REPLY TO OPAE’S MISTITLED “LIMITED REPLY IN SUPPORT” OF THE CONSUMER MOTION TO SUSPEND ELECTRIC AND NATURAL GAS UTILITY DISCONNECTIONS**

**BY**

**ADVOCATES FOR BASIC LEGAL EQUALITY**

**LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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Ohio Partners for Affordable Energy (“OPAE”) filed a so-called “Limited Reply in Support” of Consumer Advocates’ motion on June 27, 2023.[[9]](#footnote-10) OPAE’s pleading does not support Consumer Advocates’ motion, nor does it protect at-risk consumers. It is much more a memorandum contra that a claimed reply. The PUCO should allow our reply to OPAE or strike OPAE’s claimed reply.

OPAE claims that it supports Consumer Advocates’ motion to delay disconnections when a consumer cannot “secure a timely appointment with an energy assistance provider.”[[10]](#footnote-11) However, OPAE denies that community action agencies (which are among its members) have experienced delays in processing consumer applications for assistance.[[11]](#footnote-12)

Consumer Advocates, in our motion, quoted from the sworn testimony of a witness at a local public hearing regarding AES Ohio’s electric security plan. Chief Policy Officer Keelie Gustin at the Miami Valley Community Action Partnership testified that there have been delays in processing assistance due to the “limited staff, limited resources [and] overwhelming program requirements.”[[12]](#footnote-13)

Ms. Gustin also testified about the plight of many Ohioans:

[T]the customers we serve are struggling. They are exhausted. They are overwhelmed and have little place to turn.[[13]](#footnote-14) Mothers and fathers worried about keeping their homes, paying their utility bills to cook their family a meal and provide light for their children to complete their homework. Basic, basic human needs are at stake on a daily if not hourly basis at the [community action] agency where I work, and this is happening throughout the state and throughout the nation.[[14]](#footnote-15)

OPAE’s claims do not reconcile with this testimony under oath.[[15]](#footnote-16)

Consumer Advocates’ motion is not meant to be a criticism of the community action agencies that process financial assistance for utility consumers. Indeed, Ms. Gustin testified about all the efforts her agency takes to do everything to help consumers, but they are “working as fast as possible and it’s still not enough.”[[16]](#footnote-17) Now is the time for the PUCO to step in and take action under its emergency authority under R.C. 4909.16 to help “mitigate this chaos” as described by Ms. Gustin.[[17]](#footnote-18)

The Ohio Association of Community Action Agencies recently reported that the poverty rate has increased from 12.7% to 13.4% and that “Ohio has consistently experienced a higher poverty rate than the nation as a whole since 2015.”[[18]](#footnote-19) And in Ohio, “[m]any households are one major expense, one unexpected job loss, or one crisis moment from experiencing poverty.”[[19]](#footnote-20) The PUCO should act to help Ohioans avoid disconnections.

OPAE provided data from the Ohio Department of Development showing the processing percentage rates of HEAP applications within 12 weeks of receipt.[[20]](#footnote-21) According to OPAE, this information demonstrates that community action agencies are timely processing utility financial assistance applications.[[21]](#footnote-22)

However, these processing percentage rates appear to apply only to non-emergency HEAP applications for assistance. Consumers may apply for non-emergency HEAP without a pending disconnection, so the imminent threat of disconnection as the result of a delay in those cases is not as serious. However, even when consumers apply for non-emergency HEAP, they may have to wait up to 12 weeks to receive assistance. During that time, consumers may fall further behind in paying their high utility bills and be disconnected before receiving assistance.

The Ohio Department of Development data provided by OPAE does not address emergency assistance through the Winter or Summer Crisis Programs. As Consumer Advocates explained in our motion, once a consumer has completed an online application for the Winter or Summer Crisis Program, the utilities should be notified and ordered to suspend the consumer’s disconnection for 30 days. The extension would provide a consumer with adequate time to schedule an appointment with the community action agency to finalize the application during times when appointments are in high demand.

Moreover, even if community action agencies do not currently experience delays in processing financial assistance applications, the PUCO can and should take action in advance to have a protection plan in place if delays occur. This approach would help people stay connected to their essential utility services if there are processing delays in the future.

For these reasons, the PUCO should act, through its emergency authority under R.C. 4909.16, to protect consumers. The PUCO should grant Consumer Advocates’ motion to suspend disconnections for at-risk consumers if and when there are delays in the processing of their financial assistance.

Respectfully submitted,

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| Bruce Weston (0016973)  Ohio Consumers’ Counsel  */s/ Angela D. O’Brien*  Angela D. O’Brien (0097579)  Deputy Consumers’ Counsel  Counsel of Record  John Finnigan (0018689)  Assistant Consumers’ Counsel  **Office of the Ohio Consumers' Counsel**  65 East State Street, Suite 700  Columbus, Ohio 43215  Telephone: [O’Brien]: (614) 466-9531  Telephone [Finnigan]: (614) 466-9585  [angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)  [john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  (willing to accept service by e-mail)  */s/ David Manor*  David Manor (0100068)  **Advocates for Basic Legal Equality, Inc.**  525 Jefferson Avenue, Suite 300  Toledo, OH 45402  Telephone: (419) 255-0814  [dmanor@ablelaw.org](mailto:dmanor@ablelaw.org)  (willing to accept service by e-mail) | */s/ Stephanie Moes*  Stephanie Moes (0077136)  Managing Attorney  **Legal Aid Society of Southwest Ohio**  215 East Ninth Street, Suite 500  Cincinnati, OH 45202  Telephone: 513-362-2807  Fax: 513-241-1187  [smoes@lascinti.org](mailto:smoes@lascinti.org)  (willing to accept service by e-mail)  */s/ Susan Jagers*  Susan Jagers (0061678)  **Ohio Poverty Law Center**  1108 City Park Ave. Suite 200  Columbus, OH 43206  Telephone: (614) 824-2501  [sjagers@ohiopovertylaw.org](mailto:sjagers@ohiopovertylaw.org)  (willing to accept service by e-mail)  */s/ Michael Walters*  Michael Walters (0068921)  Legal Helpline Managing Attorney  **Pro Seniors, Inc.**  7162 Reading Road, Suite 1150  Cincinnati, Ohio 45237  Telephone: (513) 458-5532  Facsimile: (513) 345-4162  mwalters@proseniors.org  (willing to accept service by e-mail) |

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion for Leave to File a Reply Instanter to OPAE’s “Limited Reply in Support” of the Consumer Motion to Suspend Electric and Natural Gas Utility Disconnections and Request for Expedited Ruling and Reply to OPAE’s Mistitled “Limited Reply in Support” of the Consumer Motion to Suspend Electric and Natural Gas Utility Disconnections was served on the persons stated below via electronic transmission, this11th day of July 2023.

*/s/ Angela D. O’Brien*

Angela D. O’Brien

Deputy Consumers’ Counsel

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

**SERVICE LIST**

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1. Advocates for Basic Legal Equality is a nonprofit public interest law firm that represents low-income people in 33 Ohio counties. The Legal Aid Society of Southwest Ohio, LLC serves low-income families and individuals in southwest Ohio to resolve serious legal problems, to promote economic and family stability, and to reduce poverty through effective legal assistance. The Office of the Ohio Consumers’ Counsel is the state legal advocate for Ohio residential utility consumers. *See* R.C. Chapter 4911. The Ohio Poverty Law Center works to reduce poverty by protecting and expanding the legal rights of Ohioans living, working, and raising their families in poverty. Pro Seniors, Inc. provides education, advice, advocacy, representation, and justice for seniors in Ohio through our three programs, all provided at no cost to clients. These advocates are collectively referred to as “Consumer Advocates.” [↑](#footnote-ref-2)
2. *See* State of Poverty in Ohio 2023 Report, at 5.<http://oacaa.org/wp-content/uploads/2023/07/State-of-Poverty-2023-web_FINAL-revision.pdf>. [↑](#footnote-ref-3)
3. *Id.* [↑](#footnote-ref-4)
4. OPAE Limited Reply, at 3. [↑](#footnote-ref-5)
5. *Id.* at 4. [↑](#footnote-ref-6)
6. *Id.* at 3, and Attachments A and B. [↑](#footnote-ref-7)
7. *Id.* at 2. [↑](#footnote-ref-8)
8. *Id.* at 3. [↑](#footnote-ref-9)
9. OPAE’s Limited Reply in Support of Motion to Suspend Electric and Natural Gas Utility Disconnections for At-Risk Ohioans (June 27, 2023) (“OPAE Comments”). (Emphasis added.) [↑](#footnote-ref-10)
10. OPAE Comments, at 2. [↑](#footnote-ref-11)
11. *Id.* at 4. [↑](#footnote-ref-12)
12. Testimony of Keelie Gustin, *Re AES Electric Security Plan*, Case Nos. 22-900-EL-SSO, et al., Transcript of Local Public Hearing at 22 (February 2, 2023). [↑](#footnote-ref-13)
13. *Id.* at 20. [↑](#footnote-ref-14)
14. *Id.* at 22. [↑](#footnote-ref-15)
15. OPAE Comments, at 2-3. [↑](#footnote-ref-16)
16. Testimony of Keelie Gustin, *Re AES Electric Security Plan*, Case Nos. 22-900-EL-SSO, et al., Transcript of Local Public Hearing at 20 (February 2, 2023). [↑](#footnote-ref-17)
17. *Id.* [↑](#footnote-ref-18)
18. *See* State of Poverty in Ohio 2023 Report, at 5.<http://oacaa.org/wp-content/uploads/2023/07/State-of-Poverty-2023-web_FINAL-revision.pdf>. [↑](#footnote-ref-19)
19. *Id.* [↑](#footnote-ref-20)
20. OPAE Comments, Attachments A and B. [↑](#footnote-ref-21)
21. OPAE Comments at 3-4. [↑](#footnote-ref-22)