**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 |

**MEMORANDUM CONTRA DUKE’S APPLICATION FOR CLARIFICATION AND REHEARING**

**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.**

# I. INTRODUCTION

In response to the joint motion by five consumer advocates, the PUCO agreed to protect at-risk Ohio families from harm’s way. Per our motion, the PUCO ruled that the utilities are prohibited from disconnecting Ohioans while their applications for bill-payment assistance are being processed.

AEP, Duke and AES asked the PUCO to deny our motion for consumer protection. Now Duke has asked the PUCO to suspend the ruling that would protect Duke’s monopoly customers from Duke. Duke is wrong, very wrong.

R.C. 4909.16 gives the PUCO the authority to act when it “deems it necessary *to prevent injury to the business or interests of the public* or of any public utility of this state *in case of any emergency* to be judged by the commission, . . .” (Emphasis added.) The PUCO used this authority to prevent injury to at-risk consumers in its June 12, 2023 order. The PUCO ordered “effective immediately,” that electric and natural gas utilities “shall not disconnect the service to customers” for 30 days after a consumer completes an application for assistance to help pay utility bills.[[1]](#footnote-2) PUCO Chair Jenifer French stated the Order “will help to ensure that Ohio’s most vulnerable are not disconnected from vital utility services while they seek assistance.”[[2]](#footnote-3)

The PUCO should reject Duke’s arguments and deny its application for rehearing that would harm its own customers and those of other utilities.

# II. ARGUMENT

## A. Duke is wrong to claim that the PUCO’s Order is unlawful. The PUCO’s Order is lawful under its emergency authority in R.C. 4909.16 to prevent injury to the public. Duke’s request to suspend the Order should be rejected because it would deny at-risk Ohioans protection from the grievous injury of disconnection of their essential utility service while their applications for assistance are processed.

Duke repeatedly claims that the PUCO’s Order protecting consumers is “unlawful.”[[3]](#footnote-4) It is not. The PUCO’s Order cites R.C. 4909.16,[[4]](#footnote-5) which provides 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]](#footnote-6) Notably absent from Duke’s claim that the PUCO lacks authority for its consumer protection ruling is any discussion by Duke of the PUCO’s emergency authority in R.C. 4909.16.

The PUCO’s important new consumer protection for at-risk consumers is in response to a plea from Consumer Advocates[[6]](#footnote-7) for a suspension of disconnections when consumers’ applications for energy assistance are delayed, through no fault of their own. Indeed, earlier this year there was important testimony under oath at a PUCO local public hearing regarding AES Ohio’s electric security plan. There, a representative from a social services agency (Miami Valley Community Action Partnership) testified about delays, due to various operational challenges, in processing applications for energy assistance to at-risk families.[[7]](#footnote-8) According to the sworn testimony, assistance agencies are “bobbing above the waterline to provide assistance with a limited staff, limited resources, [and] overwhelming program requirements.”[[8]](#footnote-9) The PUCO’s Order lawfully responds to this problem “to prevent injury to . . . the public.”

Disconnecting consumers from their essential utility services certainly can cause “injury” – or even death – to consumers as they contend with record summer heatwaves and winter cold. Indeed, no one should forget that nearly 12 years ago, two Ohioans did die, apparently from hypothermia in the cold, after being improperly disconnected by Duke.[[9]](#footnote-10) Duke’s claim that the PUCO acted unlawfully and unreasonably in requiring utilities to suspend disconnections *for a mere 30 days* while consumers seek help to pay for their rising utility bills is as heartless as it is wrong.

Moreover, delaying the implementation of the PUCO’s consumer protections in the Order as Duke requests would defeat the purpose of the PUCO’s *emergency* authority set forth in R.C. 4909.16. At-risk consumers who face delays in the processing of their assistance applications need protection from impending utility disconnections immediately, not after the utility has disconnected service and potential harm has occurred.

The PUCO lawfully and reasonably determined that “[i]t does not make sense *in this environment* for customers to be disconnected after they already have sought assistance for these programs and are waiting for their applications to be processed.”[[10]](#footnote-11)

As noted, PUCO Chair Jenifer French stated that the purpose of the Order is “to ensure that Ohio’s most vulnerable are not disconnected from vital utility services while they seek assistance.”[[11]](#footnote-12) Duke’s application for rehearing should be denied.

 Further, Duke’s assignments of error are improper requests for clarification of the Order, not an application for rehearing.[[12]](#footnote-13) Duke specifically states that it “seeks clarification” of the Order.[[13]](#footnote-14) The PUCO has eliminated motions for clarification of PUCO orders.[[14]](#footnote-15) The Supreme Court of Ohio has also determined that an application for rehearing does not comply with R.C. 4903.10 if the application does not specify the grounds on which the PUCO’s order is unlawful or unreasonable.[[15]](#footnote-16) Duke’s claims that the Order is unlawful and unreasonable because it requires clarification should therefore be denied.

## B. Duke’s claims – that it cannot implement the 30-day suspension of disconnection after a consumer has completed an application for assistance – should be denied.

Duke argues that the PUCO’s Order is unlawful and unreasonable because “it requires utilities to implement disconnect suspensions immediately upon completion of an application which they have no access to or control over.”[[16]](#footnote-17) Duke’s argument should be rejected.

As an initial matter, Duke cites no legal authority that is violated by the PUCO’s order. Therefore, Duke’s claim that the Order is unlawful should be rejected. As noted, the Order is lawful under the PUCO’s emergency authority in R.C. 4909.16 (which Duke ignores).

 Also misplaced are Duke’s claims that the Order is unreasonable because utilities have no access to or control over consumers’ assistance applications. Implementation of the suspension of disconnections for 30 days after the completion of an assistance application would not require utility access to or control of the consumer’s application.

The PUCO already requires the suspension of disconnections in certain circumstances. Duke itself acknowledges that the five-day suspension of disconnections required under the PUCO’s 2022 Special Reconnect Order is accomplished when a community action agency sends a fax or e-mail to the utility indicating that a consumer has scheduled an appointment to process the assistance application.[[17]](#footnote-18) Similar to assistance applications, utilities also have no control over when a consumer schedules an appointment with a community action agency. Yet the utilities will still receive notice from the community action agency through fax or e-mail that the applicant’s appointment has been scheduled, which alerts the utility to suspend disconnection for five days.

There should be no reason why the same process cannot be applied to the PUCO’s Order to suspend disconnections for 30 days from the date the application is completed. The difference would be that the community action agency notifies the utility when a consumer’s application is completed rather than when the appointment is scheduled, and the suspension of disconnection would be for 30 days instead of instead of five.

Duke’s claims that the PUCO should grant rehearing, or otherwise delay implementation of the Order, should be rejected.

Duke also claims that the PUCO should grant rehearing because the Order is ambiguous in other respects. Duke states that it is unclear whether, after the 30-day suspension, Duke would be required “re-start the disconnection process with a new notice or proceed with disconnection pursuant to the original suspended notice.”[[18]](#footnote-19) However, under O.A.C. 4901:1-18-06(A), a utility must provide a 14-day advance notice of disconnection. A 14-day notice of disconnection that expires during the 30-day stay period begins would (under O.A.C. 4901:1-18-06(A)) would need to be reissued to the consumer.

Duke further suggests that the PUCO’s Order could allow a consumer to fill out multiple applications “to re-start the 30-day suspension clock.”[[19]](#footnote-20) Community action agencies that process assistance applications are also in a position to prevent the type of situation that Duke describes because the agencies can track consumer applications.

In any event, Duke’s projected issue is not a reason to deny or delay implementation of the Order for at-risk Ohioans who properly complete applications for bill-payment assistance. The PUCO’s 30-day suspension of disconnection will provide breathing room for consumers who desperately may need help paying their high utility bills. Moreover, the Order states that the PUCO may re-visit the disconnection procedures when it issues its Special Reconnection Order for the 2023-2024 winter season.[[20]](#footnote-21) If there are issues with the 30-day suspension of disconnections, they can be addressed by the PUCO there. The PUCO should protect at-risk Ohioans by denying Duke’s application for rehearing.

## C. The PUCO should deny Duke’s request for deferral authority of any costs related to the implementation of the PUCO’s Order.

Duke argues that the Order is unreasonable and unlawful because it would impose additional costs on utilities without addressing how those costs should be recovered.[[21]](#footnote-22) Duke claims that it should be allowed to track and defer incremental expenses for future recovery.[[22]](#footnote-23) The PUCO should deny Duke’s request.

Duke’s claim that there would be additional costs involved for “verifying customer applications that may not result in even an appointment . . .”[[23]](#footnote-24) does not make sense. Duke wouldn’t be “verifying” a consumer application, so there should not be any additional “re-training of personnel.”[[24]](#footnote-25) The community action agency that intakes the application notifies the utility that an application is filed, which would then trigger the disconnection suspension. Duke and other utilities already receive such notifications from community action agencies when consumers make appointments to process their assistance applications. In fact, Duke acknowledges that the assistance application process “is entirely outside the control of the utilities and cannot be attributed to them in any way.”[[25]](#footnote-26) Thus, Duke should not incur any significant costs to implement the PUCO’s Order.

Moreover, Duke has already implemented a customer information system that, according to Duke, “will transform the way that Duke interacts with and serves customers, ensuring a universal, simple and consistent experience across channels.”[[26]](#footnote-27) The cost of Duke’s customer information system is *$900 million* with $79 million proposed to be charged to consumers through Duke’s Power Forward Rider.[[27]](#footnote-28) Duke’s claimed state of the art customer information system (which consumers will pay for through their rates) should have the capabilities to process disconnection suspensions as a result of the Order. Accordingly, the PUCO should deny Duke’s request for deferral authority to enable to it charge more to consumers.

# III. CONCLUSION

 The PUCO’s Order protects at-risk consumers in these difficult times of financial hardship and rising utility rates, in response to the motion we five consumer advocates filed. The PUCO acted lawfully and reasonably to prevent injury to the public as intended in R.C. 4909.16. Duke’s arguments for delaying implementation of the Order and deferral request have little merit (or compassion). The PUCO should deny Duke’s application for rehearing.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Memorandum Contra Duke’s Application for Clarification and Rehearing was served on the persons stated below via electronic transmission, this24th 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:

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1. Finding and Order (July 12, 2023), at ¶ 28. [↑](#footnote-ref-2)
2. PUCO Press Release, *PUCO Adopts additional utility disconnection protections* (July 12, 2023). [↑](#footnote-ref-3)
3. Duke Application for Rehearing, at 2, 3, 6, 8, 9, 10, 11. [↑](#footnote-ref-4)
4. Order at ¶ 3. [↑](#footnote-ref-5)
5. *Id.* (Emphasis added.) [↑](#footnote-ref-6)
6. “Consumer Advocates” include the Office of the Ohio Consumers’ Counsel, Advocates for Basic Legal Equality, the Legal Aid Society of Southwest Ohio, the Ohio Poverty Law Center and Pro Seniors, Inc. [↑](#footnote-ref-7)
7. Testimony of Keelie Gustin, *Re AES Electric Security Plan*, Case Nos. 22-900-EL-SSO, et al., Transcript of Local Public Hearing (February 2, 2023). [↑](#footnote-ref-8)
8. *Id.* at 22. [↑](#footnote-ref-9)
9. *See In the Matter of the Complaint of Jeffrey Pitzer v. Duke Energy Ohio*, Case No. 15-298-GE-CSS, Opinion and Order (August 30, 2017), at ¶¶ 1, 4, 10, 59. [↑](#footnote-ref-10)
10. Order, at ¶ 20. (Emphasis added.) [↑](#footnote-ref-11)
11. PUCO Press Release, *PUCO adopts additional utility disconnection protections* (July 12, 2023). [↑](#footnote-ref-12)
12. Duke Application for Rehearing, at 2. [↑](#footnote-ref-13)
13. *Id.* [↑](#footnote-ref-14)
14. *In the Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, Case No. 06-685-AU-ORD, Finding and Order (December 6, 2006) at ¶ 59. [↑](#footnote-ref-15)
15. *Discount Cellular, Inc., et al. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 374-375, 2007-Ohio-53, 59 (citations omitted). [↑](#footnote-ref-16)
16. Duke Application for Rehearing at 8. [↑](#footnote-ref-17)
17. *Id.* at 7-8. [↑](#footnote-ref-18)
18. Duke Application for Rehearing at 9 (July 13, 2023). [↑](#footnote-ref-19)
19. *Id.* at 10. [↑](#footnote-ref-20)
20. Order at ¶ 26 (July 12, 2023). [↑](#footnote-ref-21)
21. Duke Application for Rehearing at 11. [↑](#footnote-ref-22)
22. *Id.* [↑](#footnote-ref-23)
23. *Id.* [↑](#footnote-ref-24)
24. *Id.* [↑](#footnote-ref-25)
25. *Id.* [↑](#footnote-ref-26)
26. *See In the Matter of the Application of the Duke Energy Ohio, Inc. for Authority to Adjust Its Power Forward Rider*, Case No. 19-1750-EL-UNC, et al., Direct Testimony of Retha Hunsicker (September 24, 2019), at 7. [↑](#footnote-ref-27)
27. *In the Matter of the Application of the Duke Energy Ohio, Inc. for Authority to Adjust Its Power Forward Rider*, Case No. 19-1750-EL-UNC, et al., Direct Testimony of Retha Hunsicker (September 24, 2019), at 21, Direct Testimony of Jay Brown (September 24, 2019), at 3. [↑](#footnote-ref-28)