**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 |

**REPLY TO AEP, DUKE AND AES WHO OPPOSE THE CONSUMER MOTION TO SUSPEND ELECTRIC AND NATURAL GAS UTILITY DISCONNECTIONS FOR AT-RISK OHIOANS IF AND WHEN THERE ARE DELAYS IN THE PROCESSING OF THEIR FINANCIAL ASSISTANCE**

**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.**

R.C. 4909.16 begins with the words “When the public utilities commission 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.) With that authority in mind for the PUCO to help Ohioans, the Consumer Advocates[[1]](#footnote-2) moved the PUCO to suspend electric and natural gas disconnections of utility services for at-risk Ohioans when delays occur in processing their financial assistance for those services.[[2]](#footnote-3)

AEP Ohio, Duke Energy and AES Ohio each filed a memorandum contra opposing the Consumer Advocates’ proposal. FirstEnergy did not file an opposition. The utilities’ objections are without merit and should be overruled to prevent the suffering of at-risk Ohio families when financial assistance is subject to processing delays by social service agencies. The PUCO should implement the Consumer Advocates’ recommendations to protect Ohio families at risk for energy utility disconnections during any delays in the processing of their financial assistance.

AEP, Duke and AES argue that the PUCO should reject the Consumer Advocates’ recommendations. They assert that the Consumer Advocates have made the same recommendations before, the PUCO has rejected these recommendations, and nothing has changed to warrant a different outcome.[[3]](#footnote-4) This is incorrect. While the Consumer Advocates have previously requested suspensions of utility disconnections, the requests were under different circumstances than presented here.

In the present case, the Consumer Advocates established that delays have occurred in enrolling consumers in energy assistance programs. According to testimony under oath this year by Chief Policy Officer (Ms. Keelie Gustin) at the Miami Valley Community Action Partnership, there have been assistance delays due to the “limited staff, limited resources [and] overwhelming program requirements.”[[4]](#footnote-5) Ms. Gustin also testified poignantly 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.[[5]](#footnote-6) 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.[[6]](#footnote-7)

The Consumer Advocates filed their Motion in response to this situation.

As stated above, delays in assistance were explained in the testimony at a public hearing in AES’s Electric Security Plan case earlier this year.[[7]](#footnote-8) The Consumer Advocates request that the PUCO order a suspension of utility disconnections when consumers’ financial assistance is delayed. Past PUCO rulings which addressed objections to utility disconnections under different circumstances do not apply to the present situation. Nor is this Motion an improper attempt by Consumer Advocates to file an application for rehearing of the PUCO’s most recent Special Reconnect Order, as AES contends.[[8]](#footnote-9)

AEP, Duke and AES next heartlessly argue that the PUCO should reject the Consumer Advocates’ recommendations because the PUCO should address these issues in a five-year rule review proceeding.[[9]](#footnote-10) The next rulemaking would seem not due until 2026. The PUCO Staff recently recognized that the PUCO’s rulemaking process is time consuming, when it recommended the PUCO approve a marketer’s request to *waive* consumer protection rules that protect consumers from misleading and deceptive marketing practices.[[10]](#footnote-11) The PUCO should protect at-risk consumers from the suffering of disconnection *now*, instead of waiting for completion of a five-year rule review.

We hope that no Ohioans suffer severe health effects or die from disconnection of essential utility services in cold or hot Ohio weather while waiting for their Ohio government to conduct the rulemaking that AEP, Duke and AES reference. Tragically, it should be recalled that almost 12 years ago two Ohioans did die, apparently from hypothermia in the cold, after being improperly disconnected by Duke.[[11]](#footnote-12)

Of course, the utilities are allowed by the PUCO to routinely file requests to waive a rule without waiting for the next rulemaking. But the utilities don’t want the PUCO to give consumers the reciprocal right.

The PUCO should reject the arguments by AEP, Duke and AES. This problem for Ohio consumers and their families’ well-being presents an emergency situation which the PUCO should address now under its emergency powers.[[12]](#footnote-13)

AEP, Duke Energy and AES have recently implemented, or are in the process of implementing, significant increases to their delivery charges resulting from electric security plan cases and base distribution rate cases. In addition, they recently raised their generation prices by huge amounts, as AEP explains:

During the most recent auctions, held in November 2022 and March 2023, the cost of procuring generation supply increased significantly and AEP Ohio is required to pass these costs along to customers. Global demand, global supply chain issues, economic uncertainty, and the continued war in Ukraine have had an impact on the cost to produce electricity. The results of these two auctions are blended to create the new rate. *Due to these rising costs, a typical residential customer using 1,000 kilowatt-hours of energy each month can expect their total bill to increase about 28% from today's typical bill of about $155 to about $198.* These rates will be in effect until May 2024.[[13]](#footnote-14)

The PUCO should act now to suspend electric and natural gas utility disconnections of at-risk consumers when delays occur in processing their applications for financial assistance. Again, the situation is too dire to make at-risk Ohioans wait for a five-year rule review, as the utilities recommend.

Further, AEP and AES urge the PUCO to reject the Consumer Advocates’ recommendations because this could increase the amount of utility uncollectible expense and, they allege, disrupt the PIPP program.[[14]](#footnote-15) But the PIPP program exists to help Ohioans in need. The imperative here is protecting the health and welfare of at-risk Ohio families who are confronted by delays in obtaining their energy financial assistance, through no fault of their own.

Finally, AEP and AES argue that the PUCO should reject the Consumer Advocates’ recommendations because this would interfere with the Department of Development’s jurisdiction over the PIPP program.[[15]](#footnote-16) AEP and AES would distract their regulators with a squabble about inter-agency jurisdiction while at-risk Ohioans suffer. There is no interference with ODOD’s jurisdiction. Indeed, ODOD could have filed a memorandum contra (which it didn’t) if it is concerned about its jurisdiction. Hopefully, ODOD would support action to protect Ohio consumers as proposed in our motion. The utilities’ argument is meritless.

Clearly, the PUCO has jurisdiction under R.C. 4909.16 to take emergency action needed to mitigate the impact of higher utility charges. R.C. 4909.16 begins with the words “When the public utilities commission 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, . . .” So, the legislature gave the PUCO authority to “prevent injury” to the public when the PUCO judges there to be an emergency. The PUCO should use its power now to protect Ohioans.

The mere fact that the Department of Development handles the day-to-day administration of the PIPP program does not divest the PUCO of its emergency powers under R.C. 4909.16. The PUCO is the agency with authority over electric and natural gas disconnections by utilities. The PUCO should use its authority *now*.

For the foregoing reasons, the PUCO should grant the Consumer Advocates’ Motion. The PUCO should protect Ohio families at risk for disconnections due to administrative delays in processing energy financial assistance.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply to AEP, Duke and AES Who Oppose the Consumer Motion to Suspend Electric and Natural Gas Utility Disconnections for At-Risk Ohioans if and When There Are Delays in the Processing of Their Financial Assistance was served on the persons listed below via electronic transmission, this 27th day of June 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. Advocates for Basic Legal Equality, Legal Aid Society of Southwest Ohio, LLC, Office of the Ohio Consumers’ Counsel, Ohio Poverty Law Center, and Pro Seniors, Inc. [↑](#footnote-ref-2)
2. The types of assistance that may have been delayed for consumers include: the Home Energy Assistance Program (“HEAP”), Winter Crisis Program, Percentage of Income Payment Plan Plus (“PIPP Plus”), and the Summer Crisis Program. [↑](#footnote-ref-3)
3. AEP Ohio Memorandum Contra at 1-2 (June 20, 2023); Duke Energy Memorandum Contra at 3-5 (June 20, 2023); AES Ohio Memorandum Contra at 4 (June 20, 2023). [↑](#footnote-ref-4)
4. 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-5)
5. *Id.* at 20. [↑](#footnote-ref-6)
6. *Id.* at 22. [↑](#footnote-ref-7)
7. *Id.* [↑](#footnote-ref-8)
8. AES Memorandum Contra (June 20, 2023), at 3. [↑](#footnote-ref-9)
9. AEP Memorandum Contra at 2-4 (June 20, 2023); Duke Memorandum Contra at 5-7 (June 20, 2023); AES Memorandum Contra at 3-4 (June 20, 2023). [↑](#footnote-ref-10)
10. *See In the Matter of the Application of Santanna Natural Gas Corporation d/b/a Santanna Energy Services for Waivers of Certain Provisions of Ohio Administrative Code Chapters 4901:1-21 and 4901:1-29, to Authorize Electronic Enrollment and Third-Party Verification by Digital Confirmation*, Case No. 23-171-GE-WVR, PUCO Staff Comments (June 8, 2023) at 4-5. [↑](#footnote-ref-11)
11. *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-12)
12. R.C. 4909.16. [↑](#footnote-ref-13)
13. AEP Ohio web page, *Rising Electricity Generation Supply Costs Impacting Many Customers,* available at: <https://www.aepohio.com/company/about/rates/rising-fuel-costs/> (emphasis added). [↑](#footnote-ref-14)
14. AEP Ohio Memorandum Contra at 4-6 (June 20, 2023); AES Ohio Memorandum Contra at 4 (June 20, 2023). [↑](#footnote-ref-15)
15. AEP Ohio Memorandum Contra at 6-8 (June 20, 2023); AES Ohio Memorandum Contra at 5 (June 20, 2023). [↑](#footnote-ref-16)