

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**MEMORANDUM CONTRA MOTION TO PROTECT DUKE'S CONSUMERS  
AGAINST WRONGFUL DISCONNECTION DURING THE WINTER HEATING  
SEASON BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND  
COMMUNITIES UNITED FOR ACTION**

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Comes now Duke Energy Ohio, Inc. (Duke Energy Ohio or Company), by and through counsel, and for its memoranda contra the Motion to Protect Duke's Consumers Against Wrongful Disconnection During the Winter Heating Season (Motion) filed by the Office of the Ohio Consumers' Counsel (OCC) and Communities United for Action (CUFA) (collectively referred to as the Movants), hereby states as follows.

**I. INTRODUCTION**

Without legitimate justification and instead based upon unsubstantiated and incorrect conclusions, the Movants have asked the Public Utilities Commission of Ohio (Commission) to order Duke Energy Ohio to suspend *every* residential disconnection for nonpayment during the upcoming winter heating season. The Movants claim, without any attempt at substantiation, that the adverse consequences to Duke Energy Ohio of such an extreme moratorium would be

“minimal.”<sup>1</sup> The Movants also demand that the Commission rush to judgment, ignoring the interests of the hundreds of thousands of customers who would be thrust into the position of assuming the financial burden created by this drastic and misplaced request. For the reasons set forth herein, Duke Energy Ohio respectfully requests that the Commission deny the Motion.

**II. THE MOVANTS HAVE FAILED TO DEMONSTRATE ANY PLAUSIBLE BASIS ON WHICH THE COMMISSION COULD REASONABLY FIND AN EMERGENCY TO EXIST.**

**A. The Movants’ attempt to conjure up a dire situation worthy of emergency protection by relying upon a pending complaint must be rejected.**

The sole basis for the Movants’ request for immediate and extreme measures is their contention that Duke Energy Ohio has violated the Commission’s Winter Reconnection Orders.<sup>2</sup> Using “allegations” as if synonymous with “Commission determinations,” the Movants argue, as if already found to be true, that Duke Energy Ohio has been violating, and will continue to violate, the Winter Reconnect Orders. And the lone support for the single issue underlying the Motion is a complaint case that, as the OCC is undeniably aware, concerns discrete events occurring in 2011.<sup>3</sup> Intending to create hysteria, the OCC opportunistically takes great liberties with the unfortunate deaths of two individuals, boldly proclaiming here that those deaths were caused by the actions of Duke Energy Ohio.<sup>4</sup> And compounding the effects of this false statement, the Movants further declare that harm will befall Duke Energy Ohio’s customers

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<sup>1</sup> Memorandum in Support of Motion, at pg. 7.

<sup>2</sup> See, e.g., Memorandum in Support of Motion, at pp. 3-5 (discussion of the history of the Winter Reconnection Orders, with reference to the most recent order issued in Case No. 15-1460-GE-UNC, as well as analogous prior years’ orders) and pg. 5 (reference to alleged misapplication of the Winter Reconnect Orders and their special procedures).

<sup>3</sup> *Jeffrey Pitzer v. Duke Energy Ohio*, Case No. 15-298-GE-CSS (The Complaint was originally filed by Gail Lykins but Jeffrey Pitzer was substituted as the named complainant and thus, to enable consistent naming convention, the matter is referred to herein as the *Pitzer* complaint.). Over the Company’s objection, the OCC was granted intervention on July 10, 2015.

<sup>4</sup> See, e.g., Memorandum in Support of Motion, at pg. 2.

unless the Company is immediately barred from any disconnections.<sup>5</sup> The Movants are wrong. As the procedural posture of the *Pitzer* case confirms, the Movants' proclivity for attacking Duke Energy Ohio's disconnection procedures must be characterized for what it is: an unnecessary drain on Commission resources, a disregard for the interests of all of Duke Energy Ohio's customers, and a baseless attack on the Company.

It is telling that the Movants devote scant attention to any facts on which their Motion might be predicated. Although the Movants make conclusory statements about actions by the Company, they provide no basis on which to make such assertions and fail even to reference the actual circumstances of the pending complaint case that have driven the filing of this proceeding. Not surprisingly, if the Movants had offered a comprehensive and accurate recitation of those facts, the Movants' conclusory statements would have been revealed for the falsehoods that they are.

As the filings in the *Pitzer* case confirm, the complainant there is alleging that Duke Energy Ohio did not comply with the disconnection requirements applicable during the winter heating season, as those requirements are set forth in O.A.C. Chapter 4901:1-18.<sup>6</sup> Specifically, the complainant in that case argues that a partial payment made prior to the commencement of the 2011-2012 winter heating season precluded a disconnection for nonpayment of admitted arrears.<sup>7</sup> Significantly, however, the *Pitzer* case relates to a specific time period – August to November of 2011 – and a specific set of facts to be examined under the law. Despite the admittedly limited nature of the *Pitzer* case, the OCC sought to intervene because it thought the

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<sup>5</sup> See, e.g., Motion, at unnumbered pg. 2; Memorandum in Support of Motion, at pp. 8-9.

<sup>6</sup> *Id.*, Complaint, at pg. 2 (February 10, 2015). Contrary to the Movants' propensity to use terms interchangeably, the "winter heating season," as defined in O.A.C. 4901:1-18-01, is not the same as the "winter heating season" to which the Winter Reconnect Orders are applicable. Rather, the Commission has, repeatedly, defined the specific period of time during which its special procedures are to be in force.

<sup>7</sup> *Id.*

case involved “a *possible* violation...in the PUCO’s emergency orders regarding the special reconnect procedures for the winter heating season.”<sup>8</sup> But the complaint included no such violation. Intentionally carving certain phrases and clauses out of Duke Energy Ohio’s memorandum contra the OCC’s request to intervene in the *Pitzer* case, the Movants here wrongly contend that the Company has admitted that it does not have to offer a one-third payment plan under Winter Reconnect Orders.<sup>9</sup> But putting the Company’s statements back into context and considering the correct law, as must be done, it is readily apparent that the Movants cannot articulate a viable demand for urgent relief.

As the basis for their Motion, the Movants contend that, in the *Pitzer* case, Duke Energy Ohio asserted “that it does not have to offer the additional one-third payment plan (required under in (*sic*) the PUCO’s Winter Rules and Winter Reconnect Order) if the usage that caused the arrearage occurred prior to the winter heating season.”<sup>10</sup> From here, the Movants implore the Commission to conclude that Duke Energy Ohio is violating the Winter Reconnect Order. But the *Pitzer* case is not about the Winter Reconnect Order; the allegations in that case all revolve around rules found in the Ohio Administrative Code. As such, the proscriptions of the Winter Reconnect Order as existing relative to the 2011-2012 winter heating season are irrelevant to the *Pitzer* case, as discussed by the Company in its filings in that case. Specifically, the Company has observed that that case concerns certain undisputed facts: (a) the account at issue had past due charges;<sup>11</sup> (b) the past due charges concerned utility service provided to the subject property prior to the commencement of the winter heating season;<sup>12</sup> and (c) no Duke Energy Ohio customer or consumer of its services contacted the Company to inquire into options to avoid

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<sup>8</sup> *Id.*, OCC Memorandum in Support of Motion to Intervene, at pg. 2 (May 14, 2015)(emphasis added).

<sup>9</sup> Memorandum in Support of Motion, at pg. 2.

<sup>10</sup> *Id.*, at pg. 2.

<sup>11</sup> *Pitzer* Complaint, at pg. 2.

<sup>12</sup> *Id.*, at pg. 2.



disconnection, whether before or after the commencement of the winter heating season.<sup>13</sup> Despite the lack of nexus between the facts, as alleged in the *Pitzer* complaint, and the Commission regulations concerning the winter heating season, as set forth in O.A.C. 4901:1-18-06, Duke Energy Ohio addressed the OCC's contrived claims in responding to its request for intervention. As the Company succinctly stated, "[o]n its face, the additional one-third payment plan available to a customer under O.A.C. 4901:1-18-05(B)(3) is only 'for bills that include any usage occurring from November first to April fifteenth of each year.'"<sup>14</sup> This restatement of the rules, which have not been implicated in the *Pitzer* case because the partial payment was made almost three weeks prior to the commencement of the winter heating season, is not an admission that Duke Energy Ohio is violating the Winter Reconnection Order. And it certainly is not a sufficient justification for putting some customers in a more dire situation by compounding the level of their arrearages or exposing all other customers to significantly increased uncollectible expenses.

The Movants have also predicated their Motion on confusion. They have blurred the distinction between the defined winter heating season and regulations applicable thereto, on the one hand, and the Winter Reconnect Order, on the other. They have offered inarticulate reasons for their request. But just as with hysteria, confusion has no place in Commission proceedings.

Duke Energy Ohio focuses here on the most egregious of the Movants' misstatements, as those alone are sufficient to refute the allegations.

The Movants argue that Duke Energy Ohio has admitted to violating the Commission's Winter Reconnect Order. Through rather vague language, the Movants claim that "Duke admits

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<sup>13</sup> *Id.* at pg. 6.

<sup>14</sup> *Id.* at pg. 4.

to the above disconnection practice in the *Pitzer* Complaint... .”<sup>15</sup> But Movants fail to articulate the allegedly incorrect practice that warrants immediate and exceptional relief. Presumably, it is the purported failure to proactively offer an additional one-third payment plan under the Winter Reconnect Order to individuals who were not customers of Duke Energy Ohio.<sup>16</sup> But the Winter Reconnect Order applicable to the 2011-2012 winter heating season includes no such mandate.

The Movants further contend that “Duke overlooks *this* part of the Winter Reconnect Order when processing disconnections... .”<sup>17</sup> And, again, the Movants fail to define what “this” is. Presumably, it is the requirement to provide assistance to customers. But if that presumption is correct, the Movants’ reliance on the *Pitzer* complaint is misplaced. Indeed, it is not alleged in the *Pitzer* proceeding that Duke Energy Ohio failed to provide aid to a customer who sought the assistance referenced in respect of any Winter Reconnect Order.<sup>18</sup>

**B. The Commission can only exercise that authority granted it by statute and, where the requested relief does not conform to such statutory grant, it must be denied.**

It is axiomatic that the Commission is a creature of statute. Its authority is no more and no less than that conferred to it by statute.<sup>19</sup> And as the Supreme Court has consistently found, “[t]he public utilities commission is in no sense a court. It has no power to judicially ascertain and determine legal rights and liabilities[.]”<sup>20</sup>

The ability of the Commission to impose emergency relief is codified at R.C. 4909.16, which provides, in part:

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<sup>15</sup> Memorandum in Support of Motion, at pg. 5. Emphasis added.

<sup>16</sup> *Id.* at pg. 2 (the Movants erroneously argue that the one-third payment plan must be *offered* under the Winter Reconnect Order).

<sup>17</sup> *Id.* Emphasis added.

<sup>18</sup> *Pitzer*, Complaint, at pg. 2 (February 10, 2015).

<sup>19</sup> *The Incorporated Village of New Bremen v. The Public Utilities Commission*, (1921), 103 Ohio St. 23, 30 132 N.E. 162 (“This court has repeatedly declared that the powers of the commission are conferred by statute and that it has no other authority than that thus vested in it.”)(Internal citations omitted.)

<sup>20</sup> *Id.* at 30-31. See also, *State, ex rel. Ohio Power Co. v. Harnishfeger*, (1980), 64 Ohio St. 2d 9, 10, 412 N.E.2d 395; *Hull v. Columbia Gas of Ohio*, 110 Ohio St. 3d 96, 2006-Ohio-3666, ¶ 31.

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 an emergency *to be judged by the commission*, it may temporarily alter, amend, or, with the consent of the public utility concerned, suspend any existing rates, schedule or order relating to or affecting any public utility or part of any public utility in this state.<sup>21</sup>

The Movants give short shrift to the sole basis on which the Motion is predicated; that is, the circumstances under which the Commission may rightfully order emergency relief. But giving this statutory basis the due consideration it deserves, it is undeniable that the Movants cannot demonstrate a justifiable need for promptly exposing the majority of Duke Energy Ohio's customers to significantly increased financial responsibility for obligations they did not incur and from which they did not directly benefit.<sup>22</sup>

As R.C. 4909.16 unambiguously provides, the Commission must deem necessary the implementation of temporary measures to counteract an emergency, as judged by the Commission to exist. That is, before any interim measures may be imposed, the Commission must first find that an emergency actually exists. It is well accepted that the Commission's determination must include specific findings of fact supported by the record and the reasons for its decision.<sup>23</sup> Indeed, as the Supreme Court has observed:

It is essential to the integrity of the administrative process, to judicial review of administrative action, and to the assurance of comprehensive of agency orders by parties and the public, that the reasons prompting such orders be explicitly stated.<sup>24</sup>

With regard to requests under R.C. 4909.16, the obligation to articulate the specific factual support for a decision is reflected in the Commission's pervasive practice of

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<sup>21</sup> R.C. 4909.16. Emphasis added.

<sup>22</sup> Given the Company's approved uncollectible expense riders, the effects of the Movants' request, if granted, would promptly be felt by Duke Energy Ohio customers.

<sup>23</sup> R.C. 4903.09. See also, *In re Application of East Ohio Gas Co. for Approval of Emergency Curtailment Plan v. Public Utilities Commission of Ohio*, 45 Ohio St. 2d 86, 91, 341 N.E.2d 585 (1976)(Court recalling the emphasis consistently given to the Commission's obligations under R.C. 4903.09).

<sup>24</sup> *In re Application of East Ohio Gas Co. for Approval of Emergency Curtailment Plan v. Public Utilities Commission of Ohio*, 45 Ohio St. 2d at 91 (1976).

implementing extraordinary relief in the form of temporary emergency measures only where the need for same has clearly been found to exist.<sup>25</sup>

Here, without *any* record support, the Movants attempt to convince the Commission that a legitimate emergency exists. In doing so, the Movants employ a tactic rooted in trickery, blurring the distinction between the winter heating season and the Winter Reconnect Order, selectively pulling phrases and clauses out of context, and misquoting allegations to fit their arguments. And on this faulty premise, they ask the Commission to hastily rule without giving any regard to due process, whether that of the Company or those of its hundreds of thousands of customers who will undoubtedly be prejudiced should the Movants prevail on their Motion.

As described above, there are no facts that allow the Commission to reasonably and fairly conclude that an emergency exists and that such an emergency can only be prevented through the imposition of temporary, drastic measures. It would be premature and contrary to established precedent for the Commission to find here the existence of an emergency that demands its prompt intervention.

**C. The Commission has historically balanced the needs of low-income customers with the interests of other customers when examining solutions for winter disconnections.**

In reviewing the history of the Winter Reconnect Orders, the Movants pay little attention to the early decisions of the Commission. But those decisions are critical to appreciating the deliberative nature of the rulings that form the very basis for the Movants' contentions here.

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<sup>25</sup> *Consumers' Counsel v. Public Utilities Commission of Ohio*, 55 Ohio St. 2d 30, 33, 377 N.E.2d 796 (1978) (OCC's request for extraordinary administrative relief denied as then-known facts insufficient to warrant same); *City of Amherst v. Public Utilities Commission of Ohio*, 46 Ohio St. 2d 256, 257, 348 N.E.2d 330 (1976) ("record amply supported the decision of the commission in exercising emergency powers"); *In re Application of East Ohio Gas Co. for Approval of Emergency Curtailment Plan v. Public Utilities Commission of Ohio*, 45 Ohio St. 2d at 91 (1976) (Commission's order included findings of fact that an emergency existed and failure to state reason for adopting a particular allocation scheme was a mere technical defect given the abundant record support for the decision); *Inland Steel Development Corp. v. Public Utilities Commission of Ohio*, 49 Ohio St. 2d 284, 289, 361 N.E.2d 240 (1977) (testimony supported Commission's determination that an emergency existed due to a deficiency of supply).



On November 24, 1982, the Commission did find an emergency to exist – an emergency affecting low-income customers who had been disconnected for nonpayment. As the Commission observed, these customers had been confronted with an economic recession, an increase in the cost of utility service, and a decrease in governmental assistance.<sup>26</sup> The Commission responded with both interim remedies and an investigation into long-term solutions. As to the former, the Commission ordered utilities to reconnect services for customers who had been disconnected for nonpayment, provided those customers paid the lesser of one-third of their outstanding balance or \$200.<sup>27</sup> Longer-term solutions included the adoption of the percentage of income payment plan (PIPP). Notably, in adopting PIPP, the Commission explained that “[it is] ever mindful of protecting the vast majority of customers of utilities under [its] jurisdiction who pay their bills in full from responsibility for greatly increasing uncollectibles.”<sup>28</sup> And consistent with its recognition of different customer behaviors, the Commission also addressed the rules for partial payment and, specifically, instances where a customer defaults on a payment plan. Notably, the Commission refused to afford similar treatment for customers who tried to meet their obligations and those who, instead, chose to ignore their responsibility to pay for utility service. As to the latter, the Commission concluded that, in deciding not to pursue payment options, these customers proceeded at their own peril.<sup>29</sup>

From the onset, the Commission has given consideration to *all* interests, whether those of financially challenged customers, customers who honor their payment obligations, or the utility.<sup>30</sup> And this consideration continued through the Commission’s investigation into long-

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<sup>26</sup> *In the Matter of the Investigation into Long-Term Solutions Concerning Disconnection of Gas and Electric Service in Winter Emergencies*, Case No. 83-303-GE-COI, Opinion and Order, at pg. 1 (November 23, 1983)(discussion on history of proceedings)

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at pg. 14.

<sup>29</sup> *Id.* at pp. 18-19.

<sup>30</sup> *Id.* at pg. 18 (Commission recognized right of the utility to be paid for services rendered).

term solutions. When the Commission found an emergency to exist in January 2001 because the state had experienced one of the coldest winters on record and natural gas costs were escalating, it again prohibited disconnections, provided customers entered into a payment plan or enrolled in PIPP.<sup>31</sup>

In more recent years, the Commission has not departed from its intentional consideration of all customers and the utility serving them when assessing disconnections during the winter and considering its annual Winter Reconnection Orders. Indeed, under the current Winter Reconnect Order, before a non-PIPP customer may avoid disconnection for nonpayment or have service restored during the winter heating season, the customer must undertake specific commitments.<sup>32</sup> Specifically, such a customer must:

- Pay the lesser of (i) their arrearages or the amount needed to cure any default on a payment plan or (ii) \$175.
- Pay the utility's approved reconnection charge.
- To the extent fraudulent conduct resulted in the disconnection, payment for the services obtained via fraud plus any defaulted amount not to exceed \$175 and a reconnection charge.
- Apply for the Home Energy Assistance Program.
- Enroll in an appropriate payment plan.<sup>33</sup>

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<sup>31</sup> *Id.*, Entry at pg. 1 (January 26, 2001).

<sup>32</sup> The winter heating season is defined, under O.A.C. 4901:1-18-01(V) as the time period from November first through April fifteenth. The Winter Reconnect Orders have not been adopted as a Commission regulation.

<sup>33</sup> 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 2011-2012 Winter Heating Season*, Case No. 11-4913-GE-UNC, Finding and Order, at pp. 3-6 (September 14, 2011); *In the Matter of the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for 2012-2013 Winter Heating Season*, Case No. 12-2382-GE-UNC, Finding and Order, at pp. 4-7 (September 5, 2012); *In the Matter of the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for 2013-2014 Winter Heating Season*, Case No. 13-1889-GE-UNC, Finding and Order, at pp. 3-6 (September 11, 2013); *In the Matter of the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for 2014-2015 Winter Heating Season*, Case No. 14-1371-GE-UNC, Finding and Order, at pp. 3-6 (September 10, 2014); and, *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, at pp. 3-7 (September 2, 2015).

As the Commission's consistent rulings confirm, there is an expectation under the Winter Reconnection Order that utilities, such as Duke Energy Ohio, will maintain service to less fortunate customers during the winter heating season, provided those customers satisfy the identified minimum commitments. Customers are thus expected to engage their utility company and seek assistance. These mutual obligations as between the customer receiving the utility service and the utility company are understandable as they necessarily lessen the burden ultimately borne by all other customers.

The Movants seek to upset this balance and, without any proper justification, expose hundreds of thousands of the Company's customers to increased financial obligations solely because the Movants imagine Duke Energy Ohio to be misinterpreting the Winter Reconnect Order. Supposition, however, cannot support a request for extraordinary relief.

**D. The Movants improperly seek to bolster their unsubstantiated arguments on the premise that a utility company cannot disconnect a customer for nonpayment where the amount at issue is the subject of a formal complaint.**

Hoping to manufacture a basis for their extreme request, the Movants argue that the circumstances here are akin to those in which a utility cannot disconnect a customer during the pendency of complaint, regardless of when the arrearage was incurred.<sup>34</sup> This statement is irrelevant. To be clear, neither here nor in the complaint proceeding referenced by the Movants has any customer disputed any amount contained on a Duke Energy Ohio utility bill. No customer is contending that they are subject to disconnection for nonpayment of an amount that they dispute. No individual customer or group of customers has allegedly experienced any loss of service or has been threatened with same. And it is a gross misinterpretation of Commission regulation to suggest that the Movants can rightfully prevent Duke Energy Ohio from disconnecting *each and every residential customer* who is otherwise subject to disconnection for

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<sup>34</sup> Memorandum in Support of Motion, at 6.

nonpayment simply because the Movants hope to convince the Commission that Duke Energy Ohio is doing something nefarious.

**E. The timing of the Movants' request reflects an attempt, on their part, to force the Commission to make an impetuous decision.**

Oddly – and intentionally – the Movants demand a Commission decision on their Motion in short order. Specifically, they have asked the Commission for an order before October 19, 2015, when the 2015-2016 Winter Reconnect Order goes into effect.<sup>35</sup> And, in doing so, the Movants have necessarily invited the Commission to issue a hasty ruling, without a realistic opportunity for the Commission itself to judge whether a legitimate emergency exists to afford due process. The timing of the Movants' request reflects an ulterior motive as, when it was filed, the pleadings on which it is based were four months old but the complaint on which it is based just twenty-one days from hearing. Had the Movants truly believed that Duke Energy Ohio's customers were in grave danger and that Commission intervention was necessary, they surely would have brought this matter to the Commission's attention much earlier than they did. After all, the OCC is undeniably aware of the Commission's heavy docket and its preference for deliberation. Thus, it is apparent that the Movants' motivations are really intended to advance the OCC's pending litigation position by attempting to create an improper public perception of Duke Energy Ohio. Fortunately, these tactics will be ignored by the Commission as it has consistently demonstrated a practice of deliberately considering requests for emergency relief and has thoughtfully balanced the interests of all customers, including those who have been ignored in this Motion by their statutory representative.

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<sup>35</sup> Memorandum in Support of Motion, at pg. 9.



### III. CONCLUSION

The Movants' request reflects a manipulative attempt to manufacture a concern that there is a life-threatening situation where one simply does not exist. It reflects a disregard of both the facts and the law and urges the Commission to rule impulsively. There is no emergency situation. Rather, dire circumstances would only materialize should the Commission grant the Motion and temporarily suspend *all* residential disconnections for nonpayment, regardless of when the arrearage accrued. When such a suspension would be lifted, the total arrearages would have been increased substantially. And the consequence of this? More customers would be eligible for disconnection. Fewer customers could satisfy their arrearage or honor payment plans. More customers would be asked to absorb the increased uncollectible expenses. And less assistance would come from social service agencies, which have limited funds available. These are not circumstances to be welcomed and, as such, the Motion must be denied.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



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### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum Contra was served on the following parties this 29 day of September 2015 by regular U.S. Mail, overnight delivery, or electronic delivery.

  
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