

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for a Waiver.)

Case No. 16-1096-EL-WVR

**DUKE ENERGY OHIO, INC.'S REPLY TO THE OBJECTIONS OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and hereby responds to the Office of the Ohio Consumers' Counsel's (OCC) Objections. Said Objections were not authorized by the Public Utilities Commission of Ohio (Commission) and, based upon that procedural flaw alone, should be stricken from the record. However, to further support their rejection, Duke Energy Ohio provides a substantive response to the Objections here. In doing so, the Company responds to the factual inaccuracies the OCC continues to perpetuate and its ongoing, seeming indifference to all residential customers in the Duke Energy Ohio service territory.

Respectfully submitted,



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RESPONSE TO OBJECTIONS

I. Introduction

The OCC wrongly contends that, through its waiver request, Duke Energy Ohio seeks to avoid personal contact, on the day of disconnection, with those residential customers who have past due accounts, have received prior, required Commission notices, and have not initiated any effort to avoid disconnection for nonpayment. As an initial matter, Duke Energy Ohio clarifies that personal contact is not mandatory. Such contact must be attempted but it is undeniable that a utility company may disconnect service in the absence of actual personal contact. And as discussed more fully below, the Company does not intend to eliminate contact with residential customers on the day on which their electric service is scheduled to be disconnected for nonpayment. Rather, Duke Energy Ohio is seeking to implement, prior to the day of disconnection, an additional form of notification and, on the day of disconnection, other forms of attempted contact to enable more immediate customer response and potentially the avoidance of disconnection.

The OCC further wrongly posits that Duke Energy Ohio's waiver request will adversely affect nearly every Duke Energy Ohio residential customer and result in a dramatic increase in disconnections for nonpayment. To be clear, the scope of this filing concerns just one of the Commission's rules directed at residential disconnections for nonpayment. And for this rule to be relevant, a customer must not have (i) paid their utility bill; (ii) reacted to the disconnection notice under O.A.C. 4901:1-18-06(A)(5), and (iii) relative to the winter heating season, reacted to the final notice under O.A.C. 4901:1-18-06(B). Most Duke Energy Ohio customers do not fall within this classification and, as such, while the OCC may be hypothetically correct given the number of residential customers with certified AMI meters, its allegations simply do not reflect fact. Further, as this waiver extends only to those residential electric customers who are actually

scheduled for disconnection for nonpayment, having not undertaken any efforts to avoid same, there cannot be a dramatic increase in the number of customers with whom the alternate forms of attempted contact would be made. Stated another way, through this waiver, the Company is not increasing the number of customers for whom disconnections of electric service are scheduled – it is merely looking to alter the way in which a form of required contact is attempted.

Finally, as an initial matter, the OCC contends that the waiver, if granted, would deprive customers of a final means of avoiding disconnection. But to accept this unsubstantiated contention, one must accept that all residential customers affirmatively respond to the premises visit, acknowledge the presence of the utility company employee, and engage in conversation (*i.e.*, personal contact) with that individual to resolve and prevent the disconnection. Again, however, the OCC's arguments suffer from fabrication. It is a rare occurrence for residential customers, on the scheduled day of disconnection, to engage with the Company employee dispatched to the property. In fact, Company data confirms that customer contact is made in approximately 7 percent of the premises visits. Thus, to submit, as the OCC does here, that customers would be deprived of a final opportunity to avoid disconnection is patently wrong, particularly in light of the fact that Duke Energy Ohio proposes to initiate more forms of communication with its customers. Duke Energy Ohio addresses the specific Objections below.

II. Discussion

A. The AEP Ohio Pilot Does Not Bar Approval of the Company's Application.

The OCC argues that Duke Energy Ohio's request should be rejected because an AEP Ohio pilot is currently underway. In short, the OCC maintains that, until the Commission confirms that the lack of a physical visit by an AEP Ohio employee to certain AEP Ohio

residential properties is without negative affect, no other utility company in the state can pursue a waiver of O.A.C. 4901:1-18-06(A)(2). The OCC's Objection is flawed in many respects.

It is illogical to conclude that pilot programs are, at any given time, limited in their availability to just one utility company in the state and its customers. If a pilot program benefits the public interest, the proponent of that program and its customers should not be deprived of such benefits simply because another utility company was previously implemented a similar pilot. The OCC's contentions to the contrary are designed to produce discriminatory results and, for that reason alone, should be rejected.

Further, in hoping to block the Company's request, the OCC ignores the material differences between the two pilot programs that would enable a more comprehensive review and evaluation by Commission Staff. Significantly, under the AEP Ohio pilot, contact with residential customers is attempted via telephone, forty-eight hours prior to the anticipated disconnection date.¹ In this proceeding, Duke Energy Ohio is proposing to initiate contact via text and/or telephone on the morning of the scheduled disconnection for nonpayment. And it proposes to include in the text message a link that would readily enable payment. These different communication methods, collected under the two pilots, would generate even more information for Staff as it assesses the effectiveness, efficiency, and overall merit of an actual premises visit. Further, enabling parallel pilots that necessarily include different geographical areas and populations will also facilitate a more complete evaluation by Staff. That the OCC wants to preclude a comprehensive assessment of those methods best designed to assist residential customers in avoiding disconnection and to mitigate overall charge-off amounts is concerning

¹ *In the Matter of the Application of Ohio Power Company for a Limited Waiver of Rule 4901:1-18-06(a)(2), Ohio Administrative Code*, Case No. 13-1938-EL-WVR, Request for Waiver of Ohio Power Company, at pg. 3 (September 13, 2013).

given the OCC's statutory duty to all residential customers in Duke Energy Ohio's service territory and the state. The Objections are unfounded and should be rejected.

B. Duke Energy Ohio's Waiver Request Has a Clearly Defined Scope.

The OCC wrongly argues that the Company's request does not include appropriate consumer protections. It maintains that, unlike AEP Ohio's waiver, Duke Energy Ohio's proposal is vague. The OCC's contentions are misplaced.

Similar to the AEP Ohio pilot, Duke Energy Ohio proposes to exempt certain residential customers from the scope of its pilot. Although the OCC attempts to portray Duke Energy Ohio's exemption as vague, it undeniably understood the exemption as it was able to criticize it as too narrowly tailored. As discussed here, the Company's proposed exemption adheres to existing Commission regulation and the controlling law pursuant to which such regulations were implemented.

In enacting R.C. 4933.122, the General Assembly deferred to the Commission to establish procedures for the disconnection of utility service for certain reasons.² In doing so, the General Assembly directed the Commission to adopt procedures addressing, among others, circumstances in which termination of service would be dangerous to health or make the operation of medically necessary devices impossible or impractical.³ It is these procedures in which the Commission is to include reasonable provisions for the elderly and the handicapped.⁴ As the General Assembly further directed, to the extent the Commission's procedures would require that medical conditions be validated, such validation could be provided by individuals

² The General Assembly excluded disconnections for safety reasons and at the customer's request, neither situation which is relevant to the OCC's Objections.

³ R.C. 4933.122(C).

⁴ Id.

who received appropriate medical training (e.g., physician's assistant, certified nurse practitioner).

In response to R.C. 4933.122, the Commission implemented O.A.C. Chapter 4901:1-18, regarding the termination of residential service. Insofar as it concerns terminations of service that would be especially dangerous to health, the Commission implemented O.A.C. 4901:1-18-06(C), which authorizes the use of medical certificates. Specifically and consistent with the controlling law, the Commission has instructed utility companies, including Duke Energy Ohio, that:

In accordance with the certification requirements of this rule, the utility company shall not disconnect residential service for nonpayment for either of the following situations:

- (a) If the disconnection of service would be especially dangerous to the health of any consumer who is a permanent resident of the premises.
- (b) When the disconnection of service would make operation of necessary medical or life-supporting equipment impossible or impractical.⁵

The medical certification process is not threatened by the Company's Application. On the contrary, Duke Energy Ohio customers will continue to have access to medical certifications and will continue to be informed by the Company as to the process for using same. Indeed, under the proposed pilot program and should the waiver be granted, Duke Energy Ohio will send final notice to customers year-round, providing yet another source of information regarding measures customers may initiate to avoid disconnection for nonpayment, including medical certificates. The Company's request adheres to R.C. 4933.122 and the Commission's regulations concerning disconnection of service for nonpayment.

The request, however, goes further and exempts from the pilot's scope those customers who have affirmatively established status as a critical customer under O.A.C. 4901:1-10, which the Company refers to as critical care customers. These customers, pursuant to Commission

⁵ O.A.C. 4901:1-18-06(C)(1)(emphasis added).

regulation, regularly demonstrate that they or a consumer in their home rely upon medical or life-support devices for which an interruption in service would be life-threatening. Additionally, as proposed by the Company, upon obtaining knowledge that electric service was disconnected to a residence occupied by a customer or consumer who would qualify as a critical care customer, Duke Energy Ohio would restore service to that residence as soon as practicable and also forward to the customer information on the critical care program, including enrollment therein. The OCC quibbles with the term, “as soon as practicable,” claiming that it is undefined. The phrase is self-explanatory – the Company will restore service as quickly as it can after it learns of the situation. But if further definitional context is needed by the OCC, the Company observes that remote reconnections can occur within an hour. The waiver request, therefore, appropriately includes measures to protect customers or consumers in their homes who have serious medical conditions.

The OCC claims that these protections fall short, inferring that the Company adopt AEP Ohio’s designation of vulnerable customers. But AEP Ohio’s designation is not a function of controlling Commission regulation. It is an internal policy and the OCC fails to identify the basis on which one utility company can be forced to assume the internal policies of another or the role of a medically trained professional. The OCC further glosses over the critical element of AEP Ohio’s internal policy – it is dependent upon a customer affirmatively verifying their circumstances. The company does not speculate as to the mental or physical well-being of any customer. And Duke Energy Ohio similarly should not be asked to speculate as to any customer’s aptitude as doing so is a dangerous precedent that neither the General Assembly nor the Commission has embraced.⁶ Duke Energy Ohio’s proposal, which aligns with Commission

⁶ See, e.g., R.C. 4933.122(C) and O.A.C. 4901:1-18-06(C), both which require validation from a properly trained medical professional.

regulation, similarly incorporates protections for those customers who have affirmatively identified their reliance on electrically powered medical devices and the proposed exemption, therefore, is in the public interest.

C. Commission Approval is Needed Before the Pilot Can Be Initiated.

Duke Energy Ohio is proposing a three-year pilot program and, intending only to propose the pilot's duration, it identified prospective dates between which the pilot could be conducted. But Duke Energy Ohio appreciates the need for Commission approval before implementing the pilot and thus can succinctly correct any misgivings on the part of the OCC by confirming that appreciation.

The OCC also complains that Duke Energy Ohio does not intend to terminate the pilot three years hence. But the OCC fails to accept the rationale behind the Company's proposal. Duke Energy Ohio has recommended that the notification procedures under the pilot not terminate while Staff is evaluating the data collected thereunder. The simple reason for this recommendation includes the desire to mitigate customer confusion and reduce the influx of customer inquiries (to the Commission, the Company, and even the OCC) likely to result from the Company resuming premises visits during the evaluation process and then re-instituting the alternate procedures detailed in the Application. Certainly, mitigation measures such as notifying customers could be implemented during the evaluation process, but such measures would carry a cost that is avoidable if the waiver continues. Further, if the waiver persists yet customers had been informed, in the interim, that premises visits would resume, customers would similarly need to be informed that the Company was, once again, changing its process. Given the anticipated short period of time during which Staff would evaluate the effectiveness of the pilot, it is both unreasonable and highly inefficient to initiate, and inform customers of, repeated process

changes. The OCC correctly identifies this rationale but do not refute it, thus accepting the fact that increasing customer confusion and forcing changes in customer expectations are not desired outcomes.

Casually placed in a footnote and not addressed to any meaningful degree in its Objections, the OCC submits that the data collected under the pilot should be filed of record and shared with intervenors. Duke Energy Ohio fails to see the benefit of this contention. Staff will be given the data and Staff will evaluate the effectiveness of the pilot for purposes of ascertaining whether the waiver should continue and, if so, under what circumstances. Staff, therefore, should determine what data it finds relevant to its evaluation and how to most appropriately disseminate data, if at all. Further, the OCC's contention does not address the potential for slight modification to the categories of data collected under the pilot. Duke Energy Ohio has proposed what it believes to be meaningful data. But until such time as the Commission confirms the scope of the data to be collected in connection with the waiver, the Company should not be forced to commit to the public filing of information that potentially intrudes upon customers' confidential or otherwise protected information. The OCC has failed to articulate a rational basis for its proposal, choosing instead to subordinate its worth to a footnote.

D. The Waiver Will Not Increase the Number of Residential Disconnections for Nonpayment.

The OCC continues to misinterpret information in order to portray Duke Energy Ohio has having a perverse propensity to disconnect its residential customers for nonpayment. But the OCC's assessment is wrong. Again, Duke Energy Ohio's waiver request concerns one element of the Commission's regulations applicable to residential disconnections for nonpayment. It concerns only the requirement of a premises visit on the scheduled day of disconnection. The Company is not seeking a waiver of the definition of a delinquent account under O.A.C. 4901:1-

18-04 in order to broaden the scope of that definition. The Company is not seeking a waiver of the requirement to provide notice of disconnection under O.A.C. 4901:1-18-06(A). The Company is not, relevant to the winter heating season, seeking a waiver under O.A.C. 4901:1-18-06(B) to send a final notice. On the contrary, Duke Energy Ohio is proposing here to send that final notice to residential electric customers year-round. Thus, Duke Energy Ohio will continue to adhere to these requirements, as well as those pertaining to medical certifications and as set forth in subsequent winter reconnect orders. Significantly, therefore, the number of customers to whom the waiver request would apply is not enlarged by any conduct on the part of Duke Energy Ohio. As much as the OCC attempts to confuse the issues, the Company's request is quite clear. It is seeking a waiver of the requirement to conduct a premises visit on the scheduled day of disconnection for the purpose of attempting to make contact with its customer or another adult at the premises. And, in lieu of that one physical act, Duke Energy Ohio is proposing to initiate contact via text and telephone messages. The OCC speculates that customers who would otherwise be present at the premises and answer the door would not read a text, answer their phone, or listen to a recorded message. But they offer nothing of substance to support this conjecture and it must be rejected.

The OCC's continued reference to disconnection statistics has grown old. Indeed, the OCC used a similar comparison when arguing against approval of the Company's electric security plan (ESP) in 2014.⁷ Yet even then, the OCC admitted that laws and rules support disconnecting customers for nonpayment.⁸ And, even then, the OCC admitted that uncollectible debt is recovered from all customers, not just the customer who refused to pay their bill.⁹ Just as

⁷ *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer*, Case No. 14-841-EL-SSO, *et al.*, Opinion and Order, at pgs. 78-79 (April 2, 2015).

⁸ *Id.* Tr. XII, at pg. 3569.

⁹ *Id.*

the statistics offered by the OCC did not support rejecting the Company's ESP, they do not now support the contention that the number of residential customers eligible for disconnect will increase if the waiver is approved.

E. Duke Energy Ohio's Waiver Request Properly Protects Customers.

Duke Energy Ohio's proposal in this proceeding includes proper protections for customers, consistent with existing regulation. As previously stated, the number of notifications will increase under the Company's proposed pilot in that the final notice required only in respect of the winter heating season will be sent throughout the year. Thus, whereas residential customers now receive two notices during certain times of the year, they will be receiving three. These notices – the disconnection notice and the final notice – conform to existing regulation and provide the customer with relevant information for avoiding disconnection, such as information on payment plans, medical certificates, and sources of aid. And, in place of the premises visit, Duke Energy Ohio proposes to initiate a text message or telephone call, the former which will include a link that allows the customer to efficiently make payment to avoid the disconnection. Importantly, Company contact information will be provided in both the text and telephone messages to assist in expediting contact by the customer.

Further, as discussed above, the Company's proposed exemption for critical care customers properly protects those customers or consumers residing with them who suffer from grave medical conditions. This exemption, therefore, furthers the public interest and supports approval of the waiver.

Finally, and although ignored the OCC, the waiver has been designed to further two important objectives: (i) reducing the number of residential electric disconnections for nonpayment; and (ii) reducing the number of charged-off amounts recovered via the Company's

approved bad debt riders. The OCC fails to acknowledge this purpose and instead focuses on its misplaced and worn-out criticism of the Company.

F. Customers Have Been Receiving the Benefit of Savings Associated with the Lack of a Premises Visit.

The OCC contends that Duke Energy Ohio stands to gain a windfall through this waiver request, as it will avoid incurring costs that are currently in base rates. But in advancing this argument, the OCC ignores the prior settlement to which it was a party.

There is no dispute regarding the cost saving benefit resulting from remote disconnections. The benefit was included by the Company in its justification for approval of SmartGrid deployment and recognized by MetaVu in its mid-term audit. The OCC agreed to the deployment of SmartGrid when it was initially proposed and further agreed to the incorporation of this savings into the dollars that are flowed back to customers in each rider proceeding. This admitted benefit was allocated an associated savings and, in Case No. 10-2326-GE-RDR, Duke Energy Ohio agreed to provide customers with all of the savings identified by the Commission's auditor.¹⁰ The OCC was a party to the stipulation in which this commitment was made and it cannot now legitimately claim that Duke Energy Ohio failed to pass the related savings on to customers. Quite simply, customers have been receiving this benefit although Duke Energy Ohio has continued to incur the costs associated with premises visits.

The OCC further insists upon a revision in the Company's reconnection fees before the waiver could be approved. The OCC, however, overlooks critical facts. Duke Energy Ohio does not charge an after-hours fee for remotely reconnecting a residential electric meter. Thus, while its approved tariff authorizes it to so do, Duke Energy Ohio has declined to assess the higher

¹⁰ Id. at pg. 6.

charge. There is no need for the Commission to reset any fees prior to approving the Company's waiver request.

G. The Elimination of Employee and Public Safety Issues is a Real Benefit.

The OCC objects to the Company's desire to reduce or eliminate safety issues on the theory that the Company failed to provide statistics in its Application. As Duke Energy Ohio acknowledged in its Application, it is not typical for its employees to confront potentially dangerous situations when conducting premises visits. But they do happen. Indeed, in 2015 alone, Duke Energy Ohio service technicians who had been dispatched to residential properties for purposes of disconnections for nonpayment were threatened, verbally abused, and forced to leave because of hostile situations involving dogs. Means of safe ingress have been physically blocked by individuals at the premises and Duke Energy Ohio has received a mandate not to ever return to certain properties. Duke Energy Ohio simply should not have to secure police escorts in order to complete Commission-authorized disconnections of service. By eliminating the day-of-disconnection premises visit, Duke Energy Ohio will be able to advance both employee and public safety – that the OCC needs detailed metrics before acknowledging the benefit of doing so is absurd.

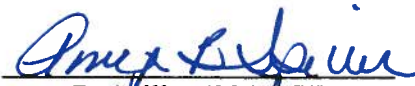
III. Conclusion

The Company's waiver request is in the public interest and should be approved. Under the waiver, Duke Energy Ohio will substitute one form of attempted contact on the scheduled day of disconnection with others forms of communication. In addition, under the waiver, Duke Energy Ohio will send a final notice to residential customers year-round, thereby providing more notifications than required under existing regulation. The waiver request incorporates appropriate customer protections and further eliminates situations that can pose a danger to Company

employees and the general public. The waiver will not increase the residential electric customers eligible for disconnection for nonpayment. It is a waiver that is narrow in scope and properly aligns the interests of the Company and all of its residential customers. It should be approved. Duke Energy Ohio therefore respectfully requests that the Commission reject the OCC's Objections.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 29th day of June, 2016, to the following parties.



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Summary: Reply Duke Energy Ohio, Inc.'s Reply to the Objections of The Office of the Ohio Consumers' Counsel electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Watts, Elizabeth H.