

**16-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

REPLY COMMENTS OF THE CITY OF CINCINNATI

I. Introduction

The City of Cincinnati (the “City”) submits its Reply Comments to the Initial Comments filed by Staff on August 19, 2016. In its Initial Comments, Staff recommended the Commission approve Duke Energy Ohio, Inc.’s (“Duke”) application for a two-year pilot whereby Duke would be exempt from Ohio Adm.Code 4901:1-18-06(A)(2), which requires Ohio utility providers to provide personal notification or posting of notice on the premises prior to disconnecting utility services for nonpayment. Staff believes that Duke’s proposal to substitute in-person notification under Ohio Adm.Code 4901:1-18-06(A)(2) with text message and/or automated phone call notification constitutes “reasonable notice.”¹ Further, Staff found Duke’s alternative methods of notification were “collectively appropriate for review on a two-year pilot basis as a replacement for personal notice on the day of disconnection.”²

The Commission should reject Staff’s recommendations and deny Duke’s application because 1) Duke has not demonstrated how its proposed alternative notifications provide adequate notice or sufficient methods of payment to avoid disconnection; 2) Duke’s application fails to offer *any* consumer protections against potential fraud and exploitation of electronic or

¹ Staff’s Initial Comments, p. 4.

² *Id.*

automated payment methods; and 3) initiating a second pilot-program while the first pilot-program remains ongoing is unnecessary and inappropriate.

II. Duke Has Failed to Show How Text Message and/or Automated Phone Calls Provide Adequate Notice or Sufficient Methods of Payment to Avoid Disconnection.

As other intervenors have underscored,³ the in-person notification requirement under Ohio Adm.Code 4901:1-18-06(A)(2) represents the final and best opportunity for customers to avoid the disconnection of a vital utility service. By requiring in-person notification (or by affixing tangible notice of disconnection in a conspicuous location at the customer's residence), the Commission provides customers every reasonable assurance that they will receive notification of any potential disconnection.

In addition, the in-person notification requirement assures that customers are afforded uncomplicated and reliable methods for submitting payment to thwart the potentially disastrous effects of utility disconnection. Instead of relying on hyperlinks embedded in text messages or automated instructions from a robocall, in-person notification enables utility company personnel to offer straightforward, responsive advice on-site about how to avoid disconnection.⁴ Under Ohio Adm.Code 4901:1-18-06(A)(4), utility company employees/agents who make on-site visits can 1) accept payment in lieu of disconnection; 2) dispatch an employee to the premises to

³ See Initial Comments by Communities United For Action ("CUFA"), the Office of the Ohio Consumers' Counsel ("OCC"), and Pro Seniors, Inc. ("Pro Seniors"), p. 4.

⁴ Duke's application and subsequent briefing underscore how its proposed alternative notification methods reduce or eliminate the negative side of providing in-person notice prior to disconnection. Specifically, Duke argues that providing electronic and/or automated notice of disconnection would reduce or even completely eliminate apparent safety issues that arise when its technicians conduct on-site visits to notify customers of imminent disconnection. See Application, pp. 4-5. Yet, like its many other assertions, Duke fails to provide any statistical evidence or data to legitimate its purported safety concerns. Revealingly, Duke acknowledges that these apparent "safety issues" are "not typical." *Id.* at 5. Moreover, the only support Duke offers to corroborate these "safety concerns" is a few anecdotal accounts, which Duke uses to dramatically claim that it "should not have to secure police escorts in order to complete Commission-authorized disconnections of service." See Duke Reply to the Objections of OCC, p. 13. Whether Duke is being hyperbolic about needing "police-escorts" is uncertain given that Duke advances this attention-grabbing argument without offering *any* supporting data or evidence that employee or public safety is actually threatened by the demands of Ohio Adm.Code 4901:1-18-06(A)(2). *Id.*

accept payment; or 3) make available to the customer another means to avoid disconnection. While the Duke employees who conduct on-site visits may not accept payment themselves, Duke concedes that its employees do provide in-person advice to customers about how to contact the customer service group or how to make payment with an authorized agent.⁵ Thus, unlike the text message and/or automated phone call notification, in-person notification affords the customer straightforward, reliable instructions for payment to avoid the potentially ruinous consequences of disconnecting electric service.

While Duke lauds the “undisputed”⁶ benefits of remote disconnection, it has utterly failed to provide *any* data/evidence that its customers actually possess the technological capability or wherewithal to actually receive notice of disconnection and make payment to avoid disconnection. For example, Duke’s proposal to substitute in-person notification for text message notification merely *assumes* that 1) all Duke customers own a working cell phone; 2) all customers who have cell phones have text message capability; and 3) customers have internet capability on their phone, which is essential for the customer to submit payment online to avoid disconnection. Yet Duke has failed to provide *any* data or evidence illustrating that any of the foregoing assumptions are actually true (or even reasonably likely to be true). Accordingly, without any actual data or evidence to support these critical assumptions, Duke’s proposed text message notification fails to provide the same reasonable assurance that customers will receive notice of disconnection or that customers will have a meaningful final opportunity to avoid disconnection.

Moreover, even if all of these unproven assumptions were true, Duke has failed to offer any data or evidence that it regularly maintains a reliable, updated database with its customers’

⁵ See Duke Reply to the Objections of CUFA/PS, pp. 4-5.

⁶ See Application for a Waiver by Duke Energy Ohio, Inc. (May 13, 2016), p. 3.

current cell phone numbers. Duke claims that it verifies and updates customer contact information, but, importantly, Duke admits that it only does so if the customer initiates a call to Duke.⁷ Moreover, Duke assures the Commission that it “will validate telephone numbers annually.”⁸ It is unclear if Duke is currently validating these numbers annually, or if it is a commitment to do so going forward. Nevertheless, even if Duke were currently validating customer contact information, Duke is only doing so once a year, which is insufficient to claim that it maintains updated and reliable customer contact information. In sum, without reliable, updated contact information, Duke’s text message notification would fail to reach some of its intended recipients. Consequently, contrary to Staff’s recommendation, Duke’s proposed text message notification is insufficient to provide customers with reasonable notice of disconnection or with an uncomplicated, reliable method of payment to avoid disconnection.

Duke’s proposed automated phone call notification suffers from the same critical flaws. In explaining its proposed automated phone call notification, Duke states that an automated voice will notify the customer “that payment can be made to avoid disconnection.”⁹ Exactly how Duke will convey this information via an automated phone call, or how Duke will meaningfully afford the customer a final opportunity to submit payment to avoid disconnection via an automated phone call is unknown. Duke has only said it will provide “[c]ompany contact information to assist in expediting contact by the customer.”¹⁰ Thus, Duke’s automated phone call notification fails to provide the customer with any clear or reliable method to make a final payment before disconnection.

⁷ See Duke Reply to the Objections of CUFA/PS, p. 5.

⁸ *Id.*

⁹ Application, p. 6.

¹⁰ Duke Reply to the Objections of the OCC, p. 11.

Moreover, like its text message proposal, Duke makes critical assumptions about its automated phone call notification that are entirely unsupported by *any* data or evidence. For example, Duke *assumes* that 1) customers will actually answer the automated phone call (presumably from an unrecognized and/or unlisted phone number); 2) the phone call will be answered by the customer of record; 3) if the phone call is not received, an automated message will be recorded on an operative voicemail box; and 4) customers will actually listen to a voicemail recording from an automated messenger. Duke's application has conspicuously failed to countenance any of these reasonable, practical concerns.

Instead of directly addressing these legitimate concerns, Duke seeks to improperly shift the burden of proving the reasonableness of its proposed alternative notifications on the intervenors. For example:

“The OCC speculates that customers who would otherwise be present at the premises and answer the door would not read a text, answer a phone, or listen to a recorded message. But they offer nothing of substance to support this conjecture and it must be rejected.”¹¹

But as the applicant in this case, it is Duke's burden to show that its proposed alternative notifications serve as a reasonable and fair substitute for the existing in-person notification requirement. Duke alone carries this burden. It is not OCC's (or any other intervenors') affirmative obligation to provide data or evidence to buttress very practical concerns about Duke's proposals, just as it was not the Commission's obligation to provide supporting data or evidence when it expressed similar concerns in Duke's prior, unsuccessful effort to obtain a waiver of the same rule at issue here.¹² Consequently, the Commission should reject outright Duke's efforts to improperly shift the burden of proof

¹¹ Duke Reply to the Objections of the OCC, p. 10.

¹² See *In the Matter of the Application of Duke Energy Ohio, Inc. for a Waiver of Certain Sections of the Ohio Administrative Code for SmartGrid Pilot Programs*, Case No. 10-249-EL-WVR, Entry (June 2, 2010).

in this case on the intervenors, especially where Duke has completely failed to provide *any* evidence or data to address the unfounded assumptions that underlie its proposals.

III. Duke Fails to Offer Any Consumer Protections Against Potential Fraud and Abuse By Third-Parties Seeking to Exploit Electronic or Automated Payment Methods.

Duke's alternative notifications also fail to provide the customer with a safe and secure method of payment to prevent disconnection. The threat of bad actors using text messaging and/or automated phone calls to exploit and defraud consumers is real. As the Federal Trade Commission has warned, text message spam is often used by identity thieves to trick consumers into disclosing sensitive personal information, or it can be used to install harmful malware on consumers' phones.¹³ Similarly, Verizon Wireless, one of the largest cell phone carriers in the country, has cautioned their customers about clicking on hyperlinks embedded in text messages, and has even urged its customers to go directly to the company website from a normal browser.¹⁴ Disregarding these valid concerns, Duke praises the "efficiencies"¹⁵ of using hyperlinks in text messages as a method to enable a customer to make payment and prevent disconnection. In essence, Duke is asking the Commission to ignore the legitimate shortcomings of facilitating electronic payment through text message notifications. Accordingly, Duke cannot seriously contend that its proposed text message notification affords a safe or reliable method of payment for its customers.

But Duke is not blind to the potential for abuse and exploitation of its customers through the use of technology, especially where threats of electric service disconnection are made. As other intervenors have highlighted, Duke has publicly issued warnings about scam artists who threaten

¹³ FEDERAL TRADE COMMISSION, CONSUMER INFORMATION: TEXT MESSAGE SPAM, <https://www.consumer.ftc.gov/articles/0350-text-message-spam>, (last visited August 25, 2016).

¹⁴ VERIZON WIRELESS, FRAUD FAQs, FRAUDULENT EMAIL (PHISHING) AND TEXT MESSAGING SCAMS (SMISHING), <http://www.verizonwireless.com/support/phishing-faqs/> (last visited August 25, 2016).

¹⁵ Application, p. 4.

Duke customers with disconnection unless payment is made immediately.¹⁶ Duke also apparently advises its customers that it will never request credit or debit card information over the phone.¹⁷ Nonetheless, Duke’s application for waiver glorifies the “benefits” and “efficiencies” of text message and robocall technology to notify customers of disconnection and to facilitate customer payments prior to disconnection. So, while Duke publicly acknowledges and cautions its customers about the legitimate risks of third-parties defrauding customers through the use of advancing technology, Duke is also urging the Commission to approve the use of same technology as a reasonable alternative to in-person notification. Duke cannot have it both ways. The Commission should, therefore, reject Duke’s efforts to substitute the in-person requirement with technology Duke already knows is critically vulnerable to exploitation and fraud.

IV. Initiating a Second Pilot-Program While the First Pilot-Program Remains Ongoing is Unnecessary and Inappropriate.

In its Initial Comments, Staff noted that the Ohio Power Company (a/k/a “AEP Ohio”) requested and received a limited waiver of the same administrative rule at issue in this case (i.e., Ohio Adm.Code 4901:1-18-06(A)(2)).¹⁸ Nevertheless, when recommending approval of Duke’s application, Staff noticeably fails to address a serious concern advanced by other intervenors¹⁹ that approving a second pilot-program while the first pilot-program remains ongoing is unnecessary and inappropriate.

¹⁶ See Initial Comments by CUFA, OCC, and Pro Seniors, p. 8.

¹⁷ *Id.*

¹⁸ See Staff’s Initial Comments, p. 2.

¹⁹ See, e.g., Motion to Intervene and Objections by OCC, pp. 7-10; Ohio Partners for Affordable Energy Motion to Dismiss, pp. 4-5.

The Commission already approved AEP-Ohio's two-year pilot-program, which has not even reached the halfway mark.²⁰ As the foregoing demonstrates, there are legitimate concerns about the sufficiency of substituting electronic/automated notice for in-person notice, as well as very serious consumer protection concerns related to making electronic or automated payments to avoid disconnection. With the prior approval of a similar pilot-program, Duke is now asking the Commission to double down on the risks associated with this experiment, thereby needlessly jeopardizing even more Ohioans confronting the unfortunate prospect of having their electric service disconnected. While there may be no legal prohibition on creating a second pilot-program to test the implications of waiving a substantive administrative requirement, it is not sensible to place even more Ohioans at risk by unnecessarily expanding the circle of experimental subjects given the risks involved.

While pilot-programs serve an important function in testing new ideas/proposals that could benefit the public interest, these pilot-programs should be appropriately limited in scope and duration to insulate the public from potentially damaging outcomes. Duke has failed to demonstrate any real need, beyond its desire to make the disconnection process more efficient and profitable, to expand this experiment to even more vulnerable Ohioans whose electricity may be shut off. Consequently, the Commission should reject Staff's recommendation to approve Duke's unnecessary and inappropriate pilot-program.

V. Conclusion

WHEREFORE, the City respectfully requests that the Commission, in issuing any order concerning Duke's request for a waiver of Ohio Adm.Code 4901:1-18-06(A)(2), specifically consider and adopt its foregoing comments and concerns.

²⁰ *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, Entry (March 18, 2015) ("AEP Ohio Entry").

Respectfully submitted,

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I certify that the foregoing Reply Comments was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 2nd day of September, 2016. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Mark T. Keaney

One of Attorneys for the City of Cincinnati

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Summary: Reply Comments of the City of Cincinnati electronically filed by Mr. Mark T Keaney
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