

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke) Case No. 16-1096-EL-WVR
Energy Ohio, Inc., for a Waiver.)

REPLY COMMENTS OF DUKE ENERGY OHIO, INC.

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and hereby submits its reply to the comments filed by the Staff of the Public Utilities Commission of Ohio (Staff), the City of Cincinnati (City), Ohio Partners for Affordable Energy (OPAE), and, collectively, Communities United for Action, the Office of the Ohio Consumers' Counsel, and ProSeniors, Inc. (the Residential Consumer Group).

Respectfully submitted,



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REPLY COMMENTS

I. PROCEDURAL HISTORY

On May 13, 2016, Duke Energy Ohio filed an application seeking a limited waiver of just one of the many regulations, adopted by the Public Utilities Commission of Ohio (Commission), applicable to the disconnection of residential utility service for nonpayment (Application). Specifically, the Company sought a waiver of the requirement under O.A.C. 4901:1-18-06(A)(2) to complete a premises visit on the day on which utility service is scheduled for disconnection. Importantly, in seeking this limited waiver, the Company did not request that it be excused entirely from compliance with the regulation. Rather, it requested that contact, or attempted contact, on the scheduled day of disconnection be accomplished via alternate means; namely, a text message or telephone call.¹ Additionally, the Company proposed to incorporate another form of notification prior to the day on which disconnection would be scheduled.²

Thereafter, on July 22, 2016, Duke Energy Ohio filed an Amended Application through which it proposed, *inter alia*, to include even more communication with residential electric customers eligible for disconnection due to nonpayment.³ As such, through Duke Energy Ohio's Amended Application, it is proposing to increase, as compared to existing regulation, the notification provided to residential customers with delinquent electric accounts eligible for disconnection.

On August 5, 2016, the Attorney Examiner issued a procedural schedule pursuant to which comments were due on August 19, 2016, and reply comments due on September 2, 2016.⁴

¹ Application, at pg. 5 (May 13, 2016).

² *Id.* at pg. 6 (Company also proposed to send the notice, as required in connection with the winter heating season, throughout the year).

³ Amended Application (July 22, 2016).

⁴ Entry, at pg. 2 (August 5, 2016).

Duke Energy Ohio respectfully submits its reply to the comments filed by Staff and the various intervenors.

II. DISCUSSION

A. Duke Energy Ohio's proposal satisfies the Commission's expectation that contact with residential customers be attempted prior to disconnection of service and, in fact, incorporates notifications not otherwise required under Commission regulation.

There is the understandable expectation that, in return for benefitting from the provision of utility service, a customer will pay for that service. And where such payment is not made, there is further the recognition that service may be disconnected. The process for the disconnection of residential service provided by a public utility is set forth in O.A.C. Chapter 4901:1-18. Therein, the Commission has established a series of regulations in respect of the disconnection of residential utility service for nonpayment that includes communication, or attempted communication, between the utility company and its customer prior to the disconnection of service. Pursuant to these regulations, Duke Energy Ohio is required, throughout the year, to send a disconnection notice to a residential customer whose account is eligible for disconnection fourteen days prior to the earliest date on which service may be disconnected.⁵ During the winter heating season only, the regulations impose upon Duke Energy Ohio the requirement to provide another notice to the residential customer prior to disconnecting service for nonpayment.⁶ And, finally, on the scheduled day of disconnection, a premises visit is currently required – a visit pursuant to which personal contact is to be attempted but need not occur before service may be disconnected.⁷ Thus, during the winter heating season, a utility

⁵ O.A.C. 4901:1-18-06(A).

⁶ O.A.C. 4901:1-18-06(B)(service of this notice may be made via personal contact, telephone, hand-delivered written notice, or regular, U.S. mail).

⁷ O.A.C. 4901:1-18-06(A)(2).

company such as Duke Energy Ohio must provide two notices and must, on one occasion, attempt contact prior to disconnecting residential service due to nonpayment. Outside of the winter heating season, the Commission requires less notice – one written communication and one attempted contact – prior to disconnection.

Through its Amended Application, Duke Energy Ohio proposes to increase, throughout the year, the communication with a residential electric customer whose account is eligible for disconnection for nonpayment. Specifically, and only in lieu of a premises visit, the Company proposes to issue the following with regard to such residential customer:

- Disconnection notice as required under O.A.C. 4901:1-18-06(A)
- Final Notice as required under O.A.C. 4901:1-18-06(B)
- Text message and/or telephone message two business days prior to the scheduled date of disconnection
- Text message and/or telephone message on the day of the scheduled disconnection, with such communication initiated beginning at 8 a.m.⁸

Notwithstanding these additional communications, the intervenors overdramatically urge the Commission to deny the waiver request, primarily arguing that a premises visit is required by Commission regulation and, in fact, must be conducted in order to avoid tragic consequences. Their concerns, predicated upon misconception and, at times, irony, are grossly overstated. Further, their urgings ignore the interests of the overwhelming number of Duke Energy Ohio residential customers who regularly pay their utility bills, which include riders for uncollectible expense, and who could be adversely impacted by a process that unduly prolongs permissible

⁸ Amended Application, at pg. 2 (July 22, 2016).

disconnections for nonpayment. Duke Energy Ohio addresses these comments below, responding separately to each set of comments filed.

B. Staff appropriately concludes that additional forms of notification, as proposed by Duke Energy Ohio, are reasonable and, through its recommendations, seeks to enable collaboration with the Company.

In its Comments, Staff finds that the Company's alternate forms of communication are reasonable for purposes of a two-year pilot.⁹ Staff also offers three recommendations, which the Company responds to here. First, "Staff recommends that [Duke Energy Ohio] collaborate with Staff on text of notices to be sent to customers prior to the pilot program beginning as well as text of notifications to be included on the disconnection notices."¹⁰ These notifications will inform residential customers that a Company employee will not be making a premises visit on the scheduled day of disconnection and Duke Energy Ohio will collaborate with Staff on the content of such notifications.

Staff further recommends that Duke Energy Ohio "collaborate with Staff on content of text messages and automated voice messages prior to implementation."¹¹ As stated in its Amended Application, Duke Energy Ohio has been sending text messages and/or automated telephone calls to residential customers on the morning on which their electric service is scheduled for disconnection.¹² As further explained, this effort has been effective in that the Company has experienced an increase in the number of disconnections canceled on the morning of the scheduled disconnection.¹³ Duke Energy Ohio will work with Staff on suggested revisions

⁹ Staff Comments, at pg. 3 (August 19, 2016).

¹⁰ Id.

¹¹ Id.

¹² Amended Application, at pg. 2 (July 22, 2016).

¹³ Id.

to the content of these current messages, as can be incorporated in the text format, for inclusion in the two-year pilot.

Finally, Staff is seeking the Company's collaboration "on the substance, format, and timing of data provided monthly."¹⁴ Subject to existing system limitations that may influence substance and format, Duke Energy Ohio will work with Staff so that the data identified for collection by the Company is meaningful to Staff and its eventual assessment of the waiver.

C. The City fails to comprehend Commission regulation and wrongly criticizes the Company for proposing additional measures of communicating with residential customers about their electric service.

Through an inaccurate recitation of Commission regulation, a deliberate decision to ignore those residential customers within the City who regularly pay their bill to Duke Energy Ohio, which includes uncollectible expense riders, and a blatant failure to recognize the protections included in Duke Energy Ohio's proposed pilot program, the City opposes the Amended Application. But as discussed below, its arguments are not convincing.

The City paradoxically concludes that Duke Energy Ohio's proposed, additional forms of communication do "not adequately provide necessary protections or opportunities to avoid the deleterious consequences that invariably attend the disconnection of a vital public utility service."¹⁵ The City further declares that "...this personal or physical notification requirement serves to protect the City's most vulnerable residents..."¹⁶ The irony in the City's comments is profound. Water service is also a vital public utility service¹⁷ and, despite its vocal disparagement of Duke Energy Ohio, the City is not required, under its own ordinance, to

¹⁴ Staff Comments, at pg. 3 (August 19, 2016).

¹⁵ Initial Comments of the City of Cincinnati, at pg. 1 (August 19, 2016).

¹⁶ *Id.*

¹⁷ The Greater Cincinnati Water Works supplies water to residents in the City of Cincinnati, most of Hamilton County, Ohio, and parts of Butler and Warren Counties. See, e.g., <http://www.cincinnati-oh.gov/water/about-greater-cincinnati-water-works/>.

provide a residential customer of a single-family residence with any notice prior to disconnecting the water service it furnishes to that home.¹⁸ Rather, and unlike a disconnection due to lack of use for more than one year or conditions that render future use impractical, a residential customer within the City who fails to timely pay their water bill may, under City ordinance, be disconnected without warning and without a premises visit. The putative nature of this ordinance continues with regard to the recognition of harm that could result from a loss of water. Specifically, to the extent that disconnection of this vital utility service causes harm to another, the residential customer disconnected without notice is, by City ordinance, liable for the damages so caused.¹⁹ It is indeed curious for the City to now criticize Duke Energy Ohio for proposing to increase the communication with its residential electric customers whose service may be disconnected beyond the notifications the Commission found to be sufficient for electric companies and even water companies under its jurisdiction.²⁰

Without any substantiation, the City also contends that low-income and elderly customers cannot reliably be contacted via telephone or a text message. The City compounds its unproven allegations by presuming that on the very same day a residential customer's electric service is scheduled for disconnection, that residential customer's cellular data allotment will have expired. The City has offered no proof of these statements and, as discussed below, its attempt to manufacture opposition to the Company's request must fail.

As an initial matter, the City ignores the communications that will have taken place under the Company's proposed pilot prior to the scheduled day of disconnection. These

¹⁸ City of Cincinnati Code of Ordinances, Municipal Code, Sec. 401-93-A. ("When account records show the premises is a single-family residence and billing has been directed to such premises, it shall not be necessary to post a notice of disconnection upon the premises or otherwise serve a notice of disconnection.")

¹⁹ City of Cincinnati Code of Ordinances, Municipal Code, Sec. 401-93-A.

²⁰ See O.A.C. 4901:1-15-27, wherein Commission regulation provides for no less than fourteen days' notice and a premises visit prior to the disconnection of water service due to nonpayment.

communications will include a notice of disconnection, final notice of disconnection, and a text and/or automated telephone message two business days prior to the scheduled date of disconnection. For the account to actually be scheduled for disconnection, the residential customer will have had to have ignored these communications and failed to initiate efforts to avoid disconnection for nonpayment. In this regard, the Company would be remiss if it did not address the process – and options – by which a customer can securely provide payment information and avoid a disconnection of service.

Duke Energy Ohio undeniably appreciates the need to protect sensitive information and steadfastly adheres to Commission regulation about same. Insofar as it concerns the Company's proposal here, its communications will continue to include a telephone number that a customer can call to speak with a Duke Energy Ohio representative if that customer is unable or unwilling to address the status of their account via online tools or automated processes. With regard to the text message, a link will be provided for sake of convenience. But this will not be the sole option for the customer. Again, a telephone number will be provided in the text message so that the customer, guided by their individual preferences, can initiate the steps necessary to avoid a disconnection of service. Thus, to the extent a customer is reluctant to complete an electronic payment, they can contact Duke Energy Ohio for purposes of accessing other viable options that include, but are not limited to, tendering payment at a nearby pay station. Notably, customers have long-since had access to various payment options and resources and there is nothing about the Company's proposal that will compromise their ability to pursue options dictated by their personal preference.

The City's opposition is also predicated upon the mistaken belief that residential customers only affirmatively respond to a premises visit and, at that time, undertake efforts to

avoid disconnection. But this is not the case. Indeed, it is only in very few instances that contact is made during the premises visit today.²¹ In contrast, the Company is currently experiencing a marked increase in the number of disconnections canceled on the day of disconnection, after having initiated a text and/or telephone call campaign.²² It is thus readily apparent that customers do receive – and are responding to – text and/or telephone messages about their utility account.

The City also posits that the Company's process for maintaining valid contact numbers for customers is unknown.²³ But the City need not be concerned in this instance. Duke Energy Ohio regularly updates customer records with contact information provided by the customer. This process is initiated with the first encounter with the customer and thereafter regularly cross-referenced or confirmed. Thus, should a customer contact Duke Energy Ohio from a telephone number that does not match the telephone number on file, they will be asked to verify their contact telephone number. And in connection with customer-initiated contacts, Duke Energy Ohio will validate telephone numbers annually. The Company thus has an appropriate process for maintaining and updating customer contact information.

The City wrongly interprets Commission regulation, contending that such regulation requires a utility company such as Duke Energy Ohio to accept payment while in the field.²⁴ But this regulation is not mandatory – a utility company may permit its field employees to accept payments.²⁵ Duke Energy Ohio will not place its field employees in a potentially compromising position created by having money or customers' credit information in their possession. Under its

²¹ Amended Application, at pg. 2 (July 22, 2016)(actual contact is made in approximately 7 percent of the premises visits).

²² Amended Application, at pg. 2 (July 22, 2016)(in addition to the text/telephone campaign, Duke Energy Ohio is conducting a premises visit).

²³ Initial Comments of the City of Cincinnati, at pg. 2 (August 19, 2016).

²⁴ Id., at 3.

²⁵ O.A.C. 4901:1-18-06(A)(4).

proposed pilot, however, Duke Energy Ohio will provide residential electric customers facing disconnection with options and information to promptly make arrangements to avoid that disconnection. As stated above, through the text messages sent prior to and on the scheduled day of disconnection, the customer will receive a link that, if accessed, would enable prompt payment. These customers, as well as those receiving a telephone message, will also be provided a telephone number that would put them in contact with Duke Energy Ohio representatives who can assist by reviewing potential options for avoiding disconnection. And as is always case, at any time after receiving the disconnection notice, a residential customer can, if they so prefer, access their account via the Company's online services. Again, therefore, Duke Energy Ohio will continue to provide its customers facing a possible disconnection for nonpayment with options that they can pursue for making payment or other arrangements to avoid that disconnection. And, importantly, customers will be given a reasonable period of time on the scheduled day of disconnection to respond to the text and/or telephone message as the Company will not commence remote disconnections before 10:00 a.m.²⁶

Perpetuating its misunderstanding of Commission regulation, the City contends that the notice left at the premises on the scheduled day of disconnection provides "...information as to the reason for the disconnection..." and "...other important details..."²⁷ As this notice is left in plain view, it does not – and cannot – contain account-specific information. Thus, the information in the text and/or telephone message provided to the customer on the scheduled day of disconnection functions as an appropriate substitute for informing that customer as to the impending disconnection. And it is undeniable that the text and/or telephone message more immediately provides information to the customer that enables a timely response to make

²⁶ Application, at pg. 6 (May 13, 2016) and Amended Application (July 22, 2016).

²⁷ Initial Comments of the City of Cincinnati, at pg. 4 (August 10, 2016).

payment or other arrangements to either avoid a disconnection or, if applicable, have their service promptly restored.²⁸ Thus, in the event a customer is not at home during times relevant to a scheduled disconnection, they will have ready access, under the Company's proposal, to the information necessary to address, and even avoid, a disconnection of service. Importantly, therefore, residential customers need not wait until they return home and observe a posted notice in order to respond. Duke Energy Ohio's proposal thus appropriately incorporates different communication channels, options for customers that they may pursue to avoid a disconnection, and more notices than are currently required under Commission regulation. It cannot be said that the Company's proposal would put more customers in harm's way and the City's comments are misplaced.

D. OPAE's reliance on past filings and Commission decisions is unconvincing.

It is rather telling that OPAE chose not to address the additional consumer protections included in the Company's Amended Application. Rather, it focused primarily on procedure, hoping to convince the Commission that an existing pilot program for AEP Ohio warrants denial of Duke Energy Ohio's Amended Application. In advancing these arguments, OPAE maintains that the Commission is presently of the view that remote disconnections cannot satisfy the personal notice requirement.²⁹ As like the City, OPAE misstates the requirement under O.A.C. 4901:1-18-(A)(2) and, further, erroneously describes both prior Commission decision and the Company's Amended Application. Duke Energy Ohio responds to these errors and, in doing so, provides an accurate recitation of past proceedings.

²⁸ Application, at pg. 3 (May 13, 2016)(service can usually be restored within an hour of a customer having made arrangements that satisfactorily address their arrearage).

²⁹ OPAE Comments, at pg. 2 (August 19, 2016).

In 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 Program, Case No. 10-249-EL-WVR (2010 Waiver Case), the Company sought waivers from specific sections of the Ohio Administrative Code for purposes of a pilot program to include no more than 250 residential customers.³⁰ Included therein was a request for waiver of the requirements set forth in O.A.C. 4901:1-18-05(A)(5).³¹ However, no such request is made in the Application currently before the Commission.³² Duke Energy Ohio did, in the 2010 Waiver Case, also seek a waiver of the requirement under O.A.C. 4901:1-18-05(A) to conduct a premises visit on the day of disconnection for the pilot participants. Specifically, the Company proposed to satisfy this requirement via alternate means of either an electronic message or a text message, with each participating customer electing their preferred form of communication.³³

In the prior proceeding, the Commission did not grant a waiver of the requirement to conduct a premises visit on the day of disconnection.³⁴ In doing so, the Commission noted that additional forms of notification (*e.g.*, via telephone) had been raised by intervenors but not fully addressed by the Company.³⁵ The Commission then concluded that adherence to its then-existing regulation would not be excused, but, importantly, it was amenable to exploring such additional notification forms in the future.³⁶ Thus, although OPAE hopes to convince the Commission that the pending waiver request should be denied because it is identical to that previously reviewed

³⁰ *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. 10-0249-EL-WVR, Application, at pp. 2-3 (February 26, 2010)(2010 Waiver Proceeding).

³¹ *Id.* at 7.

³² Application, at pg. 5 (May 13, 2016).

³³ *Id.* at 5-6.

³⁴ 2010 Waiver Proceeding, Entry, at pg. 8 (June 2, 2010).

³⁵ *Id.* at 8.

³⁶ *Id.* at 7.

by the Commission, it is undeniable that OPAE has misinterpreted the Company's prior filing and the Commission's prior decision.

In its Comments, OPAE further claims that the Company's request is flawed because it did not articulate the communications the Company had with Staff prior to the filing of the Application.³⁷ But the Commission's entry contains no such commitment. Indeed, there is no prerequisite that the Company was to have satisfied prior to submitting this waiver request. And, importantly, the waiver request here does incorporate an alternate form of communication – telephonic communication – identified by an intervenor in the 2010 Waiver Case and later found to be acceptable by the Commission.³⁸

OPAE further complains here that the savings associated with the Company's ability to remotely disconnect customers are not presently being passed back to customers.³⁹ But OPAE fails to acknowledge the disposition of the prior proceedings in which it was a party.

There is no dispute regarding the cost savings benefit resulting from remote disconnections. The benefit was included by the Company in its justification for approval of SmartGrid deployment and was recognized by MetaVu in its mid-term audit. OPAE agreed to the deployment of SmartGrid when it was initially proposed⁴⁰ and further agreed to the incorporation of guaranteed savings, including savings from remote disconnections, that have been and will continue to be flowed back to customers in each rider proceeding. The associated savings from this admitted benefit were evaluated in *In the Matter of the Application of Duke*

³⁷ Comments of OPAE, at pg. 2 (August 19, 2016).

³⁸ 2010 SmartGrid Proceeding, OCC Motion to Intervene and Opposition to Waiver and Comments, at pg. 6 (March 10, 2010); See also, *In the Matter of Ohio Power Company for a Limited Waiver of Ohio Adm. Code 4901:1-18-06(A)((2)*, Case No. 13-1938-EL-WVR, Entry, at pp. 12-13 (March 18, 2015)(hereinafter AEP Ohio Waiver Proceeding).

³⁹ OPAE Comments, at pg. 3.

⁴⁰ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan, et al.*, Case No. 08-0920-EL-SSO, Stipulation and Recommendation, at pg. 42 (October 27, 2008).

Energy Ohio, Inc., to Adjust Rider DR-IM and Rider AU for 2010 SmartGrid Costs and Mid-Deployment Review, Case No. 10-2326-GE-RDR and Duke Energy Ohio agreed, in that case, to provide customers with all of the savings identified by the Commission's auditor.⁴¹ OPAE was a signatory party to the stipulation in which this commitment was made⁴² 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 the value of this benefit although Duke Energy Ohio has been unable to actually realize the savings as it continues to incur the costs associated with premises visits.

Advancing an alternative argument, OPAE posits that an existing pilot in the AEP Ohio service territory precludes Duke Energy Ohio from pursuing its own pilot program.⁴³ Again, OPAE is wrong.

To accept OPAE's contention, the Commission would have to adopt a myopic view of every pilot program. As a consequence of OPAE's ill-advised position, a pilot program that yields benefits for one electric distribution utility's customers could not similarly afford benefits to any of the customers of Ohio's other electric distribution companies. A pilot program that is limited to scope⁴⁴ would deprive the Commission of the ability to evaluate meaningful data collected across geographically different areas and reflecting evolving circumstances. But utility regulation is not discriminatory and Duke Energy Ohio must be allowed to pursue a pilot program through which important data will be obtained, reviewed, and available for the Commission and its Staff to reconcile against the data acquired under the more limited AEP

⁴¹ *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust and Set Its Gas and Electric Recovery Rate for 2010 SmartGrid Costs Under Riders AU and Rider DR-IM and Mid-deployment Review of AMI/SmartGrid Program*, Case No. 10-2326-GE-RDR, Opinion and Order, at pg. 11 (June 13, 2012).

⁴² *Id.*, Stipulation and Recommendation, at pg. 19 (February 24, 2012).

⁴³ Comments of OPAE, at pg. 4 (August 19, 2016).

⁴⁴ AEP Ohio Waiver Proceeding, Entry, at pg. 9 (March 18, 2015).

Ohio pilot program.⁴⁵ Importantly, data anticipated under the Duke Energy Ohio pilot will be informative in enhancing future processes and procedures intended to reduce residential disconnections for nonpayment and, ultimately, the financial burden imposed upon all customers via uncollectible expense riders. OPAE's desire to preclude such an outcome is indeed unfortunate.

E. The Residential Consumer Group wrongly claims a deprivation of customer protections as well as confusion, while ignoring the full complement of their constituents.

1. The Company's proposal is consistent with Commission regulation.

Nowhere in its Comments does the Residential Consumer Group acknowledge the obligation of residential customers to timely pay their utility bill to Duke Energy Ohio, which bill includes uncollectible expense riders. Nor does the Residential Consumer Group concede that Commission regulation affords residential customers several options for avoiding an impending disconnection of service for nonpayment, all of which would remain under the Company's pilot program. Nor does the Residential Consumer Group admit the exception for critical customers in the pilot⁴⁶ and the speed with which remote reconnections may occur.⁴⁷ Rather, the Residential Consumer Group has asserted the unsubstantiated conclusion that the safety and health of every Ohioan can only be protected by a premises visit on the scheduled day of disconnection. It is plainly wrong.

Neither Commission regulation nor the underlying statute pursuant to which such regulation was adopted compel the broad conclusion that personal contact on the scheduled day of disconnection is mandatory. Indeed, the seminal regulation unambiguously provides that, on

⁴⁵ *Id.* at pp. 9, 12.

⁴⁶ See Section II. E.3., *infra*, for discussion of the critical customer exemption included in the Company's proposal.

⁴⁷ Application, at pg. 3 (May 13, 2016) and Amended Application (July 22, 2016).

the scheduled day of disconnection, “[i]f neither the customer nor an adult consumer is at home, the utility company shall attach written notice to the premises in a conspicuous location prior to disconnecting service.”⁴⁸ Moreover, Ohio law and related Commission regulation mandate specific procedures only in circumstances where disconnection could be especially dangerous to health and, as discussed herein, those procedures are not altered by the Company’s proposal in this proceeding.

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.⁴⁹ 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.⁵⁰ It is these procedures in which the Commission is to include reasonable provisions for the elderly and the handicapped.⁵¹ 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 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),

⁴⁸ O.A.C. 4901:1-18-06(A)(2).

⁴⁹ The General Assembly excluded disconnections for safety reasons and at the customer’s request, neither situation which is relevant to the Residential Consumer Group’s comments.

⁵⁰ R.C. 4933.122(C).

⁵¹ *Id.*

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.⁵²

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 provide a final notice to customers year-round, supplying 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.

Importantly, Duke Energy Ohio is not seeking to eliminate an attempt at contact on the scheduled day of disconnection. Rather, in lieu of that requirement, it is proposing to initiate contact with a residential electric customer whose account is eligible for disconnection via text and/or telephone. And it is proposing to initiate such text and/or telephone messaging both two business days prior to and on the scheduled day of disconnection. These messages will have followed two prior notifications regarding the delinquent nature of the account and the potential for disconnection and all of these messages will provide appropriate information to enable the

⁵² O.A.C. 4901:1-18-06(C)(1)(emphasis added).

customer to contact Duke Energy Ohio for purposes of discussing ways in which to avoid disconnection.

The Residential Consumer Group also improperly seeks to inject in this proceeding testimony from a prior case that, critically, does not involve Duke Energy Ohio. Because Duke Energy Ohio was necessarily deprived of its right to cross examine the witness in this unrelated proceeding, it would be a fundamental contravention of due process to allow the Residential Consumer Group to introduce, as if undisputed fact, the testimony of James D. Williams and, by extension, its one-sided commentary on AEP Ohio's pilot program and its blatant speculation as to how the results of that pilot are allegedly determinative of Duke Energy Ohio's pilot.

The Residential Consumer Group's repeated disregard for due process is compounded by its inaccurate portrayal of information. To be clear, the Company's proposed pilot will not result in more customers being eligible for disconnection. The initiating event for a disconnection of residential service is the failure of customer to pay their bill; after all, only delinquent accounts are subject to a utility's disconnection procedures.⁵³ The number of accounts eligible for disconnection cannot possibly change as a result of communications that occur after an account has become delinquent. There is thus no truth to the contention that more customers will be eligible for disconnection and thus potentially exposed to adverse consequence if the Company's waiver request is granted.

2. The Company's proposal incorporates appropriate customer protection with regard to payments on an account.

The Residential Consumer Group continues to perpetuate the fallacy that in-person contact is required under Commission regulation, maintaining that a text and/or telephone message is not a valid substitute. In doing so, it further suggests that such messages are likely to

⁵³ O.A.C. 4901:1-18-04(A).

be interpreted by customers as a “scam.”⁵⁴ The allegations, however, are unfounded as Duke Energy Ohio has incorporated appropriate protections in the process.

Again, the text and/or telephone message is just part of a series of notifications provided to a residential customer with an account that is eligible for disconnection for nonpayment. Under the Company’s proposal, a residential customer will also have received two notifications of the status of their account (*i.e.*, the disconnection notice and final notice) and, therein, information relevant to avoiding disconnection. Additionally, they will have been informed that a Duke Energy Ohio employee will not be making a premises visit prior to the disconnection of electric service.⁵⁵ The proposed text message will include a telephone number that the customer can use should there be any question as to the legitimacy of the message. Further, and more importantly, the customer will need to have their account number in order to process any payment or engage in conversation with a Duke Energy Ohio representative about their account.

The use of a telephone message also incorporates appropriate safeguards. Specifically, the automated process is structured such that the customer must enter certain prompts that confirm their identity. If the person who answers the telephone identifies that they are the customer, they will receive a telephone message that does not seek credit card information or other financial account information. Rather, they will be directed to take action, which could include (i) paying their bill; (ii) contacting the Company directly; or (iii) contacting an agency that provides financial assistance. Again, importantly, to complete these actions, the customer will have to provide their Duke Energy Ohio account number to the Company representative. This process is reflective of that used today – customers can attend to account matters via an

⁵⁴ Initial Comments of Communities United for Action, the Office of the Ohio Consumers’ Counsel, and Pro Seniors, Inc., at pg. 9 (August 19, 2016)(hereinafter referred to as Comments of Residential Consumer Group).

⁵⁵ Application, at pg. 5 (May 13, 2016) and Amended Application (July 22, 2016).

online tool, an automated telephone system, or a live call with a Duke Energy Ohio representative provided they have established the right to access account details.

3. The Company's proposal has been clearly described.

The Residential Consumer Group opposes the waiver request on the basis that it believes the Company's proposal is unclear.⁵⁶ But any purported confusion is simply a function of the Group's failure or unwillingness to read the filings.

Duke Energy Ohio seeks a waiver of O.A.C. 4901:1-18-06(A)(2) and this waiver, if granted, would apply to residential customers served by advanced metering infrastructure, or AMI, with the exception of critical care customers. With regard to this exception, Duke Energy Ohio has explained that such customers are those 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 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.⁵⁷ These critical care customers will continue to benefit from existing precautionary measures. Further, as stated above, those customers for whom the General Assembly intended additional protection will not be deprived of

⁵⁶ Comments of Residential Consumer Group, at pg. 9 (August 19, 2016).

⁵⁷ Duke Energy Ohio, Inc.'s Reply to the Objections of the Office of the Ohio Consumers' Counsel, at pg. 7 (June 29, 2016).

same. Rather, the Commission's medical certification procedures are undisturbed by the Company's waiver request.

Notwithstanding the misplaced propensity of the Residential Consumer Group to relitigate cases and recast points of contention, the Application and Amended Application make clear that the pilot program would extend to all residential electric customers, not just electric-only customers. Significantly, under the pilot, dual-service customers will continue to have the choice – which must be exercised affirmatively – to separate services when confronted with a potential disconnection.⁵⁸ Indeed, these customers will first be informed of this right with the notice of disconnection as required under O.A.C. 4901:1-18-06(A). And to the extent a customer engages with a Duke Energy Ohio representative at any time while their account is eligible for disconnection, this right will be reiterated. Thus, under the pilot, customers will be informed of, and continue to have, the rights and safeguards to which they are entitled to affirmatively initiate a separation of service by opting to retain their choice of either gas or electric service.

The parameters of the pilot are quite clear – in lieu of conducting a premises visit on the day of a scheduled disconnection, Duke Energy Ohio proposes to initiate other forms of communication. These other forms include a final notice to be provided throughout the year and not just during the limited period as identified in Commission regulation, a text and/or telephone message two business days prior to the date on which an account is scheduled for disconnection, and a text and/or telephone message on the scheduled day of disconnection, with such communication initiated beginning at 8:00 a.m. Additionally, and unlike the actions currently permitted under Commission regulation, Duke Energy Ohio will not begin the act of

⁵⁸ O.A.C. 4901:1-18-09(F).

disconnecting electric service before 10:00 a.m.⁵⁹ Accordingly, a customer whose account is scheduled for disconnection will be provided a reasonable period of time to tend to customary morning activities and also initiate efforts to avoid a disconnection of their electric service.

Throughout the two-year pilot, Duke Energy Ohio will collect data as to the effectiveness of its efforts. Specifically, the Company will collect the following:

- At the account level, the total number of residential disconnection for nonpayment notices sent.
- The total number of residential electric customers disconnected for nonpayment.
- The number of successful automated telephone calls, where such calls are made two business days prior to and on the day of the scheduled disconnection. By successful, the Company means those telephone calls during which contact is made.
- The number of automated telephone calls retrieved by an answering machine, where such calls are made two business days prior to and on the day of the scheduled disconnection.
- The number of unsuccessful automated telephone calls, where such calls are made two business days prior to or on the day of the scheduled disconnection. By unsuccessful, the Company means those telephone calls for which the recipient either hung up the telephone or was not identified as the customer of record.
- The number of remote, residential disconnections for nonpayment.
- The number of remote, residential disconnections for nonpayment that failed.
- The number of remote, residential reconnections.

⁵⁹ Application, at pg. 6 (May 13, 2016) and Amended Application (July 22, 2016).

- The number of remote, residential reconnections that failed.⁶⁰

This data will be provided to Staff throughout the course of the pilot and will, as Staff so determines, be reviewed for purposes of ascertaining whether the waiver should continue.

The Residential Consumer Group claims confusion with regard to a failed remote disconnection or reconnection. But this claim is absurd. Either a remote disconnection functions to temporarily terminate electric service to a premises or it does not. And, in the latter circumstance, a remote disconnection will have failed. The converse is true with regard to a remote reconnection and no further discussion is needed.

With regard to “successful” or “unsuccessful” calls, the Residential Consumer Group is needlessly complicating the situation. An automated telephone message incorporates a series of prompts, similar to the automated telephone system Duke Energy Ohio customers use today. If the caller identifies themselves as the customer and a portion of the automated message is played, the call will have been completed and thus successful. If, however, the caller terminates the call (*i.e.*, hangs up the telephone) or a portion of the automated is not played, the call will have been unsuccessful. The determination of whether a call is successful is a function of the system and there is thus no elaborate scheme or process to articulate. However, as Duke Energy Ohio intends to collaborate with Staff in respect of the data, any legitimate concerns will be resolved with that party having familiarity with the Company’s automated telephone system.

The Residential Consumer Group also hopes to manufacture uncertainty by questioning whether a customer will receive both a text and telephone message or either a text or telephone message. But there is no need for such grammatical exercises. Duke Energy Ohio must provide a customer the right to opt out of receiving text messages. And to the extent a customer makes this

⁶⁰ Amended Application, at pg. 4 (July 22, 2016).

election, Duke Energy Ohio will not subsequently attempt to communicate with them via text. There are thus circumstances in which only a telephone call can be initiated. Further, a text message cannot be sent to a land line and, again, there will be circumstances in which only a telephone message can be initiated. Conversely, there will be circumstances in which a customer would receive both. The Company appropriately incorporated these circumstances into its waiver request.

4. The Company's proposal properly retains a uniform reconnection fee.

Similar to other utilities under the Commission's jurisdiction, Duke Energy Ohio is authorized, by tariff, to charge a reconnection fee. This fee is tiered with respect to the restoration of electric service, with the Commission having previously authorized the Company to assess a higher reconnection fee for those instances in which the service was reconnected after normal business hours.⁶¹ In its pending proposal, Duke Energy Ohio identified its current practice insofar as reconnection fees are concerned. Specifically, where the reconnection is completed remotely, but after normal hours, the Company has not been charging the authorized, higher reconnection fee.⁶² And the Company has committed to maintaining this practice under its proposed pilot.⁶³ As the Commission has appropriately observed, the evaluation of tariffed fees should not be conducted in this limited waiver proceeding.⁶⁴ As such, the Residential Consumer Group's objection warrants no further consideration.

⁶¹ Duke Energy Ohio P.U.C.O. Electric Tariff No. 19.3, Sheet 92.3 - Charge for Reconnection of Service.

⁶² Application, at pp. 3-4 (May 13, 2016) and Amended Application, at pg. 5 (July 22, 2016).

⁶³ Amended Application for Waiver (July 22, 2016).

⁶⁴ AEP Ohio Waiver Proceeding, Application, at pg. 6 (September 13, 2013). Duke Energy Ohio P.U.C.O. Electric Tariff No. 19.3, Sheet 92.3 - Charge for Reconnection of Service and Ohio Power Company P.U.C.O. No. 20, and Duke Energy Ohio Electric Service Regulations, Section I Service Agreements (3); Ohio Power Electric Tariff P.U.C.O. No. 20, Terms and Conditions of Service, Sheet 103-20, para 24. (Duke Energy Ohio's current tariffed electric reconnection fee at the meter is \$25 while AEP Ohio's tariffed electric reconnection fee for the same service is \$53.)

Additionally, the Residential Consumer Group overlooks the fact that there are functions associated with restoring service, even remotely, that are necessary and will continue under the pilot and these costs are components of the authorized reconnection fee. By way of example only, under the pilot program, Duke Energy Ohio will continue to work with customers whose service has been disconnected to explore viable options for the restoration of their service. It will, as necessary, initiate the transmittal of information about available programs, such as the critical care customer exemption, and provide information on programs such as Energy Assistance and the Percentage of Income Payment Plan. The Company will continue to have a role in the processing of medical certificates. And the Company will still bear the administrative costs of verifying that the service was restored. It is thus apparent that the reconnection fee of \$25 is reasonable and, contrary to the Residential Consumer Group's contention, incapable of "unjustly enriching" the Company.

5. The Company's proposal has been properly supported.

The Residential Consumer Group contends that the Company has failed to provide documentation as to the effectiveness of the alternate forms of notification to be used within the course of future pilot program.⁶⁵ As the effectiveness of the pilot will be later determined, it is apparent that the Residential Consumer Group cannot be referring to prospective information. Rather, it appears that its criticism is based upon the Group's belief that the Company should have attached documents to confirm the effectiveness of the existing text and/or telephone campaign.⁶⁶ But there is no requirement for such a demonstration.

The question here is whether there exists good cause for the waiver. Through its Application, the Company demonstrated good cause, which included aligning the interests

⁶⁵ Comments by Residential Consumer Group, at pg. 16 (August 19, 2016).

⁶⁶ *Id.* at 16-17.

between Duke Energy Ohio and its customers with regard to AMI. Additionally, good cause exists in that public safety is furthered by the elimination of a premises visit. And to mitigate any contention that customers would be inappropriately denied the opportunity, on the day of a scheduled disconnection, to take action and avoid disconnection, the Company proposed alternate forms of notification. These forms included not only a final notice as required under O.A.C. 4901-1-18-06(B) but also a text and/or telephone message on the morning of the day on which the disconnection is scheduled to occur.

Through its Amended Application, the Company proposed to include yet another form of notification – one occurring two business days before the date on which disconnection would be scheduled to occur. And it was in connection with this additional form of notification that the Company referenced the effectiveness of its existing campaign. In short, the reference was intended to demonstrate that the Company’s proposal, as set forth in the Amended Application, provided even more avenues of communication with customers and more opportunity for customers to affirmatively act to avoid disconnection. The Residential Consumer Group’s concern, even if entertained by the Commission, has been adequately addressed through Staff’s recommendations and the Company’s commitment to provide data to Staff at regular intervals throughout the two-year pilot.

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 deliver 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. And it should be approved. Duke Energy Ohio therefore respectfully requests that the Commission approve the waiver and related two-year pilot.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



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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 2nd day of September 2016, to the following parties.


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