

**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.)

**DUKE ENERGY OHIO, INC.'S MEMORANDUM CONTRA THE MOTION FOR
LEAVE TO FILE SUR-REPLY COMMENTS OF THE CITY OF CINCINNATI**

I. Introduction

On August 5, 2016, the Public Utilities Commission of Ohio (Commission) issued an Entry establishing a procedural schedule for this proceeding. Initial comments were ordered to be filed by August 19, 2016, and reply comments were to be filed by September 2, 2016. No other filings were contemplated by the Commission. Consistent with the established schedule, to which no party objected, intervenors and the Commission Staff filed initial comments on August 19, 2016, and all parties filed reply comments on September 2, 2016. In its reply comments, Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) referenced an ordinance enacted by Intervenor, the City of Cincinnati (City). The ordinance establishes the procedures for the disconnection, for nonpayment, of water service provided to residential customers in the City. Although the City does not dispute the clear language of this ordinance and Duke Energy Ohio's comments were limited to discussing such unambiguous language, the City now seeks leave to share an unpublished practice. For the reasons that follow, its request must be denied.

II. The City's Surreply Comments Are of No Consequence to the Commission's Determination in this Proceeding.

The sole reason that the City seeks leave to file surreply comments is to protect its image in the eyes of its residential water service customers. Its motives, however, are irrelevant to the question of whether the Company's application is just and reasonable. Notably, in its initial comments, the City sharply criticized the Company, arguing that its proffered communications plan, which includes additional written, text, and telephone messages, did not sufficiently protect the City's low income and elderly customers. In response, Duke Energy Ohio established the just and reasonable nature of its waiver request, in part, by referencing the City's enacted ordinance for the disconnection of another vital utility service – water. In doing so, the Company noted that the City's ordinance, as passed by its elected officials, contained even less protections than those required by the Commission in respect of water companies under its jurisdiction. And with this comparison, the Company convincingly established that its proposal to engage in even more communication efforts afforded appropriate protection to its customers.

Although not disputing the Company's reliance upon the its official ordinance, the City now hopes to establish a credible basis for its current motion by criticizing the Company for failing to discuss a "practice" that the City has yet to memorialize in an ordinance. But its efforts are disingenuous as the Company's reply comments were limited to the text of a published ordinance. Certainly, it cannot be criticized for not discussing a practice the City has not incorporated into its controlling laws. And, as discussed below, reference to this alleged practice fails to offer any relevant information for the Commission's review of the Company's application.

Notably, the City's practice is subject to change at a moment's notice, without a full, public evaluation and without a vote by its governing body. Thus, what is now an alleged practice that includes one letter and two telephone calls to customers could abruptly change to remove any notification whatsoever, as contemplated under the existing ordinance. The fact that the City has failed to memorialize this practice in its Code of Ordinances suggests that the City prefers the ability to alter or depart from this practice at any time, without public scrutiny.

In contrast, Duke Energy Ohio is seeking an order from this Commission authorizing it to implement forms of communication with its customers that exceed those currently required under Commission regulation. Adherence to the Commission's authorization, if granted, will be reviewed by Staff throughout the term of the proposed pilot.

Curiously, the City seeks to advance its image by describing a practice that includes just one letter and two telephone calls. The reference is curious in that the City tersely condemned the Company for incorporating telephone messages into its proposal. If telephone calls are appropriate to inform the City's water customers of a pending disconnection of service, they are equally appropriate for informing those same individuals who receive electric service from Duke Energy Ohio about a similar circumstance.

Finally, the City's reference to not disconnecting water service from a remote location is immaterial and largely deficient. Importantly, the City states only that it sends an individual to the home to complete the disconnection. It does not elaborate on the roles and responsibilities of this individual. That is, the City does not explain whether contact is attempted or must be made before water service is disconnected. Yet, despite this lack of confirmation, the City summarily argues that it provides meaningful notice.

The Company's proposal also provides meaningful notice, exceeding even the notifications purportedly sent by the City prior to the day of disconnecting water service. And, unlike the City, Duke Energy Ohio also proposes text and/or telephone messages on the scheduled date of disconnection in order to provide a final attempt at communicating with its customers and otherwise prompting them to initiate steps that would prevent an interruption in electric service. Its waiver request fairly incorporates appropriate protection for residential electric customers.


The City's request for leave should be denied. It offers no legitimate justification for these surreply comments, instead attempting to protect its image by wrongly accusing Duke Energy Ohio of making false or misleading statements. But the statements were not false, as confirmed by the City's failure to dispute its own ordinance on which the Company relied.

III. Conclusion

For the reasons stated herein, Duke Energy Ohio respectfully requests that the City's motion for leave be denied and its surreply comments stricken from the record.

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 26th day of September 2016, to the following parties.

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Summary: Memorandum Duke Energy Ohio, Inc.'s Memorandum Contra the Motion for Leave to File Sur-Reply Comments of the City of Cincinnati electronically filed by Ms. E Minna Rolfes on behalf of Amy B. Spiller and Elizabeth H. Watts and Duke Energy Ohio, Inc.