

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke     )  
Energy Ohio, Inc., for a Waiver Related to    ) Case No. 18-1683-EL-WVR  
Ohio Administrative Code Rule 4901:1-        )  
10-20.    )

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**COMMENTS ON DUKE’S PROPOSAL TO AVOID IN-PERSON  
DISCONNECTION NOTICES TO ELECTRIC SERVICE CUSTOMERS DUKE  
SUSPECTS OF FRAUD  
BY  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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**I. INTRODUCTION**

Rules of the Public Utilities Commission of Ohio (“PUCO”) help protect consumers by requiring utilities to properly notify customers before their utility service is disconnected. Electric companies in Ohio must hand deliver disconnection notices to consumers who are suspected of obtaining or maintaining electric service by fraudulent means.<sup>1</sup> The customer’s electric service may be disconnected no sooner than three business days after receiving this in-person notice.<sup>2</sup> The utility may mail the disconnection notice to the customer only if the utility believes in-person delivery of the notice would jeopardize its employee’s safety.<sup>3</sup>

Duke Energy Ohio, Inc. (“Duke”) seeks to have the option of either mailing or hand delivering to customers the disconnection notice required by Ohio Adm. Code 4901:1-10-20(C)(1).<sup>4</sup> Duke is not seeking to avoid in-person service due to employee

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<sup>1</sup> Ohio Adm. Code 4901:1-10-20(C)(1).

<sup>2</sup> Ohio Adm. Code 4901:1-10-20(C)(3)(a).

<sup>3</sup> Ohio Adm. Code 4901:1-10-20(C)(1).

<sup>4</sup> Application, ¶6. If the disconnection notice is mailed, Duke would add three days to the disconnection date allowed under Ohio Adm. Code 4901:1-10-20(C)(3)(a). *Id.*, ¶8.

safety reasons. Duke's only basis for the waiver request is the cost of complying with the rule.<sup>5</sup> But Duke has not provided any cost information to support its application.

Under the PUCO's rules utility service may be shut off for fraud without a PUCO or court determination as to whether a customer commits fraud.<sup>6</sup> The utility, in this case Duke, acts as judge and jury. The in-person notice is a consumer protection regarding disconnection of vital energy services that should not be waived without good cause.<sup>7</sup>

In these Comments,<sup>8</sup> the Office of the Ohio Consumers' Counsel ("OCC") recommends that the PUCO deny Duke's application. Under Ohio Adm. Code 4901:1-10-02(C), the PUCO may waive any requirement of Chapter 4901:1-10, other than a requirement mandated by statute, for good cause shown. Duke has not shown good cause for waiving the in-person notice required by Ohio Adm. Code 4901:1-10-20(C)(1).

But if the PUCO approves the waiver (which it should not), it should require Duke to pass along to its customers any savings that might result from the PUCO's decision. All Duke customers pay base rates that include at least some of the costs associated with complying with the rule. They should receive the benefit from any cost savings Duke realizes because of the waiver.

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<sup>5</sup> *Id.*, ¶9.

<sup>6</sup> The PUCO's rules require the notice to describe "the *alleged* fraudulent act." Ohio Adm. Code 4901:1-10-20(C)(2)(a) (emphasis added). The rules also provide that an electric utility may disconnect the customer's electric service no sooner than two business days "after the customer received *the electric utility's* written adverse decision subsequent to the discussion between the customer and the electric utility representative, in the event that the customer initiated the discussion." Ohio Adm. Code 4901:1-10-20(C)(3)(b) (emphasis added).

<sup>7</sup> See Ohio Adm. Code 4901:1-10-02(C).

<sup>8</sup> Entry (May 7, 2019), ¶6.

## II. RECOMMENDATIONS

**A. The PUCO should not find good cause for Duke to avoid providing in-person notice of service disconnection to customers who are suspected of fraud because Duke has not shown that in-person notice is prohibitively expensive.**

Duke's only basis for its request to avoid the requirements of Ohio Adm. Code 4901:1-10-20(C)(1) is that compliance with the rule is "prohibitively expensive."<sup>9</sup> Yet Duke, which has the burden of proof in this proceeding, does not provide any data to back up its claim. Duke did not file any supporting documentation with its application or later in the docket, even though OCC raised the issue in its Motion to Intervene.<sup>10</sup>

In fact, Duke does not track the cost involved in providing in-person disconnection notices to customers who are suspected of fraud.<sup>11</sup> Duke apparently determined that in-person notice is prohibitively expensive because "on average the cost to roll a truck to a multitude of irregularly spaced premises to hand deliver notices to customers suspected of committing fraudulent acts is cost prohibitive and inefficient."<sup>12</sup> In other words, in-person notice is prohibitively expensive because Duke *thinks* it's prohibitively expensive. Duke's circular logic is an insufficient basis under Ohio law<sup>13</sup> for the PUCO to find good cause in this case.

Duke does incur some expense in providing in-person disconnection notices to customers suspected of fraud. But Duke has not shown that providing in-person notices

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<sup>9</sup> Application, ¶9. Duke does not mention employee safety as a basis for the waiver request. Employee safety should not be an issue because Ohio Adm. Code 4901:1-10-20(C)(1) allows utilities to mail disconnection notices if employee safety is a concern.

<sup>10</sup> See Motion to Intervene (February 8, 2019), Memorandum in Support at 2.

<sup>11</sup> See Duke's response to OCC INT-01-007.

<sup>12</sup> *Id.*

<sup>13</sup> R.C. 4903.09.

is *prohibitively* expensive or that it is not adequately compensated for that expense through base distribution rates.<sup>14</sup> That would require an examination of not only the actual costs involved in providing the notices, but also any offsets to those costs that Duke receives from customers through base rates. Duke has not provided any information in this case for the PUCO to perform such an examination. That examination must be conducted before the PUCO can grant the waiver.

In-person notice is important for informing customers of their rights regarding disconnection of their electric service due to suspected fraud. The PUCO should not diminish this vital consumer protection based solely on Duke's unsupported claims. Ohio law requires PUCO decisions to be based on facts in the record. The record of this proceeding does not support Duke's application.

Duke has the burden of showing good cause for the waiver. Duke has not made the showing necessary for the PUCO to find good cause. The PUCO should deny Duke's application.

**B. If the PUCO approves Duke's application (which it should not), any cost savings Duke realizes from the waiver should be passed along to Duke's customers.**

Duke claims that the costs associated with in-person disconnection notices to customers suspected of fraud are "an unreasonable financial burden to be socialized among all other customers..."<sup>15</sup> That is because some of Duke's costs associated with providing the in-person disconnection notices required by Ohio Adm. Code 4901:1-10-

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<sup>14</sup> Duke's current distribution rates were approved by the PUCO less than six months ago. *See* Case No. 17-032-EL-AIR, Opinion and Order (December 19, 2019).

<sup>15</sup> Application, ¶9.

20(C)(1) are collected from customers through base rates.<sup>16</sup> Yet Duke does not propose to pass along to customers any cost savings Duke may realize from the waiver.

Duke should not benefit from any cost savings it realizes from avoiding the consumer protections of Ohio Adm. Code 4901:1-10-20(C)(1). Because all Duke customers are charged for at least some of the cost of providing in-person disconnection notices through base rates, all Duke customers should receive the cost savings Duke would realize through avoiding in-person notices.

The PUCO should not grant Duke's application. But if it does, Duke should be required to pass along to customers all the cost savings it realizes from the waiver.<sup>17</sup> Duke should not reap a windfall from not providing necessary consumer protections.

### **III. CONCLUSION**

The in-person notice requirements of Ohio Adm. Code 4901:1-10-20(C)(1) are important and necessary consumer protections. In this case, Duke has not shown the required good cause for a waiver of these consumer protections. The PUCO should not grant Duke's application. But if the application is granted, consumers should be protected by receiving the cost savings that Duke may realize from the waiver.

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<sup>16</sup> See Duke's response to OCC INT-01-002.

<sup>17</sup> The savings could be passed along to customers as an offset to an appropriate rider, such as Rider DR-IM, which is used to collect expenses associated with grid modernization, including advanced meters that allow Duke to remotely disconnect customers' electric service.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 6<sup>th</sup> day of June 2019.

/s/ Terry L Etter  
Terry L. Etter  
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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**6/6/2019 5:04:22 PM**

**in**

**Case No(s). 18-1683-EL-WVR**

Summary: Comments Comments on Duke's Proposal to Avoid In-Person Disconnection Notices to Electric Service Customers Duke Suspects of Fraud by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.