

# 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

## SECOND ENTRY ON REHEARING

Entered in the Journal on September 26, 2019

### I. SUMMARY

{¶ 1} The Commission denies the joint application for rehearing filed by the Ohio Consumers' Counsel, Communities United for Action, and Pro Seniors, Inc.

### II. PROCEDURAL HISTORY

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is an electric distribution utility (EDU) as defined by R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On May 13, 2016, Duke filed an application for a temporary waiver of Ohio Adm.Code 4901:1-18-06(A)(2), which requires the utility to provide a residential customer with personal notice on the day of disconnection. According to Duke, in order to disconnect service, and meet the requirements of Ohio Adm.Code 4901:1-18-06(A)(2), the Company must send a technician to the property, where that technician can, impliedly, give the customer a final opportunity to make a payment to avoid disconnection. However, Duke noted that with advancements in technology the company is currently able to remotely disconnect and reconnect electric service for customers with advanced metering infrastructure (AMI). Thus, Duke requested a waiver of the requirement to provide physical notice on the day of disconnection and instead sought to start a three-year pilot program through which the company would use alternative efforts to inform customers of possible disconnections. Thereafter, on July 22, 2016, Duke amended its application. Duke's amended application shortened the pilot program from three years to two years. Duke also proposed that, in addition to what is described in its initial application, it would send customers a telephone or text message two business days before

a scheduled disconnect. Thus, the Company's proposed notifications would be: a text or phone message the day of disconnection; a text or phone message two business days before disconnection; an extension of the mailed 10-day disconnection notice from only during the winter heating season to year-round; and a one-time bill insert informing customers of the change in process. Further, compared to what it submitted in its original application, Duke proposed to expand the data it would collect and share with Staff during the term of the pilot.

{¶ 4} Ohio Partners for Affordable Energy (OPAE), the City of Cincinnati, the Ohio Consumers' Counsel (OCC), Communities United for Action (CUFA), and Pro Seniors, Inc. (PSI) intervened in the case. Comments regarding the application were filed by Cincinnati, OPAE, Staff, and, jointly, by OCC, CUFA, and PSI (collectively, the Consumer Groups). Reply comments were filed by Duke, Cincinnati, OPAE, and the Consumer Groups.

{¶ 5} On March 8, 2017, the Commission issued a Finding and Order granting Duke's motion for waiver.

{¶ 6} On April 7, 2017, the Consumer Groups filed an application for rehearing. Thereafter, on April 13, 2017, Duke filed a memorandum contra the Consumer Groups' application for rehearing.

{¶ 7} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission. On May 3, 2017, the Commission granted the application for rehearing for the limited purpose of further consideration of the matters specified in the application.

### III. DISCUSSION

{¶ 8} The Consumer Groups submit four assignments of error. In their first assignment of error, the Consumer Groups argue notification of disconnection through text messages and phone calls does not constitute reasonable prior notice that is required under R.C. 4933.122. The Consumer Groups assert that personal notice is the only way to ensure that a customer actually receives the final notice before disconnection. According to the Consumer Groups, robocalls and text messages may be inadvertently ignored by customers and there is no way to make sure customers receive the message in time.

{¶ 9} In reply, Duke states that, under the current rules, there is no assurance that a customer will actually receive a notice. Duke explains that Ohio Adm.Code 4901:1-18-06 normally only requires two notifications of disconnection and three notifications during the heating seasons. Duke avers that even during an in-person visit to a customer's premises, there is no assurance that the customer will be home during that time. According to the Company, pursuant to the waiver request, if the number of notifications increase then the opportunity to ensure the customer gets the message correspondingly increases.

{¶ 10} Next, the Consumer Groups state that the Commission erred by not requiring in-person notification for customers without phone service. The Consumer Groups aver that, according to the Federal Communications Commission, 3.7 percent of Ohioans do not have phone service. Further, the Consumer Groups explain that the percentage is likely higher for low-income customers that are more likely to be subject to disconnection for non-payment. Therefore, the Consumer Groups maintain that in-person notification should be required for customers without phones.

{¶ 11} Duke initially counters that the information introduced by the Consumer Groups is irrelevant and outside of the record of this proceeding. Duke further contends that the Company regularly updates its system to include the most current contact information for all customers. Additionally, according to Duke, under the waiver,

customers will have already received multiple notifications before calls and texts are initiated.

{¶ 12} The Consumer Groups also contend that the weight of the evidence demonstrates that customers are more likely to lose electric service under the modified notification process. According to the Consumer Groups, in a similar waiver request involving another EDU, customers with AMI were disconnected at a significantly higher rate, citing *In re Ohio Power Co.*, Case No. 13-1938-EL-WVR (*AEP Pilot*). The Consumer Groups maintain that the Commission wrongfully did not give this evidence the proper weight.

{¶ 13} Duke states that the Commission properly considered the evidence in its order. According to Duke, the Commission acknowledged that, compared to the *AEP Pilot*, Duke's waiver offered a different pilot program, serving different customers, in a different area of Ohio. Duke maintains that the goal of its program is to engage with customers sooner by increasing notifications and thus avoiding disconnections. Further, Duke states that the number of customers eligible for disconnection is not affected by the manner in which customers are notified of their delinquent accounts.

{¶ 14} Finally, the Consumer Groups contend that Duke's waiver should not have been approved for a two-year period. The Consumer Groups submit that the *AEP Pilot* is set to expire, and the Commission should have waited for that case to conclude before approving Duke's waiver request.

{¶ 15} Duke asserts its pilot program is unique compared to the *AEP Pilot* and submits there is nothing unlawful or unreasonable in running the Company's pilot program concurrently with AEP. Duke thus states that the Consumer Groups' argument has no merit and should be dismissed.

#### IV. CONCLUSION

{¶ 16} The Consumer Groups' application for rehearing should be denied. Regarding the Consumer Groups' first issue, we affirm our finding from the March 8, 2017 Finding and Order that Duke's alternative notification system provides reasonable notice to customers, meets the requirements of R.C. 4933.122, and is consistent with our policy of preventing injuries to residential customers by helping customers maintain service. As we noted then, in addition to notices required under Ohio Adm.Code 4901:1-18-06, messages supplied two days before disconnection and the day-of disconnection provides customers with sufficient opportunity to make payment arrangements with the Company. March 8, 2017 Finding and Order at ¶ 22. We are not persuaded that proper notice can only be achieved by a visit to a customer's premises. As explained by Duke, there is no guarantee that, if a Duke representative goes to a home, the customer will be there or will respond.

{¶ 17} The Commission is similarly not persuaded by the Consumer Groups' second assignment of error. We note that prior to disconnection multiple notices are to be mailed to a customer's premises pursuant to our directives and Ohio Adm.Code 4901:1-18-06. Additionally, Duke asserts it works with customers to ensure a working phone number for all customers is in the Company's system. Finally, as discussed, we affirm critical care customers are to be excluded from the waiver. Finding and Order at ¶ 22.

{¶ 18} Regarding the third assignment of error, the Commission finds it should be denied. In our order, we explained that the *AEP Pilot* involves separate utilities, serving different customers, and offering different pilot programs. For example, Duke's pilot includes additional day-of messaging that the *AEP Pilot* does not. Finding and Order at ¶ 23. Accordingly, we are not convinced that Duke's program will result in increased frequency of disconnection. Further, Duke's request is for a pilot program. The purpose of such a program is to assess potential impacts and gather information. We affirm this program allows for that, while still complying with Ohio law and providing necessary protections for customers. Finally, we find that the Consumer Groups' final assignment of error, regarding the length of the pilot program, should also be denied. Although it is

moot as this juncture, we reiterate that the *AEP Pilot* and Duke's pilot offer different programs, serving different customers, and data from both programs can provide useful information to the Commission.

## V. ORDER

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That the application for rehearing filed by the Consumer Groups be denied. It is, further,

{¶ 21} ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

NJW/mef

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**9/26/2019 2:44:23 PM**

**in**

**Case No(s). 16-1096-EL-WVR**

Summary: Entry Second Entry on Rehearing that the Commission denies the joint application for rehearing filed by the Ohio Consumers' Counsel, Communities United for Action, and Pro Seniors, Inc. electronically filed by Docketing Staff on behalf of Docketing