

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR A WAIVER
OF OHIO ADM.CODE 4901:1-10-18-
06(A)(2).

CASE NO. 19-187-EL-WVR

FINDING AND ORDER

Entered in the Journal on September 26, 2019

I. SUMMARY

{¶ 1} The Commission grants Duke Energy Ohio, Inc.'s request for waiver from the requirement of Ohio Adm.Code 4901:1-18-06(A)(2) to provide residential customers with personal notice on the day of disconnection and permits Duke Energy Ohio, Inc. to continue a program using an alternative notification process.

II. PROCEDURAL HISTORY

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is an electric distribution utility 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 January 30, 2019, Duke submitted an application to the Commission requesting a continuation of a waiver of Ohio Adm.Code 4901:1-18-06(A)(2) that was granted by the Commission on March 8, 2017. *In the Matter of the Application of Duke Energy Ohio, Inc. for a Waiver*, Case No. 16-1096-EL-WVR (2016 Waiver Case), Finding and Order (Mar. 8, 2017).

{¶ 4} On April 19, 2019, the attorney examiner set forth a procedural schedule requiring motions to intervene and comments to be filed by May 10, 2019, and reply comments to be filed by May 24, 2019.

{¶ 5} Motions to intervene were filed by Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), Direct Energy, LLP (Direct), Pro Seniors, Inc. (Pro Seniors), and Communities United for Action (CUFA). OCC and OPAE were previously

granted intervention by Entry on April 19, 2019. No memorandum contra were filed in opposition to any of the motions to intervene. For good cause shown, Direct, Pro Seniors, and CUFA should be granted intervention.

{¶ 6} On May 10, 2019, Staff, OP&E, and, jointly, OCC, Pro Seniors, and CUFA (collectively, the Consumer Groups) filed initial comments.

{¶ 7} On May 24, 2019, Duke and the Consumer Groups filed reply comments.

III. DISCUSSION

{¶ 8} R.C. 4933.122 provides that an electric company shall not terminate service without first providing reasonable notice. Additionally, a company shall not terminate service if doing so would be especially dangerous to the health of a consumer. The procedures for disconnecting electric service are outlined in Ohio Adm.Code 4901:1-18-06. Duke seeks a waiver of Ohio Adm.Code 4901:1-18-06(A)(2), which provides that:

On the day of disconnection of service, the utility company shall provide the customer with personal notice. If the customer is not at home, the utility company shall provide notice to an adult consumer. If neither the customer nor an adult consumer is at home, the utility company shall attach written notice to the premise in a conspicuous location prior to disconnecting service.

{¶ 9} On March 8, 2017, the Commission issued a Finding and Order approving Duke's amended application for a temporary waiver of Ohio Adm.Code 4901:1-18-06(A)(2). *2016 Waiver Case*, Finding and Order (Mar. 8, 2017). The Commission authorized an alternative notification process that included: a text and/or phone message the day of disconnection; a text and/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; the 14-day notice, as required under Ohio Adm.Code 4901:1-18-06; and a one-time bill insert informing customers of the change in process. Further, the Commission stated that should Duke want to continue the pilot, Duke must file a request

with the Commission and notify the parties by March 1, 2019. Applications for rehearing were filed by Consumer Groups and are still pending before the Commission.

A. Summary of the Application and Comments

{¶ 10} On January 30, 2019, Duke submitted an application to the Commission requesting a continuation of a waiver of Ohio Adm.Code 4901:1-18-06(A)(2). Duke requests to extend the pilot for an additional five years and is not proposing any other changes to the program. Duke avers that the use of communication has reduced the number of disconnections and that the Company has not received any complaints with respect to not providing a premises visit on the day of disconnection for nonpayment. Additionally, Duke states that continuing this program allows customers to realize the full benefit of the Company's advanced metering infrastructure (SmartGrid) investment. Duke argues that the continuation of the Company's SmartGrid enables many customer benefits, including the ability to remotely disconnect and reconnect electric customer service. The effective use of this service, among other benefits, provides better public and employee safety when addressing the requirement to disconnect customers. Further, Duke states its waiver request is beneficial to customers because it provides more notices and additional information to expedite payment or enter into arrangements to avoid disconnection.

{¶ 11} Staff states that as part of the Commission's approval of the amended application, the Commission directed Duke to work with Staff on the substance, format, and timing of data collected regarding the impact of the waiver. Staff maintains that Duke provided Staff monthly updates. Staff explained that it expected disconnections in the pilot area would increase because waiving the requirement to provide personal notice of pending disconnection eliminates the need to dispatch a service technician to the premises. However, Staff contends that the rate of disconnection has remained constant, which suggests that Duke customers have been responsive to the alternative means of notification and adjusted their behavior accordingly. Staff contends that the data provided by Duke demonstrates that customers are more responsive to the methods of alternative notification.

Staff recommends that the extension application should be approved, subject to the following conditions:

1. Duke should add a permanent bill message advising customers that in the event they are scheduled for disconnection due to nonpayment of a past due electric bill, they will not receive personal notice at their premises on the day of disconnection. Duke should work with Staff regarding the wording and placement of this message.
2. Duke should send separate notification, either as a mailing or bill insert, advising customers that they will not receive personal notice at their premises on the day of scheduled disconnection for nonpayment. Duke should work with Staff regarding the wording of this notification.
3. Duke should endeavor to ensure that the phone numbers on file for customers are current and accurate to the best of their ability.
4. Duke should work with social service agencies, community organizations, and any other interested parties to identify vulnerable and/or critical care customers, and those customers should continue to be excluded from the waiver.
5. Duke should continue to collect the monthly metrics as was agreed upon in the 2016 *Waiver Case*. Duke should provide this data to Staff on an annual basis, on or around July 1st each year, or when otherwise requested by Staff.

{¶ 12} OPAE argues that Duke's application contains no support for Duke's assertions that the waiver is responsible for the reduced number of disconnections or the reduced number of customers eligible for disconnection. OPAE contends that Duke has a poor record of following Ohio rules when disconnecting residential customers. OPAE cites to *In the Matter of the Commission's Investigation of the Disconnection Practices and Policies of Duke Energy Ohio, Inc.*, Case No. 17-2089-GE-COI (COI) where an auditor was selected to investigate Duke's disconnection practices and policies for its gas and electric services. In that proceeding, OPAE notes that the auditor made specific recommendations to assure that

Duke's disconnection notices provide customers with all required information. OPAE states that the Commission has not yet addressed the finding in that case and that OPAE filed comments in the *COI* that support the Commission's adoption of the recommendations of the auditor to assure that Duke is providing customers with all opportunities to avoid disconnection. OPAE argues that the Commission should adopt the auditor's recommendations from the *COI*. OPAE contends that the Commission should not renew the waiver requested in this application until the Commission has concluded the *COI* and addressed the auditor's recommendations.

{¶ 13} The Consumer Groups argue that Duke has not shown good cause for the requested waiver and the Commission should deny Duke's request. The Consumer Groups contend that, contrary to Duke's assertion, fewer customers being disconnected is due to an increased scrutiny of Duke's disconnection practices, not the waiver program. The Consumer Groups maintain that this increased scrutiny means that Duke has been on its "best behavior" when disconnecting residential customers' electric service. Further, Duke has not shown that the alternative means of notifying customers has been the sole nor the primary reason for the decrease in the number of residential electric customers disconnected for nonpayment. Additionally, the Consumer Groups state that Duke's characterization of remote disconnection as a benefit to customers is without merit. The Consumer Groups contend that Duke saves the cost of sending personnel to the customer's home to provide in-person notice. The Consumer Groups argue that customers do not realize any benefit from remote disconnection of their electric service and that, in reality, Duke benefits from remote disconnection. Further, the Consumer Groups argue that Duke's data regarding the waiver pilot does not show whether the pilot has benefited consumers because there is not any comparable data for the period before the waiver pilot began. The Consumer Groups assert that the Commission cannot gauge the waiver's effect on consumers and, therefore, should deny Duke's application and order Duke to resume in-person notice to residential customers on the day their electric service is to be disconnected.

{¶ 14} In reply comments, Duke states it agrees that the conditions recommended by Staff are reasonable and that the Company can comply with them. Additionally, in response to the Consumer Groups, Duke argues that the Consumer Groups disregard the success of the pilot and offer speculation in an attempt to explain away the results from the pilot. Duke contends that the independent auditor's review from the COI is not relevant in this case and nothing in the auditor's findings have changed or altered any of the Company's actions. Duke avers that the enhanced notification process is a benefit to customers as reconnection is completed immediately upon payment of their outstanding charges. According to Duke, the data supporting the pilot does aid the Commission and that comparable data is available through Duke's annual report on disconnection. Further, in response to OPAE, Duke argues the Company is committed to providing additional notices and are engaging in more communication rather than less. Duke argues that statistics show that, with the new processes, customers are proactively taking steps to avoid disconnection. According to Duke, the opposing comments fail to understand that Duke's customers are changing in the way they prefer to communicate and that Duke is taking great efforts to understand these preferences and respond to them. For those reasons, Duke recommends the Commission approve the contention of the existing waiver.

{¶ 15} On reply, the Consumer Groups reiterate their arguments stated in their original comments. In addition, the Consumer Groups argue that Staff's support of Duke's alternative to in-person disconnection notice to customers is based on a misreading of a passage in Duke's amended application in its *2016 Waiver Case*, and thus is faulty, and should not be followed. The Consumer Groups maintain that the Commission should end the pilot and restore the consumer protections in Ohio Adm. Code 4901:1-18-06(A)(2) to Duke's residential electric customers.

B. Commission Conclusion

{¶ 16} Upon review, the Commission finds Duke's request to continue the waiver should be approved. In the *2016 Waiver Case*, we determined that the Company's proposed alternative notification process complied with R.C. 4933.122 and was consistent with the

Commission's policies to prevent injuries to residential customers by helping customers maintain their utility service. *2016 Waiver Case*, March 8, 2017 Finding and Order, at ¶ 22. Now, after two years of information gathering, we affirm that determination. As stated by Staff, customers are more responsive to the alternative notification process than the previous methods. Additionally, notably neither Duke nor Staff received any complaints about the new process. The arguments against the waiver, provided by OPAE and the Consumer Groups, are unpersuasive. OPAE and the Consumer Groups largely submit that Duke overstates the positive effects of the waiver; however, they do not convincingly demonstrate how the waiver is harmful or does not comply with R.C. 4933.122. We observe that both OPAE and Consumer Groups reference the *COI*, which, at the time comments were submitted, was still ongoing. As that proceeding has now concluded, Duke is expected to comply with the Commission's directives from that case, including to any extent that it applies to this proceeding. See *COI*, July 17, 2019 Opinion and Order. Finally, the Commission finds that Staff's recommended conditions, to which Duke did not object, should be adopted.

{¶ 17} Accordingly, Duke's request to continue the waiver of Ohio Adm.Code 4901:1-19-06(A), as originally granted in the *2016 Waiver Case*, should be approved, subject to Staff's conditions. Duke is authorized to continue the waiver through May 1, 2024.

IV. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That Pro Seniors, Direct, and CUFA's motions to intervene be granted. It is, further,

{¶ 20} ORDERED, That the Duke's application for waiver be granted to the extent set forth in this Finding and Order. It is, further,

{¶ 21} ORDERED, That a copy of this Finding and Order 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

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