

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of its)
Temporary Plan and Waiver of Tariffs and) Case No. 20-599-GE-UNC
Rules Related to the COVID-19 State of)
Emergency.)

**JOINT COMMENTS FOR CONSUMER PROTECTION
REGARDING DUKE'S TRANSITION PLAN TO ADDRESS
THE CORONAVIRUS EMERGENCY FOR ELECTRIC AND GAS CUSTOMERS
BY
LEGAL AID SOCIETY OF GREATER CINCINNATI
OFFICE OF THE OHIO CONSUMERS' COUNSEL
PRO SENIORS, INC.**

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I. INTRODUCTION

Consumers need extra regulatory protections, including adoption of OCC’s proposals, to ensure affordable and continued access to their essential electric and gas utility services throughout the coronavirus emergency and for a reasonable time afterwards.¹ Protections are especially needed to address the challenges of at-risk populations in Duke’s service area. Those challenges include, but are not limited to high poverty levels,² food insecurity,³ and the impacts

¹ See OCC’s Comments for Additional Consumer Protections Regarding the Temporary Plan of Duke Energy Ohio to Address the Coronavirus Emergency (May 7, 2020) (“OCC Emergency Plan Comments”), and consumer protection guidelines recommended by the National Consumer Law Center (“NCLC”) (attached as Exhibit A), “Coronavirus Crises: How States Can Help Consumers Maintain Essential Utility Services.”

² For example, Cincinnati has a poverty rates in excess of 27%.
<https://www.cincinnati.com/story/news/2018/09/13/cincinnati-poverty-rate-27-7-percent-higher-than-before-great-recession-census-estimates-show/1277390002/#:~:text=Cincinnati's%20poverty%20rate%20stood%20at,of%20the%20new%20estimates%20sh.>

³ The food insecurity rate in Ohio has increased to 23% as a result of the pandemic.
[http://ohiofoodbanks.org/files/2019-20/Press-Release-OAF-urges-SNAP-increase-6.15.20.pdf.](http://ohiofoodbanks.org/files/2019-20/Press-Release-OAF-urges-SNAP-increase-6.15.20.pdf)

of social disparities in our country where, for example, minorities suffer from poverty at higher levels than their percentage representation in the overall population.⁴

In the city of Cincinnati, even before the crisis, residents already were at risk with poverty at 28.7% of the population. In Hamilton County, before the crisis, residents were at risk with food-insecurity at 17.2%. Recent pandemic-related data show food insecurity *statewide* at 23%,⁵ so circumstances no doubt are worsening for Cincinnati-area consumers. Further, 503,500 renters in Ohio were unable to pay their rent in June, according to a study.⁶

The coronavirus pandemic continues to take a toll on Ohioans' health and financial well-being. There have been more than 50,300 cases of coronavirus in Ohio, over 2,800 deaths,⁷ and over 1.36 million Ohioans have lost jobs and filed for unemployment during the last 13 weeks.⁸ Alarming, the state Administration announced last week that the number of Ohioans contracting the coronavirus is again rising.⁹ The financial strain that many Ohio customers are suffering as a result of the pandemic will continue for some time, maybe years.

⁴ For example, black Americans are 11.8% of Ohio's population, yet 32% of black Americans in Ohio live below the poverty line. <https://www.welfareinfo.org/poverty-rate/ohio/>.

⁵ <http://ohiofoodbanks.org/files/2019-20/Press-Release-OAF-urges-SNAP-increase-6.15.20.pdf>.

⁶ See <https://www.census.gov/data/tables/2020/demo/hhp/hhp8.html>, Housing Table 1(b), Ohio tab. See also <https://cohhio.org/9561-2/>.

⁷ <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home>.

⁸ <https://www.craigslist.com/government/ohio-unemployment-claims-down-nearly-300000-april-peak>.

⁹ <https://www.cleveland.com/datacentral/2020/06/ohios-disturbing-new-trend-of-increasing-coronavirus-cases.html>.

As utilities like Duke seek to resume their pre-coronavirus operations, the PUCO should continue to protect consumers facing health and financial hardships.¹⁰

II. BACKGROUND

Ohioans continue to face health and financial challenges due to the coronavirus. In fact, the health and financial challenges in Hamilton County are on the rise due to the disturbing increase in coronavirus cases and hospitalizations in recent weeks. Governor DeWine recently expressed concern over this alarming trend in Hamilton County.¹¹ This awful scenario will be even more difficult if utility disconnections are allowed to resume. As stated, in the city of Cincinnati, even before the crisis, residents already were at risk with poverty at 28.7% of the population. In Hamilton County, before the crisis, residents were at risk with food-insecurity at 17.2%. This pandemic has impacted all areas of life, and unemployment in the country is now considered the worst since the Great Depression.

Against this backdrop of human suffering, the PUCO rightfully ordered public utilities to file plans for protecting their customers. Duke filed its plan in steps -- on March 19, April 16, and May 4. In response, OCC filed comments on May 7, 2020. Among other recommendations, OCC advocated that the PUCO extend consumer protections for a reasonable period of time after the formal declaration of emergency ends.¹²

¹⁰ OCC is the statutory representative of Ohio's residential utility consumers. Pro Seniors, Inc. is a non-profit legal service provider located in Cincinnati, Ohio that works to expand economic opportunities and improve the quality of life for senior residents of Ohio. Pro Seniors is the only legal service provider in Ohio that is solely dedicated to advocating for the legal needs of Ohio senior citizens. Pro Seniors prioritizes serving low income seniors. Legal Aid Society of Greater Cincinnati helps to make the justice system fair and accessible to all, especially the vulnerable in our society by providing free, comprehensive, civil legal aid.

¹¹ See footnotes 1 and 2, *supra*.

¹² See OCC Comments at 3 (May 7, 2020).

The PUCO subsequently issued a Finding and Order approving Duke’s Emergency Plan on June 17, 2020. The PUCO said that “in light of the easing of social distancing restrictions as provided in the Department of Health’s Amended Stay at Home Order...Duke should begin working with [PUCO] Staff to develop a comprehensive plan describing the Company’s expectations to safely resume activities to a pre-COVID-19 basis.”¹³ The Order directed Duke, within 45 days, to propose a transition plan (“Transition Plan”) for resuming normal activities.¹⁴ Duke filed its Plan on June 26, 2020.

Duke’s Transition Plan proposes four specific phases to resume normal operations. First, effective August 10, 2020, Duke proposes to resume activities for all “suspended, delayed, and/or deferred, non-essential utility service-related activities...”; customer-requested disconnections of internal natural gas service; compliance repairs of service lines; and previously waived investigations required under Oh. Adm. Code 4901:1-10-04(C).¹⁵ Duke also proposes resuming normal billing processes, which includes assessing late payment fees during the regular billing cycles, and issuing disconnection notices to customers on August 10, 2020.¹⁶

Second, effective August 17, 2020, Duke proposes to resume compliance with service renewals for low cathodic protection reads.¹⁷ Third, effective August 21, 2020, Duke proposes to

¹³ See Finding and Order at ¶ 24 (June 17, 2020).

¹⁴ See *id.*

¹⁵ See *id.* at 7.

¹⁶ See *id.* at 9.

¹⁷ See *id.* at 8.

resume compliance with remediating grade two leaks.¹⁸ Fourth, effective August 24, 2020, Duke proposes to resume designated building leak surveys beyond those first prioritized.¹⁹

Duke also proposes to coordinate with the Ohio Development Services Agency to resume the Percentage of Income Payment Plan (“PIPP”) and the Graduate PIPP Programs as they were before the pandemic.²⁰ Duke is requesting that the PUCO permit it until May 31, 2021, to “catch-up and come into compliance with” certain requirements related to in-premises inspections suspended, delayed, or rescheduled by Duke or the customer due to COVID-19 concerns, along with all rule waivers granted by the PUCO.

Duke’s Transition Plan is unreasonable, and fails to account for the cognizable needs of its customers. In fact, the recent data reported by Duke reflects the personal-financial crisis that is directly impacting Duke’s residential customers.

The number of residential electric accounts with greater than 60 days in arrears increased by approximately 18,000 customers in April and May 2020, and there were 98,286 customers in greater than 60 days arrears by the end of May 2020.²¹ The number of Duke natural gas customers in April and May 2020 who had arrears greater than 60 days had increased by approximately 9,000.²² And as of the end of May 2020, there were 43,732 Duke natural gas customers who had arrears greater than 60 days. The number of customers with arrears that are greater than 60 days is a good measure of the number of customers who are significantly behind

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See id.* at 10.

²¹ *In the Matter of the Annual Report Required by Section 4933.123 Regarding Service Disconnections for Nonpayment*, Case 20-937-GE-UNC, Duke Annual Disconnection Report (June 29, 2020),

²² *Id.*

in their payments and could face being disconnected for non-payment when Duke resumes disconnections.

While some of these customers may qualify for financial bill payment assistance under the ODSA Summer Crisis Program, most will not have access to bill payment assistance when Duke begins disconnecting consumers. This is why it is crucial for Duke to offer consumers all of the PUCO ordered payment plans like the one-third, one-sixth, and one-ninth payment plans mandated in the rules.²³ But the rules also contemplate more reasonable customized payment plans suitable for the customer and the utility.²⁴ Customized payment plans could spread missed payments over a longer period of time and require a minimal initial down-payment. And Duke should not be allowed to charge consumers late fees or disconnect customers while the declared emergency is in place, or for a reasonable period of time thereafter.

III. RECOMMENDATIONS

A. To protect consumers, there should be a consistent approach to implementing an orderly transition to pre-pandemic operations for all utilities (and consumers) in Ohio.

The PUCO should establish a uniform set of guidelines applicable to all utilities for establishing an orderly transition back to pre-pandemic operations. For example, consumer protection recommendations published by the National Consumer Law Center (“NCLC”), offer good consumer protection guidance for the PUCO to adopt.²⁵

²³ Ohio Adm. Code 4901:1-18-05.

²⁴ *Id.*

²⁵ See *National Consumer Law Center, Coronavirus Crisis: How States Can Help Consumers Maintain Essential Utility Services (March 2020)*, attachment A.

Dominion has proposed through its Transition Plan to resume disconnecting customers for non-payment and to resume imposing the strict eligibility requirements for participation in the PIPP program beginning August 3, 2020.²⁶ *The PUCO has already and unfortunately approved* Columbia Gas of Ohio's plan to resume disconnecting customers for non-payment and to impose the strict eligibility requirements for participation in the PIPP program beginning July 29, 2020.²⁷ Suburban Natural Gas Company proposes that the utility will mail disconnection notices beginning August 18, with scheduled disconnections the 1st week of September.²⁸

Utilities are intending to resume usual pre-COVID-19 activities *even though there is no clear end in sight for the state of emergency*. And each utility is proposing its own deadline for resuming activities such as disconnections for non-payment. This haphazard approach should not be approved by the PUCO. The PUCO should establish a uniform set of guidelines that protect consumers statewide, applicable to all utilities, for establishing an orderly and fair transition back to pre-pandemic operations.

B. To protect consumers, the PUCO should require Duke to continue suspending all disconnections for non-payment until a reasonable period after the formal coronavirus state of emergency has ended.

Duke properly suspended its disconnections of customers related to non-payment in response to the PUCO's emergency order.²⁹ But now Duke is requesting that this important consumer protection end by September 1, 2020, approximately two months from now.³⁰ This is

²⁶ See Dominion's Transition Plan (June 18, 2020) at 2, 5.

²⁷ See *In the Matter of the Motion of Columbia Gas of Ohio, Inc. to Suspend Certain Procedures and Process During the COVID-19 State of Emergency and Related Matters*, Case No. 20-637-GA-UNC, Supplemental Finding and Order (June 17, 2020), at ¶26.

²⁸ Suburban Transition Plan, at 1.

²⁹ See Duke's Emergency Plan Application at 4.

³⁰ See Transition Plan at 9.

unreasonable (though we appreciate that Duke proposed a longer timeline for consumer protection than some other utilities).

Further, Duke previously stated in a message to consumers that disconnections related to non-payment would not resume until the national state of emergency is lifted.³¹ To date, there is no indication as to when that may occur as the health emergency is still very much ongoing and even escalating.

In fact, it is reported that coronavirus cases are on the rise in Ohio.³² Thus, there is certainly no reason to believe now that the coronavirus emergency will be over by September 1, 2020. It would not be preventing “injury” to the public -- that the emergency statute (R.C. 4909.16) is designed to prevent -- to approve Duke’s plan for resuming disconnections of consumers starting September 1, 2020.

Instead, the PUCO should modify Duke’s Transition Plan by adopting a recommendation that OCC has consistently made: extend the suspension of disconnections for non-payment for a reasonable period of time *after* the formal declared coronavirus emergency has ended.³³ This would give consumers peace of mind during the crisis that their basic, essential utility service will not be shut off. It will also give the PUCO the flexibility to address utilities’ emergency plans based on facts as the emergency unfolds. Setting a date-certain now for when Duke can start disconnecting customers for non-payment (while the emergency is still in place, coronavirus

³¹ See, e.g., <https://spectrumlocalnews.com/nc/triangle-sandhills/news/2020/03/13/duke-energy-plans-to-not-cut-power-for-nonpayment-during-coronavirus-outbreak>

³² See note 7, *supra*.

³³ See OCC Comments at 2.

cases are on the rise, and there is no certainty when the emergency will end) is a bad approach for consumers.³⁴

C. The PUCO should require Duke to offer extended payment plans and continue waiving late payment fees and reconnection fees, through 2021 or until the emergency is over (whichever is later).

Duke proposes to start charging consumers for late payment fees and reconnection fees starting August 10, 2020 and September 1, 2020, respectively.³⁵ Duke initially offered to be “extremely flexible with customers who reach out to make payment arrangements.”³⁶ But Duke’s Transition Plan only mentions that it has already created an automated process for residential and small/medium customers to self-enroll in either a three- or six-month payment arrangement without needing to contact Duke’s call center.³⁷

The Transition Plan fails to even mention the nine-month payment option that Duke is required to offer to customers. The PUCO should require that Duke offer a self-enroll option for the nine-month payment plan in its Transition Plan. Further, as part of its Transition Plan, the PUCO should require Duke to offer payment plans that allow consumers more time than the traditional three-, six-, and nine-month payment plans to pay past due balances owed Duke. Other transition plans recently filed by Dominion Energy Ohio and Suburban Natural Gas include additional payment options such as twelve-month payment plans and twenty-four-month payment plans for exceptional circumstances. These extended options are of vital importance to consumers facing the on-going personal-financial crisis caused by the coronavirus pandemic.

³⁴ The PUCO has the authority to suspend disconnections and to order other consumer protections under R.C. 4909.16. It enables the PUCO to act when it “deems it necessary to prevent injury to the business or interests of the public....”

³⁵ See Duke’s Transition Plan at 9.

³⁶ See Duke’s Emergency Plan Application at 4.

³⁷ See Transition Plan at 5.

Duke's transition plan provides no specific details on the requirements that will be imposed upon PIPP customers. In fact, Duke merely mentions that it will coordinate with ODSA for resuming pre-pandemic requirements for PIPP and Graduate PIPP customers.³⁸ But it is unreasonable that Duke is not disclosing how PIPP customers will be treated in the Transition Plan. After all, only the PUCO has the statutory authority to determine disconnection requirements for PIPP customers.³⁹

At a minimum, the PUCO should require Duke to suspend late payment and reconnection fees. And it should allow customers to enter into payment plans for paying back any past-due amounts accruing during the state of emergency, through 2021 or until the emergency is over (whichever is later).

Also, the PUCO should not permit Duke to allow customers to be charged third-party payment processing fees as it has proposed.⁴⁰ Such fees only make utility payments all the more expensive for consumers.

These recommendations will provide some much-needed relief to Duke customers who have lost income or jobs due to the coronavirus emergency. And it will allow Duke to collect revenues for utility service over a longer period of time while consumers are fighting to get back on their feet.⁴¹

³⁸ Transition Plan at 9

³⁹ R.C. 4928.53(B)(3).

⁴⁰ Transition Plan at 9.

⁴¹ See R.C. 4928.02 (L).

IV. CONCLUSION

Ohio consumers continue to face perilous times – a health crisis and a personal-finance crisis. The PUCO should continue to require Duke to offer consumer protections while the emergency is in place and for a reasonable period of time thereafter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Joint Comments have been served via electronic transmission upon the following parties of record this 6th day of July 2020.

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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Coronavirus Crisis: How States Can Help Consumers Maintain Essential Utility Services

March 2020

KEEP RESIDENTIAL UTILITY SERVICE ON DURING THE CRISIS

Access to affordable electric, gas, water, sewer, and telecommunications (including internet) services is essential at all times, but especially during a worldwide pandemic and shelter-at-home orders. Throughout the COVID-19 emergency, states should take the following steps to ensure that consumers stay connected to essential utility networks and reduce the need for public interaction:

- Issue an emergency declaration through gubernatorial action banning all regulated and unregulated utility service shut offs, including electric, gas, water/sewer, and telecommunications services, due to inability to pay, during the crisis;
- Order all regulated and unregulated utilities to reconnect customers who were previously disconnected due to inability to pay;
- Ban all in-person marketing and sales of alternative energy supply and distributed energy products during the length of the emergency declaration;
- Encourage low-income households to apply for the federal Lifeline phone and broadband program for free or discounted voice and data service;
- Adjust state Low Income Home Energy Assistance Program (LIHEAP) application deadlines, enrollment access and eligibility certification processes; and

ENSURING THAT UTILITY SERVICE IS AFFORDABLE FOR ALL

After emergency orders have been lifted, states should ensure that utility arrearages incurred during the crisis do not trigger disconnections. States should require all utility service providers, both regulated and unregulated, to adopt more flexible credit and collections practices than currently required by state regulations and unregulated utility policies. Such protections should:

- Eliminate any customer deposit requirements;
- Eliminate down payment requirements on deferred payment arrangements (DPAs);
- Allow flexible, reasonable DPAs that are based on the customer's ability to pay;
- Eliminate any requirement that disconnected customers pay the full arrearage in order to reconnect, thereby permitting reconnection upon issuance of an affordable DPA;
- Eliminate minimum balance requirements for prepaid utility service customers;
- Require utilities to write off debt for consumers who certify that they are eligible for LIHEAP, but are unable to receive LIHEAP due to insufficient LIHEAP funds; and
- Prohibit utilities from imposing late fees and engaging in negative credit reporting

Questions? Contact National Consumer Law Center advocates Jen Bosco (jbosco@nclc.org), Charlie Harak (charak@nclc.org), John Howat (jhowat@nclc.org), Karen Lusson (klusson@nclc.org) or Olivia Wein (owein@nclc.org).

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Summary: Comments Joint Comments for Consumer Protection Regarding Duke's Transition Plan to Address the Coronavirus Emergency for Electric and Gas Customers by Legal Aid Society of Greater Cincinnati, Office of the Ohio Consumers' Counsel and Pro Seniors, Inc. electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.