

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE MOTION OF
VECTREN ENERGY DELIVERY OF OHIO,
INC. TO SUSPEND CERTAIN PROCEDURES
AND PROCESS DURING THE DECLARED
STATE OF EMERGENCY AND RELATED
MATTERS.

CASE NO. 20-649-GA-UNC

ENTRY ON REHEARING

Entered in the Journal on July 29, 2020

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by Ohio Consumers' Counsel of the Commission's June 3, 2020 Finding and Order, granting, in part, the motion of Vectren Energy Delivery of Ohio, Inc. for waiver of certain provisions of the Ohio Administrative Code and corresponding provisions of its tariff during the declared state of emergency.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Vectren Energy Delivery of Ohio, Inc. (Vectren or Company) is a natural gas company and a public utility, as defined in R.C. 4905.03 and 4905.02, respectively. Therefore, Vectren is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4909.16 provides, in part, that, in the event of an emergency, when the Commission finds it necessary to prevent injury to the business or interests of the public or of any public utility, it may temporarily alter, amend, or suspend any existing rates or schedules.

{¶ 4} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department

of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 5} Pursuant to R.C. 3701.13, the Ohio Department of Health has supervision of “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation.” On March 12, 2020, the Director of the Ohio Department of Health issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.” On March 22, 2020, and as amended on April 2, 2020, the Director of the Ohio Department of Health issued an Order directing that from March 23, 2020, until May 1, 2020, with certain outlined exceptions, “all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence except as allowed in [the] Order. * * * All persons may leave their homes or place of residence only for Essential Activities, Essential Governmental Functions, or to participate in Essential Businesses and Operations,” as defined in the Order.

{¶ 6} On March 12, 2020, the Commission initiated Case No. 20-591-AU-UNC and directed all utility companies in this state to review their disconnection procedures in light of the state of emergency. *In re the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC (*Emergency Case*), Entry (Mar. 12, 2020) at ¶ 7. On March 13, 2020, the Commission extended its winter reconnection order through May 1, 2020, and directed all utility companies in this state to review their reconnection procedures. *Emergency Case*, Entry (Mar. 13, 2020) at ¶ 6. In the March 12, 2020, and March 13, 2020 Entries, the Commission also directed all utility companies to promptly seek any necessary approval, for the duration of the emergency, to suspend otherwise applicable disconnection or

reconnection requirements that may impose a service continuity or service restoration hardship on residential and non-residential customers or create unnecessary COVID-19 risks associated with social contact. The Commission determined that such filings shall be deemed approved on an emergency basis for a period of at least 30 days effective as of the filing date or until such date as the Commission may otherwise specify, which shall not be less than 30 days.

{¶ 7} On March 20, 2020, in the *Emergency Case*, the Commission directed all utility companies to suspend in-person, actual meter readings in circumstances where a meter is located inside a customer's home or similar location, as well as all other non-essential functions that may create unnecessary COVID-19 risks associated with social contact, including, but are not limited to, in-home energy efficiency audits, weatherization programs, in-premises inspections not prompted by an identified safety-related concern, and other similar initiatives. The Commission also clarified that requests for accounting authority or incremental cost recovery related to the emergency will be addressed in each utility's individual case by subsequent entry. *Emergency Case*, Entry (Mar. 20, 2020) at ¶¶ 10-11, 13.

{¶ 8} On March 24, 2020, in the above-captioned case, Vectren filed a motion to suspend or modify certain policies and practices and to seek a waiver of various provisions of the Ohio Administrative Code, its tariff requirements, and other policies or requirements for the duration of the state of emergency in Ohio.

{¶ 9} On April 8, 2020, in the *Emergency Case*, the Commission, among other things, extended the 30-day automatic approval period for filings to suspend otherwise applicable disconnection requirements for an additional 30 days, unless otherwise ordered by the Commission. *Emergency Case*, Finding and Order (Apr. 8, 2020) at ¶ 9.

{¶ 10} Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE) were granted intervention in this matter.

{¶ 11} On May 11, 2020, Staff filed its review and recommendations in response to Vectren's motion to suspend provisions of the Ohio Administrative Code and corresponding provisions of its tariff.

{¶ 12} By Entry issued May 13, 2020, to assist the Commission with its review of Vectren's motion, a procedural schedule was established such that motions to intervene and comments were due by no later than May 20, 2020. Comments were timely filed by OCC and OP&E.

{¶ 13} On May 20, 2020, Vectren filed a motion for extension of the suspension of, modification to, or waiver of rules, tariff provisions, and applicable policies and practices requested in its motion filed on March 24, 2020.

{¶ 14} By Entry issued May 21, 2020, Vectren's motion for an extension of its rule and tariff suspension was granted until the Commission specifically orders otherwise.

{¶ 15} By Finding and Order issued June 3, 2020, the Commission granted, in part, Vectren's motion for waiver of certain provisions of the Ohio Administrative Code, and the corresponding provisions of its tariff, consistent with Staff's recommendations and modifications, and the Finding and Order.

{¶ 16} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 17} On July 6, 2020, OCC filed an application for rehearing of the June 3, 2020 Finding and Order, asserting five assignments of error.

{¶ 18} Memoranda contra OCC's application for rehearing were filed by Vectren and OP&E on July 16, 2020.

{¶ 19} The Commission has reviewed and considered all of the arguments raised in OCC's application for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

B. Consideration of the Application for Rehearing

{¶ 20} In its first assignment of error, OCC argues that the Commission failed to use its emergency powers under R.C. 4909.16 to direct Vectren to repurpose funds collected for low-income weatherization for the remainder of 2020 and approximately \$2.1 million to be collected in 2021. OCC argues that instead the funds collected for low-income weatherization programs should be used to provide bill payment assistance to customers. OCC notes that, while the Commission acknowledged a likely increased need for bill payment assistance for Vectren's customers, the Commission rejected OCC's proposal to repurpose non-essential weatherization funds to provide immediate payment assistance in the June 3, 2020 Finding and Order and deferred the decision to Vectren's demand-side management (DSM) audit case, Case No. 19-2084-GA-UNC, with an unknown timeline for resolution. OCC asserts that the program funds collected by Vectren provide weatherization for approximately 334 low-income homes, whereas the monies could provide bill payment assistance for approximately 12,000 low- and lower-income Vectren customers. OCC advocates that the challenges of poverty and food insecurity in the Dayton and Montgomery County areas necessitate the Commission's use of its emergency authority to prevent injury to the public interest.

{¶ 21} Vectren and OPAE note that, in the June 3, 2020 Finding and Order, the Commission recognized that OCC had raised this very same proposal in Case No. 19-2084-GA-UNC, the Company's DSM rider update case, which is currently pending before the Commission. Further, Vectren notes that on June 26, 2020, certain parties to Vectren's DSM case, including Vectren and Staff, filed a Stipulation and Recommendation providing a path forward for resolution of the application in the near term. Vectren asserts that the Commission's decision to address OCC's proposal in the DSM case, where Vectren's low-

income weatherization program is at issue, was not unreasonable. OP&E declares that, in its first assignment of error, OCC fails to state any legal principle that the June 3, 2020 Finding and Order violates. Accordingly, OP&E and Vectren advocate that the Commission again reject OCC's proposal and deny the request for rehearing.

{¶ 22} In the June 3, 2020 Finding and Order, the Commission explained that the issue had previously been raised in Case No. 19-2084-GA-UNC, Vectren's DSM audit proceeding, and that, unlike this case, the parties to the DSM proceeding had been afforded the opportunity to respond to OCC's proposal. To be clear, the Commission has not rejected nor foreclosed consideration of OCC's proposal but will consider the request to repurpose weatherization funds in Vectren's DSM case.

{¶ 23} In regard to R.C. 4909.16, we note such authority is at the Commission's discretion; where the Commission deems it necessary to prevent injury to the business or interests of the public or of any public utility, the Commission may temporarily alter or amend any existing rates, schedules, or order relating to or affecting any public utility. Through the Commission's *Emergency Case* and Vectren's response thereto, the Company immediately ceased disconnections for non-payment and, at customers' requests, commenced the reconnection of service, as well as waived certain fees and deposits and deferred charges to eliminate the financial barriers to the reconnection or continuity of service. June 3, 2020 Finding and Order at ¶¶ 32-34. The Commission has also directed Vectren and other utilities to inform customers of extended payment plans and payment assistance, as well as other resources. June 3, 2020 Finding and Order at ¶ 37; *In re Ohio Power Co.*, Case No. 20-602-EL-UNC, et al., Finding and Order (May 6, 2020) at ¶ 51; *In re Columbia Gas of Ohio, Inc.*, Case No. 20-637-GA-UNC, Finding and Order (May 20, 2020) at ¶ 42. The Commission has taken these steps to prevent injury to Ohio businesses, the public interest, and the public utility. While OCC cites the Commission's emergency authority pursuant to R.C. 4909.16, OCC has raised no new argument for the Commission's consideration on this issue and, therefore, we find that the request for rehearing should be denied.

{¶ 24} In its second assignment of error, OCC submits that the Commission unreasonably failed to require, pursuant to R.C. 4909.16, the reconnection of service for customers, particularly at-risk consumers, that Vectren disconnected during the time period beginning 30 days before the governor declared a state of emergency on March 9, 2020. Further, OCC asserts that the Commission summarily rejected, without explanation, OCC's recommendation to implement the proposed look-back period, in violation of R.C. 4903.09. OCC notes that customers whose service was disconnected by Vectren immediately prior to the declaration of the emergency are no less worthy of protection than customers that experienced a disconnection of service after the declaration of the emergency. OCC declares that, for a disconnected consumer, Vectren's utility services are needed now to heat water and will be needed later for winter heating; thus, OCC contends that reconnecting the service of disconnected customers fits under the Commission's emergency authority granted pursuant to R.C. 4909.16. OCC requests that the Commission, pursuant to its emergency authority, abrogate the June 3, 2020 Finding and Order and direct Vectren to reconnect the service of customers who were disconnected for non-payment in the 30-day period prior to the declaration of the emergency.

{¶ 25} While OPAE generally agrees with OCC that Vectren should work to reconnect customers disconnected as a result of the pandemic, OPAE reasons that OCC's assertion of an assignment of error is not an error at all but the Commission's decision not to adopt a recommendation of OCC. OPAE contends that, while OCC alleges that the June 3, 2020 Finding and Order violates R.C. 4903.09, that is not the case; the Commission clearly stated that OCC's proposal was too strict. In OPAE's opinion, OCC simply disagrees with the Commission's decision and merely rehashes the arguments made in its comments. Accordingly, OPAE recommends that OCC's second assignment of error be denied by the Commission.

{¶ 26} Vectren contends that the assertion that the Commission summarily rejected, without explanation, OCC's proposal is untrue, as the Commission determined OCC's proposal to be overly strict and unnecessary. As part of the June 3, 2020 Finding and Order,

Vectren notes that the Commission encouraged Vectren to work with customers to agree on terms to reconnect service, regardless of when service was disconnected, and to temporarily forego the collection of deposits and fees, where it was reasonable to do so under the circumstances. June 3, 2020 Finding and Order at ¶ 33. Vectren states that it was not unreasonable for the Commission to reject OCC's recommendation and the Commission's rationale for doing so was adequately supported. Vectren notes that the Commission's Entry on Rehearing in Columbia's emergency plan case, Case No. 20-637-GA-UNC, comes to the same conclusion. Vectren states that OCC has not offered anything new to justify the Commission's reconsideration of its prior decision on OCC's proposal.

{¶ 27} The Commission notes that, in its comments regarding Vectren's motion for suspension, OCC recommended that the Commission establish the look-back period and further specifically proposed that, "at a minimum, the [Commission] should direct Vectren to work with its customers on terms to reconnect customers regardless of when disconnection occurred." Further, OCC proposed the Commission "order that all reconnection fees, deposits, and accumulated late fees during the emergency, including any look-back period, be deferred, for later collection from customers and returned to those customers, if already collected." The Commission determined that it was imperative that the service of disconnected customers be restored with access to assistance if needed, rather than select an arbitrary date, prior to the declared emergency, and focus on customers disconnected during the proposed look-back period, to grant the waiver and deferral of fees and charges, as OCC suggested.

{¶ 28} In the June 3, 2020 Finding and Order, in lieu of an arbitrary and overly prescriptive look-back period to trigger a reinstatement of service and payment assistance, we encouraged Vectren to work with all customers, including at-risk consumers, to agree on terms to reconnect service, regardless of when the service disconnection occurred. June 3, 2020 Finding and Order at ¶ 33. In this manner, the Commission afforded customers disconnected during the initial phase of the declared emergency and those customers

disconnected prior to the emergency the same assistance and process to have service reconnected.

{¶ 29} Further, the Commission notes that OCC endorsed Vectren's request that customers previously disconnected for non-payment contact the Company to have service reconnected, thus affording Vectren the opportunity to inform customers of available assistance. Vectren also agreed to waive late payment fees and reconnection fees and suspended or waived other payment requirements. June 3, 2020 Finding and Order at ¶¶ 23, 29, 33-34. Thus, considering the totality of the June 3, 2020 Finding and Order, the Commission adopted an approach to efficiently reconnect utility service for customers previously disconnected for non-payment, to inform customers of available assistance and resources, and to fairly support the continuity of service for all Vectren customers, including at-risk consumers, irrespective of when the service was disconnected. OCC has raised no new argument on this issue which persuades the Commission that its decision should be abrogated or amended and, therefore, the Commission finds that OCC's request for rehearing of this matter should be denied.

{¶ 30} In its third assignment of error, OCC notes that, in its comments, it requested that the Commission order Vectren to suspend the disconnection of service for a reasonable time after the declared state of emergency has ended. OCC submits that the Commission unreasonably rejected OCC's proposal and failed to sufficiently protect consumers, particularly at-risk consumers. OCC notes that the June 3, 2020 Finding and Order directed Vectren to file a plan to resume pre-COVID-19 emergency activities and operations and, pursuant to the transition plan filed June 30, 2020, Vectren proposes to resume service disconnections beginning August 15, 2020, and to fully resume pre-emergency disconnection practices by October 1, 2020. June 3, 2020 Finding and Order at ¶ 54. OCC argues that Vectren's plan to restart disconnections is premature. OCC states that the COVID-19 crisis is escalating and the impact to the public increasing and Vectren's customers continue to face a health crisis and struggle financially. OCC contends that the continuation of the moratorium on disconnections is essential, as Vectren's service is needed

to heat water in the summer and to provide heat in the winter. For these reasons, OCC argues that the Commission should use its emergency authority under R.C. 4909.16 to protect Ohioans from the disconnection of their utility service.

{¶ 31} As to OCC's third assignment of error, Vectren notes that the Commission recognized that the state had begun efforts to responsibly rescind the orders of the Department of Health's Amended Stay at Home Order and directed that the Company work with Staff to develop a plan to resume suspended activities, including disconnections. Vectren notes that the Company filed its transition plan, which incorporates a four-phase approach, on June 30, 2020. Vectren contends that there are reasonable consumer safeguards in the advance notice afforded customers, the four-phase approach for engaging with customers, and the expanded payment plans offered. According to Vectren, it was not unreasonable for the Commission to reject OCC's recommendation that disconnections be suspended indefinitely, given the requirement that the Company work with Staff to develop the conditions of the transition plan. As OCC's application for rehearing merely repeats its prior recommendation to the Commission and does not offer any reason for the Commission to reconsider its decision, Vectren asks that OCC's request for rehearing be denied.

{¶ 32} In its fourth assignment of error, OCC contends that the Commission failed to order, pursuant to R.C. 4909.16, that the declared emergency will continue indefinitely, consistent with the threat of the virus to Ohioans and the consequences of its financial impact, particularly for at-risk consumers. OCC notes that the number of coronavirus cases is escalating, and Ohioans continue to face the financial impacts as a result of the pandemic. Instead of discontinuing consumer protections, as Vectren proposes in its transition plan, OCC argues that the Commission should protect consumers by continuing its emergency jurisdiction indefinitely or at least until an end to the emergency is officially declared and for a reasonable time thereafter.

{¶ 33} As to OCC's fourth assignment of error, Vectren notes that, in the June 3, 2020 Finding and Order, the Commission did not indicate that it was discontinuing the use of its

emergency powers under R.C. 4909.16 nor declare the emergency over. Indeed, Vectren avers that the Finding and Order is not, as OCC asserts, an abdication of the Commission's duty to protect consumers. The purpose of the June 3, 2020 Finding and Order, according to Vectren, was to encourage Vectren to develop additional protocols and practices to facilitate the safe resumption of suspended activities, which are set forth in the Company's transition plan currently pending before the Commission. Accordingly, Vectren argues that there is no basis for OCC's suggestion that the Commission has stopped taking action in response to the emergency. Vectren notes that OCC's arguments as to the fourth assignment of error have been considered and rejected in Case No. 20-637-GA-UNC. *In re Columbia Gas of Ohio, Inc.*, Case No. 20-637-GA-UNC, Entry on Rehearing (July 15, 2020) at ¶ 35. Vectren states that OCC fails to offer any new arguments on this issue and, therefore, the Company submits that the request for reconsideration should be denied.

{¶ 34} As to OCC's third and fourth assignments of error, OPAE states that, while OPAE agrees with OCC that the pandemic is an ongoing concern that will need to be monitored closely, which may require further action by the Commission, blanket, indefinite suspensions of disconnections are not the best option to protect customers and, in the long term, can make it harder for customers to get back on track with their utility. Further, OPAE explains that the issues raised in OCC's third and fourth assignments of error are premature and should be decided as part of the Commission's consideration of Vectren's transition plan to resume pre-emergency operations and activities. OPAE notes that Vectren filed its transition plan on June 30, 2020, and OCC availed itself of the opportunity to file comments. According to OPAE, the Commission can properly decide the issues raised in OCC's third and fourth assignments of error when it considers the Company's transition plan.

{¶ 35} In regard to OCC's third and fourth assignments of error, the Commission notes that, as acknowledged in the June 3, 2020 Finding and Order, the state has taken steps to responsibly relax the requirements of the Department of Health's Amended Stay at Home Order. We further noted that the issue of how Vectren should responsibly return to otherwise applicable activities and operations requires further consideration by the

Commission. The Commission recognizes, as OP&E acknowledges, that disconnections for non-payment cannot be suspended indefinitely and, for that reason, as OCC requested in its comments, the Commission directed Vectren to work with Staff to develop a plan to resume suspended activities, including disconnections, and to offer extended payment plans, including flexible custom payment plans, for customers. We also specified that Vectren's plan to return to operations previously precluded by the Commission's directives in the *Emergency Case* would be a matter for comment by OCC and other interested stakeholders. June 3, 2020 Finding and Order at ¶¶ 34, 38, 54.

{¶ 36} The alleged errors raised in OCC's third and fourth assignments of error pertain to the duration of the suspension of disconnections and other emergency measures. Consistent with the June 3, 2020 Finding and Order, OCC's recommendations with respect to the proper timeframe for resuming disconnections and other activities temporarily suspended due to the emergency were offered for the Commission's consideration in response to the filing of Vectren's transition plan. The Commission considers OCC's comments, as well as the comments of other intervenors, in regard to Vectren's transition plan in its decision issued today, including specifically as to disconnections. July 29, 2020 Supplemental Finding and Order at ¶¶ 35-37. Accordingly, the Commission finds that OCC's third and fourth assignments of error as to the June 3, 2020 Finding and Order are more appropriately addressed in the Supplemental Finding and Order and, therefore, should be denied.

{¶ 37} Finally, in its fifth assignment of error, OCC argues that the June 3, 2020 Finding and Order unreasonably failed to adopt all of the recommendations developed by the National Consumer Law Center (NCLC) as proposed by OCC to protect consumers. OCC submits that the Commission should establish a uniform set of guidelines applicable to all utilities, consistent with those published by NCLC, to protect customers and provide much needed certainty as to utility services during the state of emergency and for a reasonable time afterwards. OCC notes that Vectren's transition plan, as well as the transition plans of other Ohio utilities, proposes to resume disconnections as early as July

29, 2020, in contradiction to the recommendations of NCLC that all utilities be prohibited from disconnecting customers for non-payment during the emergency. Further, OCC alleges that the Finding and Order failed to provide reasons for the Commission's decision to decline to adopt the NCLC recommendations, as required by R.C. 4903.09.

{¶ 38} Vectren notes, as to the requirements of R.C. 4903.09, that, in the Finding and Order, the Commission emphasized that the issues of service continuity, social distancing, consumer protections, and payment arrangements, including fees and charges, were being and would continue to be adequately addressed by way of the *Emergency Case*, as well as in each utility's individual emergency plans or motions for waivers. June 3, 2020 Finding and Order at ¶ 51. Vectren reasons that the uniform adoption of the NCLC recommendations was unnecessary, given the actions already taken by the Commission and each utility. Therefore, Vectren contends that OCC has not raised any new arguments to justify the Commission revisiting the determination in its June 3, 2020 Finding and Order.

{¶ 39} OPAE notes that, while OCC argues that the Finding and Order unreasonably rejected the recommendations of the NCLC, without explanation, in violation of R.C. 4903.09, OCC provides no basis for the Commission to reconsider its decision. In OPAE's view, OCC simply disagrees with the Commission's decision and rehashes its arguments, which have already been considered and rejected, in an attempt to achieve a different outcome. OPAE argues that NCLC's recommendations are generic and some are simply not applicable, given Ohio's mixture of low-income programs. OPAE adds that the Commission's orders, coupled with the motions for waivers and transition plans filed by the utilities, address the recommendations of NCLC. OPAE concludes that the rehashing of these arguments does not present a basis for modification of the Commission's decision in the Finding and Order and, therefore, OCC's fifth assignment of error should be denied.

{¶ 40} The Commission notes that, in the *Emergency Case* and Vectren's motion for suspension, as discussed in the June 3, 2020 Finding and Order, consumer protection issues, including the disconnection of service for non-payment, the reconnection of service, the

waiver and deferral of fees and deposits, extended payment plans, and payment assistance have been thoughtfully and thoroughly addressed. The Commission finds it unnecessary, as OCC asserts, that all utilities under the Commission's jurisdiction follow a uniform set of guidelines as presented by NCLC. While OCC may disagree with the Commission's decision, the application for rehearing fails to present any new arguments which persuade the Commission to reconsider its decision on this matter. Accordingly, OCC's request for rehearing should be denied.

III. ORDER

{¶ 41} It is, therefore,

{¶ 42} ORDERED, That the application for rehearing filed by OCC be denied. It is, further,

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

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

GNS/hac

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