

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 RULES
RELATED TO THE COVID-19 STATE OF
EMERGENCY.

CASE NO. 20-599-GE-UNC

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR
APPROVAL OF A REASONABLE
ARRANGEMENT.

CASE NO. 20-856-EL-AEC

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. TO MODIFY
ITS ECONOMIC COMPETITIVENESS FUND
RIDER AND REQUEST FOR WAIVERS.

CASE NO. 20-857-EL-RDR

ENTRY ON REHEARING

Entered in the Journal on August 12, 2020

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by Ohio Consumers' Counsel of the Commission's June 17, 2020 Finding and Order, granting Duke Energy Ohio, Inc.'s application for approval of its plan for addressing the COVID-19 state of emergency, motion for waiver of certain provisions of the Ohio Administrative Code, and corresponding provisions of its tariff during the COVID-19 state of emergency.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Duke Energy Ohio, Inc. (Duke or Company) is an electric light company and natural gas company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, 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.”

{¶ 6} On March 12, 2020, the Commission opened 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 19, 2020, in Case No. 20-599-GE-UNC, Duke filed an application proposing a temporary plan for addressing the COVID-19 state of emergency, which sought the Commission's approval of certain policies, practices, and requirements the Company seeks to suspend pursuant to the Commission's March 12, 2020, and March 13, 2020 Entries and waiver of certain administrative rules.

{¶ 8} By Entry dated March 20, 2020, 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. 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.

{¶ 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} On April 16, 2020, and amended on April 17, 2020, Duke filed an application in Case Nos. 20-856-EL-AEC and 20-857-EL-RDR for a reasonable arrangement proposal that would temporarily reduce the currently approved demand ratchet in applicable non-

residential rates during the summer of 2020 and enable Duke to recover the lost revenues from those classes of customers.

{¶ 11} On April 24, 2020, and corrected on April 28, 2020, Staff filed its review and recommendations in response to Duke's request for approval of its emergency plan, as amended.

{¶ 12} By Entry on April 27, 2020, the attorney examiner established a procedural schedule directing motions to intervene and comments to be filed by May 7, 2020.

{¶ 13} On May 4, 2020, Duke filed a motion seeking additional waivers in Case No. 20-599-GE-UNC. Specifically, the Company sought a waiver of Ohio Adm.Code 4901:1-18-05, regarding extended payment plans. Duke requested authority to proactively reach out to customers accumulating arrearages to offer various repayment plans. The Company also sought to offer repayment plans not outlined in Ohio Adm.Code 4901:1-18-05.

{¶ 14} Ohio Energy Group, Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), Ohio Environmental Council, the Ohio Manufacturers' Association Energy Group, and the Kroger Company were granted intervention in these matters.

{¶ 15} On May 7, 2020, all intervening parties filed comments regarding Duke's request.

{¶ 16} By Finding and Order dated June 17, 2020, the Commission approved Duke's application for waiver of certain provisions of the Ohio Administrative Code and corresponding provisions of the Company's tariff, consistent with Staff's recommendations and modifications, and consistent with the Finding and Order. Further, in recognition of the state's relaxation of social distancing restrictions, the Commission directed Duke to work with Staff to develop a single, comprehensive plan to resume activities and operations, including timelines, and file the plan at least 45 days prior to resuming such activities and

operations. Interested persons were directed to file comments within ten days after the filing of the plan.

{¶ 17} 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.

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

{¶ 19} Duke and OPAE filed memoranda contra OCC's application for rehearing on July 27, 2020.

{¶ 20} 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

{¶ 21} In its first assignment of error, OCC submits that the Commission unreasonably failed to require the reconnection of service for customers that Duke 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 Duke 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 contends that these customers that were disconnected before the emergency face health challenges and financial challenges and need basic utility service. OCC requests that the Commission abrogate the June 17, 2020 Finding and Order,

and direct Duke to reconnect the service of customers who were disconnected for non-payment in the 30-day period prior to the declaration of the emergency.

{¶ 22} In response to OCC's first assignment of error, Duke opines that the Commission has already rejected several times, both in its initial orders and in subsequent entries denying rehearing, OCC's suggestion to reconnect customers disconnected up to 30 days before the declaration of the state of emergency on March 9, 2020. Furthermore, Duke argues that the Commission explained in these cases that it was rejecting OCC's suggestion for the same reasons given in *In re Ohio Power Co. d/b/a AEP Ohio*, Case No. 20-602-EL-UNC, et al., Finding and Order (May 6, 2020) (*AEP Order*). In the *AEP Order*, Duke argues that the Commission found the look-back period "overly strict" and "unnecessary," and preferred instead to encourage the utility to work with its customers to agree on terms to reconnect service, regardless of when disconnection occurred. Duke argues that this explanation is sufficient for purposes of R.C. 4903.09. Furthermore, Duke argues that it is not "sheer happenstance" that certain consumers were disconnected before the declaration of the emergency, stating that, while the emergency was declared on March 9, 2020, schools and businesses did not shut down until afterwards. Additionally, it is Duke's belief that the financial difficulties of those customers who had already been disconnected began well before the coronavirus halted significant economic activity in Ohio and are not likely to be attributable to the coronavirus state of emergency because disconnection occurs only after bills go unpaid and prescribed notification periods expire. Accordingly, Duke recommends that OCC's first assignment of error should be denied.

{¶ 23} OPAE reasons that the Commission considered the very request OCC now highlights and found it to be unnecessary, citing the June 17, 2020 Finding and Order at ¶ 26. OPAE argues that the Commission's decision to decline to adopt a recommendation of a party does not amount to an error worthy of rehearing. Additionally, OPAE believes that the Commission clearly stated that OCC's recommendation was unnecessary, as it held in the *AEP Order*, but encouraged Duke to work with customers who need payment plans.

OPAE represents that OCC is rehashing its original argument. Subsequently, OPAE recommends that OCC's first assignment of error should be denied.

{¶ 24} Consistent with the June 17, 2020 Finding and Order, we again decline to adopt OCC's restrictive and unnecessary 30-day look-back period. Adopting OCC's arbitrary look-back period would not ensure that all customers who may have been affected by the initial phase of the declared emergency are protected. We encouraged Duke to work with its customers to agree on terms to reconnect service, regardless of when the service disconnection occurred, and to temporarily forego the collection of fees and deposits, where it was reasonable to do so under the circumstances. Further, we encouraged Duke to be flexible in its deferment of delinquent charges, deposits, and fees, as well as its acceptance of extended payment plans and terms as a result of the pandemic and consider each customer's unique circumstances. June 17, 2020 Finding and Order at ¶¶ 25, 26. Recognizing that reconnection of disconnected service was the most important issue during the pandemic, irrespective of the time of service disconnection, our approach provides Duke and its customers appropriate flexibility. By encouraging Duke and customers to work together, this approach provided Duke customers immediate bill relief, while affording Duke and each customer that requests to do so the opportunity to enter into an extended payment plan that includes the payment of the charges, fees, and/or deposit at a later date. OCC, again, has raised no new argument for the Commission's consideration on this issue but rather simply disagrees with the Commission's decision. Therefore, we find that the request for rehearing should be denied.

{¶ 25} In its second assignment of error, OCC notes that, in its comments, it requested that the Commission order Duke 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 continue consumer protection. OCC argues that consumers need protection now and the least of their worries should be about receiving basic utility services while they are struggling with lost wages, jobs, and health matters associated with the coronavirus. Therefore, OCC urges the Commission to order

Duke to suspend disconnection for a reasonable period of time after the formal declared emergency or to continue the formal emergency.

{¶ 26} In reply, Duke avers that OCC's second assignment of error is premature, as the timing and process of resuming disconnections for non-payment is, as OCC acknowledges, currently still under consideration by the Commission. Duke represents that a future Commission order on the Company's proposed transition plan and the disconnection suspension is forthcoming. Duke argues in the alternative that, even if OCC's argument were not premature, it would lack merit, stating that OCC fails to address the Commission's rationale that "the safe resumption of more complete operations" has become appropriate "in light of the easing social distancing restrictions" by the Department of Health, notwithstanding the continuation of the state of emergency itself. Duke points to the fact that the Commission already rejected OCC's argument and further found that the measures the utility was taking to alleviate the financial stress on customers were "reasonable, in light of advanced notice to be provided and extended payment options." *In re Columbia Gas of Ohio, Inc.*, Case No. 20-637-GA-UNC, Supplemental Finding and Order (June 17, 2020). Duke believes that any measures to relieve the financial stress being experienced by customers must be balanced with the need to maintain sustainable utility operations. As a final note, Duke posits that protracted suspensions of disconnections for non-payment would lead to the accumulation of unmanageable amounts in arrearages, which would likely lead to more disconnections in the end, not fewer. Accordingly, Duke recommends that OCC's second assignment of error on this basis should be denied.

{¶ 27} In its third assignment of error, OCC contends that the Commission failed to order that the declared emergency will continue indefinitely, consistent with the threat of the virus to Ohioans and the consequences of its financial impact. OCC notes that Ohioans are facing uncertain times as no one can predict with accuracy how the health and financial challenges posed by the coronavirus will turn out or will end. OCC posits that utility consumers could face a second wave and that the Commission should not prematurely abandon or discontinue the consumer protections it has implemented. Once again, OCC

urges the Commission to 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 after.

{¶ 28} Duke believes OCC's third assignment of error is without merit and should be denied. First, Duke points out that OCC does not identify where any party suggested in the comments that the Commission should continue its emergency jurisdiction indefinitely, or at least until an extended period of time after the end to the coronavirus emergency. Accordingly, OCC cannot raise a new issue on rehearing. Second, Duke believes that OCC's third assignment of error is also premature, as the Commission is still considering how the Company will resume some or all of its currently suspended practices and operations. Furthermore, OCC was also given the opportunity to comment on the Company's proposed transition plan and has done so. Third, with respect to the merits, Duke states that OCC fails to explain why the Commission should declare its own independent state of emergency at a time when the Department of Health has been working for months with businesses, schools, restaurants, and other entities to responsibly reduce restrictions and facilitate resumption of operations. Duke states that the Commission has neither the jurisdiction nor the expertise to assess the acuteness or the duration of a public health threat or crisis. However, Duke suggests that, if the Commission finds it necessary, the Commission can issue appropriate orders on specific issues as they arise. Duke believes OCC's third assignment of error should be denied.

{¶ 29} In reply, OPAE addresses OCC's second and third assignments of error together. Similar to Duke's arguments above, OPAE argues that OCC's arguments should be rejected as premature. OPAE states that, while it agrees with OCC that the pandemic is an ongoing concern that will need to be monitored closely and possible further action by the Commission may be necessary to protect customers, a blanket, indefinite suspension is 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. Rather, OPAE believes that customers should utilize the bill payment assistance options and programs available to them as well as work with

Duke to establish payment plans that fit their budget. OPAE also believes that OCC's second and third assignments of error are premature as they should be decided in the Commission's consideration of Duke's transition plan. OPAE states that OCC availed itself of the opportunity to file comments on the plan and the Commission can properly decide the issues raised in OCC's second and third assignments of error when it considers Duke's transition plan and the comments. Accordingly, OPAE believes OCC's second and third assignments of error should be denied.

{¶ 30} Reviewing OCC's second and third assignments of error together, the Commission notes, as acknowledged in the June 17, 2020 Finding and Order, that the state has taken steps to responsibly rescind the requirements of the Department of Health's Amended Stay at Home Order. In the Finding and Order, we further noted that the issue of Duke's responsible return to otherwise applicable activities and operations requires further consideration by the Commission. The Commission recognizes, as OPAE acknowledges, that disconnections for non-payment cannot be suspended indefinitely and, for that reason, the Commission directed Duke 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 Duke's transition 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 17, 2020 Finding and Order at ¶ 24.

{¶ 31} The alleged errors raised in OCC's second and third assignments of error pertain to the duration of the suspension of disconnections and other emergency measures. Consistent with the June 17, 2020 Finding and Order, OCC's recommendations with respect to the proper timeframe for resuming disconnections and other activities which were suspended due to the emergency were offered for the Commission's consideration in response to the filing of Duke's transition plan. Duke filed its transition plan on June 26, 2020, to which OCC filed comments on July 6, 2020, which the Commission considered and rejected again. The Commission declined to adopt the recommendation to indefinitely

suspend disconnection for non-payment. However, the Commission observed that Duke now allows customers to set up three-and six-month payment plans through the Company's website. July 29, 2020 Supplemental Finding and Order at ¶ 17. OCC fails to offer any arguments on rehearing for the Commission's consideration which have not already been repeatedly considered and denied. Accordingly, OCC's second and third assignments of error should be denied.

{¶ 32} Finally, in its fourth assignment of error, OCC argues that the June 17, 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 believes that consumers should have certainty now that their essential electric service will not be turned off by Duke. 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.

{¶ 33} In reply, Duke states that the Commission has already rejected OCC's proposal to adopt the NCLC recommendations more than once. Duke points to the Commission's explanation in two separate entries on rehearing that it is not necessary that all utilities under the Commission's jurisdiction follow a uniform set of guidelines as presented by NCLC, citing *In re Columbia Gas of Ohio, Inc.*, Case No. 20-637-GA-UNC, Entry on Rehearing (July 15, 2020) and *In re The Dayton Power and Light Co.*, Case No. 20-650-EL-AAM, et al., Entry on Rehearing (July 15, 2020). Duke believes that the Commission thoughtfully addressed consumer protection issues in its June 17, 2020 Finding and Order and will address such issues further in its ruling on the Company's transition plan. Duke argues that OCC raises no new arguments in its assignment of error in these cases, and the Commission should reject OCC's fourth assignment of error.

{¶ 34} Similarly, OPAE argues that the Commission has already rejected OCC's suggestion to adopt the consumer protection recommendations of the NCLC in its June 17,

2020 Finding and Order and noted that all the same issues are being dealt with on a utility by utility basis in each COVID-19 docket, citing the June 17, 2020 Finding and Order at ¶ 28. OPAE points to the fact that OCC does not claim the Commission's rejection is unlawful or even unreasonable; instead, OCC argues that the Commission should have adopted OCC's recommendation. According to OPAE, the rehashing of OCC's arguments does not present a basis for modification of the Commission's June 17, 2020 Finding and Order. Accordingly, OPAE recommends that the Commission deny OCC's fourth assignment of error.

{¶ 35} The Commission notes that, in the *Emergency Case* and Duke's application for suspension, and as discussed in the June 17, 2020 Finding and Order, consumer protection issues, including the issues of disconnection of service for non-payment, the reconnection of service, the deferral of fees and deposits, extended payment plans, and payment assistance have been thoughtfully addressed. It is not necessary, 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. Accordingly, OCC's request for rehearing should be denied.

III. ORDER

{¶ 36} It is, therefore,

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

{¶ 38} 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

LLA /kck

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/12/2020 2:51:11 PM

in

Case No(s). 20-0599-GE-UNC, 20-0856-EL-AEC, 20-0857-EL-RDR

Summary: Entry denying the application for rehearing filed by Ohio Consumers' Counsel of the Commission's June 17, 2020 Finding and Order, granting Duke Energy Ohio, Inc.'s application for approval of its plan for addressing the COVID-19 state of emergency, motion for waiver of certain provisions of the Ohio Administrative Code, and corresponding provisions of its tariff during the COVID-19 state of emergency. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio