

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter of the Commission’s Review of)
Chapters 4901:1-17 and 4901:1-18 of the Ohio) Case No. 19-52-AU-ORD
Administrative Code.)
)

**DUKE ENERGY OHIO, INC’S MEMORANDUM CONTRA THE APPLICATIONS FOR
REHEARING OF OHIO PARTNERS FOR AFFORDABLE ENERGY AND THE
ADVOCATES FOR BASIC LEGAL EQUALITY, INC., THE LEGAL AID SOCIETY OF
CLEVELAND, THE LEGAL AID SOCIETY OF COLUMBUS, LEGAL AID SOCIETY
OF SOUTHWEST OHIO, LLC., THE OFFICE OF THE OHIO CONSUMERS’
COUNSEL, OHIO POVERTY LAW CENTER, PRO SENIORS, INC., AND
SOUTHEASTERN OHIO LEGAL SERVICES**

I. INTRODUCTION

On November 4, 2020, the Commission issued revisions to O.A.C. Chapters 4901:1-17 and 4901:1-18 in a Finding and Order (Order). An application for rehearing was filed by Ohio Partners for Affordable Energy (OPAE) on December 4, 2020. Another application for rehearing was filed on December 4, 2020, jointly by the Office of the Ohio Consumer’s Counsel, Advocates for Basic Legal Equality, Inc., Legal Aid Society of Southwest Ohio; Legal Aid Society of Cleveland, the Legal Aid Society of Columbus, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services (Joint Filers). Pursuant to O.A.C. 4901-1-35(B), Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) submits this memorandum contra certain assignments of error in the applications for rehearing of OPAE and the Joint Filers.

With respect to the assignments of error discussed below, the Commission should deny OPAE and the Joint Filers’ requests for rehearing.

II. ARGUMENT

A. The Commission was correct to require customers to make up to 24 months of PIPP payments to re-enroll.

Both OP&A and the Joint Filers object to the Commission's decision to require customers who have left PIPP, or been dropped or disconnected, to make up to 24 months of missed payments in order to re-enroll, including payments for periods of disconnection and/or unenrollment.¹ OP&A and the Joint Filers argue that this requirement is overly onerous, but this is not the case. As the Commission has already explained, "limiting the PIPP participant's obligation better balances the interests of PIPP participants and non-PIPP customers and helps to maintain the integrity of the gas PIPP program, rather than eliminating any requirement to make up missed PIPP installment payments."²

The Company supports the Commission's efforts to ease PIPP customer burdens, but believes it is important to balance those efforts with the interests of non-PIPP customers, such that all ratepayers are treated fairly. The alternatives proposed by OP&A and the Joint Applicants (requiring only 6 months or zero months of made-up payments for periods of unenrollment or disconnection, respectively), will create problematic incentives. In the absence of accountability for missed PIPP payments, PIPP customers will be able to leave the program, build up arrearages while not enrolled in PIPP, and then return to the program. This would lead to more unpaid arrearages and run counter to the Commission's goal of maintaining a proper balance and the integrity of the gas PIPP program.

B. The Commission was correct to find that utility rates and charges are properly addressed outside of rule review proceedings.

¹ OP&A Application for Rehearing, pp. 5-7; Joint Filers Application for Rehearing, pp. 2-6.

² Order, pp. 55-56.

The Joint Filers argue on rehearing that the Commission should “require utilities without a rate case filing (or a commitment to file) before 2022 to file an application . . . to implement a cost-based tariff for AMI meter disconnections/reconnections.”³ The Company agrees with the Commission that it is “more appropriate to address a utility’s rates and charges outside the context of a rule review proceeding” and that this provision should be left intact.⁴

The Company’s existing electric tariff already accounts for the difference in cost between remote and non-remote reconnections, the fees for which are \$10 and \$69 respectively.⁵ Remote disconnection and reconnection is not instantaneous or cost-free. Utilities incur administrative costs in conducting the necessary reviews of the customer account and completing all the appropriate administrative work before disconnecting or reconnecting. And indeed, in their earlier comments, Joint Filers tacitly acknowledged the reasonableness of the Company’s current remote reconnection fee by requesting that such fees be limited to \$10,⁶ but on rehearing the Joint Filers appear to be demanding that the Company file an application to re-establish this rate. The Company believes this request is baseless and inappropriate for this rule review proceeding and should be denied.

C. Joint Filers’ proposed modifications to Rule 4901:1-18-02(D) are unreasonable, would be burdensome to implement, and would lead to confusion.

On rehearing, Joint Filers argue that Rule 4901:1-18-02(D) must be further modified to give customers “the right to decide which transactions and notices (if any) they receive electronically and which notices they receive in writing through the mail or in another form.”⁷

³ Joint Filers Application for Rehearing, p. 8.

⁴ Order, p. 44.

⁵ See P.U.C.O. Electric No. 19, Sheet No. 92.4. The Company is not able to disconnect or reconnect gas meters remotely at this time.

⁶ See Joint Filers Reply Comments, pp. 15-16.

⁷ Joint Filers Application for Rehearing, pp. 11-12.

Furthermore, the Joint Filers contend that the rule should require utilities to “inform[]” customers of “any risks that they assume by receiving notices (like disconnection notices) electronically rather than through the mail or in-person.”⁸ The Company opposes such modification as unreasonably vague, likely to lead to confusion, and burdensome to implement.

As written, the Joint Filers’ proposal to give customers the “right to decide which transactions and notices” will be provided electronically would require identifying every possible transaction and notice and permitting a customer to select the style of communication for each such transaction and notice separately. While some utilities may have or soon acquire the capability to allow customers to select forms of communication for specific categories of notices or transactions, such categories will inevitably group more than one type of notice or transaction together, will not be uniform across utilities and may not capture every possible type of notice and transaction that could occur. The micro-management proposed by Joint Filers would be burdensome to implement and would be confusing for both customers and utilities. The existing rule, which singles out electronic disconnection notices as requiring especial notice for consent, provides both clear guidance to the utility and protection for the customer regarding arguably the most time-sensitive communications (disconnection notices).

Additionally, Joint Filers’ proposal that utilities be required to inform customers of “any risks that they assume by receiving”⁹ electronic disconnect notices would place an unreasonably vague and burdensome requirement on the utility. A utility would be forced to speculate as to the relative risks of electronic disconnect notices versus mail notices versus in-person notices, which would be impossible because such risks would differ from customer to customer based on the customer’s lifestyle and habits. A customer who spends most of his time at home, with mail

⁸ Id., p. 12.

⁹ Id.

delivered directly to the door and checks e-mail only occasionally on a desktop computer might be at higher risk of missing an electronic disconnect notice. On the other hand, a graduate student who is frequently away from her apartment socializing and/or traveling and receives mail at a central mail room, but brings her mobile phone everywhere, is much more likely to timely receive an electronic disconnect notice than a snail-mail or in-person one. Utilities are simply not positioned to assess these risks for their customers and would be forced to speculate if required to do so. Furthermore, the risks of missing a disconnect notice can vary depending on which notice it is (21-day, 10-day, or day-of), as well as the customer's own status with regard to factors such as rate, PIPP participation, and so on. To avoid confusing both utilities and customers, this requirement should be rejected.

D. The Company disagrees with OPAE's suggested modification to Rule 4901:1-18-13(C)(2), but believes a modified version would be reasonable.

In its second assignment of error, OPAE suggests that the Commission reconsider OPAE's earlier suggestion to modify Rule 4901:1-18-13(C)(2) to apply funds from a public or private agency first to a customer's missed PIPP installments (if any), then current PIPP payments, and only afterward to any arrears.¹⁰ The Company disagrees partially with OPAE's proposed order of priorities.

In order to enable customers to more easily remain on PIPP and/or reenroll, the funds in question should be applied first to missed PIPP installments, then to current PIPP installments, and then to *future* PIPP installments, rather than arrears. This would reduce the frequency of customers having to be dropped off PIPP and then to re-enroll, which, in turn, would make it easier for those customers to maintain their utility service. Thus, although the Company does not agree with

¹⁰ OPAE Application for Rehearing, pp. 7-8.

OPAE's assignment of error as written, it believes a modified version of OPAE's proposal would make for a reasonable rule.

III. CONCLUSION

For the foregoing reasons, the Commission should deny OPAE and the Joint Filers' applications for rehearing on the above-discussed assignments of error.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission's e filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Duke Energy Ohio, Inc's Memorandum Contra the Applications for Rehearing of Ohio Partners for Affordable Energy and the Advocates for Basic Legal Equality, Inc., The Legal Aid Society of Cleveland, The Legal Aid Society of Columbus, Legal Aid Society of Southwest Ohio, LLC., the Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 14th day of December, 2020 via electronic transmission.

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Summary: Memorandum Duke Energy Ohio, Inc. submits its Memorandum Contra electronically filed by Mrs. Debbie L Gates on behalf of Duke Energy Ohio Inc. and Vaysman, Larisa and D'Ascenzo, Rocco O. Mr.