

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	Case No. 19-0052-EL-ORD
Review of Ohio Adm. Code Chapters)	
4901:1-17 and 4901:1-18)	

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY'S MEMORANDUM CONTRA
APPLICATION FOR REHEARING BY THE CONSUMER ADVOCATES**

I. INTRODUCTION

The Public Utilities Commission of Ohio (the "Commission") should deny the Consumer Advocates'¹ Application for Rehearing². The Consumer Advocates' second, third, and fourth assignments of error are not well-taken³ because these assignments of error present new proposed rule changes that were not previously addressed in this docket. An application for rehearing is not the appropriate procedural mechanism to introduce a new recommendation⁴. Moreover, the Commission's decision was both reasonable and lawful, and it was made after a comprehensive and deliberate consideration of numerous party comments. The Consumer Advocates' AFR should be denied.

¹ The Office of the Ohio Consumer's Counsel, Advocates for Basic Legal Equality, Inc., Coalition on Homelessness and Housing in Ohio, Communities United for Action, 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 (hereinafter "Consumer Advocates").

² Application for Rehearing on Residential Disconnection Rules by 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., Southeastern Ohio Legal Services (Dec. 4, 2020) ("Consumer Advocates AFR").

³ The Companies take no position with respect to the Consumer Advocates' first assignment of error, which relates to the PIPP rules for natural gas companies.

⁴ See, e.g., *In the Matter of the Complaint of Suburban Natural Gas Company v. Columbia Gas of Ohio, Inc.*, Case No. 17-2168-GA-CSS, Second Entry on Rehearing at ¶ 23 (Oct. 23, 2019) ("[Complainant] attempts to alter its initial grounds for complaint by asserting this new argument at the rehearing stage of the proceeding. For this reason alone, rehearing should be denied."); *In the Matter of the Application of Killen Generating Station for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-891-EL-REN, Entry on Rehearing at ¶ 15 (May 26, 2010) ("[T]he Commission finds no merit to OCC and OEC's argument . . . , which was improperly raised for the first time on rehearing."); *In the Matter of the Commissions Review of Chapter 4901:1-35 of the Ohio Admin. Code.*, No. 18-1188-EL-ORD, 2020 WL 4819379, at *6 (F.E.D.A.P.J.P. July 29, 2020) (same).

II. ARGUMENT

A. **Consumer Advocates Assignment of Error No. 2: The PUCO erred because it failed to establish a reconnection charge for customers that have meters that may be remotely read based on the utility's actual cost to disconnect/reconnect as required under R.C. 4928.02 and 4929.02.**

For the first time in this proceeding, the Consumer Advocates argue that the Commission erred because it failed to establish a “cost-based” reconnection charge for customers that have advanced metering infrastructure (“AMI”) with remote disconnect and reconnect capabilities.⁵ This was not raised in the Consumer Advocates’ comments or reply comments, and the Consumer Advocates fail to cite to any place in the record where this suggestion was raised.⁶ The Companies stand by their reply comments to OPAE’s proposed reduction in reconnection charges: this type of a change is not appropriate for this rulemaking and should instead be considered on an individual basis as part of a proceeding regarding an EDU’s tariff.⁷ This assignment of error should be rejected in its entirety.

B. **Consumer Advocates Assignment of Error No. 3: The PUCO erred because it failed to require the utilities to report on the number of actual customized plans that are being made for consumers.**

Again, for the first time in this proceeding, the Consumer Advocates argue that the Commission erred because it failed to require the utilities to report on the number of actual customized payment plans that are being made for consumers. This was not raised in the Consumer Advocates’ comments or reply comments, and the Consumer Advocates fail to cite to any place in the record where this suggestion was raised.⁸ The Companies do not currently track customized payment plans in this way, and such a reporting requirement would be administratively

⁵ Consumer Advocates AFR at 7.

⁶ See Consumer Advocates AFR, Mem. in Support at 7.

⁷ Companies’ Reply Comments at 9.

⁸ See Consumer Advocates AFR, Mem. in Support at 9-10.

burdensome and require updates to the Companies' computer systems. Moreover, customers are not harmed as such a reporting requirement would not impact the ample payment plan options available customers under the Commission's Rule. This assignment of error should likewise be rejected in its entirety.

C. Consumer Advocates Assignment of Error No. 4: The PUCO erred because it failed to modify its rules (Ohio Adm. Code 4901:1-18-02(D)) to reflect that consumers who pay utility bills electronically do not affirmatively consent to receive all notifications electronically, including disconnection notices.

Finally, and again, for the first time in this proceeding, the Consumer Advocates argue that the Commission erred by failing to modify O.A.C. 4901:1-18-02(D) to reflect that consumers who pay utility bills electronically do not affirmatively consent to receive all notifications electronically, including disconnection notices. This was not raised in the Consumer Advocates' comments or reply comments, and the Consumer Advocates fail to cite to any place in the record where this suggestion was raised.⁹

In their Reply Comments, the Consumer Advocates opposed AEP's proposal to amend the rule such that if customers agree to receive any transactions or notices electronically, then all transactions and notices must be provided electronically.¹⁰ However, the Consumer Advocates did not propose the affirmative changes to this rule which they now propose in their AFR.¹¹ In adopting AEP Ohio's proposed amendment, the Commission correctly noted that "AEP Ohio's language only clarifies what is already permitted."¹² The Commission's decision to amend O.A.C. 4901:1-18-02(D) was both reasonable and lawful, and it was made after a comprehensive and

⁹ See Consumer Advocates AFR, Mem. in Support at 10-12.

¹⁰ See Consumer Advocates' Reply Comments at 6-8.

¹¹ See *id.*

¹² Finding & Order at 17.

deliberate consideration of numerous party comments.¹³ This assignment of error, too, should be rejected in its entirety.

III. CONCLUSION

For the foregoing reasons, the Commission should deny the Application for Rehearing by the Consumer Advocates.

Respectfully submitted,

/s/ Emily V. Danford

Emily V. Danford (0090747)

Counsel of Record

FirstEnergy Service Company

76 South Main Street

Akron, OH 44308

(330) 384-5849

edanford@firstenergycorp.com

*Attorney for Ohio Edison Company, The Cleveland
Electric Illuminating Company, and The Toledo
Edison Company*

¹³ *Id.* at 16-17.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Memorandum Contra Application for Rehearing by The Office of the Ohio Consumer's Counsel, Advocates for Basic Legal Equality, Inc., Coalition on Homelessness and Housing in Ohio, Communities United for Action, 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 was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 14th day of December, 2020. The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Emily V. Danford

Emily V. Danford (0090747)

*An Attorney for Ohio Edison Company, The
Cleveland Electric Illuminating Company
and The Toledo Edison Company*

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/14/2020 4:02:07 PM

in

Case No(s). 19-0052-AU-ORD

Summary: Memorandum Contra Application for Rehearing by The Office of the Ohio Consumer's Counsel, Advocates for Basic Legal Equality, Inc., Coalition on Homelessness and Housing in Ohio, Communities United for Action, 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 electronically filed by Ms. Emily V Danford on behalf of The Cleveland Electric Illuminating Company and Ohio Edison Company and The Toledo Edison Company