

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Report Required)
by R.C. 4933.123 Regarding Service)
Disconnections for Nonpayment.) Case No. 21-548-GE-UNC

**THE OHIO GAS ASSOCIATION MEMORANDUM CONTRA
CONSUMER PARTIES' MOTIONS TO INTERVENE AND
SUSPEND AND REPORT THE IMPACTS OF DISCONNECTIONS**

I. INTRODUCTION

On July 30, 2021, several parties [the Advocates for Basic Legal Equality, Inc., Legal Aid Society of Southwest Ohio, LLC, the Office of the Ohio Consumers' Counsel (OCC), Ohio Poverty Law Center, and Pro Seniors, Inc. (collectively, the Consumer Parties)] filed motions to intervene in this proceeding. In addition, these parties also filed a motion requesting among other things that the Public Utilities Commission of Ohio (the Commission) suspend disconnections of electric and natural gas consumers during the upcoming winter heating season or insert various requirements in its forthcoming winter reconnect order, including a ban on remote disconnections. In addition, the Consumer Parties ask the Commission to require electric and gas utilities to report the number of disconnections by zip code.

In accordance with Ohio Adm.Code 4901-1-12(B), the Ohio Gas Association (OGA)¹ files this memorandum contra the Consumer Parties' motions.

¹ OGA is a natural gas trade organization which represents over 30 natural gas distribution companies and cooperatives in Ohio. See <https://www.ohiogasassoc.org/about-oga/mission-statement/>. OGA member companies are "operators" under Ohio Adm.Code 4901:1-16-01(P).

II. ARGUMENT

As it has each year since 2010, the Commission initiated this proceeding to “direct[] all energy companies subject to R.C. 4933.123 to file a written report on service disconnections for nonpayment with the Commission and provide a copy to OCC on or before June 30, 2021.” Case No. 21-548-GE-UNC, Entry (May 19, 2021) ¶ 1. This proceeding is not a rulemaking. Nor has the Commission given notice to utility companies that disconnection procedures and practices were to be evaluated. The simple and express purpose of this proceeding is to provide a repository for the annual reports required by R.C. 4933.123(B). Based on OGA’s review of past dockets, no party has ever moved to intervene in an annual-report proceeding, no hearing has ever been held, and no action on any substantive issue has ever been taken by the Commission. *See* Case Nos. 20-937, 19-974, 18-757, 17-1069, 16-1224, 15-882, 14-846, 13-1245, 12-1449, 11-2682, and 10-1222-GE-UNC.

Notwithstanding the limited purpose of this proceeding, the Consumer Parties moved to individually intervene and filed motions asking for significant modifications to the Commission’s annual procedures and all gas and electric utilities disconnection and reporting procedures. In short, the Consumer Parties seek to improperly convert this reporting docket into a contested policy-making case.

OGA and its members certainly sympathize with the difficulties that consumers face, and they support the important interests served by the various payment-assistance and consumer-relief programs offered under the Commission’s supervision, such as the annual Winter Reconnect Order. OGA also appreciates the Consumer Parties’ intention to help customers. Nevertheless, OGA does not believe that this is an appropriate proceeding in which to consider the issues raised

by the Consumer Parties. For this reason, OGA recommends that the Commission deny their motions.

A. The Consumer Parties have not made a prima facie showing in support of intervention.

First, the Consumer Parties do not satisfy the basic standards for intervention. Under Ohio law, would-be intervenors must show they will be “adversely affected,” R.C. 4903.221, and this annual-report proceeding simply presents no such adverse effect. As the initiating order’s language shows, the purpose of this proceeding is ministerial—to create a repository for the filing of annual reports, not to evaluate the policies and practices associated with service disconnections. For that reason, the Consumer Parties’ interventions should be denied.

The Consumer Parties claim that this is a “case” that “involves Ohio utilities reporting to the Commission the number of consumers they disconnect from their essential utility service.” But there is no “case” here. No relief is being sought by any utility, no rights are being adjudicated, nor any practices investigated, and the proceeding has not been noticed as such. Accordingly, there is no hearing scheduled, or even a procedural entry, and in fact neither a hearing nor any other formal review process has ever been ordered in the 11 years the Commission has created dockets to receive annual disconnection reports. All this reflects the limited purpose of this proceeding: to facilitate the filing of annual disconnection reports required by R.C. 4933.123. Case No. 21-548-GE-UNC, Entry (May 19, 2021).

This is *not* a proceeding that will—or even can—adversely affect the Consumer Parties or otherwise justify their intervention. R.C. 4903.221 provides that “any other person who may be *adversely affected* by a public utilities commission proceeding may intervene in such proceeding.” (Emphasis added.) The filing of annual disconnection reports, however, in no way adversely affects the Consumer Parties’ interests—the reports merely set forth historical facts, and if

anything, the provision of these reports in compliance with the law has *benefited* them. They argue that their “constituents may be ‘adversely affected,’ especially if they are unrepresented in a proceeding involving utilities’ disconnections of consumers’ essential electric and gas utility services.” (Mot. to Intervene at 2). But again, this is not a contested case to address service disconnections or the rules and policies surrounding them. No action has been taken or requested in this proceeding that would impact the Consumer Parties or their constituents.

For the same reason, there is no issue pending before the Commission in this proceeding that requires a finding on the “merits.” R.C. 4903.221(B)(2). The Consumer Parties argue that they “will obtain and develop information that the Commission should consider for equitably and lawfully deciding the case in the public interest.” (Mot. to Intervene at 3). But again, neither the Commission by its entries nor the utilities by their filings have created any issue or case to decide. There are simply no “factual issues” that require “full development and equitable resolution.” R.C. 4903.221(B)(4).

For these reasons, the Commission should deny the Consumer Parties’ motions to intervene.

B. There are other proceedings better suited to evaluation of the issues raised by the Consumer Parties.

With one exception (discussed in the next section), OGA does not believe it is necessary to discuss the merits of the Consumer Parties’ substantive proposals. There are a number of procedural options better suited for review and consideration of the pros and cons of the Consumer Parties’ positions. This, however, is not one of them.

Issues concerning the scope of the Winter Reconnect Order, for example, can be presented in that proceeding. This is precisely what occurred last year, when the Consumer Parties filed rehearing of the Winter Reconnect Order. [See Case No. 20-1252-GE-UNC, Consumer Parties’

App. Reh'g (Sept. 8, 2020)]. The Consumer Parties themselves recognize the availability of that proceeding to address their issues, and acknowledge that such issues are “fit” for consideration under the Commission’s emergency-powers statute, under which the Order is issued. (*See* Mot. to Suspend at 16 (“The traditional Winter Reconnect Order is helpful for consumers who’ve been disconnected. But more should be done. Protecting Ohioans from disconnections during the upcoming 2021-2022 winter heating season is a fit under the state’s emergency statute, R.C. 4909.16.”); *see also Id.* at 17–18.) If the Consumer Parties are not satisfied with the procedures ultimately authorized by the Commission in the 2021-22 Winter Reconnect Order, they have the opportunity to seek rehearing, and that proceeding is clearly the most appropriate place to address the contents of that Order.

Emergency proceedings are not the only cases where concerns with disconnection policies and procedures can be raised. As the Consumer Parties again recognize, various rulemakings pertain to disconnection procedures and payment-assistance programs. [*See* Mot. to Suspend at 17 (referencing “recent PUCO and ODSA rulemakings”)]. Rulemakings such as these provide an opportunity for any interested party to propose additional requirements concerning service disconnections.

There may be other options as well. The salient point is that other procedural vehicles provide more than adequate venues to consider the issues raised by the Consumer Parties. The express purpose of this proceeding is simply to receive annual reports, and there is no reason to broaden that scope when other, more appropriate vehicles are available.

C. The Consumer Parties have not demonstrated that reporting disconnections by zip code is appropriate or necessary.

Finally, OGA would respond to one substantive position taken by the Consumer Parties, namely, their request that the Commission require electric and gas utilities to report the number of

disconnections by zip code. If intervention is denied (as OGA believes it should be), there is no reason to reach any merits issue. But even if the Commission were to reach the merits of this recommendation, the Consumer Parties fail to demonstrate that such additional reporting is either appropriate or necessary.

R.C. 4933.123(B) sets forth the detailed reporting requirements for the annual report and does not include a requirement that disconnections be reported by zip code. Gas utilities already provide monthly data and detailed annual reporting on disconnections in compliance with this statute's requirements. The Consumer Parties effectively ask the Commission to revise and expand upon these statutory requirements. But the Commission is a creature of statute. *Discount Cellular, Inc. v. Pub. Util. Comm'n*, 112 Ohio St.3d 360, 373 (2007). While there may be individual circumstances in which the Commission could properly request more refined data, it would be inappropriate for the Commission to revise the statutory reporting requirements absent legislative direction.

Even if it were generally appropriate to expand on the statutory reporting requirements, the Consumer Parties do not support this request. While they generally state that zip code reporting will “promote energy justice” (Mot. at 19–20), they fail to explain how, and certainly do not show that the costs of this reporting would justify any benefits obtained. In this regard, the Commission rejected a similar recommendation in a recent case. In Case No. 20-637-GA-UNC, Ohio Partners for Affordable Energy (OPAE) made a similar recommendation with respect to Columbia Gas of Ohio (Columbia). *See Id.*, Supp. Finding & Order (June 17, 2020) ¶ 24. The Commission, noting that OPAE's request was “outside the scope of Columbia's plan to resume pre-emergency operations and activities,” found “no reason to impose an additional data requirement on the utilities.” *Id.* ¶ 27.

The Consumer Parties in this filing fail to demonstrate the need for a different conclusion, even if this were an appropriate proceeding to consider such recommendations.

III. CONCLUSION

The Consumer Parties have not demonstrated that their intervention in this proceeding is warranted. Nor is this annual reporting proceeding the appropriate forum to consider the additional requirements that the Consumer Parties ask the Commission to impose. For these reasons, the Commission should deny their motions.

Dated: August 16, 2021

Respectfully submitted,



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CERTIFICATE OF SERVICE

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Summary: Text The Ohio Gas Association Memorandum Contra Consumer Parties' Motions to Intervene and Suspend and Report the Impacts of Disconnections electronically filed by Teresa Orahood on behalf of Devin D. Parram