

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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

**OHIO POWER COMPANY’S MEMORANDUM CONTRA
JULY 30, 2021 MOTIONS FILED BY CONSUMER PARTIES**

August 16, 2021

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The COVID-19 State of Emergency in Ohio (“State of Emergency”) was a time of uncertainty for all citizens of the State. When Governor DeWine declared the State of Emergency on March 9, 2020, the Commission swiftly acted to provide needed relief and protection to all public utility customers. The Commission balanced those interests while ensuring that costs associated with the relief are appropriately managed and ordering that all of the public utilities develop a transition plan to resume to as normal operations as they could. Ohio Power Company (“AEP Ohio” or “Company”) was among the very first public utilities to respond to the crisis and proactively file a plan to assist its customers. While the uncertainty prevails, the Commission continues to monitor the conduct and practices of public utilities and to address issues as needed. Nothing in the Consumer Parties’¹ Motions demonstrate otherwise.

Nevertheless, the Consumer Parties believe that it is their role to second guess (and attempt to upstage) the Commission and its Staff. Utilizing isolated data points regarding disconnection rates, the Consumer Parties single out AEP Ohio when in reality the Company,

¹ Consumer Parties are: Advocates for Basic Legal Equity, Inc.; Legal Aid Society of Southwest Ohio, LLC; Office of the Ohio Consumers’ Counsel; Ohio Poverty Law Center; and Pro Seniors, Inc.

during the relevant time period (June 1, 2020 to May 31, 2020), has disconnected *less than 1%* of its residential customers.² Without any facts or allegations that the Company has improperly disconnected customers and solely based on the number of disconnections AEP Ohio reported versus the other electric distribution utilities (“EDUs”), Consumer Parties request extraordinary relief restricting the Company and baselessly call for an “investigation.” While the Consumer Parties request various items in their Motions,³ they essentially ask that this Commission order that *all* electric and gas utilities suspend disconnections. Such a broad request for relief is inappropriate and not feasible. Indeed, the Commission has previously found: “electric bills that are not paid by the customer are ultimately recovered as bad debt expense from all of the Company’s ratepayers; therefore the Commission must be mindful to balance the interests of the individual customer subject to disconnection and all other customers.” *In the Matter of the Application of Ohio Power Company for a Limited Waiver of Ohio Adm. Code 4901:18-06(A)(2)*, Case Nos 13-1938-EL-WVR, 17-1380-EL-WVR and 17-1381-EL-WVR, Second Entry on Rehearing at ¶ 19 (June 28, 2018). The Motions should be denied for several reasons.

First, their Motions ignore the significant actions the Commission, its Staff and AEP Ohio have taken during the State of Emergency to assist their customers and keep customers connected with their electric service. Many of the criticisms they lodge in their Motions were already proffered by the Office of the Ohio Consumers’ Counsel (“OCC”) in *In the Matter of the Proper Procedures and Process for the Commission’s Operations and Proceedings During the*

² The number of disconnections AEP Ohio reported in this docket represent only a small percentage compared to the number of residential customers - 1.05%. However, approximately 56% of those disconnections are from repeat customers equating to 0.69% of AEP Ohio's residential customers who were disconnected for non-payment from June 1, 2020-to May 31, 2021.

³ The Consumer Parties ask the Commission to: 1) investigate AEP Ohio’s practices; 2) immediately suspend AEP Ohio’s disconnections; 3) suspend all electric and gas utility disconnections during the winter heating season; and 4) require the electric and gas utilities to assess the impact of disconnections. (See Memorandum in Support at 5, 13, 15, and 19.)

Declared State of Emergency and Related Matters (“State of Emergency Proceeding”) Case No. 20-591-AU-ORD. The Commission fully considered the same arguments Consumer Parties make in their Motions and denied them.

Second, the Motions fail to recognize that there are several resources available to customers to assist them in maintaining electric service. Third, there is no basis to investigate the Company’s disconnection and credit practices because AEP Ohio has followed the Commission’s rules and orders. The data they present in their Motions are misconstrued and do not justify the requested relief.

Fourth, the Company’s Advanced Metering Infrastructure (“AMI”) has been appropriately utilized in the manner in which it was intended. Consumer Parties again seek to re-litigate matters previously adjudicated by the Commission in Case Nos 13-1938-EL-WVR, 17-1380-EL-WVR and 17-1381-EL-WVR. Finally, as Staff also indicated in their Memorandum Contra the Motions, Consumer Parties’ Motions are procedurally inappropriate.

All of that being said, the Company takes no issue with the Staff or Commission – in their role as independent and objective regulator –reviewing reported data they possess and inquiring as to other related, factual matters in order to determine whether a new set of directives is justified in light of current circumstances. Rather, as is AEP Ohio’s normal custom and practice, the Company stands by ready to transparently cooperate with the Commission in addressing customer issues. As a starting point, however, the Commission should deny the Consumer Parties’ Motions.

I. AEP OHIO HAS UNDERTAKEN SIGNIFICANT ACTIONS DURING THE STATE OF EMERGENCY TO ASSIST ITS CUSTOMERS

Throughout their Motions, the Consumer Parties criticize AEP Ohio and the Commission’s conduct during the State of Emergency and during the current state of affairs.

(See e.g., Memorandum in Support at 1-3.) AEP Ohio, the Commission and its Staff appropriately addressed the extraordinary circumstances and impact that COVID-19 had on all of the Company’s customers. On March 12, 2020, the Commission directed “all public utilities under its jurisdiction to review their service disconnection policies, practices and tariff provisions and to promptly seek any necessary approval to suspend otherwise applicable requirements....” during COVID-19. *State of Emergency Proceeding*, Entry at ¶ 1 (March 12, 2020).⁴ In response, AEP Ohio proposed a comprehensive plan for implementation during the State of Emergency (“Plan”). The Commission permitted the Company to implement portions of its Plan automatically “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.” *Id.* at Entry at ¶ 6(b) (March 13, 2020).

A. The State of Emergency Plan

Staff had significant involvement in reviewing the Company’s Plan, recommending most provisions of the Plan and allowing deferral of several expenses. *Id.* at Staff Recommendation (April 15, 2020). Subsequently, the Commission ultimately approved the Plan subject to Staff’s recommendation and modifications. *Id.* at Finding and Order at ¶ 1 (May 6, 2020).

AEP Ohio’s approved Plan included significant relief and protections to assist customers:

1. Suspension of all residential and non-residential disconnections, except as necessary to prevent or resolve a presently or imminently hazardous situation or where requested by a customer; *Id.* at ¶¶ 20; 24.
2. Implementation of information technology modifications to ensure that percentage of income payment plan (“PIPP”) customers maintain their eligibility status at their anniversary date and ensuring that any dropped customers are re-enrolled; *Id.*

⁴ On March 13, 2020, the Commission issued a similar entry but directed all public utilities to review their service reconnection policies, practices and tariff provisions. *State of Emergency Proceeding*, Entry at ¶ 1 (March 13, 2020).

3. Continuation of the Commission's winter reconnect order through May 1, 2020; *Id.* at ¶ 27
4. Temporarily foregoing customer deposits and reconnection fees for customers that have been recently disconnected and assisting reconnection of customers; *Id.*
5. Suspending late fees to commercial and industrial customers and deferring the charges; *Id.*
6. After the state of emergency, reassessing deposits as appropriate and addressing deferred payments; *Id.*
7. Expanding the Neighbor to Neighbor program customer assistance program; *Id.* at ¶ 46
8. Implementing a mechanism where any non-residential customer subject to a minimum billing demand provision that has or will have an accumulated bill payment arrearage to maintain service; *Id.* at ¶ 40⁵ and
9. Expanding communications regarding bill payment mechanisms and encouraging online bill payment. *Id.* at ¶ 51.

In their Motions, the Consumer Parties do not allege that AEP Ohio did not follow their Plan or that AEP Ohio did anything inappropriate during the State of Emergency. Rather, the Consumer Parties reassert the same arguments that OCC asserted in the *State of Emergency Proceeding*. (See Memorandum in Support at 13 (the Commission “should immediately suspend all of AEP Ohio’s disconnection of consumers for non-payment, during the investigation”) and at 15 (the Commission should “suspend all electric and gas utility disconnections of consumers for non-payment, during the upcoming 2021-2022 winter heating season”).) In the *State of Emergency Proceeding*, OCC commented that the Commission should extend suspended disconnections after the state of emergency is lifted. *State of Emergency Proceeding*, Finding and Order. at ¶ 23 (May 6, 2020). The Commission considered OCC’s comments and found that

⁵ AEP Ohio had originally requested a reasonable arrangement whereby a non-residential customer could obtain a bill credit for to temporarily eliminate or offset a minimum demand charge. The Commission approved a different mechanism. *State of Emergency Proceeding*, Finding and Order at ¶ 40 (May 6, 2020).

“even in light of the emergency, service disconnections for non-payment cannot be suspended indefinitely.” *Id.* at ¶ 25. Likewise, OCC filed rehearing and argued that the Commission erred by failing to continue the suspensions by AEP Ohio for a reasonable period of time after the declared emergency ended. *State of Emergency Proceeding*, Entry on Rehearing at ¶ 35 (July 1, 2020). OCC also asserted that the Commission erred by failing to order that the declared emergency will continue indefinitely.⁶ *Id.* at ¶ 36. The Commission declined to order that relief reiterating its direction that AEP Ohio work with Staff to resume suspended activities. *Id.* at ¶ 38.

B. The State of Emergency Transition Plan

The Consumer Parties also criticize the Company for following the Commission order to resume disconnections - implying that AEP Ohio *chose* to resume disconnections. (Memorandum in Support at 1; 3; 13-18.)⁷ In its initial Finding and Order approving the Plan, the Commission recognized that, “even in light of the emergency, service disconnections for non-payment cannot be suspended indefinitely.” *State of Emergency Proceeding*, Finding and Order at ¶ 25. The Commission directed the Company “to work with Staff to develop a plan for the resumption of meter reading and of service disconnections, including timelines and provisions for extended payment plans for both residential and non-residential customers impacted by the emergency.” *Id.* On rehearing, the Commission repeated that direction and denied OCC’s arguments for an indefinite suspension of disconnections stating that it would

⁶ Governor DeWine ultimately ended the State of Emergency on June 18, 2021.

⁷ Specifically, the Consumer Parties declare that “AEP Ohio stated that its emergency plan was intended to last ‘the entire duration of the declared emergency,’ but that ‘did not last long.’” (Memorandum in Support at 3.) The Consumer Parties misleadingly fail to mention, however, that the Commission directed AEP Ohio to file a plan to resume disconnections.

have the opportunity to comment on any transition plan AEP Ohio proposes to return to normal activities. *State of Emergency Proceeding*, Entry on Rehearing at ¶ 39.

On July 6, 2020, in accordance with the Commission’s direction, the Company filed an Updated Compliance Plan and Report including a Transition Plan for Resumption of Disconnections (“Transition Plan”). In the Transition Plan, AEP Ohio again provided numerous customer protections including:

1. Continuation of a disconnect moratorium until August 1, 2020; (Transition Plan at 3)
2. Implementation of updated disconnect notices, bill messages, calls and website; (*Id.*)
3. Updated customer bills in September 2020 that will contain a disconnect notice that provides the amount of payment needed to maintain service and information on payment plans; (*Id.* at 4)
4. Withholding of late payments from March 9 to July 31 to trigger deposits; (*Id.*)
5. Withholding the assessment of new deposits for 90 days after the moratorium ends; (*Id.*)
6. Offering payment plan options for residential and non-residential customers during the 90 days after the moratorium ends; (*Id.* at 6) and
7. Moving PIPP anniversary dates to October 2020 to align with the benefit of the Winter Reconnect Order. (*Id.* at 10.)

OCC again criticized the resumption of disconnections and filed comments against AEP Ohio’s Transition Plan. (*See* Comments filed on July 16 2020.). Recognizing that “many customers may continue to experience financial stress as a result of COVID-19” and reiterating that disconnections for non-payment cannot be suspended indefinitely, the Commission approved AEP Ohio’s Transition Plan. *State of Emergency Proceeding*, Supplemental Finding and Order at ¶ 26 (August 12, 2020). The Commission also directed AEP Ohio to provide payment plans,

PIPP and reasonable requests for payment plans as well as remain flexible with the collection of deposits and fees during the course of the emergency. *Id.* at ¶ 27.⁸

In their Motions, the Consumer Parties barely mention the significant measures the Company, Commission and its Staff carefully considered and implemented during the State of Emergency. The requested relief is not necessary and the Commission should deny their Motions.

II. THE CONSUMER PARTIES IGNORE THE SIGNIFICANT RESOURCES THAT REMAIN AVAILABLE TO ASSIST CUSTOMERS

Noticeably absent in their Motion is any discussion on the significant cost of the extraordinary relief the Consumer Parties seek.⁹ Moreover, they fail to consider the significant cost to consumers an indefinite suspension could entail by subjecting them to arrearage amounts that they may not possibly be able to pay. Finally, the relief sought by Consumer Parties fails to recognize alternative options and remedies for the subset of customers that cannot pay their electric bill.

AEP Ohio offers resources to assist customers with their electric bill to avoid disconnection. The AEP Ohio website has a “Payment Assistance” link on its home page at: www.AEPOhio.com/assistance. COVID-19 relief is available. While the specifics of this program are still being finalized, the Ohio Department of Development and the Ohio Housing Finance Agency have CARES Act funds available for customers who meet certain requirements and were behind on their utility bills as of January 1, 2020. Once implemented, AEP Ohio will

⁸ See Section II *infra* for a discussion of the number of payment plans AEP Ohio had with customers during this time period.

⁹ Indeed, OCC represents all residential customers of AEP Ohio and fails to acknowledge that an indefinite suspension of disconnections would increase bad debt and USF riders for all residential customers.

include a bill insert pointing customers to program information on the “Payment Assistance” section of the AEP Ohio homepage.

In addition, other Programs offered include:

- Payment Extensions and arrangements:
 - Payment extension – a one-time payment extension to provide additional time to pay the bill; and
 - Payment arrangement – a monthly payment plan that requires a portion of the past due amount each month plus the current month bill until the past due balance is paid in full.
- Payment Assistance Programs:
 - Low-Income Home Energy Assistance Program (LIHEAP) – federally funded assistance to help families manage energy costs;
 - Neighbor to Neighbor Bill Pay Assistance – AEP Ohio’s partnership with Dollar Energy Fund to help families pay their electric bills;
 - PIPP – Administered by the Ohio Department of Development. Makes monthly payments more affordable. Paying on time and in full each month reduces the outstanding balance. After 24 on-time payments in a row, the outstanding balance is eliminated;
 - Winter Reconnect Order (WRO) – allows customer who are disconnected or are facing disconnection to pay a maximum of \$175 to have their service restored or maintained for a minimum of 30 days; and
 - Emergency Rental Assistance Program – helps families pay rent and utilities because of COVID-19 related hardships, while funds are available.

During the State of Emergency and presently, AEP Ohio remains committed to providing its customers with flexible payment options. Prior to the termination of the moratorium on disconnections in September 2020, the monthly average number of customers on active payment agreements (excluding PIPP) for AEP Ohio was 35,751 and the average monthly deferred dollar amount was \$10.8 million from June through August 2020. After that moratorium, from September through December 2020, the monthly average number of customers on active

payment agreements (excluding PIPP) for AEP Ohio increased to 56,779 and the average monthly deferred dollar amount was \$24.6 million. From January through May 2021, the monthly average number of customers on active payment agreements (excluding PIPP) for AEP Ohio was 55,308 and the average monthly-deferred dollar amount was \$19.75 million. This data demonstrate that AEP Ohio has worked with its customers to make payment arrangements to prevent disconnections during the State of Emergency, after the moratorium on disconnections ended and during the current year. Put simply, relief is available and is more than sufficient to keep consumers on track for maintaining their electric service rather than an indefinite suspension of disconnections. The Commission should deny the Consumer Parties' Motions.

III. THE CONSUMER PARTIES FAIL TO DEMONSTRATE A REASON TO INVESTIGATE AEP OHIO'S PRACTICES

Utilizing isolated data, the Consumer Parties grasp at a reason to persuade this Commission that AEP Ohio's disconnection and credit practices should be investigated. They argue essentially that because AEP Ohio has statistically more disconnections than the other electric distribution utilities ("EDUs"),¹⁰ AEP Ohio somehow is worthy of an "investigation." Even more egregious is that the Consumer Parties, through OCC, is trying to perform its own investigation by serving AEP Ohio discovery *in this docket*. Nevertheless, the data the Consumer Parties proffer must be evaluated in the context in which it is being offered.

First, the Consumer Parties attack the Company for a discrepancy in its disconnection data. (Memorandum in Support at 1.) They attempt to utilize this unintentional error as a "smoking gun" to justify an investigation of AEP Ohio's practice. What the Consumer Parties fail to understand, but the Commission and its Staff (the Company's regulators) do, is that in

¹⁰ It is important to note that this docket pertains to *all* public utilities including gas. Yet, the Consumer Parties do not attempt to compare the rate of EDU disconnections versus gas because it is inappropriate to do so.

2020, Staff noticed an inconsistency in the number of customers disconnected for non-payment as reported in the monthly PIPP Reports versus the Annual Disconnection Report. AEP Ohio investigated the discrepancy and determined that the PIPP monthly reports did not include the disconnected customers who had AMI installed while the Annual Report included those customers. AEP Ohio's coding in its system did not capture the AMI-related disconnections and prevented AEP Ohio from discovering the discrepancy. The Company worked with Staff to resolve the discrepancy, which occurred in January 2021. This was not an attempt to hide disconnection rates as the Consumer Parties imply.

Second, for the Annual Report period of June 1, 2020 to May 31, 2021 (capturing the bulk of the State of Emergency), the number of disconnections represent only a small percentage compared to the number of residential customers - 1.05%. However, approximately 56% of those disconnections are from repeat customers. In reality then, only 0.69% of AEP Ohio's residential customers were disconnected for non-payment during that time period. While every disconnection has its own story, Consumer Parties do not allege that AEP Ohio is improperly disconnecting customers. Indeed, the Staff recently audited the Company's compliance with O.A.C. 4901:1-18 Termination of Residential Service and deemed that AEP Ohio's disconnection policies and procedures satisfactorily comply with the Termination of Residential Service rules in the Ohio Administrative Code.¹¹ See Electric Industry Audit, p. 22-30 (September 3, 2020). Consumer Parties do not demonstrate otherwise. This low disconnection rate does not justify a special investigation and the extraordinary relief that Consumer Parties request.

¹¹ In addition, in its Memorandum Contra the Motions, Staff indicated that it has not observed any violations on the part of AEP Ohio. (Memorandum Contra by the Staff at 3.)

Third, for the period June 1, 2020 to May 31, 2021, AEP Ohio reported 63.61% of total *disconnections* for all EDUs in Ohio, but AEP Ohio also reported 68.37% of total *reconnections* for all EDUs.¹² Customers are simply not being disconnected and left with no electric service as the Consumer Parties imply.

Fourth, as discussed below, the Consumer Parties gloss over the fact that AEP Ohio has deployed more AMI than any other EDU. The disconnection statistics reflect that deployment and the efficiencies it brings. Comparing AEP Ohio's disconnection rates to the disconnection rates of other EDUs, who do not have robust AMI deployment, is comparing apples to oranges. Carving out AEP Ohio based on that data point is inappropriate.

While the Consumer Parties try and paint AEP Ohio as the scapegoat for all public utility disconnections in Ohio, the data simply do not demonstrate that. An investigation of AEP Ohio based on this data is not warranted and should be denied. Nevertheless, the Company remains committed to the Commission and its Staff to discuss any concerns related to its disconnection rates, credit policies or any other customer service issues that may arise.

IV. THE CONSUMER PARTIES FAIL TO DEMONSTRATE THAT THE COMPANY HAS INAPPROPRIATELY UTILIZED ITS ADVANCED METERING INFRASTRUCTURE

A. AEP Ohio has robust AMI Deployment.

One of the data points the Consumer Parties uses, to argue that both an investigation and indefinite suspension of disconnections is warranted, is the number of disconnections AEP Ohio has versus other EDUs. However, they fail to recognize that AEP Ohio has more AMI deployed than any other EDU in the State. In April 2021, the Edison Foundation's Institute for Electric Innovation issued a report called *Electric Company Smart Meter Deployments*:

¹² See Section IV *infra* for a discussion of same day reconnections made possible by AMI with remote disconnection capability.

Foundation for a Smart Grid (2021 Update) (the “IEI Report”), which discusses statistics related to the deployment of smart meters across the United States. The IEI Report estimates that 115 million smart meters will be deployed by the end of 2021. Through June 2021, AEP Ohio has installed 934,761 residential smart meters with remote disconnection capability – 69.7% of its residential meters. The IEI Report provides estimates of smart meter deployments for Ohio’s other EDUs. AES Ohio received Commission approval to move forward on its Smart Grid Plan in June 2021. The IEI Report projects that AES Ohio will have approximately 28,000 smart meters installed by the end of 2021 with full deployment completed by 2024. The same report also states that Duke Energy Ohio has fully deployed approximately 747,000 smart meters while the Cleveland Electric Illuminating Company installed approximately 34,000 meters as part of a pilot program. Based on the higher number of AMI meters that have been deployed by AEP Ohio as compared to the other Ohio EDUs, it is reasonable that the rate of disconnection and reconnection would be higher for AEP Ohio due to the remote capability of the AMI meters and the efficiencies that it brings.

Indeed, those efficiencies bring cost savings to the customer. In Case No. 18-1618-EL-RDR, the Commission adopted a joint stipulation and recommendation resolving the issues related to the operational benefits assessment of AEP Ohio’s gridSMART (AMI) deployment. *See In the Matter of the Review of the Operational Benefits Assessment of the gridSmart Deployment of Ohio Power Company*, Case No. 18-1618-EL-RDR, Finding and Order (November 19, 2020). The Commission agreed that the annualized level of operational savings credits to be applied to the gridSMART rider were \$8.2 million in 2020 and \$8.4 million in 2021 of which 35% is due to the remote disconnection and reconnection capabilities of AMI meters. *Id.* at ¶ 22. OCC supported the operational savings and credit that was given to customers.

These operational savings from reduced credit and collections expenses, which were passed back to customers, will be lost if AEP Ohio is not able to leverage remote disconnections. In addition, the remote disconnection and reconnection benefits of AMI meters allowed AEP Ohio to perform those functions more safely and disconnect customers that did not pay their bill without sending a representative to the premise – a priority during the State of Emergency.

Another efficiency that Consumer Parties fail to acknowledge is that remote capability not only permits remote disconnections but also permits remote *reconnections*. Through June 30, 2021 an average of 72.6% of customers that were remotely disconnected were reconnected the same day. Additionally, remotely disconnected AMI customers are reconnected in 5.1 minutes after making their payment while non-AMI customers are manually reconnected, on average, in 243.6 minutes (approximately 4 hours). This process helps reduce uncollectible costs that would otherwise end up being funded by the Company's other customers. Remote capabilities benefit customers and should not be eliminated.

B. The issues related to remote disconnection raised by the Consumer Parties have already been addressed by the Commission.

Rehashing another already litigated issue, the Consumer Parties take umbrage with the fact that AEP Ohio has a robust AMI program that allows for remote disconnections.¹³ (Memorandum in Support at 10-11, 14-15.) Indeed, they request that the Commission terminate AEP Ohio's remote disconnection process. However, those issues have been already fully vetted by the Commission in Case Nos. 13-1938-EL-WVR, 17-1380-EL-WVR and 17-1381-EL-WVR.

¹³ In the Transition Plan, the Company indicated it would continue disconnection remotely where AMI capabilities exist, subject to the normal rules and applicable notices. (p. 4) The Commission again approved the continuation of this practice.

AEP Ohio has demonstrated success in the remote disconnection process. In 2013, AEP Ohio requested that the Commission temporarily waive certain provisions of O.A.C. 4901:1-18-07(A)(2) to initiate a two-year, remote disconnect pilot program. *See In the Matter of the Application of Ohio Power Company for a Limited Waiver of Ohio Adm. Code 4901:1-18-06(A)(2)*, Case No. 13-1938-EL-WVR. On March 18, 2015, the Commission approved, with certain modifications, AEP Ohio's request. *Id.* at Entry (March 18, 2015). The Commission directed that if AEP Ohio wished to continue or expand the remote disconnect pilot, AEP Ohio, Staff and the other parties in the case would be afforded the opportunity to evaluate the pilot. *Id.* at Entry (March 18, 2015); Second Entry on Rehearing (Sept. 9, 2015).

On June 1, 2017, AEP Ohio filed a request for a permanent or indefinite waiver and to expand the waiver. *See In the Matter of the Application of Ohio Power Company for a Limited Waiver of Ohio Adm. Code 4901:1-18-06(A)(2)*, Case Nos. 17-1380-EL-WVR and 17-1381-EL-WVR ("*Waiver Case*"). OCC intervened in those cases and the Commission directed AEP Ohio to provide to OCC monthly data metrics collected to evaluate the remote disconnect pilot and monthly metrics data tabulated as part of the pilot for 24 months ended July 31, 2017. *Id.* at Entry at ¶21 (July 12, 2017). The Commission also set a comment period and extended the pilot program beyond August 1, 2017. *Id.* at 22.

In its comments in the *Waiver Case*, AEP Ohio demonstrated the success of the pilot by transparently providing data and facts related to remote disconnection. *See id.* at AEP Ohio's Initial Comments (Sept. 18, 2017). AEP Ohio explained that customer experience, customer knowledge, customer benefit and customer engagement improved during the pilot. *Id.* at 8-9. In response, OCC claimed, as it likewise does here, that the Pilot caused an increase in disconnections and strongly objected to AEP's waiver request.

Despite OCC's comments, the Commission found that:

all the same consumer protections available prior to the implementation of the Pilot remain in place and available to all customers to avoid disconnection of service or facilitate reconnection of service, including the Commission's Winter Reconnection Orders, payment plans such as the budget payment plan and other payment arrangements, medical certificates, and payment assistance such as the Percentage of Income Payment Plan-Plus, depending on customer eligibility, and other sources of payment assistance.

Id. at Finding and Order at ¶18 (April 11, 2018). The Commission also noted that vulnerable customers are exempt from the waiver of in-person notice. *Id.* In addition, the Commission recognized that "AEP Ohio has an internal policy not to disconnect a residential customer's service during extreme weather temperatures."¹⁴ *Id.* All of these conditions remain today.

Thus, the Commission rejected OCC's arguments, the same ones the Consumer Parties are making here, finding:

Primarily because the remote disconnect pilot does not directly affect the number of accounts eligible for disconnection.....the Commission finds that the increase in residential disconnections is an insufficient reason to deny the Company's application to continue and expand the remote disconnect process.

Id. The Commission also noted that because AEP Ohio provides, prior to remote disconnection: 1) a telephone call; 2) ten-day mail or telephonic notice; and 3) a 48-hour telephone call prior to scheduled remote to disconnection, "more attempts to reach the customer" exist than "our current rules require during the non-winter heating season."¹⁵ *Id.* at ¶ 21. Based on all these factors, the Commission approved AEP Ohio's waiver request and that waiver continues today. The Consumer Parties have not demonstrated that the Company has violated

¹⁴ If the forecasted high is above 95 degrees or below 25 degrees, disconnections are delayed for up to four days and cancelled until the next bill cycle if delayed past four days. In the first six months of 2021, AEP Ohio delayed 5,953 residential remote disconnections and cancelled 5,499 residential remote disconnections for nonpayment due to extreme weather.

¹⁵ In addition to these types of notice, AEP Ohio also proposed a process to notify customers should they not be able to reach them in the automated 48-hour call. *See Waiver Case*, Finding and Order at ¶ 36.

any Commission rules or orders pertaining to remote disconnection warranting a termination of this waiver.

Not satisfied with the Commission's ruling, on rehearing, OCC rehashed its argument that based on the "disproportionately high" rate of disconnection in the pilot area, the Commission should not have granted the waiver. *Id.* at Second Entry on Rehearing at ¶17 (June 28, 2018). The Commission rejected OCC's assertion finding:

Key to the Commission's decision to grant the waiver request, regardless of the number of disconnections for nonpayment, is the fact that the standard for determining when a residential account is delinquent and eligible for disconnection remains the same and has not changed in more than 30 years and all the consumer protections for a customer to avoid disconnection continue to be available.

Id. at ¶19. The Commission also asserted "electric bills that are not paid by the customer are ultimately recovered as bad debt expense from all of the Company's ratepayers; therefore the Commission must be mindful to balance the interests of the individual customer subject to disconnection and all other customers." *Id.* Despite the State of Emergency, these same concerns exist today. The Commission has already heard the same arguments regarding remote disconnection as it did before – very little has changed making the conclusion any different. As the Commission did in the *Waiver Case* and the *State of Emergency Proceeding*, it must balance the interest of all customers and deny the Consumer Parties' Motions.

V. THE CONSUMER PARTIES' MOTIONS ARE PROCEDURALLY INAPPROPRIATE

For several years, the Commission has not been faced with litigation in its generic docket regarding the Annual Reports Required by R.C. 4933.123.¹⁶ Yet, the Commission is unfortunately confronted with a litigious process merely because it opened a customary docket

¹⁶ See generally, Case Nos. 20-0937-GE-UNC; 19-0974-GE-UNC; 18-0757-GE-UNC; 17-1069-GE-UNC; 16-1224-GE-UNC; 15-0882-GE-UNC.

so that all public utilities can transparently report their disconnection statistics. The Consumer Parties have seized this opportunity to insert themselves into what is normally a monitoring function by the Commission and its Staff. Not only do the Motions suggest that the Consumer Parties intend to turn what is a normal and generic docket of the Commission into a litigated proceeding, OCC has doubled down on that effort by serving discovery on AEP Ohio. The Consumer Parties' adversarial actions suggest that they do not intend for this to be the collegial, open and transparent process that has historically existed.

The Commission enjoys "wide discretion" over its order of business. *Office of Consumers' Counsel v. Pub. Util. Comm.*, 56 Ohio St.2d 220, 227, 383 N.E.2d 593 (1978); *State ex rel. Columbus Gas & Fuel Co. v. Pub. Util. Comm.*, 122 Ohio St. 473, 475, 172 N.E. 284 (1930). Ohio law does not provide for full discovery or a hearing simply because the Commission opened a docket. Indeed, the Commission declined to transform every open docket into a "proceeding" when requested by OCC. *See In re Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code, Pub. Util. Comm.* No. 06-685-AU-ORD, Finding and Order at ¶ 9 (Dec. 6, 2006) (finding that if OCC's proposal to add a broad definition of "proceeding" to Ohio Adm.Code 4901-1-01 were adopted, "any interested person would have the right to intervene, conduct discovery, and present evidence in any Commission case. The Commission does not believe that such rights exist. In addition, OCC's proposed definition would eliminate the Commission's discretion to conduct its proceedings in a manner that it deems appropriate and would unduly delay the outcome of many cases.") *See also In re Triennial Review Regarding Local Circuit Switching*, Case No. No. 03-2040-TP-COI, Entry on Rehearing at ¶ 8 (Oct. 28, 2003) ("The Commission's procedural rules and its governing statutes convey significant discretion and flexibility on the governance of its own proceedings. This is

particularly so for proceedings where no hearing is required by law. There is no right to an evidentiary hearing in this proceeding or to the full discovery process normally reserved for cases where a hearing is required.”)

Here, there are no issues of fact requiring discovery or a “proceeding.” The docket was opened simply for transparency so that *all* public utilities could report their disconnection process as is required by R.C. 4933.123. Indeed, Staff agreed stating “the sole purpose of this case is to create a place on the Commission’s publicly available docket for energy companies to file the annual disconnection reports...” indicating that there is “not an actual case in controversy.” (Staff’s Memorandum Contra at 2-3.) Nowhere in that statute does it say that a hearing is warranted. In addition, the Consumer Parties in their Motions argue relief related to the Winter Reconnect Order as well as issues related to PIPP. Those issues have nothing to do with this docket and are generally addressed in other dockets.¹⁷ The Commission should disregard those arguments.¹⁸ Put simply, the Company, as all of the public utilities, have dispensed with their statutory obligation to provide transparent statistics on its disconnections. To turn this into a litigated proceeding is inappropriate and should be denied. Should the Commission wish to pursue some of the matters alleged in their Motions, it should request comments from all stakeholders regarding all of the public utilities – not just AEP Ohio.

¹⁷ See also Staff’s Memorandum Contra at 5.

¹⁸ The Company fully expects that if the Consumer Parties are not successful in this proceeding that they will also turn what has customarily been a generic proceeding into a litigated matter should the Commission entertain their Motions here.

VI. CONCLUSION

For all of the foregoing reasons, the Commission should deny the Consumer Parties' Motions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO'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 *Memorandum Contra* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 16th day of August, 2021, via electronic transmission.

/s/ Steven T. Nourse

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Summary: Memorandum -Ohio Power Company's Memorandum Contra July 30, 2021
Motions Filed By Consumer Parties electronically filed by Mr. Steven T. Nourse on behalf of
Ohio Power Company