

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY IN SUPPORT OF MOTIONS FOR CONSUMER PROTECTIONS
FROM AEP'S AND ENERGY UTILITIES' DISCONNECTIONS
BY
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I. INTRODUCTION

Many Ohioans are struggling with the coronavirus pandemic and its health and financial repercussions. AEP itself admits that the uncertainty caused by the pandemic continues.¹ But AEP is disconnecting its consumers at an alarming rate.

Ohio’s regulator of AEP, the PUCO Staff, thinks AEP’s high disconnections are OK for Ohioans as long as AEP’s internal disconnection policies and practices “do not violate the minimum standards of the Ohio Administrative Code.”² That is not a good perspective from the government that Ohioans depend upon for protection during the pandemic and at other times. The legislature has given the PUCO ample regulatory authority to protect Ohioans regarding disconnections. That authority should be used now.

¹ AEP’s Memorandum Contra at 1.

² The PUCO Staff’s Memorandum Contra at 5.

AEP's disconnections of consumers' electric service for nonpayment were more than all other Ohio electric distribution utilities combined. AEP's disconnections were alarming at about two-thirds of all electric disconnections (including its own) and nearly half of all electric and gas utility disconnections.³ The Consumer Parties⁴ have moved the state agency charged with regulating utilities and protecting their consumers – the PUCO – to investigate AEP's alarming disconnections.⁵

Parties⁶ (including the PUCO's Staff) largely do not contest the merits of the Consumer Parties' motions.⁷ Instead, they make procedural arguments. The PUCO Staff and AEP even suggest that rather than protecting consumers at the outset from being disconnected, the PUCO should allow consumers to be disconnected so consumers can *then* try to find help.⁸ In the PUCO Staff's view, consumers should be disconnected in order to stay connected.⁹ That makes no sense.

To protect consumers, the Consumer Parties' motions should be granted.

³ See Report of Service Disconnections for Nonpayment of Ohio Power Company, Case No. 21-548-GE-UNC (June 11, 2021) ("AEP Ohio Disconnection Report").

⁴ Advocates for Basic Legal Equality, Inc., Legal Aid Society of Southwest Ohio, LLC, Office of The Ohio Consumers' Counsel, Ohio Poverty Law Center & Pro Seniors, Inc.

⁵ See Consumer Parties' Motions at 5-14.

⁶ Memorandum Contra were filed by the PUCO Staff, Duke, the Ohio Gas Association, and AEP (collectively, "Utility Industry").

⁷ See, e.g., OGA's Memorandum Contra at 4 ("With one exception . . . , OGA does not believe it is necessary to discuss the merits of the Consumer Parties' substantive proposals."); Duke's Memorandum Contra at 2 ("The bulk of the Consumer Parties' Suspension Motion, and the lead argument, is directed at matters related to AEP Ohio and its disconnection practices. Duke Energy Ohio will not respond regarding those matters."). AEP spends pages 4-8 of its Memorandum Contra describing and defending its Coronavirus Emergency Plan and Transition Plan. See AEP's Memorandum Contra at 4-8. The issue here is AEP's inordinate number of disconnections, not its Coronavirus Emergency Plan and Transition Plan.

⁸ The PUCO Staff's Memorandum Contra at 4; AEP's Memorandum Contra at 10.

⁹ *Id.* Specifically, the PUCO Staff states "Staff is concerned that without the possibility of disconnection, customers often do not reach out for assistance in paying their utility bills." The PUCO Staff's Memorandum Contra at 4.

II. ARGUMENT

A. The PUCO should grant Consumer Parties' intervention.

Before filing their motions for consumer protection, Consumer Parties filed motions to intervene on July 30, 2021.¹⁰ The motions to intervene should be granted. Neither the PUCO Staff nor AEP oppose Consumer Parties' intervention in this case. Duke says that it opposes Consumer Parties' intervention,¹¹ but makes no argument in its Memorandum Contra to dispute that Consumer Parties' have met the grounds for intervention under R.C. 4903.221 and the PUCO's rules. The PUCO should reject Duke's bald claim that Consumer Parties' intervention should be denied.

The Ohio Gas Association ("OGA") also opposes Consumer Parties' intervention. OGA asserts that this docket is merely an exercise in ministerial data gathering and that there is no case to be adjudicated.¹² According to OGA, Consumer Parties cannot be adversely affected by the outcome of this proceeding.¹³ OGA says that no utility has requested relief, no rights are being adjudicated or practices investigated, and there is no hearing scheduled or procedural entry.¹⁴

OGA's argument should be rejected. Utilities are not the only stakeholders affected by this docket. R.C. 4933.123(B) provides that disconnection reports must be filed not only with the PUCO, but OCC as well. The information filed by the utilities (particularly AEP) demonstrates that there is something wrong with utilities' disconnections of consumers' essential utility

¹⁰ See Docket.

¹¹ Duke's Memorandum Contra at 2, 6.

¹² OGA's Memorandum Contra at 3-4.

¹³ *Id.* at 3.

¹⁴ See *id.*

service during the pandemic. Thus, there should be rights adjudicated and practices investigated (as outlined in Consumer Parties' motions) to protect consumers. Further, contrary to what OGA suggests, it is simply not necessary for there to be a procedural schedule issued prior to filing a motion to intervene. And in any event, it is customary for the PUCO to issue a procedural entry (including scheduling a hearing) after preliminary filings have been made.¹⁵

OGA's argument that "[t]his is not a proceeding that will—or even can—adversely affect the Consumer Parties or otherwise justify their intervention"¹⁶ puts the cart before the horse. It wrongly assumes that the PUCO cannot exercise its emergency authority (under R.C. 4909.16) and other authority to investigate disconnection practices of AEP and others. And it is callous towards tens of thousands of disconnected Ohioans.

Consumer Parties' motions to intervene should be granted.

B. To protect consumers, the Utility Industry's arguments should be rejected because this is the right case and the right time to investigate AEP's disconnection practices.

Given the high number of disconnections of AEP's consumers,¹⁷ the Consumer Parties have moved the PUCO to investigate AEP's disconnection practices and to protect consumers in the interim by suspending disconnections.¹⁸ The Utility Industry largely do not contest the data in Consumer Parties' motions or the merits of any of the arguments made by the Consumer Parties.¹⁹ Instead, the Utility Industry asserts: 1) this is the wrong proceeding in which to protect

¹⁵ See e.g. *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Adjust Rider PF*, Case No. 20-666-EL-RDR, Entry (June 29, 2021) (setting a procedural schedule and evidentiary hearing following the filing of motions to intervene and comments); and *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Proposed Reliability Standards*, Case No. 13-1539-EL-ESS (April 10, 2014) (same).

¹⁶ OGA's Memorandum Contra at 3-4.

¹⁷ See, e.g., Consumer Parties' Motions at 6-7 (AEP's disconnections per 1,000 consumers was over twice that of any other electric utility).

¹⁸ See Consumer Parties' Motions at 5-14.

¹⁹ See the PUCO Staff's Memorandum Contra.

consumers by investigating AEP's disconnection practices;²⁰ 2) the PUCO Staff is monitoring the situation and that it is better to allow consumers to be disconnected so they will be forced to seek payment assistance (rather than protecting consumers before their service is shutoff);²¹ and 3) there are other cases in which the PUCO can protect consumers from AEP's disconnections.²² These arguments should be rejected.

None of the utilities or their industry groups should be surprised by the Consumer Parties' motions or that they were filed in this docket.²³ As stated above, R.C. 4933.123(B) provides that disconnection reports must be filed with the PUCO *and* OCC. The Entry establishing the disconnection report filing requirement directs utilities to provide the reports to the Director of the PUCO's Service Monitoring and Enforcement Department *and* OCC's Utility Consumer Policy Expert.²⁴ Ohio's utility consumer advocate²⁵ is entitled to actively participate in this proceeding and directly receive all relevant filings. To say that Ohio's utility consumer advocate (along with other consumer advocates) cannot then act on such information in this docket is wrong for the public and administratively inefficient.

The utilities and the PUCO Staff did not cite authority to support their contentions that the PUCO cannot or should not grant the relief requested in the Consumer Parties' motions in this docket.²⁶ The PUCO Staff claims that the PUCO has not "historically" considered motions

²⁰ See *id.* at 2-3; OGA's Memorandum Contra at 3-4.

²¹ See the PUCO Staff Memorandum Contra at 3-5; Duke Memorandum Contra at 3.

²² See the PUCO Staff's Memorandum Contra at 5-6; OGA Memorandum Contra at 4-5.

²³ See OGA's Memorandum Contra at 2.

²⁴ See Entry (May 19, 2021) at para. 5.

²⁵ See R.C., Ch. 4911.

²⁶ See the PUCO Staff's Memorandum Contra.

to investigate disconnection issues in annual reporting dockets.²⁷ But that does not mean the PUCO cannot or should not do so here.

As explained in great detail in Consumer Parties' motions, the PUCO clearly has the authority to do what the Consumer Parties are asking.²⁸ Further, these are no ordinary times. The coronavirus pandemic,²⁹ the alarming number of disconnections,³⁰ and the technology that makes disconnecting consumers as easy as flipping a switch,³¹ are all novel issues that the PUCO should keep a watchful eye on to protect consumers.³² The PUCO has the emergency authority to do just that.³³ This is the case in which AEP's and others' disconnections are reported. This is the case in which they should be investigated.

Those opposing the Consumer Parties generally claim that an investigation into consumer disconnections is unwarranted because the PUCO Staff monitors consumer utility service shutoffs.³⁴ Unfortunately, it appears that the PUCO Staff's monitoring mainly defers to the utility's own policies and practices as to whether they comply with *minimum* standards.³⁵

²⁷ The PUCO Staff's Memorandum Contra at 3.

²⁸ *See, e.g.*, Consumer Parties' Motions at 5-13.

²⁹ According to the Ohio Department of Health, there have been nearly 1 million confirmed coronavirus cases in Ohio, over 20,000 deaths, and nearly 200 cases per 100,000 Ohioans. *See* Ohio Department of Health, "Coronavirus (COVID-19)," Attachment A (last visited August 16, 2021).

³⁰ *See, e.g.*, Consumer Parties' Motions at 6-8.

³¹ *See* Consumer Parties' Motions at 10.

³² *See* Consumer Parties' Motions.

³³ R.C. 4909.16.

³⁴ Or in Duke's words, "the Commission's dockets are replete with actions designed to consider best ways in which to serve customers during both the winter heating season and during the previously declared emergency." Duke's Memorandum Contra at 3.

³⁵ The PUCO Staff's Memorandum Contra at 5.

Also, the Consumer Parties explained that AEP grossly underreported the number of consumer disconnections in an initial report to the PUCO Staff.³⁶ Under-reporting can prevent the timeliness of needed additional attention and regulatory oversight for protection of consumers. The PUCO should investigate and consider penalties for AEP's underreporting.

AEP's disconnections of consumers' electric service for nonpayment were more than all other Ohio electric distribution utilities combined.³⁷ In fact, AEP's disconnections per 1,000 consumers was *over twice* that of any other electric utility.³⁸ More telling, the average number of AEP annual disconnections reported in the disconnection reports for the period 2010 through 2015 (before remote disconnections) was 91,613.³⁹ But the average annual number of AEP disconnections reported between 2016 and the 2021 (after remote disconnections) has increased to 124,284.⁴⁰ Remote disconnections and changes in the AEP credit and collection policies and practices are the only explanation for these increases. Additional investigation into AEP's disconnections is necessary *now* to stop the outrageous numbers of disconnections and protect Ohioans from further harm.

AEP claims that Consumer Parties misconstrue the disconnection report data to make AEP the "scapegoat" for utility service shutoffs.⁴¹ And AEP provides further detail regarding its previous underreporting of consumer disconnections and additional information specific to residential consumer disconnections.⁴² AEP further touts its "robust" advanced metering

³⁶ See, e.g., Consumer Parties' Motions at 6-8.

³⁷ See Report of Service Disconnections for Nonpayment of Ohio Power Company, Case No. 21-548-GE-UNC (June 11, 2021) ("AEP Ohio Disconnection Report").

³⁸ Consumer Parties' Motions at 6-7.

³⁹ See, e.g., Consumer Parties' Motions at 11.

⁴⁰ *Id.*

⁴¹ AEP's Memorandum Contra at 12.

⁴² AEP's Memorandum Contra at 10-11.

deployment throughout Ohio.⁴³ AEP presents this information to support its argument that Consumer Parties' motions should be denied.

Regarding its early under-reporting of disconnections (prior to the annual report), AEP admits faulty reporting of advanced metering disconnection (which occurred during several months between September 2020 and May 2021), but that it worked with the PUCO Staff to "fix" the problem.⁴⁴ It is unconscionable that AEP would inaccurately report advanced metering disconnection data considering the health and safety implications to consumers who were placed at-risk. And the number of disconnections reported by AEP between February 2021 and May 2021 to the PUCO Staff still doesn't match the annual disconnection report -- even after AEP's "correction".⁴⁵

In any event, AEP should not be disconnecting customers under a waiver of PUCO rules.⁴⁶ Those rules require significantly more consumer protections – in-person contact on the day of disconnection.

The information provided by AEP in its Memorandum Contra actually raises more questions than it answers. It demonstrates why it is so important for the PUCO to protect consumers by conducting an investigation into disconnection policies and procedures. The PUCO should also require utilities to provide the public with more specific and accurate disconnection reporting on a quarterly basis. The PUCO should grant Consumer Parties' motions.

⁴³ AEP's Memorandum Contra at 10-14.

⁴⁴ AEP's Memorandum Contra at 10-11.

⁴⁵ AEP's disconnection report shows that there were 47,848 disconnections between February and May 2021. But the reporting to the PUCO Staff shows 47,308 disconnections between February and May 2021.

⁴⁶ The PUCO has waived the requirement that AEP Ohio provide in-person notice to consumers prior to disconnection. *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. 17-1380-EL-WVR et al. Finding and Order (April 11, 2018).

Further, the PUCO Staff's suggestion in its Memorandum Contra that the PUCO stand by and allow consumers to be disconnected and then make them seek help, rather than preventing disconnections in the first place, is simply a bad idea.⁴⁷ Ohio law is far more protective of consumers and requires the PUCO to adopt rules that protect consumers by *preventing* disconnections.⁴⁸

Avoiding disconnections in the first place is far better for consumers because of the additional charges (such as deposits and reconnection fees) that add to the cost of getting utility services restored. In this challenging time for Ohioans, many struggle to overcome the financial and health challenges of the coronavirus pandemic. The PUCO should be proactive in helping consumers.⁴⁹ Essential utility service is a matter of life and death.

This is the docket where AEP reports its disconnections. They are alarming. This is the docket in which disconnection policies and procedures of AEP and others should be investigated and consumers protected. It is not the province of the industry to, in OGA's words, choose the "procedural vehicle" for consumer advocates to pursue consumer protections.⁵⁰

In the interest of energy justice, the PUCO should address the Consumer Parties' motions, in this case and without delay. A PUCO response that the Consumer Parties' motions should be refiled to be heard in another case (such as a complaint), is not an answer to the need

⁴⁷ Similar to the PUCO Staff, Duke says that consumers can rely on various "economic relief measures." Duke's Memorandum Contra at 4. AEP cites to "resources" it offers. AEP's Memorandum Contra at 8.

⁴⁸ R.C. 4933.122. R.C. 4928.02(L).

⁴⁹ See "PUCO winter shutoff ban is humane, responsible," Akron Beacon Editorial, p. A4 (Nov. 30, 1982), Attachment B (In a November 30, 1982 editorial, the Akron Beacon Journal described the PUCO's 1982-1983 winter disconnection moratorium as "humane, responsible.").

⁵⁰ See OGA's Memorandum Contra at 5.

for consumer protection. That is illustrated by the PUCO's inaction, delay and lack of justice for consumers in the disconnection complaint of *OCC and CUFA v. Duke Energy Ohio*.⁵¹

C. Providing disconnection information by zip code promotes energy justice by helping at-risk populations consistent with Ohio policy.

OGA asserts that the PUCO does not have the authority to promote energy justice by requiring utilities to report disconnection data by zip code, nor is there any reason to require utilities to do so.⁵² Duke asserts that the Consumer Parties do not explain what such information would be used for.⁵³ OGA and Duke are wrong.

Protecting at-risk populations is the Ohio policy on electric service.⁵⁴ Nothing in the statute calling for utility disconnection reports (R.C. 4933.123) prevents the PUCO from exercising its general or emergency authority⁵⁵ to require utilities to report disconnection data by zip code. Requiring utilities to report disconnection data by zip code could provide the PUCO and other agencies with data to help protect those at-risk populations, consistent with Ohio policy.⁵⁶

Certainly the utilities know the zip codes where they are disconnecting service, so there is minimal effort needed to provide a sum of the number of disconnections by zip code. And more granular reporting of disconnection data enables an understanding of the demographics of Ohioans that are most likely to face disconnection and the associated negative impacts. With this

⁵¹ Case No. 15-1588-EL-CSS, Complaint at 5 (September 15, 2015); *see generally* Consumer Parties' Motions at 21-22.

⁵² *See* OGA's Memorandum Contra at 5-7.

⁵³ *See* Duke's Memorandum Contra at 4-5.

⁵⁴ R.C. 4928.02(L).

⁵⁵ *See generally* Consumer Parties' Motions at 3-5.

⁵⁶ *See* Consumer Parties' Motions at 19-22.

information, those who serve consumers can better help and protect them, including from any unfair disparities.

III. CONCLUSION

The PUCO should investigate the issues raised by the consumer parties. And the PUCO should take appropriate actions for the protection of Ohioans regarding the utility services that they and their families need to live.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply was served on the persons stated below via electronic transmission, this 20th day of August 2021.

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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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