

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Proper Procedures and)
Process for the Commission's Operation and) Case No. 20-591-AU-UNC
Proceedings During the Declared State of)
Emergency and Related Matters.)

**APPLICATION FOR REHEARING TO PROTECT CONSUMERS FROM
DISCONNECTION AND TO ASSURE ENERGY JUSTICE FOR OHIOANS
BY
THE LEGAL AID SOCIETY OF COLUMBUS
OFFICE OF THE OHIO CONSUMERS' COUNSEL
OHIO POVERTY LAW CENTER
SOUTHEASTERN OHIO LEGAL SERVICES**

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The Office of the Ohio Consumers’ Counsel (“OCC”), the Legal Aid Society of Columbus (“LASC”), the Ohio Poverty Law Center (“OPLC”), and Southeastern Ohio Legal Services (“SEOLS”) file to protect consumers from disconnection and to assure energy justice for Ohioans, especially during the pandemic. The state ended its declared emergency.¹ But the pandemic emergency, including its financial distress, is real and continuing for Ohioans. There is this from a recent news story (including a quote from Director Phil Cole of the Ohio Association of Community Action Agencies):

This unprecedented need for assistance isn't unique to Ohio. Agencies across the county (*sic*) have seen massive spikes in the number of people needing help paying their bills. "We have been inundated with requests for help with rent, mortgage and utility assistance," Cole said. "It began early in the pandemic, and it has not let up." ²

¹ Executive Order 2021-08D (June 18, 2021).

² “Delayed doctor’s visits and late rent: 4 takeaways from annual report on poverty in Ohio,” by A. Staver, The Columbus Dispatch, Aug. 9, 2021.

Given the current surge of the delta variant of the coronavirus, Ohio Governor Mike DeWine recently stated:

“Today 3,235 positive COVID-19 cases were reported. To put that into context, there have been three days in the last week with more than 3,000 newly reported cases. Prior to the past week, there hasn’t been a single day with over 3,000 newly reported cases since February.”³

Unemployment levels are starting to increase again.⁴ Disconnections are increasing at a steady rate⁵—especially for AEP Ohio consumers.⁶

Utilities argue that there are resources available to consumers to maintain utility service.⁷ Such resources are not enough, especially with the question of what will happen when some of the federal relief ends.⁸ These are extraordinary times which call for extraordinary protections.

³ News Release, Governor Mike DeWine, *COVID-19 Update: Vaccinations Increasing, Delta Variant, Local Efforts Encouraged* (August 17, 2021).

⁴ News Release, Ohio Department of Job and Family Services *Ohio’s Unemployment Rate Increased to 5.2% in June* (July 16, 2021). May’s unemployment rate was 5.0%.

⁵ See Report of Service Disconnections for Nonpayment, Case No. 21-548-GE-UNC (June 11, 2021).

⁶ See Report of Service Disconnections for Nonpayment of Ohio Power Company, Case No. 21-548-GE-UNC (June 11, 2021) (AEP made 124,157 disconnections of Ohio consumers, which was 64% of the total electric utility disconnections of 195,186) (“AEP Ohio Disconnection Report”).

⁷ See the utilities’ Memorandum Contrasted to Consumer Parties’ Motion. *In re Report of Service Disconnections for Nonpayment*, Case No. 21-548-GE-UNC, Motion for the PUCO to investigate AEP Ohio’s practices for consumer disconnections, credit, collections and use of Smart Meters for remote disconnections, in light of AEP’s June 11, 2021 reporting of its comparatively high disconnections of consumers and Motion for the PUCO to immediately suspend AEP Ohio’s disconnections of consumers during a PUCO investigation or, as a secondary alternative to suspend AEP’s use of Smart Meters for remote disconnections during a PUCO investigation and Motion for the PUCO to suspend all electric and gas utility disconnections of consumers during the upcoming winter heating season or as a secondary alternative to continue and expand consumer protections in future winter reconnect orders including by banning remote electric disconnections and Motion for the PUCO to require the electric and gas utilities to assess and report the impacts of disconnections in their service areas, especially any disproportionate impacts for diverse segments of the population including but not limited to at-risk and minority communities and the working poor, toward further consumer protection programs and the PUCO’s assurance of energy justice and Memorandum in Support filed by W. Michael on behalf of Advocates for Basic Legal Equality, Inc., Legal Aid Society of Southwest Ohio, LLC, Office of Ohio Consumers’ Counsel, Ohio Poverty Law Center and Pro Seniors, Inc., (June 11, 2021) (“Consumer Parties’ Motion”).

⁸ “Ohio advocates concerned that poverty will rise when COVID-19 pandemic aid ends,” by K. Gordon, *The Columbus Dispatch*, Aug. 16, 2021.

Accordingly, the PUCO should rehear its July 28, 2021 Entry. Instead of ending its emergency, the PUCO should enter rulings that protect consumers from impending disconnections of essential utility service during the upcoming winter heating season. Ohio's cold winter is approaching, with consumers' need for winter heating and with winter conditions that favor the virus for continuing its rage.

And rulings should include action to assess and assure energy justice for Ohioans, especially during the pandemic. Energy justice includes impacts of disconnections and other distress on such diverse segments of the population as at-risk and minority communities and the working poor.

Under R.C. 4903.10, the PUCO's Entry was unjust, unreasonable, and unlawful in the following respects:

Assignment of Error 1: The PUCO erred by prematurely ending the emergency it invoked and failing to suspend utility disconnections of consumers during the upcoming winter heating season, given the pandemic's new wave of illness and distress for many Ohioans. The PUCO should have "deem[ed] it necessary to prevent injury to the business or interests of the public..." under R.C. 4909.16.

Assignment of Error 2: The PUCO erred by not acting to assure energy justice for consumers during the emergency of the pandemic (and beyond), including through requiring energy utilities to report information about the impacts of their disconnections and other utility issues on such diverse segments of the population as at-risk and minority communities and the working poor and then correcting for any inequities.

Consumer groups that seek consumer protection through this application for rehearing are as follows. Office of the Ohio Consumers' Counsel ("OCC") is the statutory representative of Ohio's approximately 4.5 million residential utility customers; The Legal Aid Society of Columbus ("LASC") works to assist low-income and elderly individuals living in Columbus and Central Ohio combat unfairness and injustice, and to help people rise out of poverty; Ohio Poverty Law Center ("OPLC") works to reduce poverty and increase justice by protecting the legal rights of Ohioans living in poverty; Southeastern Ohio Legal Services is an LSC-funded legal services program

whose mission is to act as general counsel to a client community residing throughout thirty rural counties in southeast Ohio and, as such, provide the highest quality of legal services to its clients toward the objective of enabling poor people to assert their rights and interests.

The PUCO should grant rehearing and abrogate or modify its Entry as requested to protect consumers during this ongoing pandemic.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The pandemic emergency, including its financial distress, is real and continuing for Ohioans. There is this from a recent news story (including a quote from Director Phil Cole of the Ohio Association of Community Action Agencies):

This unprecedented need for assistance isn’t unique to Ohio. Agencies across the county (*sic*) have seen massive spikes in the number of people needing help paying their bills. “We have been inundated with requests for help with rent, mortgage and utility assistance,” Cole said. “It began early in the pandemic, and it has not let up.”⁹

At the pandemic’s outset, on March 9, 2020, Governor DeWine declared a state of emergency to protect the health and safety of Ohioans from the dangerous effects of the coronavirus pandemic. Subsequently, the PUCO opened a docket to decide how to proceed under the state of emergency. It directed all utilities to “review their service disconnection policies, practices, and tariff provisions and to promptly seek any necessary approval to suspend otherwise applicable requirements that may impose a service continuity hardship on residential

⁹ “Delayed doctor’s visits and late rent: 4 takeaways from annual report on poverty in Ohio,” by A. Staver, The Columbus Dispatch, Aug. 9, 2021.

and non-residential customers or create unnecessary COVID-19 risks associated with social contact.”¹⁰

In response to the PUCO’s Entry, the utilities submitted individual emergency plans in separate dockets.¹¹ In each of the utility cases, the PUCO ordered a moratorium on utility service disconnections for nonpayment. The disconnection moratoria were helpful. But they were ended prematurely when consumers were still suffering the distress of the pandemic and the related financial crisis.¹² In the orders ending the moratoria, the PUCO even acknowledged that “many customers may continue to experience financial stress as a result of COVID-19, despite the gradual reopening of businesses throughout Ohio.”¹³

On July 28, 2021, the PUCO issued an Entry prematurely ending the emergency in case 20-591-AU-UNC (the PUCO’s emergency docket for process and procedures related to the coronavirus pandemic). But the PUCO instead should have acted to protect at-risk Ohioans.

The PUCO should protect consumers while they are still suffering from the effects of the pandemic including the new wave of illness. That means suspending disconnections during the upcoming winter heating season. This is especially important since utility disconnections can have a disparate impact on at-risk and low-income consumers despite state policy protecting these consumers. Protections should include action to assess and assure energy justice for

¹⁰ *In the Matter of the Proper Procedures and Process for the Commission’s Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry at 1 (March 12, 2020).

¹¹ AEP Ohio: 20-602-EL-UNC; Duke: 20-599-GE-UNC; DP&L/AES: 20-651-EL-UNC; FirstEnergy: 20-1344-EL-UNC.

¹² The PUCO ruled in each EDU’s specific cases, permitting disconnections to resume on different dates. AEP Ohio: September 2020 (20-602-EL-UNC, Supplemental Finding and Order (August 12, 2020)); FE: September 15, 2020 (20-1344-EL-UNC, Finding and Order (September 23, 2020)); Duke: August 10, 2020 (20-599-GE-UNC, Supplemental Finding and Order (July 29, 2020)); DP&L: September 1, 2020 (20-651-EL-UNC, Supplemental Finding and Order (August 12, 2020)).

¹³ *See Id.*

Ohioans, especially during the pandemic. Energy justice encompasses impacts of disconnections and other distress on such diverse segments of the population as at-risk and minority communities and the working poor.

R.C. 4909.16 (the emergency statute), among other authority, warrants the granting of this application for rehearing. The PUCO should “deem[] it necessary to prevent injury to the business or interests of the public...” under R.C. 4909.16.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR 1: The PUCO erred by prematurely ending the emergency it invoked and failing to suspend utility disconnections of consumers during the upcoming winter heating season, given the pandemic’s new wave of illness and distress for many Ohioans. The PUCO should have “deem[ed] it necessary to prevent injury to the business or interests of the public...” under R.C. 4909.16.

Utility service is *essential* to consumers, particularly when more families need to be at home in the coming Fall and Winter months due to job loss, health issues, or school closures as a result of the pandemic. This danger associated with utility disconnections—already exacerbated by the pandemic—is further heightened with the rapidly spreading delta variant—where consumers could be facing another shutdown if the variant continues to spread. And even in non-pandemic conditions, disconnection from utility service can literally be a matter of life or death for at-risk Ohioans.

But the fact is the pandemic is again raging.¹⁴ There are changed (worsening) circumstances that warrant again suspending disconnections.¹⁵ If previous assertions that the pandemic worsens in cold weather (while more activities are planned in-doors), and it has

¹⁴ News Release, Governor Mike DeWine, *COVID-19 Update: Vaccinations Increasing, Delta Variant, Local Efforts Encouraged* (August 17, 2021).

¹⁵ *Id.*

already been worsening with the delta variant, then the upcoming winter could be worse than the 2020/2021 winter heating season. The PUCO should abrogate its decision to end its emergency provisions and reinstate its moratorium on disconnections until the pandemic ends, and at least throughout the upcoming winter heating season.

The PUCO Staff recently expressed its concern that suspending disconnections will not reduce customers' ultimate responsibility to pay for their utility service.¹⁶ The PUCO Staff argued that consumers' "service will stay on, but the amount they owe the utility companies will continue to grow. Financial assistance is only available up to a certain amount. If the amount customers owe exceeds the level of assistance available, service will eventually be shut off. Therefore, Staff believes it is in the best interest of customers for Staff to continue to monitor disconnections and assist customers individually, rather than implement an overall ban."¹⁷

It appears that the PUCO Staff is suggesting that consumers should allow themselves to be disconnected so that they can request limited financial assistance. Furthermore, the PUCO Staff points out that if a consumer owes more than the level of assistance available, service will be shut off eventually. This is exactly OCC's point. If the PUCO freezes disconnections to deal with the extraordinary pandemic, then consumers will not need to worry about the limited financial assistance and eventual disconnection. It is more protective of consumers to pause disconnections while the pandemic is ongoing, especially as the winter months approach.

The PUCO Staff's argument contradicts itself. Consumers are not better by getting shut off now and applying for financial assistance that will eventually end in utility service disconnection than they would be if disconnections were suspended, and the financial aid was

¹⁶ PUCO Staff Memorandum Contra Consumer Parties' Motions at 3-4 (August 13, 2021).

¹⁷ *Id.*

later used to catch up on bills. Consumers are going to owe either way, but if the PUCO would suspend disconnections, at least they won't have to worry about disconnections threatening their well-being while the pandemic continues and winter approaches.

In a November 30, 1982 editorial, the Akron Beacon Journal described the PUCO's 1982-1983 winter disconnection moratorium as "humane, responsible."¹⁸ That characterization of a PUCO disconnection moratorium 40 years ago is applicable today. Indeed, the PUCO just last year allowed for a moratorium on energy utility disconnections of consumers, given the pandemic emergency. And now government is expressing concern that although the official state of emergency has expired,¹⁹ the pandemic is far from over and continues to worsen with the delta variant, as Ohio Governor Mike DeWine recently verified stating: "Today 3,235 positive COVID-19 cases were reported. To put that into context, there have been three days in the last week with more than 3,000 newly reported cases. Prior to the past week, there hasn't been a single day with over 3,000 newly reported cases since February."²⁰

Protecting Ohioans from disconnections while the pandemic is ongoing, and especially during the upcoming 2021-2022 winter heating season, is authorized under the state's emergency statute, R.C. 4909.16. The emergency statute provides for the PUCO to act when "necessary to prevent injury to the business or interests of the public...in case of any emergency...." To protect consumers, the PUCO should immediately suspend all disconnections of consumers for non-payment during the winter heating season.

The PUCO should grant OCC's application for rehearing to protect consumers.

¹⁸ "PUCO winter shutoff ban is humane, responsible," Akron Beacon Editorial, p. A4 (Nov. 30, 1982).

¹⁹ Executive Order 2021-08D (June 18, 2021).

²⁰ News Release, Governor Mike DeWine, *COVID-19 Update: Vaccinations Increasing, Delta Variant, Local Efforts Encouraged* (August 17, 2021).

ASSIGNMENT OF ERROR 2: The PUCO erred by not acting to assure energy justice for consumers during the emergency of the pandemic (and beyond), including through requiring energy utilities to report information about the impacts of their disconnections and other utility issues on such diverse segments of the population as at-risk and minority communities and the working poor and then correcting for any inequities.

At-risk and low-income populations (including minority communities) and the working poor in Ohio have been disproportionately affected by the pandemic, both financially and physically. And they will continue to need assistance. The PUCO should act to assure energy justice for consumers during the emergency of the pandemic (and beyond). Requiring energy utilities to report information about the impacts of their disconnections and other utility issues on such diverse segments of the population as at-risk and minority communities and the working poor and then correcting for any inequities would be a good start.

The poverty rate in Ohio is approximately 14.9%, and nearly 1.7 million Ohioans have reported income below the poverty line.²¹ The poverty rate among African-Americans in Ohio is 32%.²² Food insecurity in Ohio for 2020 is reported at 16%, an increase of almost 3% over 2019.²³ And there is reporting that food insecurity has nearly doubled during the early months of the pandemic.²⁴ Recently, over a half million Ohioans were unable to pay their rent.²⁵ And there is a continuing shortage of affordable rental homes for low-income Ohioans.²⁶ Therefore, these consumers need and will continue to need assistance. The harm from the pandemic is ongoing and so should be the consumer protections.

²¹ WelfareInfo.org, “Poverty Rate in Ohio.”

²² *Id.*

²³ FeedingAmerica.org, “Food Insecurity Ohio” ” (last visited July 27, 2021).

²⁴ Ohio Association of Foodbanks, “Ohio Food Insecurity Rates Nearly Double Since Start of COVID-19 (June 15, 2020).

²⁵ United States Census Bureau, Housing Table 1(b), Ohio tab (July 1, 2020).

²⁶ National Low Income Housing Coalition “Needs in Ohio” ” (last visited July 27, 2021).

The gas and electric utilities provide monthly disconnection data to the PUCO Staff and publicly file annual disconnection reports. But the information that is provided lacks the details that enable an understanding of the demographics of Ohioans that face disconnection and the associated negative impacts. That information should be known to help the affected Ohioans and to avoid any unfair disparities.

The number of disconnections that are reported by zip code could provide needed information about particular communities and segments of communities that tend to be more at risk for disconnection. According to the report “State of Poverty in Ohio – 2020,” Black and Hispanic Ohioans are substantially more likely to face poverty than non-Hispanic White Ohioans.²⁷ A 2020 CNN article references a 2017 report by the NAACP, which “found that utility shutoffs had a disproportionate impact on poor and Black communities.”²⁸ Therefore, the PUCO should require electric and gas utilities to report the number of disconnections by zip code.²⁹ And requiring other utility reporting, based on other types of analysis including quantitative and qualitative analyses, should be considered.

This information will help the PUCO promote energy justice, an important issue that has been made even more important due to the pandemic. It has been reported that one in three “American households faces some sort of energy insecurity, such as a challenge affording their

²⁷ “State of Poverty in Ohio – 2020,” Ohio Association of Community Action Agencies.

²⁸ Duster, Chandelis, *Utility Shutoffs Threaten a Fresh Crisis for Low-income and Black Families as Covid Surges Again*, CNN (July 12, 2020).

²⁹ See e.g. *In the Matter of the Investigation and Comprehensive Review of the Commission’s Disconnection Rules and the Disconnection Policies of Public Service Corporations*, Arizona Corp. Comm’n, Docket No. E-00000A-19-0128, Dec. No. 77849 (Dec. 17, 2020), ¶20(i) (requiring quarterly reports from utilities through January 2023 of detailed information regarding residential consumer disconnections by zip code); *In the Matter of the Inquiry Into the Actions of Electric and Natural Gas Utilities in Light of the COVID-19 Pandemic Emergency*, Minnesota Pub. Utils. Comm’n., Docket No. E,G999/CI-20-375 (March 8, 2021) (adopting consumer advocates’ recommendation to require utilities to report consumer disconnections by zip code).

energy bills or trouble keeping their home a healthy temperature.”³⁰ As the Rockefeller Foundation has reported:

Across the U.S., low-income households are impacted by energy burden – that is, the high percentage of household income spent on gas and electricity. According to the U.S. Department of Energy, pre-pandemic 37 million households suffered from energy insecurity. This issue is particularly acute for Native American (60+%), Black (50%), and Latinx (40%) households. Low-income households typically pay more than three times their household income on utilities compared with higher-income households (7.2% vs. 2.3%).

Black and Latinx households specifically spend disproportionate amounts of their income on energy – experiencing energy burdens 64% and 24% greater than white households, respectively.³¹

As a result of the energy burden, it has been reported that “[s]truggling families sometimes find themselves forced to choose between electricity and other basic necessities like groceries or healthcare.”³² It bears keeping in mind that reportedly “the cost of energy is regressive; low-income customers (those with a household income not exceeding 200% of the federal poverty level) spend a larger share of their income on energy costs.”³³ So the cost of energy hurts those that have difficulty paying for it the most.

In the interest of energy justice, the PUCO should grant OCC’s application for rehearing.

III. CONCLUSION

The PUCO should grant this Application for Rehearing. As described above, the PUCO should protect Ohioans from disconnections during the upcoming winter heating season and

³⁰ OurEnergyPolicy.org, “Energy Justice.”

³¹ Rachel Isacoff, The Rockefeller Foundation, “Texas Crisis Highlights U.S. Energy Justice Issues.”

³² *Id.*

³³ Colette Brashears, Talia Lanckton, Shalanda H. Baker, Initiative for Energy Justice, “Utility Shutoffs and the COVID-19 Pandemic.”

should assure energy justice for such diverse segments of the population as at-risk and minority communities and the working poor.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electric transmission this 27th day of August 2021.

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Case No(s). 20-0591-AU-UNC

Summary: App for Rehearing Application for Rehearing to Protect Consumers From Disconnection and to Assure Energy Justice for Ohioans by The Legal Aid Society of Columbus, Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Southeastern Ohio Legal Services electronically filed by Ms. Deb J. Bingham on behalf of Wilson, Ambrosia E.