

**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)

**COMPANIES’ MEMORANDUM CONTRA
CONSUMER PARTIES’ APPLICATION FOR REHEARING**

On July 28, 2021, the Public Utilities Commission of Ohio (the Commission) lifted the emergency directives issued in this docket, to the extent they had not already expired. *See* Entry (July 28, 2021) ¶ 11. This Entry was in direct response to the Governor’s Executive Order 2021-08D, which declared the state of emergency in Ohio, with respect to COVID-19, to be over. *Id.*

On August 27, 2021, several parties (Southeastern Ohio Legal Services, the Legal Aid Society of Columbus, LLC, the Office of the Ohio Consumers’ Counsel (OCC), and the Ohio Poverty Law Center (collectively, the Consumer Parties)) filed a request that the Commission rehear that Entry.¹ In accordance with Ohio Adm.Code 4901-1-35(B), Columbia Gas of Ohio, Inc., The East Ohio Gas Company d/b/a Dominion Energy Ohio, Duke Energy Ohio, Inc., Vectren Energy Delivery of Ohio, Inc. d/b/a CenterPoint Energy Ohio, and Ohio Power Company (collective, the Companies) file this memorandum contra the Consumer Parties’ application for rehearing.

I. INTRODUCTION

The Consumer Parties’ application raises two assignments of error, but neither has anything to do with the actual contents of the Commission’s Entry. Notably, the Consumer

¹ The Consumer Parties, although certain of them have filed a number of other applications for rehearing and motions in this docket since the Commission opened it, have never filed motions to intervene in this proceeding in accordance with Ohio Adm.Code 4901-1-11.

Parties filed motions in Case No. 21-0548-GE-UNC, the annual disconnection-reporting docket, asking for the exact same relief. (*See* July 30, 2021 Motions.) The same arguments filed in response to those motions continue apply to here: the Consumer Parties' requests are not relevant to the Commission's Order in this proceeding; whatever the merits of their arguments, their arguments should be raised in different proceedings.

The point of the Commission's Entry was simple and straightforward: to recognize the Governor's declaration that the COVID-19 state of emergency had ended. The Consumer Parties' specific requests for relief, however, are not substantially related to the Commission's response to COVID-19. Although they mention the pandemic, the Consumer Parties' request to impose additional disconnection restrictions and requirements on electric and gas utilities relies on the exact same factors these Parties cited while asking for the exact same relief in the annual disconnection-reporting docket.

The Companies certainly sympathize with the difficulties that consumers can face, whether as a result of the COVID pandemic or any other cause, and they continue to 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. The Companies also appreciate the Consumer Parties' intention to help customers and, indeed, have offered numerous avenues of relief throughout the pandemic and otherwise. Nevertheless, the Companies do not believe that the Consumer Parties' application for rehearing bears any relationship to the Commission's Entry, nor do the Companies believe that this is an appropriate proceeding in which to consider the issues raised by the Consumer Parties. For these reasons, the Companies recommend that the Commission deny their application for rehearing.

II. ARGUMENT

For the Commission to grant rehearing, certain criteria must be met. Assuming for sake of argument that the Consumer Parties are proper parties to seek rehearing (which is not at all clear), they must demonstrate that the Commission's Order is unreasonable or unlawful, which they have failed to do. Along the same lines, the Consumer Parties also fail to demonstrate that their requests for relief—the additional restrictions and requirements concerning future disconnections that they seek to impose on all electric and gas utilities—are appropriate issues for rehearing in a proceeding focused on the Commission's response to the COVID-19 pandemic. There are other forums better suited to addressing these policy issues, and the Commission should deny rehearing.

A. The Consumer Parties' application does not satisfy the basic standards for seeking rehearing of the Commission's Entry.

Procedurally, the Consumer Parties' application does not satisfy the basic standards for seeking rehearing of the Commission's Entry.

To begin with, it is not clear that any of the Consumer Parties (none of whom have sought or been granted intervention) are proper parties under R.C. 4903.10 to file an application for rehearing. That section generally permits "parties" to apply for a rehearing, and it is not clear to the Companies that the Consumer Parties constitute "parties" under Ohio Adm.Code 4901-1-10. None of them sought to intervene or were made parties by the Commission. And the Commission made the "party" requirement quite clear in an earlier Entry in this very proceeding. *See, e.g.,* Case No. 20-591-AU-UNC, *et al.*, Entry (Aug. 12, 2020) ¶ 17 (finding that consumer parties who did not enter an appearance or seek leave to file an application for rehearing in this proceeding did not have standing to participate).

But assuming for sake of argument that the application for rehearing was properly filed, the Consumer Parties' assignments of error fail to demonstrate that the Entry is unreasonable or unlawful. Their pleading barely even mentions the Entry. Twice, they make the general and misleading claim that the Commission should not have "end[e]d its emergency" and that it "prematurely end[ed] the emergency." (Reh'g App. at 3; Mem. in Support at 2.) These are the only times that the Entry is discussed. As a matter of fact, it was the Governor, and not the Commission, who both initiated and ended the state of emergency, and the Commission merely reflected the Governor's decision. The Consumer Parties' mistaken factual assumptions do not show that the Entry is unreasonable or unlawful.

The clear purpose of the Consumer Parties' pleading is to make new and affirmative requests for future relief—confirmed by the fact their requests are identical to those filed in the annual disconnection-reporting docket. But the purpose of an application for rehearing is to demonstrate how the Commission's prior entry was unreasonable or unlawful. The application for rehearing does not seriously attempt to make this demonstration and should be denied as insufficient on its face.

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

The Companies do not believe it is necessary to discuss the merits of the Consumer Parties' substantive requests in this proceeding.² Notwithstanding the purpose of the proceeding (*i.e.*, the Commission's response to COVID-19), the Consumer Parties have asked for significant

² To be clear, the Companies maintain their opposition to the Consumer Parties' request to require electric and gas utilities to report the number of disconnections by zip code, for reasons stated in their August 16, 2021 Memorandums Contra in Case No. 21-548-GE-UNC. Although lacking merit, that request to modify disconnection reporting arguably had at least some relevance to the disconnection-report docket, and for that reason the Companies responded to it. But this request has no relevance whatsoever to this docket.

modifications to all gas and electric utilities' disconnection and reporting procedures for reasons that go beyond the pandemic. There are a number of procedural options better suited for review and consideration of the pros and cons of the Consumer Parties' policy positions on disconnections. This, however, is not one of them.

Issues concerning the scope of the Winter Reconnect Order, for example, can be presented in that proceeding—a proceeding that is likely to commence imminently. 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).) 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. Various rulemakings pertain to disconnection procedures and payment-assistance programs. 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 disconnection issues raised by the Consumer Parties.

III. CONCLUSION

The Consumer Parties have not demonstrated that that the Commission's Entry is unreasonable or unlawful, or that their requests for relief would be appropriate issues for

resolution in this proceeding. For these reasons, the Commission should deny their application for rehearing.

Dated: September 7, 2021

Respectfully submitted,

/s/ John R. Ryan

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CERTIFICATE OF SERVICE

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Summary: Memorandum Companies' Memorandum Contra Consumer Parties' Application for Rehearing electronically filed by Christopher T. Kennedy on behalf of The East Ohio Gas Company d/b/a Dominion Energy Ohio and Vectren Energy Delivery of Ohio, Inc. d/b/a CenterPoint Energy Ohio