

**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
Disconnections for Nonpayment.)

**APPLICATION FOR REHEARING
BY
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LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC
OFFICE OF THE OHIO CONSUMERS' COUNSEL
OHIO POVERTY LAW CENTER
PRO SENIORS, INC.**

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During the time of the pandemic when many Ohioans face health and financial challenges, including the human suffering involved with utility disconnections, the PUCO's denial of our Joint Motion lacked the sensitivity needed by Ohio's utility regulator. The PUCO has a legal obligation to ensure utility charges and service are just and reasonable.¹ The policy of the state obligates the PUCO to protect at-risk populations in Ohio.² Accordingly, the PUCO abdicated these responsibilities in a heartless decision denying our Joint Motion for an investigation of AEP's disconnection practices and other consumer protections.

The PUCO found that AEP, while disconnecting consumers at a high rate, was not violating any laws or PUCO rules.³ Thus, the PUCO concludes what AEP was doing (disconnecting consumers at a high rate) was OK. But it's not OK. The PUCO's ruling was myopic. The PUCO's regulatory responsibility to Ohioans includes its authority to ensure

¹ R.C. 4905.22.

² R.C. 4928.02(L).

³ Entry at paragraph 29.

consumers are provided necessary and adequate service that is just and reasonable, including with regard to charges. And the PUCO has oversight of utility management, for consumer protection, under R.C. 4909.154.⁴ The PUCO’s light-touch regulatory approach to our concerns about AEP’s high disconnections is an abdication of its responsibility to Ohioans.

This case involves the Utility Industry reporting on their consumer disconnections. It *can* and *should* involve protecting consumers from being disconnected from their essential utility service and fostering energy justice. That is why Advocates for Basic Legal Equality, Inc.; Legal Aid Society of Southwest Ohio, LLC; Ohio Poverty Law Center; Pro Seniors, Inc.; and the Office of the Ohio Consumers’ Counsel (“OCC,” the statutory representative for Ohio residential utility consumers⁵) (collectively, “Consumer Groups”), filed a Joint Motion to intervene in this case on July 30, 2021. Along with the Joint Motion to intervene, the Consumer Groups also filed Joint Motions for various relief from service disconnections to protect consumers in light of the astonishingly high number of reported disconnections (particularly by AEP).⁶ Notwithstanding the high number of reported disconnections and the alarming rise in the costs of all forms of energy and the lingering effects of the pandemic, the Public Utilities Commission of Ohio (“PUCO”) will not even investigate the matter to see if energy justice is being denied. In fact, it unreasonably and unlawfully, and in violation of Ohio Supreme Court precedent, denied the Joint Motion to intervene.

⁴ R.C. 4909.154 states in part: If the commission finds after a hearing that the management policies, practices, or organization of the public utility are inadequate, inefficient, or improper, the commission may recommend management policies, management practices, or an organizational structure to the public utility.

⁵ R.C. 4911.

⁶ These motions include to investigate AEP’s disconnection, credit, and collection policies and practices; to suspend AEP’s disconnections pending the investigation or, in the alternative, suspend AEP’s use of smart meters; to suspend all utilities’ disconnections during the 21-22 winter heating season or, in the alternative, continue and expand consumer protections as part of future winter reconnection orders; and to require all utilities to assess and report the impact of disconnections in their respective service areas).

The PUCO erred in denying the Consumer Groups intervention. The PUCO should abrogate its decision and grant the Consumer Groups intervention in this case. The PUCO's Entry⁷ is unlawful and unreasonable in the following respects:

Assignment of Error 1: The PUCO erred by unreasonably and unlawfully denying the Consumer Groups intervention in this case in violation of Ohio Supreme Court precedent in *OCC v. Pub. Util. Comm.*⁸

Assignment of Error 2: The PUCO erred by denying the Joint Motion to Investigate AEP and suspend disconnections pending the investigation on the grounds that AEP had not violated Ohio law or rule in abdication of its obligation to the Ohio public that rates and service are just and reasonable.

The PUCO should grant the Consumer Groups' Application for Rehearing and abrogate its decision to deny intervention and other motions for consumer protection.

⁷ Entry (Oct. 6, 2021) (hereinafter "the Entry").

⁸ *OCC v. Pub. Util. Comm.*, 111 Ohio St.3d 384 (2006).

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The PUCO thinks that AEP’s high number of disconnections for residential consumers are OK for Ohioans unless it is proven that AEP has violated a statute or a PUCO order.⁹ But the PUCO fails to recognize that AEP’s high number of disconnections is a *symptom* of a problem that *requires investigation*. The PUCO cannot assume that AEP has not violated any statute or order *unless* it investigates the issue. The PUCO found that AEP while disconnecting consumers at a high rate was not violating any laws or PUCO rules.¹⁰ Thus the PUCO concludes that what AEP was doing (disconnecting consumers at a high rate) was OK. But the analysis should not end there. The PUCO has regulatory authority to ensure consumers are provided safe and reliable service at reasonable rates under R.C. 4905. 22 and has management oversight under R.C. 4909.154.¹¹ To disregard such authority under the law is an abdication of its duties that it owes to Ohioans.

⁹ Entry at paragraph 29.

¹⁰ Entry at paragraph 29.

¹¹ R.C. 4909.154 states in part: If the commission finds after a hearing that the management policies, practices, or organization of the public utility are inadequate, inefficient, or improper, the commission may recommend management policies, management practices, or an organizational structure to the public utility.

The Supreme Court of Ohio recently reminded the PUCO that its decisions must be made based on the evidence in the record.¹² Without an investigation, there is no evidence. Without evidence, the PUCO cannot just declare that disconnections rates are OK. Ohioans depend upon the PUCO to protect them from inadequate, unsafe, and unreasonably priced utility services.¹³ The PUCO is not protecting consumers when it denies the Consumer Groups intervention and fails to investigate the astonishingly high number of disconnections.

The legislature has given the PUCO ample regulatory authority to protect consumers. That authority should be used now. At a minimum, the PUCO should grant intervention. Further, to protect consumers the PUCO should investigate in this docket or in a newly opened “Commission Ordered Investigation” docket¹⁴ whether the high number of disconnections by AEP and other utilities is a denial of energy justice and a violation of state law and PUCO rules. But there should be an investigation. The PUCO should not simply assume that there is no violation. The PUCO should grant the Consumer Groups’ application for rehearing and abrogate or modify its decision. It should grant intervention, perform an investigation into the effect of disconnections on consumers, and suspend disconnections until the investigation is complete.

II. ASSIGNMENTS OF ERROR

Assignment of Error 1: The PUCO erred by unreasonably and unlawfully denying the Consumer Groups intervention in this case in violation of Ohio Supreme Court precedent in *OCC Pub. Util. Comm.*¹⁵

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The PUCO, in its October

¹² *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Opinion No. 2021-Ohio-3630.

¹³ *See, e.g.*, R.C. 4905.22.

¹⁴ R.C. 4905.26, *see also, e.g.*, Joint Motions at 3-5.

¹⁵ *OCC v. Pub. Util. Comm.*, 111 Ohio St.3d 384 (2006).

6, 2021 Entry denying intervention by the Consumer Groups, said that “there is no case, proceeding, or factual issue presented which will require a decision by the Commission or an impact on the rights of any party to be adjudicated and, accordingly, the need for and requirements of intervention have not been satisfied.”¹⁶ The PUCO cites authority where it denied intervention in administrative proceedings where a hearing was not held or required¹⁷ and where a proceeding’s sole purpose is to serve as a procedural docket and no substantive decision by the PUCO would be made.¹⁸ The PUCO cites authority that the intervention statute contemplates intervention in quasi-judicial proceedings characterized by notice, hearing, and the making of an evidentiary record.¹⁹ Specifically, the PUCO cites *Ohio Domestic Violence Network v. Pub. Util. Comm.*, 70 Ohio St. 3d 311 (1992) and *OCC v. Pub. Util. Comm.*, 111 Ohio St. 3d 384 (2006).

The PUCO incorrectly allows the wish (we hope there’s no case) to be the father of the thought (there is no case). The PUCO incorrectly applied the binding precedent in *OCC v. Pub. Util. Comm.*²⁰

In *OCC v. Pub. Util. Comm.*, the Court held that *OCC should have been granted intervention and distinguished Ohio Domestic Violence Network* because, as is the case here, there were no concerns with intervention causing delay *and* alternative avenues to pursue the issues.²¹ The Court’s decision means that the Consumer Groups have a *right*, under law, to intervene in PUCO proceedings. Though the PUCO relies on both *OCC v. Pub. Util. Comm.* and

¹⁶ Entry at ¶ 12 (Oct. 6, 2021).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *OCC v. Pub. Util. Comm.*, 111 Ohio St.3d 384 (2006).

²¹ *Id.*

Ohio Domestic Violence Network, it fails to follow *OCC v. Pub. Util. Comm.* and fails to recognize that *OCC v. Pub. Util. Comm.* distinguished *Ohio Domestic Violence Network*. The PUCO's decision denying intervention is therefore clearly unreasonable and unlawful.

Further, utilities are not the only stakeholders affected by this case. OCC, as Ohio's statutory residential utility consumer advocate, and the Consumer Groups, have an acute interest in this case. This is apparent based on the statutory framework governing disconnection reporting. R.C. 4933.123(B) provides that disconnection reports must be filed not only with the PUCO, but OCC as well. Given that the law *requires* that OCC be provided with the reports, clearly the legislature considered OCC as representing parties "who may be adversely affected" by disconnections. This is additionally supported by the fact that OCC is the *statutory* representative of residential consumers.²² As representatives of consumer constituencies, each of the Consumer Groups represent parties "who may be adversely affect" by disconnections.

The PUCO failed to comply with *binding Supreme Court precedent* and with legislative intent as reflected in the governing statutes. The PUCO should follow this precedent, grant rehearing, and grant intervention.

Assignment of Error 2: The PUCO erred by denying the Joint Motion to Investigate AEP and suspend disconnections pending the investigation on the grounds that AEP had not violated Ohio law or rule in abdication of its obligation to the Ohio public that rates and service are just and reasonable.

The information filed by the utilities (particularly AEP) demonstrates that there is something worrisome and wrong with utilities' disconnections of consumers' essential utility service, particularly during the pandemic. Energy justice is being denied consumers.

²² R.C. 4911.

Accordingly, rights should be adjudicated, and practices investigated (as outlined in the Consumer Groups' motions) to protect consumers.

Despite the impact on consumers of having their essential utility service disconnected in alarmingly high numbers, the PUCO said that the Consumer Groups failed “to assert that AEP Ohio violated any applicable statute, or Commission disconnection or credit rule or order; instead, [it] merely assert[s] that AEP Ohio’s rate of disconnection is higher than any other EDU.”²³ But that is wrong. The Consumer Groups specifically discussed R.C. 4928.02(L), noting:

It is state policy to protect “at-risk populations” in the provision of energy services. At-risk populations include but are not limited to minority and senior citizen communities that suffer a higher rate of poverty, food insecurity, and illness related to the coronavirus pandemic. Energy justice demands that the PUCO protect vulnerable consumers from having their essential energy service disconnected. In addition to investigating AEP Ohio's disconnection, credit, and collection policies and practices, the PUCO should consider the disparate impact of shutoffs on at-risk and low-income and other communities. The PUCO should determine why the shutoffs occurred during a time when so many consumers in Ohio suffered the health and financial impacts of the pandemic.²⁴

And of course, R.C. 4905.22 requires that utility charges and service be just and reasonable. The alarmingly high number of AEP disconnections merit PUCO investigation into whether AEP was violating this statutory requirement.

Further, as the Consumer Groups noted in their Joint Motion, and as the PUCO Staff stated in its pleadings, the PUCO is “a regulatory agency charged with overseeing regulated Ohio public utilities, . . .”²⁵ That role empowers and requires investigation under the circumstances here, where consumers have been disconnected from their essential utility service in alarmingly high numbers. The PUCO clearly has the requisite authority and responsibility to

²³ Entry at paragraph 29.

²⁴ See Joint Motions at 5-6.

²⁵ PUCO Staff's Memorandum Contra at 2.

investigate this problem affecting essential utility services to a large number of consumers, as the Consumer Groups asserted in their Joint Motion and above.²⁶

The PUCO is requiring the Consumer Groups to prove their case before it's been made. Indeed, it cites to *complaint cases* to support its decision.²⁷ But the complaint cases cited by the PUCO are distinguishable. Complaints can be dismissed if not properly pled.²⁸ That is not the issue here. The Consumer Groups are requesting that the PUCO exercise its regulatory authority to investigate utility industry practices (disconnections) that harm consumers and deny them energy justice. The Consumer Groups should not have to prove what the results of an investigation needed to protect consumers are before the investigation even occurs.

The PUCO has data (provided by the Consumer Groups) that clearly shows that there is an issue with disconnections, especially in AEP's case. To protect consumers, the PUCO has the authority and the duty to determine why disconnections are so high. A high number of disconnections is concerning for any year, but it is aggravated by the coronavirus pandemic where consumers are already suffering. At a minimum, the PUCO should open an investigation, as it has in the *PALMco*²⁹ and *Verde*³⁰ cases where there are symptoms of a problem. The PUCO has the power to do so, and it has done before. The PUCO should protect consumers and determine whether disconnections, especially those by AEP, are carried out lawfully.

²⁶ Reply in Support of Motions at 6 (Aug. 20, 2021).

²⁷ Entry at paragraph 30.

²⁸ See, e.g., Civ. R. 12(b)(6).

²⁹ *In re the PUCO's Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Noncompliance*, Case No. 19-2153-GE-COI.

³⁰ *In re the PUCO's Investigation into Verde Energy USA Ohio, LLC's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-958-GE-COI.

The PUCO's Order is unreasonable, the Consumer Groups' application for rehearing should be granted, and the PUCO should conduct the requested investigation to protect consumers and energy justice.

III. CONCLUSION

On rehearing, the PUCO should grant intervention to OCC—its statutory right—and the Consumer Groups. The PUCO should also order an investigation into disconnection practices and their effect on consumers. The PUCO cannot just declare that disconnections are OK when there are symptoms of an issue. Consumers deserve an investigation. Consumers deserve energy justice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Application for Rehearing was served by electronic transmission upon the parties below this 5th day of November 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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