

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S  
CONSIDERATION OF SOLUTIONS  
CONCERNING THE DISCONNECTION OF  
GAS AND ELECTRIC SERVICE IN WINTER  
EMERGENCIES FOR THE 2021-2022  
WINTER HEATING SEASON.

CASE NO. 21-750-GE-UNC

## SECOND ENTRY ON REHEARING

Entered in the Journal on November 17, 2021

### I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed jointly by Advocates for Basic Legal Equality, Inc., Ohio Poverty Law Center, Southeastern Ohio Legal Services, Legal Aid Society of Columbus, Office of the Ohio Consumers' Counsel, and Pro Seniors, Inc.

### II. DISCUSSION

#### A. *Procedural Background*

{¶ 2} The gas, natural gas, and electric light companies (utility companies) defined in R.C. 4905.03 are public utilities in accordance with R.C. 4905.02, and, as such, are subject to the jurisdiction of the Commission, pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 3} R.C. 4909.16 provides, in part, that, in the event of an emergency, when the Commission finds it necessary to prevent injury to the business or interests of the public or of any public utility, it may temporarily alter, amend, or suspend any existing rates or schedules.

{¶ 4} On September 8, 2021, the Commission issued a Finding and Order (Winter Reconnect Order or WRO) in this case, establishing special procedures regarding reconnection and disconnection of natural gas and electric service, to be effective October 18, 2021, through April 15, 2022. In the WRO, the Commission determined that it was necessary and prudent to invoke the emergency provisions of R.C. 4909.16 in order to

prevent injury to affected residential customers and to support the public interest. Accordingly, among other things, the WRO set forth special procedures for customers to reconnect service, avoid disconnection of service, and request the connection of new service during the 2021-2022 winter heating season. Under the special procedures, the Commission established initial requirements that customers seeking to have service restored or maintained must follow, including the applicability and calculation of any fees.

{¶ 5} On October 7, 2021, Advocates for Basic Legal Equality, Inc., Ohio Poverty Law Center, Southeastern Ohio Legal Services, Legal Aid Society of Columbus, Office of the Ohio Consumers' Counsel (OCC), and Pro Seniors, Inc. (collectively, the Consumer Groups) filed a joint motion to intervene and memorandum in support.

{¶ 6} R.C. 4903.10 provides that, in any uncontested proceeding, any affected person may file an application for rehearing within 30 days after the entry of any final Commission order. In addition, R.C. 4903.10 requires that an application for rehearing must set forth the specific ground or grounds upon which the applicant considers the order to be unreasonable or unlawful.

{¶ 7} On October 8, 2021, the Consumer Groups filed an application for rehearing specifying five assignments of error.

{¶ 8} On October 18, 2021, Columbia Gas of Ohio, Inc., The East Ohio Gas Company dba Dominion Energy Ohio, Duke Energy Ohio, Inc. (Duke), Vectren Energy Delivery of Ohio, Inc. dba CenterPoint Energy Ohio, The Dayton Power and Light Company dba AES Ohio, and Ohio Power Company dba AEP Ohio (AEP Ohio) (collectively, the Companies) jointly filed a memorandum contra the application for rehearing.

{¶ 9} On November 3, 2021, the Commission issued an Entry on Rehearing granting rehearing for further consideration of the Consumer Groups' application for rehearing.

***B. Consideration of Assignments of Error in the Application for Rehearing***

**1. WHETHER THE COMMISSION ERRED BY NOT EXTENDING THE EFFECTIVE DATES FOR THE WINTER RECONNECT ORDER TO BEGIN EARLIER THAN OCTOBER 18, 2021, AND TO END NO EARLIER THAN APRIL 30, 2022**

{¶ 10} The Consumer Groups contend that shortening the effective dates of the WRO, particularly when compared to the prior two heating seasons, is unreasonable and not in the public interest. In the Consumer Groups' opinion, extending the duration of the WRO will help currently disconnected consumers get services reconnected sooner, while also providing protections for consumers who may face disconnection toward the end of winter.

{¶ 11} The Consumer Groups emphasize that there are many persons in need, including those living with food insecurity; thus, closing the gap between disconnections and the WRO effective date is essential. The Consumer Groups further assert the need for continued utility service for school-age children who may be required to be at home during the school year. The Consumer Groups conclude that, to the extent practicable, the Commission should implement the WRO before October 18, 2021.

{¶ 12} Finally, the Consumer Groups contend that protecting utility consumers from disconnection is appropriate under R.C. 4909.16, an emergency statute that authorizes the Commission to act when necessary to prevent injury to the business or interests of the public during an emergency.

{¶ 13} In their memorandum contra, the Companies observe that the factors cited by the Consumer Groups to extend the WRO starting and ending dates, such as food insecurity and at-home schooling, are not specifically tied to the winter months or any special circumstances that arose during the COVID-19 pandemic. Further, the Companies assert that the Consumer Groups did not demonstrate that the Commission failed to weigh such concerns when deciding on the WRO's effective dates, nor did the Consumer Groups explain why the effective dates do not sufficiently address their concerns. In addition, the Companies contend that this assignment of error is raised too late for the Commission to

act. The Companies note that, although the WRO was approved by the Commission on September 8, 2021, the application for rehearing was filed on October 8, 2021, just ten days before the WRO effective date of October 18, 2021. The Companies further note that Ohio Adm.Code 4901-1-35(B) allows a memorandum contra to be filed within ten days of an application for rehearing, which in this case was October 18, 2021. Thus, the Companies conclude that there is no earlier date that the WRO could be made effective. The Companies urge that this assignment of error should be denied.

{¶ 14} The Commission observes that the Consumer Groups' application for rehearing was not filed until October 8, 2021, and that, pursuant to Ohio Adm.Code 4901-1-35(B), ten days are allowed for opposing parties to file a memorandum contra. As noted above, the Companies filed a memorandum contra on October 18, 2021. Clearly, because the application for rehearing and the memorandum contra were filed on the dates indicated, the Commission could not address the application for rehearing before the WRO effective date of October 18, 2021. Thus, the Consumer Groups' request is moot as to their request for an earlier start date for the WRO. With respect to a later ending date for the WRO, the Consumer Groups have not sufficiently supported their request or explained how the Commission's designated ending date of April 15, 2022, does not adequately protect consumers. Accordingly, we find that the first assignment of error should be denied. We note, however, that the Commission will continue to monitor conditions throughout the winter heating season and will take reasonable actions to protect consumers, as we deem necessary.

**2. WHETHER THE COMMISSION ERRED BY NOT LIMITING THE NUMBER OF CONSUMERS WHO ARE DROPPED FROM THE PERCENTAGE OF INCOME PAYMENT PLAN (PIPP)**

{¶ 15} The Consumer Groups contend that at-risk consumers who participate in PIPP are particularly impacted by the WRO, because affordable natural gas and electric service is not a reality for most low-income Ohioans. The Consumer Groups emphasize that PIPP consumers are at risk for eventually being disconnected for nonpayment, and that the

reasons that consumers are dropped from PIPP are often failure to reverify income and/or failure to have the account current on their anniversary date. The Consumer Groups note that reverification and/or anniversary date issues for PIPP consumers were suspended by the Commission in the 2020-2021 winter heating season because of the COVID-19 pandemic. Given the current high number of COVID-19 cases, the Consumer Groups assert that the Commission should again protect consumers from being dropped from PIPP for failure to reverify eligibility or for not having accounts current on the anniversary date.

{¶ 16} The Companies emphasize that the Commission has already addressed, on a case-by-case basis in prior Commission proceedings, the matter of PIPP reverification and anniversary requirements that had previously been suspended during the COVID-19 pandemic.<sup>1</sup> The Companies observe that the Commission temporarily suspended PIPP reverification and anniversary requirements, indicated dates when the suspensions would conclude, and rejected OCC's position that the suspensions should remain in effect essentially indefinitely. In the Companies' opinion, the Consumer Groups have neither demonstrated that the Commission should reimpose the suspensions, nor explained why the protections from the current WRO do not sufficiently address concerns about disconnecting PIPP customers. The Companies urge that this assignment of error should be denied.

{¶ 17} The Commission finds that the Consumer Groups are, indeed, attempting to revisit a matter that the Commission has already addressed in prior cases filed by utility companies concerning service during the pandemic. *See, e.g., In re Ohio Power Co.*, Case No. 20-602-EL-UNC, et al., Entry (Nov. 4, 2020). Aside from urging the Commission to protect consumers from being dropped from PIPP because of failure to reverify eligibility, or for not having accounts current on the anniversary date, the Consumer Groups have not explained why protections in the current WRO do not sufficiently address concerns

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<sup>1</sup> The Companies cite cases such as 20-599-GE-UNC, 20-600-GA-UNC, 20-602-EL-UNC, 20-637-GA-UNC, and 20-649-GA-UNC.

regarding disconnection of PIPP customers. The Commission will continue to monitor service continuity conditions, the availability of payment plan options and customer assistance programs, and related issues during the winter heating season. We find that the second assignment of error should be denied.

**3. WHETHER THE COMMISSION ERRED BY NOT ORDERING THAT THE RECENTLY APPROVED PIPP PAYMENT DECREASE TO FIVE PERCENT OF A CONSUMER'S MONTHLY HOUSEHOLD INCOME BE IMPLEMENTED BY THE UTILITY COMPANIES PRIOR TO, OR CONCURRENT WITH, THE EFFECTIVE DATE OF THE WRO**

{¶ 18} The Consumer Groups note that, effective November 2021, the PIPP rules were amended so that PIPP consumers pay five percent, rather than six percent, of monthly household income. To help PIPP consumers avoid disconnection during the upcoming winter heating season, the Consumer Groups contend that the reduced payment amount should be available by the effective date of the WRO.

{¶ 19} The Companies assert that, just as with the first assignment of error, the third assignment of error is untimely, because the WRO was already effective even before the deadline for parties to file a memorandum contra. Further, the Companies observe that any material changes in PIPP eligibility requirements ordinarily require time-consuming adjustments to a utility company's internal information and billing systems. In recognition of this reality, the Companies note that the Commission provided sufficient notice to stakeholders of the effective date of revisions to Ohio Adm.Code Chapters 4901:1-17 and 4901:1-18 following issuance of the Entry on Rehearing in Case No. 19-52-AU-ORD. In any event, the Companies assert that the Consumer Groups' concern regarding the effective date of Ohio Adm.Code 4901:1-18-13, which concerns payment requirements for PIPP customers, should have been raised in that proceeding. Finally, the Companies note that the Consumer Groups do not show why the WRO fails to address concerns with PIPP customer disconnection without their requested relief. The Companies urge that this assignment of error should be denied.

{¶ 20} As the Consumer Groups are aware, the Commission recently completed its review of the PIPP and Graduate PIPP rules. The Commission and the Ohio Development Services Agency, now known again as the Ohio Department of Development, adopted amendments to the electric and gas PIPP programs, including reduction of the payment percentage for PIPP participants. As reflected in the Entry issued on September 23, 2021, in Case No. 19-52-AU-ORD, the amendments to rules in Ohio Adm.Code Chapters 4901:1-17 and 4901:1-18, including Ohio Adm.Code 4901:1-18-13 with the new payment percentage for gas PIPP participants, became effective November 1, 2021. *In re the Commission's Review of Ohio Adm.Code Chapters 4901:1-17 and 4901:1-18*, Case No. 19-52-AU-ORD, Entry (Sept. 23, 2021). The Commission observes that the Consumer Groups filed comments and reply comments in the docket concerning the review of Ohio Adm.Code Chapter 4901:1-18 and actively participated at every stage of that proceeding. The Commission further observes that amendments to Ohio Adm.Code Chapter 4901:1-18 were initially adopted November 4, 2020, and that the Consumer Groups filed an application for rehearing of the amendments on December 4, 2020, when the COVID-19 pandemic was ongoing. Therefore, we find that the Consumer Groups had an opportunity during the pandemic to raise concerns about the effective date of Ohio Adm.Code 4901:1-18-13 in that rulemaking proceeding, but the Consumer Groups did not do so.

{¶ 21} The Commission strongly believes that the gas PIPP rules at Ohio Adm.Code 4901:1-18-12 et seq., as previously effective and amended to be effective November 1, 2021, provide a more than reasonable means for PIPP participants to address their outstanding utility debt, to participate and continue participation in the PIPP or Graduate PIPP programs, to maintain their utility service, and to be reasonably responsible for the utility service that they receive. That said, the Commission encourages the utility companies to extend, at their discretion, flexible payment plan options and shareholder-funded bill payment assistance, beyond the requirements of the Ohio Administrative Code, to continue to help customers experiencing health and/or financial hardships. Accordingly, the Commission denies this assignment of error.

**4. WHETHER THE COMMISSION ERRED BY NOT ORDERING THAT ALL GAS AND ELECTRIC UTILITY COMPANIES PROVIDE PERSONAL NOTICE OF DISCONNECTION AT CONSUMERS' HOMES, AS REQUIRED BY OHIO ADM.CODE 4901:1-18-06(A)(2)**

{¶ 22} The Consumer Groups state that the purpose of Ohio Adm.Code 4901:1-18-06(A)(2) is to provide consumers with a final opportunity to make payment before service is disconnected for nonpayment. In addition, the Consumer Groups note that personal notice at a consumer's home also provides protection to help determine if there are health conditions or other infirmities that could qualify for other consumer protections under Commission rules to avoid disconnection. According to the Consumer Groups, the proliferation of smart meters has resulted in some electric utility companies obtaining Commission waivers from Ohio Adm.Code 4901:1-18-06(A)(2) so that disconnections can be performed remotely from a utility's offices. The Consumer Groups urge the Commission to require all electric and gas utility companies to comply with the personal notice requirements in Ohio Adm.Code 4901:1-18-06(A)(2).

{¶ 23} The Companies contend that this assignment of error seeks to relitigate policy considerations that the Commission already considered in granting waivers from Ohio Adm.Code 4901:1-18-06(A)(2), which requires that utility companies provide personal notice of disconnection.<sup>2</sup> In particular, the Companies note Case No. 21-548-GE-UNC, in which the Commission continued to permit remote disconnections, because the standard by which a residential account is determined to be delinquent and subject to disconnection has not changed in 30 years, and because all consumer protections for a customer to avoid disconnection, such as payment assistance, continue to be available.<sup>3</sup> The Companies further contend that the Consumer Groups provide no reason why the WRO is unreasonable or unlawful by not requiring personal notice before disconnection during the winter, if remote disconnect procedures are available and properly followed. In sum, the Companies

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<sup>2</sup> The Companies cite *In re Ohio Power Co.*, Case No. 13-1938-EL-WVR, et al., Entry (Mar. 18, 2015) at 4-7, Second Entry on Rehearing (Sept. 9, 2015), Finding and Order (Apr. 11, 2018) at ¶¶ 16-18, Second Entry on Rehearing (June 28, 2018) at ¶¶ 17-19.

<sup>3</sup> The Companies refer to *In re Annual Report Required by R.C. 4933.123 Regarding Service Disconnections for Nonpayment*, Case No. 21-548-GE-UNC, Entry (Oct. 6, 2021) at ¶ 31.

assert that the Consumer Groups do not offer any rationale why the 2021-2022 heating season changes the dynamics of the Commission decision in Case No. 21-548-GE-UNC; therefore, the Companies request that the Commission reject this assignment of error.

{¶ 24} As the Consumer Groups have acknowledged, AEP Ohio and Duke have been granted a waiver of Ohio Adm.Code 4901:1-18-06(A)(2). *In re Ohio Power Co.*, Case No. 13-1938-EL-WVR, Entry (Mar. 18, 2015), Second Entry on Rehearing (Sept. 9, 2015), Finding and Order (Apr. 11, 2018), Second Entry on Rehearing (June 28, 2018); *In re Duke Energy Ohio, Inc.*, Case No. 19-187-EL-WVR, Finding and Order (Sept. 26, 2019), Entry on Rehearing (Nov. 21, 2019). The Consumer Groups have not explained how the Winter Reconnect Order is unreasonable or unlawful in permitting AEP Ohio and Duke to continue their authorized remote disconnection procedures, provided that they are properly implemented. Additionally, as the Commission recently observed with respect to remote disconnections, the standard by which a residential account is determined to be delinquent and, therefore, subject to disconnection has not changed in more than 30 years. *In re Annual Report Required by R.C. 4933.123 Regarding Service Disconnections for Nonpayment*, Case No. 21-548-GE-UNC, Entry (Oct. 6, 2021) at ¶ 31. All of the consumer protections for a customer to avoid disconnection continue to be available, in addition to payment assistance, and the account of a residential customer with a smart meter is subject to disconnection on the same basis as for residential customers without a smart meter. Finally, a customer may contact their electric service provider concerning a payment plan or other payment arrangements to avoid disconnection, and assistance from community agencies may also be available. Given these factors, we find that the fourth assignment of error should be denied.

**5. WHETHER THE COMMISSION ERRED BY NOT ORDERING THAT THE UTILITY COMPANIES' REPORTING OF DATA REGARDING DISCONNECTIONS/RECONNECTIONS INCLUDE ADDITIONAL DATA REPORTING REQUIREMENTS BECAUSE OF THE PANDEMIC**

{¶ 25} The Consumer Groups note that the WRO requires monthly reporting of information concerning the number of customers who have gas and/or electric service reconnected each month, the types of payment plans entered into, and the length of time

that customers were without gas and/or electric service. The Consumer Groups assert that this information would be more useful if it indicated the number of disconnections and reconnections by zip code in each natural gas and electric service territory, thus providing important information concerning the demographics of customers who face disconnection, as well as information necessary to plan for available resources to better respond to consumers who face disconnection.

{¶ 26} The Companies state that the Consumer Groups offer little support for this assignment of error. The Companies observe that R.C. 4933.123(B) sets forth detailed reporting requirements for the annual disconnection report that do not require reporting of disconnections by zip code. Further, the Companies assert that utility companies already provide monthly data and detailed annual reporting concerning disconnections, in compliance with statutory requirements. Finally, the Companies emphasize that, because the Consumer Groups provided little evidence in Case No. 21-548-GE-UNC to support their request for reporting of disconnection data by zip code, the Commission declined to impose such a requirement. The Companies urge the Commission to reject this assignment of error.

{¶ 27} When determining how the 2021-2022 WRO could best address customer needs during the winter heating season, the Commission considered, as reflected in Staff's report attached as Appendix B, many factors, including the necessity of any additional data reporting by the utility companies. The Commission finds that the level of reporting specified in the WRO will enable the Commission and Staff to monitor disconnections during the 2021-2022 winter heating season. The utility companies are required to provide extensive information regarding extended payment plans and other metrics, as set forth in Appendix A to the WRO, to Staff on a monthly basis through an established process. If the Commission or Staff subsequently determines that additional data is needed, it can be obtained from the utility companies at that point. Finally, the Consumer Groups' request for reporting of disconnection data by zip code was already considered and declined by the Commission in Case No. 21-548-GE-UNC, because insufficient support was provided for their request. *In re Annual Report Required by R.C. 4933.123 Regarding Service Disconnections*

*for Nonpayment*, Case No. 21-548-GE-UNC, Entry (Oct. 6, 2021) at ¶ 48. We find that the fifth assignment of error should be denied.

### III. ORDER

{¶ 28} It is, therefore,

{¶ 29} ORDERED, That the application for rehearing filed by the Consumer Groups be denied. It is, further,

{¶ 30} ORDERED, That a copy of this Second Entry on Rehearing be served upon each gas company, natural gas company, and electric distribution utility and each interested person and party of record. It is, further,

{¶ 31} ORDERED, That a copy of this Second Entry on Rehearing be sent to the electric-energy and gas-pipeline industry service lists.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

M. Beth Trombold

Daniel R. Conway

Dennis P. Deters

JML/hac

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Summary: Entry denying the application for rehearing filed jointly by Advocates for Basic Legal Equality, Inc., Ohio Poverty Law Center, Southeastern Ohio Legal Services, Legal Aid Society of Columbus, Office of the Ohio Consumers' Counsel, and Pro Seniors, Inc. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio