

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE ANNUAL REPORT
REQUIRED BY R.C. 4933.123 REGARDING
SERVICE DISCONNECTIONS FOR
NONPAYMENT.

CASE NO. 21-548-GE-UNC

ENTRY ON REHEARING

Entered in the Journal on December 1, 2021

I. SUMMARY

{¶ 1} The Commission denies the joint application for rehearing filed by the Advocates for Basic Legal Equality, Inc., Legal Aid Society of Southwest Ohio, LLC, Ohio Consumers' Counsel, Ohio Poverty Law Center, and Pro Seniors, Inc. and affirms its decision in the October 6, 2021 Entry.

II. DISCUSSION

{¶ 2} By Entry issued May 19, 2021, the Commission directed, pursuant to R.C. 4933.123(B), that all energy companies¹ file, on or before June 30, 2021, a written report on service disconnections for nonpayment with the Commission and provide a copy to the Ohio Consumers' Counsel (OCC). Further, the May 19, 2021 Entry also specifically designated the information to be included in the report, by month, for the 12 months ending May 31, 2021.

{¶ 3} As directed, numerous designated energy companies filed their respective annual disconnection report in the above-noted case docket.

{¶ 4} On July 30, 2021, as subsequently amended on the same date, a joint motion to intervene individually was filed by Advocates for Basic Legal Equality, Inc., Legal Aid

¹ Pursuant to R.C. 5117.01(D), an energy company subject to this annual filing requirement includes all of the following companies: retail propane dealers that distribute propane by pipeline; electric light; rural electric; gas; and natural gas. Providers of competitive retail electric service, as defined in R.C. 4928.01(A)(4), and competitive retail natural gas service, as defined in R.C. 4929.01(J), are not subject to this annual filing requirement.

Society of Southwest Ohio, LLC, OCC, Ohio Poverty Law Center, and Pro Seniors, Inc. (jointly, Consumer Groups) pursuant to R.C. 4903.221 and Ohio Adm.Code 4901-1-11.

{¶ 5} On July 30, 2021, Consumer Groups also filed four motions. In their first motion, Consumer Groups requested that the Commission investigate Ohio Power Company d/b/a AEP Ohio (AEP Ohio) for its disconnections, credit and collections policies and practices, and use of smart meters. Second, Consumer Groups also requested that the Commission immediately suspend AEP Ohio's disconnection of service during the Commission's investigation or, in the alternative, suspend AEP Ohio's use of smart meters. Third, Consumer Groups requested that the Commission suspend all electric and gas utility disconnections during the 2021-2022 winter heating season² or, in the alternative, continue and expand consumer protections as part of future winter reconnection orders. Finally, Consumer Groups requested that the Commission require electric and gas utilities to assess and report the impact of disconnections in their respective service areas, especially any disproportionate impacts on at-risk and minority communities and the working poor.

{¶ 6} On August 13, 2021, Staff filed a memorandum contra Consumer Groups' motions. On August 16, 2021, Duke Energy Ohio, Inc. (Duke), Ohio Gas Association, and AEP Ohio, respectively, filed memoranda contra Consumer Groups' motions.

{¶ 7} Consumer Groups filed a reply memorandum to the various memoranda contra on August 20, 2021.

{¶ 8} By Entry issued October 6, 2021, the Commission denied Consumer Groups' motions to intervene pursuant to R.C. 4903.221 and Ohio Adm.Code 4901-1-11 and further addressed, in detail, each of the four motions made by Consumer Groups regarding the disconnection of consumers' service for nonpayment, ultimately denying each of the requests.

² Ohio Adm.Code 4901:1-18-01(V) defines the winter heating season as the period from November 1 through April 15.

{¶ 9} R.C. 4903.10 provides that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days of the entry of the order upon the Commission's journal.

{¶ 10} On November 5, 2021, Consumer Groups filed an application for rehearing asserting that the October 6, 2021 Entry is unreasonable and unlawful in two respects.

{¶ 11} On November 15, 2021, a memorandum contra Consumer Groups' application for rehearing was jointly filed by AEP Ohio, The East Ohio Gas Company d/b/a Dominion Energy Ohio, Duke, Vectren Energy Delivery of Ohio, Inc. d/b/a CenterPoint Energy Ohio, Columbia Gas of Ohio, Inc., and The Dayton Power & Light Company d/b/a AES Ohio (collectively, the Companies).

{¶ 12} The Commission notes that R.C. 4903.10 provides, in part, that, after any order by the Commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing. Although Consumer Groups' motion to intervene was denied, for the limited purpose of contesting the Commission's ruling, we find that Consumer Groups should be permitted to file an application for rehearing of the Commission's decision in this case pursuant to the first paragraph of R.C. 4903.10, without filing a request for leave to file an application for rehearing.

{¶ 13} In their first assignment of error, Consumer Groups argue that the Commission erred by unreasonably and unlawfully denying the Consumer Groups' intervention in this case, in violation of Ohio Supreme Court precedent. More specifically, Consumer Groups contend that the Commission cited binding precedent, but then incorrectly applied the precedent. October 6, 2021 Entry at ¶ 12 (citing *Ohio Domestic Violence Network v. Pub. Util. Comm.*, 70 Ohio St.3d 311, 315, 605 N.E.2d 13 (1992); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 856 N.E.2d 940 (2006)). According to Consumer Groups, in *Ohio Consumers' Counsel v. Pub. Util. Comm.*, the Court held that OCC should have been granted intervention and distinguished the circumstances

from *Ohio Domestic Violence Network* because, as is the situation here, there were no concerns with intervention causing delay and there were no alternative avenues to pursue the issues. Therefore, Consumer Groups assert that the Court's decision means that Consumer Groups have a right to intervene in Commission proceedings and the October 6, 2021 Entry denying intervention is clearly unreasonable and unlawful. In addition, Consumer Groups emphasize OCC's status as the statutory residential utility consumer advocate, as well as the language of the disconnection reporting statute, R.C. 4933.123(B), which requires that the disconnection information be provided not only to the Commission but also to OCC.

{¶ 14} The Companies reply that Consumer Groups' first assignment of error is without merit. The Companies reason that the Commission appropriately denied Consumer Groups' requests for intervention in an administrative docket used for information gathering where there is no case or controversy. Further, the Companies postulate that Consumer Groups also failed to satisfy the requirements for intervention pursuant to R.C. 4903.221(B). The Companies note that Ohio law does not provide for full discovery or a hearing simply because the Commission opened a docket and cite instances where the Commission has refused to revise administrative rules to incorporate a broad definition of "proceedings." See *In re Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, Case No. 06-685-AU-ORD, Finding and Order (Dec. 6, 2006) at 3-4 (finding that, if OCC's proposal to add a broad definition of "proceeding" to Ohio Adm.Code 4901-1-01 were adopted, "any interested person would have the right to intervene, conduct discovery, and present evidence in any Commission case" and that it "would eliminate the Commission's discretion to conduct its proceedings in a manner it deems appropriate and would unduly delay the outcome of many cases"); see also *In re Triennial Review Regarding Local Circuit Switching*, Case No. 03-2040-TP-COI, Entry on Rehearing (Oct. 28, 2003) at 3-4 (finding that "[t]he Commission's procedural rules and its governing statutes convey significant discretion and flexibility on the governance of its own proceedings" and that "[t]his is particularly so for proceedings where no hearing is required by law"). The Companies assert that the Commission's citation of *Ohio Domestic Violence*

Network v. Pub. Util. Comm. and *Ohio Consumers' Counsel v Pub. Util. Comm.* was in support of its simple assertion that “[n]one of the required elements of a quasi-judicial proceeding are present in this matter.” October 6, 2021 Entry at ¶ 12. According to the Companies, the Commission did not, as Consumer Groups allege, rely on those cases for the denial of intervention – it simply cited those cases to demonstrate where a quasi-judicial process existed warranting intervention. The Companies proclaim that, contrary to Consumer Groups’ assertion otherwise, the Court’s decisions in *Ohio Domestic Violence Network v. Pub. Util. Comm.* and *Ohio Consumers' Counsel v. Pub. Util. Comm.* do not grant Consumer Groups, most of which were not part of those cases, the right to intervene in Commission proceedings.

{¶ 15} After thorough consideration of the application for rehearing and the memorandum contra, the Commission finds, as to their requests for intervention, that Consumer Groups fail to present any new arguments for the Commission’s consideration which were not previously considered and addressed in the Entry. With regard to the precedent referenced in the Entry, we cited *Ohio Domestic Violence Network* and *Ohio Consumers' Counsel* in support of our finding that none of the characteristics of a quasi-judicial proceeding exist in this reporting docket. As was previously explained, the purpose of this docket is merely to serve as a public receptacle for the disconnection reports and, as such, this is not a quasi-judicial proceeding, unlike the cases involving accounting changes and deferral requests that were the subject of the appeal in *Ohio Consumers' Counsel*. Contrary to Consumer Groups’ claim, there are alternative avenues for Consumer Groups to address the disconnection practices and policies of the energy companies as part of a rule review proceeding or, as to a particular energy company, in a complaint case or waiver proceeding. Indeed, we note that Consumer Groups have raised various aspects of their motions in numerous dockets, including, but not limited to, the waiver cases of AEP Ohio and Duke as well as the Winter Reconnection Order. See *In re Ohio Power Co.*, Case No. 13-1938-EL-WVR, Entry (Mar. 18, 2015), Second Entry on Rehearing (Sept. 9, 2015); *In re Ohio Power Co.*, Case No. 17-1380-EL-WVR, et al., Entry (Apr. 11, 2018), Second Entry on

Rehearing (June 28, 2018); *In re Duke Energy Ohio, Inc.*, Case No. 16-1096-EL-WVR, Finding and Order (Mar. 8, 2017); *In re Duke Energy Ohio, Inc.*, Case No. 19-187-EL-WVR, Finding and Order (Sept. 26, 2019), Entry on Rehearing (Nov. 21, 2019); *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 (Nov. 17, 2021); see also *In re the Proper Procedures and Process for the Commission's Operation and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry on Rehearing (Sept. 23, 2021). Given that there is no case or controversy before the Commission, there is no right of intervention. October 6, 2021 Entry at ¶ 12. Accordingly, we deny Consumer Groups' first assignment of error.

{¶ 16} Notwithstanding our decision regarding Consumer Groups' right to file an application for rehearing as to their intervention, and consistent with the rationale presented in the Entry as to the other motions, we will review and respond to the other arguments presented by Consumer Groups in their application for rehearing. October 6, 2021 Entry at ¶ 13. This practice is consistent with the Commission's rulings and consideration under similar circumstances. See *In re Ohio Edison Co., et al.*, Case No. 11-5201-EL-RDR, Entry on Rehearing (Sept. 18, 2013) at 4, Second Entry on Rehearing (Dec. 18, 2013).

{¶ 17} In their second assignment of error, Consumer Groups argue that the Commission erred by denying their joint request for an investigation of AEP Ohio and a suspension of disconnections pending the investigation on the grounds that AEP Ohio had not violated any Ohio law or rule, which, according to Consumer Groups, is an abdication of the Commission's obligation to ensure that rates and service are just and reasonable. Consumer Groups contend that the disconnection reports, particularly AEP Ohio's report, show a worrisome level of service disconnections for nonpayment, which the Commission should investigate as requested by Consumer Groups. Consumer Groups submit that, in their motion, they highlighted the state policy at R.C. 4928.02(L), as to at-risk populations, and R.C. 4905.22, which requires that utility charges and service be just and reasonable. Consumer Groups reiterate their conclusion that the number of service disconnections by

AEP Ohio merit Commission investigation into its compliance with statutory requirements. Consumer Groups note that the Commission cited to complaint cases to support its decision. October 6, 2021 Entry at ¶ 30. However, Consumer Groups contend that the complaint cases cited are distinguishable from the case at bar. According to Consumer Groups, complaint cases can be dismissed if not properly pleaded which is not the issue in this proceeding. See Civ. R. 12(b)(6). Consumer Groups state that they have provided the Commission with data that demonstrates there is an issue with disconnections. Therefore, Consumer Groups contend that, at a minimum, an investigation should be opened as was done in *PALMCo*³ and *Verde*⁴. Consumer Groups assert that the Commission's order is unreasonable to the extent it failed to initiate an investigation into AEP Ohio's service disconnections and to suspend all utility service disconnections.

{¶ 18} In their memorandum contra, the Companies state that, while the Consumer Groups' second assignment of error is styled as targeting AEP Ohio, there are three instances in their application for rehearing which argue that the Commission erred by denying the request to investigate utility disconnections generally or suspending all utility disconnections; therefore, the Companies address the second assignment of error as to all utilities. The Companies note that, should the Commission deny Consumer Groups' request for rehearing as to intervention, the Commission need not address the second assignment of error, as Consumer Groups would lack standing to file their motion. October 6, 2021 Entry at ¶ 13.

{¶ 19} Further, the Companies contend that, without any facts or allegations that any utility company has improperly disconnected customers and solely based on the number of disconnections AEP Ohio reported versus the other electric distribution utilities, Consumer Groups request extraordinary relief restricting utility companies from disconnecting

³ *In re the Commission'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.

⁴ *In re the Commission's Investigation into Verde Energy USA Ohio, LLC's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Noncompliance*, Case No. 19-958-GE-COI.

customers for nonpayment and baselessly call for an investigation. The Companies reason that, absent any specific allegations, the Commission reasonably and appropriately denied Consumer Groups' motions to investigate any utility's disconnection policies and procedures and to suspend disconnections. The Companies recognize, as Consumer Groups and Staff acknowledged in their respective filings, that Consumer Groups are not without recourse to address such issues in another docket. However, the Companies argue that Consumer Groups have not demonstrated that any further action is needed and, even if Consumer Groups had made the necessary demonstration, this is not the proper proceeding to address their claims regarding utility disconnections in general or disconnections by AEP Ohio specifically. Finally, the Companies posit that including an investigation as part of this docket would unduly prolong this docket, as a result of Consumer Groups' attempt to insert themselves into the monitoring function of the Commission and its Staff. For all these reasons, the Companies argue that the Commission should deny the Consumer Groups' second assignment of error.

{¶ 20} The Commission affirms its October 6, 2021 Entry to deny Consumer Groups' motions to, among other things, open an investigation of AEP Ohio's disconnection policies and procedures, as well as suspend the disconnections of AEP Ohio and all other utilities based solely on the number of disconnections. The Commission utilizes multiple avenues to ensure that rates and service are just and reasonable. Regarding the issues raised by Consumer Groups, we reiterate that Staff recently conducted a review of AEP Ohio's compliance with the provisions of Ohio Adm.Code Chapter 4901:1-18. We note that Staff found AEP Ohio to be in compliance with virtually all extended payment plan and disconnection requirements and that any potential non-compliances were addressed by AEP Ohio. October 6, 2021 Entry at ¶ 29. In addition, the Commission notes that this is not the first occasion where OCC and others have requested that the Commission investigate a utility's disconnection policies and practices based on the historic number of disconnections performed. As Consumer Groups acknowledge, the Commission cited two cases as precedent not to initiate an investigation. October 6, 2021 Entry at ¶¶ 30-31. Consumer

Groups do not offer any new argument that persuades the Commission to reverse its decision not to initiate an investigation of AEP Ohio's disconnection policies and practices or to suspend service disconnections by AEP Ohio or any other utility for nonpayment based on the number of disconnections as of the 12 months ended May 31, 2021. Accordingly, we deny Consumer Groups' second assignment of error.

III. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That Consumer Groups' application for rehearing be denied. It is, further,

{¶ 23} ORDERED, That a copy of this Entry on Rehearing be served on all interested persons of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

GNS/hac

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Case No(s). 21-0548-GE-UNC

Summary: Entry denying the joint application for rehearing filed by the Advocates for Basic Legal Equality, Inc., Legal Aid Society of Southwest Ohio, LLC, Ohio Consumers' Counsel, Ohio Poverty Law Center, and Pro Seniors, Inc. and affirms its decision in the October 6, 2021 Entry electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio