

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke) Case No. 23-823-EL-WVR
Energy Ohio, Inc. for a Waiver.)

**CONSUMER PROTECTION COMMENTS
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") offers these Comments to protect the rights of Ohioans whose electric service may be disconnected for nonpayment. Duke Energy Ohio, Inc. ("Duke") seeks to continue a waiver from the PUCO's rule that requires electric utilities to provide residential consumers with in-person notice of electric service disconnections for nonpayment.¹ Waiver of this rule allows Duke to remotely disconnect a consumer's electric utility service through an advanced meter without notifying the consumer in-person.² The PUCO should deny Duke's request. Waiver of the rule denies Duke's consumers a final opportunity to make a payment on the disconnection amount or set up a payment arrangement to prevent the disconnection of service.

Not only does Duke want to continue its waiver to avoid the requirement to provide in-person notice, but Duke also wants to dispense with the requirement that they provide notification to consumers that they will not receive in-person notice of

¹ O.A.C. 4901:1-18-06(A)(2).

² Duke Application (Nov. 17, 2023) at 3.

disconnection. There is no good reason to make it easier for Duke to disconnect consumers. Duke's waiver request should be denied.

In March 2017, the PUCO, on a pilot basis, approved Duke's request to disconnect its consumers without an in-person notice. The waiver of O.A.C. 4901:1-18-06(A)(2) initially ran for two years – from May 1, 2017 through May 1, 2019.³ Instead of in-person notice, Duke's residential electric consumers received a text and/or phone message the day of disconnection, a text and/or phone message two business days before disconnection, a mailed ten-day disconnection notice and a 14-day disconnection notice.⁴

While the PUCO initially authorized a waiver of the in-person notice rule on a pilot basis, Duke has since been allowed to continue automatically disconnecting its consumers without an in-person notice. In 2019, the PUCO granted Duke's request for a waiver from the PUCO's rule for an additional five years – through May 1, 2024.⁵

Duke has again asked for authority to continue the waiver for another five years, through May 1, 2029.⁶ The waiver puts households, including the elderly and at-risk consumers, in crisis. The PUCO should protect Duke's consumers and deny Duke's request to avoid the consumer protection rules.

³ *In the Matter of the Application for Continuation of Waiver by Duke Energy Ohio, Inc. for a Waiver of Ohio Adm. Code 4901:1-10-18-06(A)(2)*, Case No. 16-1096-EL-WVR, Finding and Order (March 8, 2017) at ¶ 25.

⁴ *Id.* at ¶ 22.

⁵ *In the Matter of the Application for Continuation of Waiver by Duke Energy Ohio, Inc. for a Waiver of Ohio Adm. Code 4901:1-10-18-06(A)(2)*, Case No. 19-187-EL-WVR, Finding and Order (Sept. 26, 2019).

⁶ *In the Matter of the Application for Continuation of Waiver by Duke Energy Ohio, Inc. for a Waiver of Ohio Adm. Code 4901:1-10-18-06(A)(2)*, Case No. 23-823-EL-WVR, Application for Continuation of Waiver (Nov. 17, 2023) at pages 1-2.

II. STANDARD OF REVIEW

Under O.A.C. 4901:1-18-02(B)(3), the PUCO may waive any requirement, standard, or rule in Chapter 4901:1-18 for good cause shown. An application for a waiver must include the specific rule(s) requested to be waived. By rule, the waiver request must also provide sufficient explanation to allow the PUCO to thoroughly evaluate the waiver request. Duke has not shown good cause to continue disconnecting its electric consumers without in-person notification for an additional five years. Nor is there sufficient information for the PUCO to evaluate the waiver request.

III. CONSUMER PROTECTION COMMENTS AND RECOMMENDATIONS

A. The PUCO should reject Duke's request for a waiver from the consumer protection requirements of O.A.C. 4901:1-18-06(A)(2).

The PUCO should deny Duke's request to avoid O.A.C. 4901:1-18-06(A)(2) for another five years. The waiver allows Duke to bypass the requirement to provide an in-person notice on the day the service is disconnected. However, providing in-person notice protects consumers by giving them one last opportunity to make a payment arrangement. In the past five years (during which Duke has been allowed to avoid the rule), several unpredictable events occurred that negatively impacted consumers (particularly at-risk consumers). Contrary to Duke's claims, continuing the waiver is not in the public interest. The PUCO should err on the side of protecting consumers, rather than making it easier for Duke to disconnect consumers from their essential electric utility service.

Duke’s residential consumers experienced a pandemic that occurred from March 2020 through May 2023.⁷ During the pandemic, there were households that experienced job loss or reduction in working hours leading to reduced wages.⁸ At the beginning of the pandemic, Duke suspended disconnections for non-payment from March 13, 2020, through September 2020.⁹ However, even when Duke resumed disconnections, Ohioans were still struggling financially, especially low-income consumers.

The Ohio Association of Community Action Agencies (“OACAA”) reported that 2021 marked “the first time in over a decade that the poverty rate increased from year to year in Ohio.”¹⁰ OACAA further reported:

The persistence of episodic poverty reminds us that, for many Ohioans, economic well-being is a precarious situation. Many households are one major expense, one unexpected job loss, or one crisis moment from experiencing poverty. The COVID-19 pandemic showed us how a single unforeseen event can have crippling effects on families; indeed, some of those effects continue to this day.

...¹¹

⁷ *COVID-19 Milestones Around the World and at Northwestern Medicine*, Northwestern Medicine (2023), <https://www.nm.org/healthbeat/medical-advances/new-therapies-and-drug-trials/covid-19-pandemic-timeline>.

⁸ Kim Parker, Rachel Minkin, and Jesse Bennett, *Economic Fallout From COVID-19 Continues To Hit Lower-Income Americans the Hardest: Half of adults who say they lost a job due to the coronavirus outbreak are still unemployed*, Pew Research Center, Washington, D.C. (Sept. 24, 2020), <https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>.

⁹ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Its Temporary Plan and Waiver of Tariffs and Rules Related to the COVID-19 State of Emergency*, Case No. 20-599-GE-WVR, Supplemental Finding and Order (July 29, 2020).

¹⁰ Ohio Association of Community Action Agencies, *The State of Poverty in Ohio, Vulnerable to Disruption*, 2023 Report, at p. 5, https://oacaa.org/wp-content/uploads/2023/07/State-of-Poverty-2023-web_FINAL-UPDATE.pdf.

¹¹ *Id.*

The pandemic and its impact on low-income households along with pandemic-related suspensions of disconnection make the PUCO’s evaluation of the impact of the waiver on consumers impossible.

In addition, last year OCC and other consumer advocates alerted the PUCO to delays in processing consumer applications for financial assistance to pay for utility bills.¹² OCC and consumer advocates filed a motion requesting that utility disconnections be suspended for thirty days after a consumer completes an application with a community action agency for utility bill financial assistance. The PUCO granted that motion stating “we have encouraged consumers to use all available measures to address the current market prices for electricity and natural gas, including these programs where available” and “(i)t does not make sense in this environment for customers to be disconnected after they already have sought assistance for these programs and are awaiting for their applications to be processed.”¹³ Given the hurdles consumers face with paying their utility bills, the PUCO should require more, not less, consumer protection.

Duke also transitioned to a new Customer Information System (“CIS”) between February 18, 2022 through July 2022.¹⁴ The transition included the suspension of disconnections for non-payment.¹⁵ However, the transition to the new CIS has been

¹² *In the Matter of the Commission’s Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2022-2023 Winter Heating Season*, Case No. 22-668-GE-UNC, Motion to Suspend Electric and Natural Gas Utility Disconnections for At-Risk Ohioans If and When There Are Delays in the Processing of Their Financial Assistance by Advocates for Basic Legal Equality, Legal Aid Society of Southwest Ohio, LLC, Office of the Ohio Consumers’ Counsel, Ohio Poverty Law Center, and Pro Seniors, Inc. (June 5, 2023).

¹³ Case No. 22-668-GE-UNC, Finding and Order (July 12, 2023) at ¶ 20.

¹⁴ *In the Matter of the Application of Duke Energy Ohio, Inc., for a Waiver of Specific Sections of the Ohio Administrative Code*, Case No. 22-43-GE-WVR, Finding and Order (March 23, 2023).

¹⁵ *Id.*

rocky. There have been multiple billing issues affecting residential consumers. After the implementation of the new CIS, Duke went for months billing Percentage of Income Payment Plan (“PIPP”) consumers inaccurately.¹⁶ Duke blamed the PIPP consumer billing errors on the transition to a new CIS in their Application for Waiver:

In recent months, Duke Energy Ohio experienced technical issues which resulted in approximately 5,600 PIPP Plus or Graduate PIPP Plus customers (Impacted Customers) having on-time incentive credits and/or HEAP credits applied to their installment amount due instead of their PIPP Plus arrearage balance in one or more of the following billing months: August, September, and October (Impacted Months). This, in turn, resulted in the Impacted Customers’ bills displaying lower balances, and in some cases, zero or credit balances, for a period of time, causing confusion and frustration. Some customers may have received recalculated bills for June and July when the incorrect August bill was generated. Thus, the billing month of August could have impacted customers’ understanding of the installment amounts due at that time (including any balance from previous months) and customers could have been confused about whether it was necessary to make an installment payment for these months.¹⁷

These unanticipated but ongoing CIS implementation problems directly impacted the disconnection of Duke’s consumers.

Moreover, these were not the only billing issues created by Duke’s transition to a new CIS. On November 9, 2023, more than a year after Duke supposedly completed its transition to a new CIS, the PUCO Staff issued a notice of probable non-compliance to Duke for ongoing billing issues.¹⁸ The PUCO Staff stated it reviewed complaints due to

¹⁶ *In the Matter of the Application of Duke Energy Ohio, Inc., for a Waiver*, Case No. 22-1004-GE-WVR, Application for Waiver (Oct. 28, 2022).

¹⁷ *Id.* at pages 1 and 2.

¹⁸ *In the Matter of the Joint Stipulation and Recommendation*, Case No. 24-297-GE-UNC, Joint Stipulation and Recommendation (March 28, 2024).

inaccurate billing, untimely billing, unusually high bills, along with not issuing bills to consumers who participate in Duke’s “soft close” program.¹⁹

In the face of inadequate data and Duke’s own non-compliance, there is no good cause for Duke to further jeopardize consumer safety by avoiding the PUCO’s disconnection notice requirements. As part of the Order in Case No. 19-187-EL-WVR, the PUCO adopted its Staff’s recommendation that Duke be required to “send separate notification, either as a mailing or bill insert, advising customers that they will not receive personal notice at their premises on the day of scheduled disconnection for nonpayment.”²⁰ Duke now claims such notice is “confusing to their customers.”²¹ The PUCO should give Duke’s residential utility consumers more credit (and protection).

It is vital that all residential consumers impacted by the waiver receive a notification through a separate mailing or a bill insert that they will not receive an in-person notification of disconnection. The notification is an extra reminder for current consumers, and education for new consumers, that Duke will not provide a personal visit on the day of disconnection. Also, consumers who research the PUCO’s disconnection policies may be unaware of Duke’s waiver and assume they would receive an in-person disconnection notice.

If the PUCO decides to continue Duke’s waiver (it should not), the PUCO should also deny Duke’s request to no longer send notification to consumers that they will no longer receive in-person disconnection notice. No consumer deserves to be disconnected

¹⁹ *Id.* at Exhibit A.

²⁰ *In the Matter of the Application for Continuation of Waiver by Duke Energy Ohio, Inc.*, Case No. 19-187-EL-WVR, Comments (May 10, 2019) at 5.

²¹ *In the Matter of the Application of Duke Energy Ohio, Inc. for a Waiver*, Case No. 23-823-EL-WVR, Application for the Continuation of Waiver by Duke Energy Ohio, Inc. (Nov. 17, 2023) at 3.

simply because Duke does not want an additional notice. There is no downside in erring on the side of caution and requiring Duke to continue to send out notifications to consumers that it will not be providing in-person disconnection notice.

The pandemic, problems with implementing the CIS system, and Duke's noncompliance issues, along with the resulting suspensions of disconnections demonstrate that more, not less, consumer protection is needed. In the absence of useful, accurate, and verifiable data that the waiver has not led to increased consumer disconnections, the PUCO should deny Duke's waiver continuation request.

B. There is insufficient data for the PUCO to evaluate the impact of the waiver on consumers. Duke's waiver request should be rejected.

In its Application, Duke claims that the current waiver disconnection processes have resulted in reducing the number of customers disconnected.²² As noted above, during the past five years, Duke suspended disconnections from March 2020 through September 2020 due to the pandemic.²³ Then again disconnections were suspended from February 2022 through July 2022 due to Duke's transition to a new CIS.²⁴ Then Duke was cited by PUCO Staff for probable noncompliance regarding billing issues. As a result of these repeated issues, the available disconnection data does not support Duke's claim.

As shown in Table 1, while appearances indicate a reduction in electric disconnections over the prior five years, those numbers are grossly misleading because

²² *Id.*

²³ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Its Temporary Plan and Waiver of Tariffs and Rules Related to the COVID-19 State of Emergency*, Case No. 20-599-GE-WVR, Supplemental Finding and Order (July 29, 2020).

²⁴ *In the Matter of the Application of Duke Energy Ohio, Inc., for a Waiver of Specific Sections of the Ohio Administrative Code*, Case No. 22-43-GE-WVR, Finding and Order (March 23, 2023).

four out of the last five annual disconnection reports included months where disconnections for non-payment had been suspended.

Table 1: Annual Electric Disconnection Reports

Year (June through May)	Electric Disconnections
2018-2019	42,914 ²⁵
2019-2020*	32,758 ²⁶
2021-2021**	28,028 ²⁷
2021-2022***	31,500 ²⁸
2022-2023****	23,059 ²⁹

*No Disconnections from mid-March through May Due to COVID Emergency Issued by the PUCO.

**No Disconnections from June through September Due to COVID Emergency. Resumed Disconnections in October 2020.

***No Disconnections from March through May Due to Disconnection Waiver While Transitioning to a New Customer Information System.

****No Disconnections from June through mid-July Due to Disconnection Waiver While Transitioning to a New Customer Information System.

Considering the suspension of disconnection during the past five years, the data is not sufficient to support the conclusion that waiving in-person notification for Duke

²⁵ *In the Matter of the Annual Report of Service Disconnections for Nonpayment as Required by Section 4933.123, Case No. 19-974-GE-UNC, Duke Energy Ohio’s Report of Service Disconnections for Nonpayment (June 26, 2019).*

²⁶ *In the Matter of the Annual Report of Service Disconnections for Nonpayment as Required by Section 4933.123, Case No. 20-937-GE-UNC, Duke Energy Ohio’s Report of Service Disconnections for Nonpayment (June 30, 2020).*

²⁷ *In the Matter of the Annual Report of Service Disconnections for Nonpayment as Required by Section 4933.123, Case No. 21-548-GE-UNC, Duke Energy Ohio’s Report of Service Disconnections for Nonpayment (June 25, 2021).*

²⁸ *In the Matter of the Annual Report of Service Disconnections for Nonpayment as Required by Section 4933.123, Case No. 22-513-GE-UNC, Duke Energy Ohio’s Report of Service Disconnections for Nonpayment (June 30, 2022).*

²⁹ *In the Matter of the Annual Report of Service Disconnections for Nonpayment as Required by Section 4933.123, Case No. 23-532-GE-UNC, Duke Energy Ohio’s Report of Service Disconnections for Nonpayment (June 22, 2023).*

consumers results in a lower number of disconnections. But for the suspension of disconnections over the prior waiver period, the disconnection data from the past four annual disconnection reports would have been significantly higher.

Moreover, in its Application, Duke has provided no evidence that disconnections after the waiver program began are less than the disconnections prior to the waiver program. Instead, Duke only included information in its application regarding disconnections after the waiver program began. Its claim of reduced disconnections under the waiver program is unsupported and there is no good cause for the waiver.

Due to the incomplete and unusable disconnection data, the PUCO should deny Duke's request to extend the waiver of rules for an additional five years.

C. Duke should be required to provide the OCC with the annual disconnection report submitted to the PUCO. And Duke should be required to include zip code disconnection data within the annual report.

Duke was required to provide the PUCO Staff with disconnection data under the personal disconnection notice waiver that was allowed in Case No. 16-1096-EL-WVR. In Case No. 19-197-EL-WVR, which extended the waiver another five years, Duke was required to continue collecting data on the impact of the waiver and provide the data to PUCO Staff on an annual basis.³⁰ The PUCO should order Duke to provide the same data to OCC as well.

Also, as part of the report, the PUCO should require Duke to report disconnections for non-payment data by zip code. The data would help provide more granular information on what communities are most impacted by disconnections. Duke

³⁰ *In the Matter of the Application for Continuation of Waiver by Duke Energy Ohio, Inc. for a Waiver of Ohio Adm. Code 4901:1-10-18-06(A)(2)*, Case No. 19-187-EL-WVR, Finding and Order (Sept. 26, 2019) at 3.

could use the information to educate consumers in these communities about the waiver, financial bill payment assistance programs, and other ways to keep service connected (medical certificate, payment plans, Special Reconnect Order). Also, the disconnection data would help OCC target outreach in at-risk communities to educate consumers on ways to lower their utility bill and bill payment assistance, and disconnection rights.

D. Duke should be required, on a pilot basis, to provide additional notifications to consumers who have a disconnection notice that live in the top ten zip codes for the number of disconnections.

To protect residential consumers, Duke should be required to provide additional notifications to consumers who live in the top ten zip codes with the highest number of annual disconnections. Additional notices to these zip codes would help consumers stay connected to their essential electric utility service.

Starting five days prior to the disconnection of service, Duke should be required to call and text (if applicable) consumers each day up to the day of disconnection to provide notice of the pending disconnection if payment is not secured. If applicable, Duke should also send an email to consumers who are facing a disconnection notice. The email would be sent on a daily basis starting five days prior to the service being disconnected in zip codes with the ten highest number of annual disconnections. The email could provide consumers with additional information on how to avoid a disconnection. The PUCO should require Duke to take extra steps to protect at-risk consumers.

IV. CONCLUSION

O.A.C. 4901:1-18-06(A)(2) is a vital consumer protection that requires electric and natural gas utilities to provide a personal notice to the consumer on the day of

disconnection. A waiver of these rules without additional precautions would likely result in unnecessary disconnections of at-risk consumers who struggle to pay for utility service. The PUCO should deny Duke's request to continue avoiding in-person disconnection notifications and help protect Duke's consumers from unnecessary disconnection.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Consumer Protection Comments was served on the persons stated below via electronic transmission, this 10th day of May 2024.

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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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