

In the Matter of the Application of) Case No. 18-0371-EL-WVR
AEP Energy, Inc. for a Partial Waiver of) Case No. 18-0372-GA-WVR
OAC Rules 4901:1-29-06 and 4901:1-21-06.)

August 16, 2019

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. STANDARD OF REVIEW	2
III. DISCUSSION	3
A. The PUCO’s Entry unreasonably and unlawfully placed consumers at risk by removing the most necessary consumer protection questions that the rules have reserved for independent third-party verification of changes in consumers’ gas supplier.	3
B. By allowing a door-to-door salesperson to remain in the consumer’s home while the consumer responds to the most important questions in the third-party verification rules, the PUCO undermined the consumer protections required by R.C. 4929.22.	5
IV. CONCLUSION.....	7

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It is important for the PUCO to protect consumers from abusive marketing practices by energy marketers. It has become all the more imperative because of two recent cases at the Public Utilities Commission of Ohio (“PUCO”) involving a large number (over 500) of customer complaints filed at the PUCO in a matter of months. In one case, the PUCO Staff documented at least 231 consumer complaints against marketer Verde Energy in a six-month period,¹ of which 22 pertained to door-to-door solicitation.² In the other case, the PUCO Staff documented at least 373 consumer complaints regarding PALMco, another energy marketer.³ The PUCO Staff noted that customer complaints against PALMco include allegations of deceptive and misleading practices concerning door-to-door marketing.⁴

In this case, the PUCO has allowed a marketer to cease providing an important consumer protection regarding door-to-door solicitations.⁵ Two PUCO rules require

¹ See Case No. 19-958-GE-COI, Staff Letter (April 16, 2019).

² *Id.*, Corrected Staff Report (May 29, 2019) at 16.

³ See Case No. 19-957-GE-COI, Staff Letter (April 16, 2019). PALMco does business as Indra Energy.

⁴ *Id.*, Staff Report (May 10, 2019) at 7-8.

⁵ Entry (November 14, 2018), ¶17.

independent third-party verification of changes to a consumer's utility service provider resulting from door-to-door marketing.⁶ The third party verification process helps protect consumers from unfair, misleading, deceptive, and unconscionable sales practices that certain marketers have engaged in during door-to-door solicitations of electric and natural gas services.⁷

Under the PUCO's Entry, door-to-door salespeople from AEP Energy, Inc. ("AEP Energy") will still be in the consumers' home while the consumer answers some questions that the independent third-party verifier must ask under the PUCO's rules. These include questions regarding the consumer's understanding of the contract, the rate that the consumer would be charged under the contract, and key terms of the contract. The PUCO's Entry also dilutes the role of the independent third-party verifier to asking questions that are mostly ministerial in nature, such as permission to record the call, the consumer's identity, whether the salesperson has left the consumer's home, and whether the consumer received the signed contract and welcome packet.

The Office of the Ohio Consumers' Counsel ("OCC") files an Application for Rehearing of the PUCO's Entry. The Entry was unlawful and unreasonable in the following respects:

1. The PUCO's Entry unreasonably places consumers at risk by changing the third-party verification process, removing consumer protections in the verification process used when a consumer switches providers as a result of door to door solicitation.

⁶ Ohio Adm. Code 4901:1-21-06(D)(1)(h) (electric) and Ohio Adm. Code 4901:1-29(D)(6)(b) (natural gas).

⁷ See <https://www.chooseenergy.com/blog/deregulation/door-to-door-energy-scam/>; <https://www.dispatch.com/article/20140615/NEWS/306159950>.

2. By allowing a door-to-door salesperson to remain in the consumer's home while the consumer responds to the most important questions in the third-party verification rules, the PUCO undermined the consumer protections required by R.C. 4928.10 and R.C. 4929.22.

The PUCO should grant OCC's Application for Rehearing and abrogate or modify the Entry. The PUCO should also stay implementation of the waiver while rehearing is pending. The grounds for this Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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In the Matter of the Application of) Case No. 18-371-EL-WVR
AEP Energy, Inc. for a Partial Waiver of) Case No. 18-372-GA-WVR
OAC Rules 4901:1-29-06 and 4901:1-21-06.)

I. INTRODUCTION

Ohio law requires the PUCO to adopt rules that protect consumers against unfair, deceptive, and unconscionable acts and practices in the marketing, solicitation, and sale of electric and natural gas service.⁸ As part of its rules concerning competitive electric and natural gas service, the PUCO requires third-party verification of all changes to a residential customer's electric or natural gas supplier if the change occurs because of door-to-door marketing.⁹ Among other things, the door-to-door marketing rules require that the salesperson leave the customer's property before the independent third-party verification has begun and not return "before, during, or after" the third-party verification process.¹⁰ And the door-to-door marketing rules require a third party to verify that the customer has in fact consented to a change in service, which is adduced through a series of questions to the customer. These protections for consumers are intended to prevent the marketer's salesperson from unduly influencing the customer's responses to the independent third-party verifier's questions.

⁹ See *In the Matter of the Commission's Review of Its Rules for Competitive Retail Natural Gas Service Contained in Chapters 4901:1-227 through 4901:1-34 of the Ohio Administrative Code*, Case No. 12-925-GA-ORD, Entry on Rehearing (January 17, 2014).

¹⁰ Ohio Adm. Code 4901:1-21-06(D)(1)(h)(ii); Ohio Adm. Code 4901:1-29(D)(6)(b)(ii).

In its Entry the PUCO has allowed AEP Energy to thwart these protections. AEP Energy's salesperson will be able to coach consumers' answers to the most important questions normally reserved for the verification process. The Entry is unlawful and unreasonable. The PUCO should abrogate or modify the Entry as OCC recommends in this Application for Rehearing.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order,¹¹ "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." OCC intervened and filed comments in this proceeding.

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." In addition, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear." The statute also provides: "If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed,

¹¹ In this instance, the Entry orders that AEP Energy's application be granted and thus serves the same purpose as a PUCO order.

the commission may abrogate or modify the same; otherwise such order shall be affirmed.” As shown herein, the statutory standard to abrogate and/or modify the Entry is met here.

III. DISCUSSION

A. The PUCO’s Entry unreasonably and unlawfully placed consumers at risk by removing the most necessary consumer protection questions that the rules have reserved for independent third-party verification of changes in consumers’ gas supplier.

R.C. 4929.22 requires the PUCO to adopt rules that protect consumers against unfair, deceptive, and unconscionable acts and practices in the marketing, solicitation, and sale of such electric and natural gas service. The PUCO’s door-to-door solicitation rules are meant to protect consumers against deceptive, unfair, and unconscionable acts and practices that have occurred through the years.¹²

The PUCO claims that the waiver allows AEP Energy to substantially comply with the consumer protections in the electric and natural gas marketing rules.¹³ But the PUCO ignores the fact that AEP Energy’s salesperson will remain inside the consumer’s home while the consumer answers the most important questions that are usually reserved for the independent third-party verification of changes in consumers’ gas supplier. Such “substantial compliance” reduces the necessary consumer protections in the PUCO’s rules. The PUCO’s Entry is contrary to R.C. 4929.22 and thus is unlawful.

Rather than having the independent third-party verifier ask the customer all the questions required by the PUCO’s rules, the PUCO’s Entry would have customers

¹² See, e.g., *In the matter of the Commission’s Investigation of the Customer Choice Program of Columbia Gas of Ohio, Inc.*, Finding and Order (December 2, 1999) at 7-8.

¹³ Entry, ¶12.

respond to some of the questions through a link sent to them on their personal communications device.¹⁴ The link is to AEP Energy's electronic order verification form that requires customers to respond to a number of yes-or-no questions.¹⁵

Many of the questions to be answered through the link are the types of questions that could interfere with customer rights. Some of the problematic questions involve the customer's acceptance of the following¹⁶: (1) the service(s) that will be provided; (2) the rate the customer will be charged; (3) the length of the contract term; (4) an approximate service commencement date; (5) the contract termination date and any early termination fees; (6) any material limitations, conditions, or exclusions in the contract; (7) any fees or costs to the customer; (8) whether AEP Energy will perform a credit check and require a deposit, including the amount; and (9) who will bill for AEP Energy's service(s).

These questions are reserved in the PUCO's gas rules for the independent third-party verifier to ask the consumer¹⁷ after the door-to-door salesperson has left the consumer's home.¹⁸ But under the PUCO's Entry, the questions would be answered by the consumer electronically, while the salesperson is still in the consumer's home.¹⁹ This eliminates the consumer protection attributes of the PUCO's rules.

The PUCO's Entry would significantly diminish the role – and the effectiveness – of the independent third-party verification process in the PUCO's rules. The only

¹⁴ Application at 5.

¹⁵ *Id.* The customer apparently is expected to answer “yes” to all the questions. If the customer responds with a “no,” “a pop-out window would appear with a further explanation of the question and an invitation to change the response if desired.” *Id.* at 6.

¹⁶ *Id.* at 5-6.

¹⁷ See Ohio Adm. Code 4901:1-29-06(E)(1)(f).

¹⁸ Ohio Adm. Code 4901:1-29-06(D)(6)(b)(ii).

¹⁹ See Application at 6.

information that AEP Energy has proposed to have verified through the independent third-party verification would be (1) permission to record the call; (2) the customer's identity; (3) if the person speaking to the verifier is not the account holder, whether the person is the account holder's spouse or holds power of attorney to authorize a change in the customer's energy supplier; (4) that AEP Energy is an independent seller and the customer can remain with the local utility or other supplier; (5) that AEP Energy's sales representative has left the property; and (6) whether the field sales agent provided to or e-mailed the customer signed enrolled terms and the welcome brochure.²⁰

The third-party verifier would not even have to obtain the customer's acknowledgment that he/she has consented to enroll with AEP Energy, as required by the PUCO's rules.²¹ And the third-party verification process proposed by AEP Energy fails to verify through an oral statement that the customer accepts each of the principal terms and conditions for the service, as required by the PUCO's rules.²²

The PUCO's Entry unlawfully and unreasonably allows AEP Energy to circumvent the consumer protections in the PUCO's gas rules. The PUCO should abrogate the Entry.

B. By allowing a door-to-door salesperson to remain in the consumer's home while the consumer responds to the most important questions in the third-party verification rules, the PUCO undermined the consumer protections required by R.C. 4929.22.

R.C. 4929.22 requires the PUCO to adopt rules for the protection of consumers in this state. Protection means preventing harm.

²⁰ *Id.* at 7.

²¹ Ohio Adm. Code 4901:1-29-06(D)(6)(b).

²² Ohio Adm. Code 4901:1-29-06(E)(1)(f).

Under the PUCO's Entry, a customer could have to respond to the very important consumer protection questions discussed above in the presence of AEP Energy's door-to-door salesperson. The salesperson could unduly influence the customer's supposed independent response. This is contrary to the consumer protections required by R.C. 4929.22 and provided under the PUCO's rules.

AEP Energy states that once the customer answers all the questions in the electronic order verification form, the independent third-party verifier will call the customer.²³ But the salesperson does not leave the customer's property until the customer receives the call from the independent third-party verifier.²⁴ Thus, the salesperson is on the customer's property (and presumably standing or sitting next to the customer) while the customer is responding electronically to the questions usually reserved for the independent third-party verifier. This means that the salesperson could assert the type of undue influence over the customer that the PUCO's rules are meant to prevent.

The PUCO must, by law, protect consumers in transactions involving gas and electric marketers. Ohio Adm. Code 4901:1-29-06(E)(2)(b)(ii) protects consumers by expressly providing that the customer does not respond to questions from the independent third-party verifier until *after* the salesperson has left the consumer's home. The PUCO's Entry has unlawfully and unreasonably undermined this protection. To protect consumers, the PUCO should abrogate the Entry.

²³ Application at 6.

²⁴ *Id.*

IV. CONCLUSION

The Verde and PALMco investigations by the PUCO Staff are evidence of why the third-party verification rules should not be compromised. Consumers are too vulnerable in the high-pressure door-to-door sales environment. The independent third-party verification required by Ohio Adm. Code 4901:1-29-06(E)(1) helps protect consumers from the bad acts of natural gas and electric marketers. By allowing AEP Energy to avoid these consumer protections, the PUCO substantially increased the risk of harm for consumers. The PUCO's Entry is unlawful, and unreasonable. To protect consumers, the PUCO should abrogate the Entry as discussed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission, this 16th day of August 2019.

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Summary: App for Rehearing Application for Rehearing of the PUCO's Order Reducing Consumer Protections in Door-To-Door Marketing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.