

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF THE)	Case Nos:
COMMISSION'S REVIEW OF OHIO	)	17-1843-EL-ORD
ADM.CODE CHAPTERS	)	17-1844-EL-ORD
4901:1-21, 4901:1-23, 4901:1-24, 4901:1-	)	17-1862-EL-ORD
27, 4901:1-28, 4901:1-29, 4901:1-	)	17-1845-GA-ORD
30,4901:1-31, 4901:1-32, 4901:1-33,	)	17-1846-GA-ORD
AND4901:1-34 REGARDING RULES	)	17-1847-GA-ORD
GOVERNING COMPETITIVE RETAIL	)	17-1848-GA-ORD
ELECTRIC SERVICE AND	)	17-1849-GA-ORD
COMPETITIVE	)	17-1850-GA-ORD
RETAIL NATURAL GAS SERVICE.	)	17-1851-GA-ORD
)	17-1852-GA-ORD

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

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I. INTRODUCTION

The Public Utilities Commission of Ohio (“PUCO”) has invited interested stakeholders to provide comments on the rules governing the certification and practices of retail electric and natural gas marketers that provide energy services to Ohio consumers.¹ The PUCO’s proposed rules leave gaps in consumer protection that should be filled. Recently, Columbia Gas’s shadow billing revealed that consumer payments to marketers had crossed a bad threshold of being more than two billion dollars above Columbia’s own offers for natural gas since 1997. Duke Energy’s shadow billing recently revealed that, for a mere two-year period of January 2019 through July 2021, Duke natural gas consumers paid more than \$70 million above Duke’s own natural gas offers.² The Wall Street Journal recently had an article about consumers not faring well with

¹ Entry, Sept. 8, 2021 (“Sept. 8 Entry”).

² See Attachment A.

energy marketing, under the headline “*Deregulation Aimed to Lower Home-Power Bills. For Many it Didn’t –*.”³

The PUCO is required by R.C. 111.15(B) and R.C. 106.03(A) to review its rules every five years. Issues for this review include (or should include) consumer protections to prevent alternative energy marketers from engaging in unfair, misleading, deceptive, and unconscionable acts or practices. The issues relate to: 1) the marketers’ interactions with customers, 2) the marketing, solicitation, or sale of energy services, and 3) the administration of contracts between marketers and Ohio consumers. The PUCO’s rules regarding certification of energy marketers also should ensure that those marketers serving Ohioans have the managerial, technical, and financial capabilities to provide safe and reliable service and to comply with applicable Commission rules.⁴

The Office of the Ohio Consumers’ Counsel (“OCC”) has advocated for Ohio’s residential consumers in several PUCO investigations and certification proceedings involving unfair and anticompetitive practices by marketers in recent years.⁵ Especially as many consumers

³ *Deregulation Aimed to Lower Home-Power Bills. For Many it Didn’t –*. Wall Street Journal (March 8, 2021) <https://www.wsj.com/articles/electricity-deregulation-utility-retail-energy-bills-11615213623>

⁴ The PUCO is required, under R.C. 111.15(B) and R.C. 106.03(A), to review its rules every five years to determine whether to continue them without change, amend them, or rescind them.

⁵ See e.g. *In the Matter of the Commission’s Investigation of PALMco Power OH, LLC, d/b/a Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI (“PALMco 1 Investigation”); *In the Matter of the Commission’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 (“Verde Investigation”); *In the Matter of the Commission’s Investigation of PALMco Power OH, LLC, d/b/a Indra Energy and PALMco Energy OH, LLC, d/b/a Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-2153-GE-COI (“PALMco 2 Investigation”); *In the Matter of the Commission’s Investigation into SFE Energy Ohio, Inc. and Statewise Energy Ohio, LLC’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 20-1216-GE-COI (“SFE Investigation”); *In the Matter of the Application of Verde Energy USA Ohio, LLC for Certification as a Competitive Retail Electric Service Supplier and a Competitive Retail Natural Gas Service Supplier*, Case Nos. 11-5886-EL-CRS and 13-2164-GA-CRS (“Verde Certification Renewal”); and *In the Matter of the Review of the Initial Certification Application of Suvon LLC d/b/a FirstEnergy Advisors to Provide Aggregation and Broker Services in the State of Ohio*, Case No. 20-103-EL-AGG (“FirstEnergy Advisors Certification”).

continue to suffer the financial and health consequences from the coronavirus pandemic, consumer protection is imperative. The PUCO's proposed rules need more consumer protections to make sure that retail energy competition in Ohio does not harm Ohio's consumers.

The PUCO Staff made several modifications to O.A.C. 4901:1, Chapters 24, 27, and 29. However, the PUCO Staff's proposals are for most part minor and/or represent changes to remove redundant language within the rules. Most of these minor changes by the PUCO Staff are OK for consumers.⁶ But there are glaring omissions in consumer protection in the PUCO Staff proposals. Changes are needed to address the thousands of consumer contacts and complaints to the PUCO regarding marketer practices. OCC's recommendations should be adopted for protection of Ohio consumers.

II. OCC'S COMMENTS ON RULES REGARDING ENERGY MARKETERS AND THE NEED FOR CONSUMER PROTECTION.

A. For consumer protection, the PUCO should expand and clarify the definition of "unfair, misleading, deceptive, or unconscionable acts and practices." O.A.C. 4901:1-21-05(C), 4901:1-29-05(D).

O.A.C. 4901:1-21-05 and 4901:1-29-05 govern energy marketers' advertising and solicitation of energy services to Ohio consumers. O.A.C. 4901:1-21-05(C) of the electric marketer rules and 4901:1-29-05(D) of the natural gas marketer rules prohibit marketers from engaging in unfair, misleading, deceptive, or unconscionable acts and practices. The rules state that the "unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to" those specifically listed. This definition should be expanded to include acts by marketers that have recently harmed Ohio's consumers. O.A.C. 4901:1-21-05(C) and 4901:1-29-

⁶ As further discussed in Section III, below.

05(D) should be amended and make it crystal clear to all marketers that the following marketing and solicitation practices will not be tolerated by the PUCO.

1. Robo-Calling: The rules should be amended to include as an “unfair marketing practice” the use of “robo-calling” technology or automated messages to entice consumers to speak with the marketer. The PUCO Staff identified robo-calling as a misleading and deceptive marketing practice in its investigation regarding marketer Verde Energy.⁷ Robo-calling technology is a scourge, and in fact, the Federal Communications Commission (“FCC”) recently implemented the TRACED Act, which augments the FCC’s authority and ability to combat unlawful and unwanted robocalls.⁸ Robo-calling should be expressly prohibited by the PUCO in the marketing and solicitation of energy services to consumers.

O.A.C. 4901:1-21-05(C), as well as the analogous provision regarding natural gas marketers in O.A.C. 4901:1-29-05(D), should be amended to include the following language:

- (C) No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

* * *

(12) Telephone solicitations that utilize “robo-calling” technology or automated messages to entice consumers to speak with the CRES provider.

2. Spoofing: The PUCO should clarify that it is an unfair marketing practice for energy marketers to use technology to “spoof” or disguise their telephone numbers or identities when soliciting consumers by telephone. This form of marketing is no better than lying to the customer

⁷ See *In the Matter of the Commission’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, Staff Report (May 29, 2019) at pp. 26-27.

⁸ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, 116 P.L 105 (Dec. 30, 2019).

about who they work for when selling door to door. In the PUCO's investigation regarding the deceptive and misleading marketing practices of Verde Energy, there was evidence that sales agents used technology in telephone solicitations to disguise their identity on Caller ID to make consumers believe they were answering calls from the distribution utility and the Internal Revenue Service.⁹ It is a violation of the federal Truth in Caller ID Act for an entity to send misleading or inaccurate Caller ID information in communications with consumers with the intent to defraud or wrongly obtain something of value.¹⁰

The PUCO should prohibit spoofing. And it should also make clear that it will permanently suspend the certificate of any marketer that uses technology to spoof or disguise its telephone number or identity in communicating with consumers. O.A.C. 4901:1-21-05(C), as well as the analogous provision regarding natural gas marketers in O.A.C. 4901:1-29-05(D), should be amended to include the following language:

- (C) No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

* * *

(13) Telephone solicitations that utilize “spoofing” technology or IP-enabled voice service to cause any caller identification service to transmit misleading or inaccurate caller identification information. If the Commission finds that a provider has used spoofing technology in soliciting customers, the Commission will suspend or rescind the provider’s certification to provide competitive service in Ohio.

⁹ *Id.* at 9-10.

¹⁰ See 47 U.S.C. § 227(e)(1) (“It shall be unlawful for any person within the United States, in connection with any telecommunications service or IP-enabled voice service to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification with the intent to defraud, cause harm, or wrongfully obtain anything of value . . .”); See also Verde Investigation OCC Ex. 19B (Williams Direct), JDW-10.

3. Soliciting consumers who cannot understand contract terms: Under O.A.C.

4901:1-29-05(D)(7), a natural gas marketer is prohibited from: “Knowingly taking advantage of a customer’s inability to reasonably protect their interests because of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement.” This language is important to protect consumers from unfair marketing practices, particularly for the elderly and those who do not speak English and others. However, the same language does not appear in the rules governing electric marketers. Accordingly, OCC recommends that O.A.C. 4901:1-24-05(C) be amended to include the same provision.

4. Offering cash or gift cards to entice new enrollments: One way a marketer can take advantage of consumers is to offer cash or gift cards as an incentive to switch providers.¹¹ Additionally, consumers should not be enticed into enrolling with a marketer based on promises for reward points that have no tangible cash value. At-risk consumers, such as those with low or fixed incomes, may be more willing to switch to a service that will ultimately harm them if they are promised cash up front. The PUCO’s definition of unfair and unconscionable marketing practices should be expanded to prohibit this practice.

O.A.C. 4901:1-21-05(C), as well as the analogous provision regarding natural gas marketers in O.A.C. 4901:1-29-05(D), should be amended to include the following language:

- (C) No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

* * *

¹¹ *Alternative energy scams hit poor blacks and Latinos the hardest complaints show*, The Chicago Reporter (Nov. 16, 2018). <https://www.chicagoreporter.com/alternative-energy-scams-hit-poor-blacks-and-latinos-the-hardest-complaints-show/>.

(14) Offering cash cards, gift cards, or rewards points as an incentive for new customer enrollments.

5. Fixed-rate “teaser” contracts: Marketers should not be allowed to lure customers into switching service by offering short-term, low fixed rate contracts that automatically renew to variable rate contracts that ultimately charge rates far in excess of the distribution utility’s standard offer. In looking at the PUCO’s own “Energy Choice Ohio”¹² website there are dozens of offers with rates below the standard service offer that switch to variable rates after a few months. The offers give no indication what the price will be after this teaser rate expires and there is no requirement to notify the consumer before they have time to switch. This practice was one the most pernicious marketing tactics at issue in the PUCO investigations of Verde Energy and PALMco.¹³ In those cases, evidence was presented that some consumers were charged rates several times in excess of the utility’s standard offer after their low fixed rate contracts expired and automatically renewed to monthly variable rates.¹⁴ Consumers are then trapped into paying unconscionably high rates for utility service. These teaser rate contracts should be an unfair practice under the PUCO’s rules.

O.A.C. 4901:1-21-05(C), as well as the analogous provision regarding natural gas marketers in O.A.C. 4901:1-29-05(D), should be amended to include the following language:

(C) No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

* * *

¹² <http://www.energychoice.ohio.gov/>.

¹³ See Verde Investigation, PUCO Staff Report, at 22; PALMco 1 Investigation, PUCO Staff Letter (Apr. 16, 2019); PALMco 2 Investigation Staff Notice of Probable Non-Compliance (Dec. 16, 2019).

¹⁴ Verde Investigation, OCC Ex. 19B (Williams Direct) at 20; PALMco 1 Investigation, PUCO Staff Letter (Apr. 16, 2019); PALMco 2 Investigation Staff Notice of Probable Non-Compliance (Dec. 16, 2019).

(15) Enticing customers to enroll in service by offering a short-term fixed rate contract that automatically renews to a variable rate contract.

Alternatively, if the PUCO does not adopt this change, it should adopt the recommended modifications to Rules O.A.C. 4901:1-21-05, 4901:1-21-12, 4901:1-21-05, 4901:1-29-11 regarding introductory rate offers described later in Section D of these comments.

6. Door to Door Solicitations: The PUCO has allowed marketers to solicit residential consumers directly through door to door sales. Door to door sales should be prohibited at all times. This form of marketing cannot by its nature be policed by the PUCO and this marketing encourages and takes advantage of immediate, uninformed consumer decision-making on a complex energy purchase that can cost the consumer a lot of hard-earned money compared to the utility standard offer. Additionally, door to door energy marketing should be banned for consumer protection during the pandemic.

On March 17, 2020, the PUCO directed all natural gas and electric marketers to suspend door to door and in-person marketing activities as these activities were not necessary services and could create unnecessary risks of social contact that could harm consumers' health.¹⁵ But three months later, the PUCO permitted door to door marketing to resume,¹⁶ despite the ongoing coronavirus pandemic risk of exposure – and now the risk of the more contagious virus variants. Indeed, the Ohio Department of Health continues to record COVID-19 cases, hospitalizations, and deaths in Ohio. Since July 2020, Ohio has experienced 1,169,519 confirmed cases and 22,290 deaths as the result of coronavirus.¹⁷

¹⁵ *In the Matter of the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry (Mar. 17, 2020).

¹⁶ *In the Matter of the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry (June 17, 2020).

¹⁷ <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home>.

What's more is that bad behavior by marketer door to door sales agents has increased in Ohio. For example, in the SFE case, the PUCO Staff investigated consumer complaints of interactions captured on doorbell cameras where door to door sales agents did not wear masks, represented that they were associated with the distribution utility, made false statements, and even refused to leave when the consumer asked.¹⁸ That behavior is intolerable. There were allegations of unfair and deceptive door to door solicitations in the PALMco and Verde investigations as well.

There can be no doubt that there are far more violations occurring than those that are actually being caught, as not every consumer that has been illegally solicited complains to the PUCO. Door to door solicitations violate consumers' privacy and catch them off guard, making them more vulnerable to misleading sales practices. This is especially true in situations where solicitors use high pressure sales tactics and target at-risk populations, such as the elderly, low-income consumers, and non-English speakers.

The risk associated with door to door energy marketing to Ohioans when they are still experiencing the health and financial crisis should outweigh the inconvenience to marketers who want to solicit door to door. This is further amplified by the increases in crime that are experienced across the state and the need for Ohioans to feel safe and secure in their own homes without uninvited persons showing up at the door. The PUCO should outright prohibit door to door solicitations. If the PUCO prohibits door to door solicitations, it can also remove all other provisions in the rules regulating door to door sales, as they will no longer be necessary.¹⁹

¹⁸ SFE Investigation, PUCO Staff Letter (June 29, 2020).

¹⁹ See R.C. 121.95(F) ("a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions.")

O.A.C. 4901:1-21-05(D) and (E) should be amended to include the following language:

- (D) CRES providers shall not conduct direct solicitations though ~~perform criminal background checks on all employees and agents engaged in door-to-door marketing and enrollment. The criminal background check shall be done by an independent contractor and the CRES provider shall confirm that the independent contractor has performed a comprehensive criminal background check on its employees or agents in accordance with this rule.~~
- (E) ~~In the absence of local ordinances or regulations and to ensure the safety of all involved, CRES providers, and their agents shall not conduct door to door marketing, solicitation, or enrollment outside the hours of nine a.m. to seven p.m.~~

Similarly, O.A.C. 4901:1-29-05(E) should be amended as follows:

- (E) CRNGS providers shall not conduct direct solicitations through door-to-door marketing and enrollment. ~~Retail natural gas suppliers or governmental aggregators when engaging in direct solicitation shall:~~
 - (1) ~~Perform a criminal background check on all employees and agents of retail natural gas suppliers or governmental aggregators engaged in door to door solicitation. The criminal background check shall be done by an independent contractor and the retail natural gas supplier or governmental aggregator shall confirm that the independent contractor has performed the comprehensive criminal background check on its employees or agents in accordance with this rule.~~
 - (2) ~~Comply with all applicable ordinances and laws of the customer's jurisdiction, when engaged in direct solicitation door to door. Where the applicable ordinances and laws do not limit the hours of direct solicitation door to door, not solicit customers before the hour of nine a.m. or after the hour of seven p.m.~~
 - (3) ~~Leave the premises of a customer when requested to do so by the customer or the owner or occupants of the premises, when engaging in direct solicitation door to door.~~

7. Marketing using the name of the regulated utility: It goes without saying that if it is misleading for a marketer to represent to consumers an association with the regulated distribution utility, it would also be an unfair and misleading marketing practice to do business under the name of the regulated distribution utility. Where a regulated distribution utility has an

affiliate that provides competitive energy service, the affiliate marketer should not be permitted to operate or do business under the same or similar name as the regulated utility.

A marketer's use of the regulated utility's name (or parent company name) and similar logo could easily cause customer confusion and create an unfair competitive advantage for the marketer. This issue is currently being considered in Case No. 17-974-EL-UNC, regarding the audit of FirstEnergy's compliance with the PUCO's corporate separation rules.²⁰ The FirstEnergy regulated distribution utilities have an affiliate that provides competitive retail aggregation and brokering services that does business in Ohio under the name of FirstEnergy Advisors. The independent auditor in the Corporate Separation Audit case recently recommended that the "FirstEnergy" name and logos be removed from affiliates' marketing materials and activities. The independent auditor stated:

Using the Ohio Companies' names to sell non-electric goods and services is capitalizing on the reputation of the Ohio Companies. Although there is a disclaimer on the marketing materials, it is not highly visible, and a customer could reasonably assume that [the affiliate] was their utility's offering, rather than an affiliate's offering. This is an advantage that other providers of the same services do not have.²¹

The PUCO's competitive electric supplier rules already state that it is an unfair marketing practice for a marketer to advertise and market offers that lead the consumer to believe that the supplier is soliciting on behalf of the distribution utility.²² The rules governing natural gas suppliers permit use of the distribution utility name provided the affiliate relationship is

²⁰ *In the Matter of the Review of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC ("Corporate Separation Audit Case").

²¹ Corporate Separation Audit Case, Daymark Energy Advisors *Compliance Audit of the FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio* (Sept. 13, 2021) ("Corporate Separation Audit Report"), p. 76.

²² See e.g. 4901:1-21-05(C)(8)(h).

conspicuously disclosed on advertising materials.²³ For consumer protection, both rules should be amended to make it an unfair practice for a marketer to operate and market to consumers using a distribution utility affiliate name.

O.A.C. 4901:1-21-05(C)(8)(h) should be amended as follows:

- (C) No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

* * *

(8) Advertising or marketing offers that:

* * *

- (h) Lead the customer to believe that the CRES provider is soliciting on behalf of or is an agent of an Ohio electric utility when no such relationship exists. If the CRES provider is affiliated with a distribution utility regulated by the Commission, the CRES provider shall not solicit, market, or advertise to consumers using the same or similar name or logo of the distribution utility.

Similarly, O.A.C. 4901:1-29-05(D)(8)(f) should be amended as follows:

- (D) No retail natural gas supplier or governmental aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a competitive retail natural gas service. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

* * *

(8) Advertising or marketing offers that:

* * *

- (f) Lead the customer to believe that the CRNGS provider is soliciting on behalf of or is an agent of an Ohio electric utility when no such relationship exists. If the CRNGS provider is affiliated with a distribution utility regulated by the Commission, the CRNGS provider shall not

²³ O.A.C. 4901:1-29-05(D)(8)(f).

~~solicit, market, or advertise to consumers using the same or similar name or logo of the distribution utility. Fail to fully disclose, in an appropriate and conspicuous type size, an affiliate relationship or branding agreement on advertising or marketing offers that use an Ohio utility's name and logo.~~

8. Representations regarding renewable energy: The PUCO's rules governing electric marketers provide that it is an unfair marketing practice to market, advertise, or claim that "the environmental characteristics of any generation service generation source(s) provide an environmental advantage that does not exist."²⁴ This same provision does not exist in the rules governing natural gas marketers. However, both electric and natural gas marketers sell products represented as "green," "renewable," "environmentally friendly," or that otherwise have a reduced impact on the environment. Marketers will often charge customers high rates for these "green" products.²⁵

To help consumers fully understand what they are paying for, the PUCO should amend both the electric and natural gas marketer rules to require express disclosure of the appropriate number of renewable energy credits purchased and retired by the marketer, including when the credits are retired. Marketing materials and contracts shall explain how the marketer uses renewable energy credits in providing "green" energy to consumers.

O.A.C. 4901:1-21-05(C)(9) and O.A.C. 4901:1-29-05(D), should be amended to include the following language:

- (C) No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

* * *

²⁴ See e.g. 4901:1-21-05(C)(9).

²⁵ The Energy Choice Ohio website lists many renewable offers at over twice the standard service offer.

- (9) Marketing, advertising, or claiming that the environmental characteristics of any generation service energy source(s) provide an environmental advantage that does not exist. The marketer shall disclose the number of renewable energy credits it purchases and retires, including the date when they were retired. The marketer shall disclose information to the consumer to explain how the product offered provides an environmental advantage.

9. Offering contracts to consumers that are not labeled “fixed,” “introductory,” or

“variable”: To protect consumers, the PUCO should clarify the definition of unfair, misleading, and unconscionable acts and practices to include marketer contracts that are not expressly labeled as having “fixed,” “introductory,” or “variable” rates. Requiring marketers to use these labels will go a long way to help consumers understand the rates they will pay for service.

In Case No. 14-568-EL-COI, the PUCO considered the use of these labels to assist consumers in understanding their contracts and rejected claims by the Retail Energy Supply Association that requiring marketers to use such labels is unlawful.²⁶ However, the PUCO specifically found that this issue would be more appropriate for review in this rulemaking proceeding.²⁷ The PUCO Staff’s draft rules do not specifically address this issue.

The PUCO should also clarify, consistent with its decision in Case No. 14-568-EL-COI, that “fixed means fixed.”²⁸ In other words, the PUCO should make it an unfair practice for a marketer to offer fixed rate contracts to consumers that contain pass-through clauses that could result in unexpected charges to consumers with fixed rate contracts.

O.A.C. 4901:1-21-05(C)(9) and O.A.C. 4901:1-29-05(D), should be amended to include the following language:

²⁶ *In the Matter of Commission-Ordered Investigation of Marketing Practices in the Competitive Retail Electric Service Market*, Case No. 14-568-EL-COI, Fourth Entry on Rehearing (Sept. 27, 2017), at ¶12.

²⁷ *Id.* at ¶¶12-13.

²⁸ Case No. 14-568-EL-COI, Finding and Order (Nov. 18, 2015), at ¶9.

- (C) No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

* * *

- (16) Offer a consumer a contract that is not identified as “fixed,” “variable,” or “introductory.” Contracts labeled as “fixed” shall not contain language or clauses that permit the pass through of additional charges to the customer in excess of the identified fixed rate.

B. The PUCO should amend its customer consent and enrollment rules to protect consumers when energy marketers solicit and enroll customers using third-party sales agents. O.A.C. 4901:1-21-06, 4901:1-29-06.

In order to protect consumers from unfair and deceptive marketing and solicitation, it is imperative that the PUCO make marketers ultimately responsible for any bad acts by their third-party agents. Also, marketers should be required, when using sales agents, to properly train them including for compliance with Ohio law and the PUCO’s rules. Ideally, each marketer would directly employ and train their own salesforce to interact with consumers. However, many marketers outsource sales and marketing to third-party vendors who typically conduct telephone and door to door solicitations. These marketing contracts can then be subcontracted to other vendors, which adds in another level of complexity as to who is actually selling on behalf of the marketer. The PUCO’s rules do not adequately address marketers’ use of third-party vendors for sales, and that should change. Outsourcing sales to third parties has caused serious harm to Ohio consumers in the past, particularly when the marketer fails to properly train the salesforce and monitor compliance.²⁹

As an initial matter, a supplier should disclose to the PUCO whether it plans to use third-party sales agents. The PUCO’s rules should make clear that the marketer is responsible for the

²⁹ See Verde Investigation, PALMco 1 Investigation, and SFE Investigation.

sales agents' acts during marketing and solicitation to consumers. A marketer should not be able to avoid responsibility for unfair and deceptive marketing and solicitation simply because the sales agent is not a direct employee. In addition, the customer consent and enrollment rules should be amended to require marketers to disclose to the PUCO Staff and OCC a list of all third-party companies that will interact with consumers. This list should include all management personnel for the third-party vendors and all people that will be selling on behalf of the marketer. Third-party vendors should be required to register with the PUCO so those found violating PUCO rules do not simply change the name of their company and continue on with their bad practices.

To make sure sales agents comply with the PUCO's rules and applicable state and federal laws, suppliers should train all sales agents *directly*, regardless of whether they are employed internally by the marketer or employed by a third-party. Marketers should be required to provide their training materials to the PUCO Staff, and marketers should provide the PUCO Staff with documentation certifying that all sales agents have completed compliance training. In addition, marketers should regularly audit internal and external (third-party) solicitation practices. The PUCO should adopt these requirements to help protect consumers from unfair marketing and sales by third-party agents.

O.A.C. 4901:1-21-06, and the analogous rule in O.A.C. 4901:1-29-06 concerning natural gas suppliers, should be amended to include the following language:

(F) Use of third-party or independent sales agents for solicitation and marketing.

(1.)CRES providers must disclose to the Commission and the Office of the Ohio Consumers' Counsel all third-party or independent sales agents that are not directly employed by the marketer.

- (2.) CRES providers shall be responsible for the acts and omissions of third-party and independent sales agents in soliciting and marketing competitive energy services to consumers.
 - (3.) CRES providers shall directly train third-party and independent sales agents regarding proper solicitation and marketing practices and compliance with Ohio law and the Commission's rules.
 - (4.) CRES providers shall provide the Commission with the training and compliance materials used to train third-party and independent sales agents.
 - (5.) CRES providers shall complete and retain certifications that third-party and independent sales agents have completed the necessary solicitation, marketing, and compliance training, and provide copies of such certifications to the Commission.
 - (6.) CRES providers shall bi-annually audit training materials and third-party and independent sales agents for continuing compliance with Ohio law and the PUCO's rules.
 - (7.) CRES providers shall suspend the use of third-party and independent sales agents that fail to comply with Ohio law and PUCO's rules in soliciting and marketing to consumers.
 - (8.) Upon suspension of a third-party and independent sales agents, all enrollments that were performed by the third-party shall be subject to a compliance audit paid for by the CRES provider to verify that the enrollment is in full compliance with the rules.
 - (9.) All third-party and independent sales agents shall register with the PUCO and include the names of management personnel, names of sales agents, office address and phone number.
- C. To protect consumers from unconscionable rates, the PUCO should amend the contract administration rules to disallow automatic contract renewals and limit the amount marketers can charge residential consumers for early contract terminations. O.A.C. 4901:1-21-11, 4901:1-29-10.**

As noted above, Ohio consumers have been harmed by entering into “teaser” contracts that offer a low fixed rate for a short period of time and then automatically renew to a variable rate contract that charges significantly more. The PUCO's rules currently allow suppliers to offer contracts to consumers that automatically renew (so-called evergreen contracts), as long as the supplier provides timely notice to the consumer with instructions on how to opt-out or terminate

the contract.³⁰ The PUCO should amend these rules to do away with automatic contract renewals, excluding month to month contracts. Contract renewals should only be allowed with affirmative consent from the customer.

Marketers should still be required to provide notice to consumers as required under the rules, but instead of providing information on how to terminate the contract (*i.e.* stop the automatic renewal) marketers should inform consumers how they can affirmatively renew the contract. Requiring consumers to take an affirmative action to renew the contract is key and will protect consumers from unexpected charges in the event they do not receive contract termination notice. In the Verde Investigation, there was evidence that customers were unaware that their contracts had renewed and as a result were charged exorbitant rates during the winter months. And in the event a customer does not take action to affirmatively renew the contract, the customer should be returned to the utility standard offer. The marketer can communicate this information to the consumer when it sends notification of contract expiration.

In addition, residential consumers should not be forced to pay excessive fees to terminate their contracts early, particularly when many are still suffering from the financial impacts of the coronavirus pandemic. In most cases, early termination fees for residential consumers should be zero. However, if a supplier must charge an early termination fee, it should not be in excess of \$25.

O.A.C. 4901:1-21-11(F) and (G), along with the analogous provisions in O.A.C. 4901:1-29-10 concerning natural gas marketers, should be amended as follows:

(F) Contract renewals

- (1) The provisions of this paragraph apply to residential and small commercial contracts ~~that contain automatic renewal clauses except~~

³⁰ O.A.C. 4901:1-21-11(F)&(G); O.A.C. 4901:1-29-10(F)&(G).

~~those which renew on a month-to-month basis.~~ Residential contracts shall not contain automatic renewal clauses unless the contract is on a month to month basis with no early termination fees.

- (2) For contracts that contain an early termination or cancellation option with no fee for early termination or cancellation, upon renewal, the CRES provider shall, in a separate notice, notify customers of such expiration at least forty-five calendar days, but not more than ninety calendar days, in advance of the contract expiration date. Such notice shall accurately describe or highlight any changes and state that the small commercial customer contract will renew at the specified rate unless the small commercial customer affirmatively cancels the contract. Such notices must clearly and accurately describe the manner in which the small commercial customer may cancel the contract and the time during which the small commercial customer must act to cancel the contract. For residential customers, the CRES provider shall provide expiration notices consistent with these rules but instead will state that unless the residential customer takes affirmative steps to renew the contract, the residential customer will be returned to the utility's standard offer if the customer does not re-enroll with the current CRES provider or enroll with another CRES provider. The CRES provider shall provide residential consumers clear and accurate information regarding the manner in which the residential customer may renew the contract and the time during which the residential customer must act to renew the contract.
 - (a) The notice shall be made by separate mailing (envelope or postcard), the front cover of which shall state: "Important notice regarding your electric service contract."
 - (b) The notice shall, at a minimum, state any renewal period and how the customer may terminate, renew, and/or extend the contract.
 - (c) The renewal period for contracts with renewal provisions shall not exceed the initial contract period.
- (3) For contract renewals that contain an early termination or cancellation option with a fee of twenty-five dollars or less for early termination or cancellation, upon renewal, the CRES provider shall provide customer with two separate notices that accurately describe or highlight any changes and state that the customer contract will renew at the specified rate unless the customer affirmatively cancels or, for residential customers affirmatively renews, the contract. Such notices must clearly and accurately describe in understandable language the manner in which the customer may cancel or renew the contract and the time during which the customer must act to cancel or renew the contract. The first notice shall be in writing in accordance with the requirements of this rule and shall be provided at least forty-five

calendar days, but no more than ninety calendar days in advance of the contract expiration date. The second notice may be in writing in accordance with paragraphs (F)(2)(a) to (F)(2)(c) of this rule, by telephone, by a notice on the customer's monthly bill, or by electronic mail. The second notice shall be provided at least thirty-five calendar days in advance of the contract expiration and must contain the rate at which the customer contract will renew, or in the case of a variable rate, the applicable formula.

- (a) In the event that the CRES provider provides the second notice by telephone, the CRES provider or opt-in governmental aggregator must confirm that the customer of record is on the line, clearly explain both the new contract price and the manner in which the customer may cancel the contract, record the entire conversation, and retain such recording in a manner consistent with rule 4901:1-21-06 of the Administrative Code.
- (b) In the event that the CRES provider provides the second notice on the customer's monthly bill, such notice must be in a different color, highlighted, or otherwise differentiated from the remainder of the bill.
- (c) In the event that the CRES provider provides the second notice by electronic mail, the notice must:

* * *

- (d) This paragraph shall not apply to contract renewals which renew on a month-to-month basis.
- (4) Residential contracts shall not contain an early termination fee in excess of \$25. Small commercial contract renewals that contain an early termination or cancellation option with a fee greater than twenty-five dollars for early termination or cancellation or which contain no option for early termination or cancellation, upon renewal, the CRES provider shall notify the customer of any changes, describe or highlight each change, and also obtain the customer's affirmative consent to such changes pursuant to any of the enrollment procedures established in rule 4901:1-21-06 of the Administrative Code. In addition, the CRES provider shall notify the customer that no response will result in the customer automatically reverting to the electric utility unless the customer chooses another CRES provider. The notice shall be provided at least forty-five calendar days, but not more than ninety calendar days in advance of the contract expiration date and comply with paragraphs (F)(2)(a) to (F)(2)(c) of this rule. This paragraph shall not apply to contract renewals which renew on a month-to-month basis.

D. The PUCO's rules should protect consumers from marketer charges for unconscionable variable rates. O.A.C. 4901:1-21-05, 4901:1-21-12, 4901:1-21-05, 4901:1-29-11.

Marketers have caused significant harm to consumers by gouging them with unconscionable rates charged through variable rate contracts. OCC recommends that the PUCO prohibit variable rates entirely. Under the current PUCO rules, marketers can charge variable rates provided that they disclose to consumers recurring and non-recurring charges, the distribution charge, and an understandable formula by which the marketer sets variable rate.³¹ But the formulas do not typically produce a result that would be understandable to the consumer for actually knowing what the marketer's charges will be. In fact, many marketers do not abide by this rule. In looking at on-line variable rate contracts marketers use language such as:

You will be billed an introductory fixed rate of .04299/kWh for the metered usage for the first 2 months of the term. After that, the price will be a variable rate determined in the sole discretion of Nordic Energy Services, LLC ("Nordic Energy"). Nordic Energy will determine the variable rate based on market and other factors, including but not limited to industry charges Nordic Energy is subject to, competitive prices, profit margins, and other business risks³².

This wording does not include an understandable formula, it explicitly states the marketer will charge the customer whatever it wants to reach its desired profit margin. And this is just one example, and the Energy Choice Ohio website is full of offers exactly like this one. Even if the marketer makes these disclosures, it is easy for consumers to be confused or misled as to what their total charges will be by marketers using unfair marketing practices. Notably, Connecticut has banned variable rate contracts entirely for residential consumers.³³

³¹ O.A.C. 4901:1-21-12; O.A.C. 4901:1-29-11(J).

³² Nordic Energy Services, LLC Terms and Conditions for an Electric Customer Choice Contract Residential and Small Commercial (<https://www.nordicenergy-us.com/apply/>)

³³ 2021 Ct. H.B. 6526 (Enacted July 6, 2021).

If the PUCO retains variable pricing, variable-rate price offers should be tied to an index or otherwise be able to be easily calculated using data provided by the marketer and/or readily available data sources. These prices need to be provided to customers early enough so the customer can review the price and switch if the price is not acceptable. Consumers should be able to confirm that they are being charged the promised rate, recalculate their bill for accuracy, and comparison shop. For month-to-month variable rate contracts, consumers should have sufficient information provided in sufficient time to determine the rate they will be charged in time to switch if desired. And, if variable pricing is allowed, the PUCO should impose a limit to prevent any variable rate that is at or exceeds 2.25 times the utility's standard offer.

If the PUCO does not outright prohibit variable rate contracts for residential consumers, O.A.C. 4901:1-21-05(A) should be amended to read as follows:

- (A) Each competitive retail electric service (CRES) provider that offers retail electric generation service to residential or small commercial customers shall provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make intelligent cost comparisons against offers they receive from other CRES providers.

Offers shall at a minimum include:

* * *

- (3) For variable rate offers, a clear and understandable explanation of the factors that will cause the price to vary, including any related indices, how often the price can change, and expressed in a manner that will enable the customer to compare the variable rate offered against other offers available.
- (4) For offers that include any form of an introductory rate, a clear identification of the initial rate that will be charged, the time period that the introductory rate will be charged, the rate that will be charged once the introductory period is over, and the time period that the post-introductory rate will be in effect.

O.A.C. 4901:1-21-12(B)(7) should be amended as follows:

- (7) An itemized list and explanation of all prices and all fees associated with the service such that:

- (a) For fixed-rate offers, such information shall, at minimum, include the cost per kilowatt hour for generation service, and, if applicable, transmission service.
- (b) For per cent-off discounted rates, an explanation of the discount and the basis on which any discount is calculated.
- (c) For variable-rate offers ~~either of the following options:~~
 - (i) A clear and understandable formula, based on publicly available indices or data that the CRES provider will use to determine the rate that will be charged. ~~In the event that the CRES provider chooses to follow this option, The CRES provider shall~~ provide the indices or data on which the price is based must be clearly identified in the contract terms and conditions.
 - (ii) ~~A clear and understandable explanation of the factors that will cause the price to vary including any related indices and how often the price can change. In the event that the CRES provider chooses to follow this option, no early termination fee may be charged. Shall be expressed in such a manner that will enable an ordinary consumer to readily confirm that they were charged the contracted rate in accordance with the contracted formula, recalculate the rates charged on their bill to confirm the bill's accuracy, and/or compare their rate to competing offers.~~
 - (iii) Shall be provided to the customer to allow for enough time that the customer can switch to another provider or return to the utility's standard service offer.
 - (iv) The variable rate shall not exceed 2.25 times the utility's standard offer.
- (d) For offers based upon kilowatt hours, the unit price per kilowatt hour.
- (e) For flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract, how the flat-monthly rate was calculated, and publicly available resources where customers can determine how the flat-monthly rate compares with what the service would cost for the same usage under the standard service offer.
- (f) For offers that include any form introductory rate, clear identification of the initial rate that will be charged, the time period that the introductory rate will be charged, the rate that will be charged once the introductory period is over that conforms to this Rule, and the time period that the post-introductory rate will be in effect.

O.A.C. 4901:1-29-05(A) should be amended as follows:

- (A) Each retail natural gas supplier and governmental aggregator that offers competitive retail natural gas service to customers shall provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make informed cost comparisons.

* * *

- (2) For variable-rate offers, such information shall, at minimum, include:

- (a) A clear and understandable explanation of the factors that will cause the price to vary (including any related indices) ~~and~~, how often the price can change, and expressed in a manner that will enable the customer to compare the variable rate offered against other offers available.
 - (b) The amount of any other recurring or retail natural gas supplier or governmental aggregator charges.
 - (c) A statement that the retail natural gas supplier's or governmental aggregator's rate is exclusive of all applicable state and local taxes and the incumbent natural gas company's service and delivery charges.
- (3) Offers that include any form of an introductory rate shall provide a clear identification of the initial rate that will be charged, the time period that the introductory rate will be charged, the rate that will be charged once the introductory period is over, and the time period that the post-introductory rate will be in effect.

O.A.C. 4901:1-29-11(J) should be amended as follows:

All retail natural gas supplier and opt-in governmental aggregator customer contracts shall include, but not be limited to, the following information, which shall be stated in clear and understandable language:

* * *

- (J) An itemized list and explanation of all prices in clear and understandable language and all fees associated with the service such that:
- (1) For fixed-rate offers, such information shall, at minimum, include: the cost per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, for competitive retail natural gas service, if the product is based on a per-unit price, or for flat- monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract; the amount of any other recurring or nonrecurring retail natural gas supplier or opt-in governmental aggregator charges; and a statement that the customer will incur additional charges for the incumbent natural gas company's services.

- (2) For variable-rate offers, such information shall, at minimum, include the amount of any other recurring or nonrecurring retail natural gas supplier or opt-in governmental aggregator charges; a statement that the customer will incur additional charges for the incumbent natural gas company's services; and ~~either of the following options:~~

A clear and understandable formula, based on publicly available indices or data, that the retail natural gas supplier or opt-in governmental aggregator will use to determine the rate that will be charged that is expressed in such a manner that will enable an ordinary consumer to readily confirm that they were charged the contracted rate in accordance with the contracted formula, recalculate the rates charged on their bill to confirm the bill's accuracy, and/or compare their rate to competing offers.

~~(b) A clear and understandable explanation of the factors that will cause the price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, to vary (including any related indices) and how often the price can change. In the event the retail natural gas supplier or opt-in governmental aggregator chooses to follow this option, no early termination fee may be charged.~~

- (3) For offers that include any form introductory rate, clear identification of the initial rate that will be charged, the time period that the introductory rate will be charged, the rate that will be charged once the introductory period is over that conforms to this Rule, and the time period that the post-introductory rate will be in effect.
- (4) Shall be provided to the customer to allow for enough time that the customer can switch to another provider or return to the utility's default offer.
- (5) The variable rate shall not exceed 2.25 times the utility's standard offer.

Finally, consistent with the discussion above in Section II.A.9, the PUCO should require all electric and natural gas marketer contracts to disclose whether the rates are "fixed," "introductory," or "variable."

- E. To protect consumers from unconscionable charges from marketers, the PUCO should require utilities to provide shadow billing, or alternatively, marketers should be required to develop a "do not call" list for consumers who choose not to be solicited.**

Because marketers continue to charge consumers unconscionable rates for energy service, the PUCO should require all utilities to conduct "shadow billing" analyses and make the

results available to OCC and the PUCO. Further, each utility should develop an online form that permits consumers to opt out from utility sharing of consumer contact info. This will help protect consumers who do not choose to shop and who do not want solicitations from marketers.

Alternatively, marketers should be required, with PUCO oversight, to develop a "do not call" system similar to the national "Do Not Call" list, that marketers will observe to not call or visit consumers for sales. Consistent with this recommendation, O.A.C. 4901:1-21-10, and the analogous rule regarding natural gas marketers in O.A.C. 4901:1-29-09, should be amended to include the following language:

CRES [CRNGS] providers shall, in conjunction with the PUCO Staff develop a "Do Not Call" list for consumers who choose not to shop or be solicited. CRES [CRNGS] providers will observe this list and will not contact consumers on this list for the purposes of solicitation or marketing of competitive energy services.

F. The PUCO should require that marketers disclose additional information regarding management structures and affiliate relationships. O.A.C. 4901:1-24-05, 4901:1-24-11, 4901:1-27-05, 4901:1-27-11.

Under the PUCO's rules, marketers seeking to serve Ohio consumers must file an application that provides the information required by O.A.C. 4901:1-24-05(B) (for electric marketers) and O.A.C. 4901:1-27-05(B) (for natural gas marketers). These rules should be amended to require marketers to provide additional important information regarding their managerial, technical, and financial ability to serve Ohio's consumers.

First, if a would-be marketer is the affiliate of a distribution utility regulated by the PUCO, the marketer should be required to identify specifically any members of management it will share with the regulated utility. The marketer should identify the name of each shared management member and identify and describe the position the manage member will hold with each entity. The marketer should also be required to provide an explanation of how, in light of

shared management, the marketer and its affiliate distribution utility will comply with R.C. 4928.17 (regarding corporate separation) and the code of conduct set forth in the PUCO's rules, 4901:1-37-04(D).

In the FirstEnergy Advisors Certification Case (Case No. 20-103-EL-AGG), FirstEnergy Advisors, an affiliate of the regulated FirstEnergy distribution utilities, filed an application to provide competitive retail electric aggregation and brokering services. FirstEnergy Advisors' application disclosed that it would share several high-level members of management with FirstEnergy Corp. and the distribution utilities. The application did not, however, explain how FirstEnergy Advisors could satisfy the PUCO's code of conduct rules in light of the shared management's access to customer information of the regulated companies. Numerous parties, including OCC, intervened in the case and attempted to explore these issues to protect consumers. But the PUCO denied discovery and an opportunity for an evidentiary hearing, and ultimately granted FirstEnergy Advisors certificate without resolving the code of conduct issues in that case.³⁴

Currently, FirstEnergy Advisors is providing competitive brokering and aggregation service to Ohio consumers – likely with a competitive advantage over other marketers by virtue of its shared management structure with the FirstEnergy distribution utilities. The PUCO is considering these issues in the FirstEnergy Corporate Separation Audit Case. Notably, with respect to shared management the independent auditor found that all FirstEnergy Advisor employees are FirstEnergy Service Company employees and recommended that FirstEnergy

³⁴ *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, Finding an Order (April 22, 2020), appealed to the Supreme Court of Ohio, Case No. 2020-1009.

Advisors “be separated into their own organization within FirstEnergy, and not be considered a part of FESC.”³⁵ The independent auditor found that:

[I]n the past, the Commission has allowed shared staff to work for both a competitive services affiliate and distribution utilities. However, in this case [FirstEnergy Advisors] is a certified retail electric service (CRES) provider and employees are only performing competitive functions. Previously, FirstEnergy’s competitive service arm, FirstEnergy Solutions (FES), was a distinct affiliate that was not under FirstEnergy Service Company. Separating [FirstEnergy Advisors] from FESC would clarify who works for the competitive business, as currently there appears to be confusion, and would also provide an additional protection against inadvertent sharing of information. It also makes cost allocation much more straight forward avoiding any potential for cross-subsidization.³⁶

Consistent with the independent auditor’s recommendation in the Corporate Separation Audit Case, and for consumer protection, the PUCO’s rules should require marketer applicants to disclose information detailing shared management arrangements with utility affiliates regulated by the PUCO. Such information should disclose the employee’s function with each entity and explain how the code of conduct rules will be satisfied. O.A.C. 4901:1-24-05(B)(1) should be amended to read:

(B) The applicant shall complete the appropriate application form (e.g., retail electric generation provider, aggregator, power broker, or governmental aggregator) in its entirety and supply all required attachments, affidavits, and evidence of capability specified by the form at the time an application is filed.

(1) Retail electric generation providers and power marketers shall file general, technical, managerial, and financial information as set forth in the application. This information includes but is not limited to:

* * *

(f) If the applicant is an affiliate of a distribution utility regulated by the Commission, statements identifying principal officers, directors, partners, and managers that are also employed by the distribution utility. The applicant should further provide information to explain safeguards it will take to prevent cross-

³⁵ Corporate Separation Audit Report, at 70.

³⁶ *Id.* at 70-71 (internal citations omitted).

subsidization and sharing of any information that could provide the applicant with competitive advantage in serving consumers.

This provision should likewise be added to O.A.C. 4901:1-24-05(B)(2) (regarding aggregators and power brokers), O.A.C. 4901:1-27-05(B)(1) (regarding natural gas marketers), and O.A.C. 4901:1-27-05(B)(2) (regarding natural gas aggregators and brokers).

Second, the PUCO's rules currently require an applicant to disclose whether the applicant's certification to provide service has been revoked or suspended and whether there are or have been judicial actions or rulings against it.³⁷ These provisions should be expanded to require the applicant to provide the same information with respect to the applicant's affiliates and management. Some applicants may have affiliates in Ohio and other states that also provide competitive retail electric and natural gas service. Senior management of applicants could have managed marketers that have had licenses revoked or suspended or had judicial actions brought against them.

Information regarding whether affiliate entities have harmed consumers is relevant to an applicant's managerial, technical, and financial capabilities to provide service to Ohio consumers. For example, in the Verde Investigation, the PUCO Staff found that Verde's misleading and deceptive marketing practices were common among Verde's affiliates in other states and were the result of poor management and operations at the parent company level.³⁸

The rules should also include whether any members of the management team have overseen another marketer that has had a license revoked or suspended or had any judicial rulings against it. An officer of a company could easily shut down a company that has lost its

³⁷ See e.g. O.A.C. 4901:1-24-05(B)(1)(e), 4901:1-24-05(B)(2)(e), 4901:1-27-05(B)(1)(f), 4901:1-27-05(B)(2)(f).

³⁸ Verde Investigation Case, Staff Report, at 24-25; see also Verde Investigation Case, OCC Ex. 1 (Direct Testimony of Barbara Alexander).

license or been suspended and simply start another competitive marketer under a different name and continue its bad practices. Therefore, the background of marketer management must include previous marketers they have worked for and any adverse judgments against those former companies.

The PUCO's rules regarding disclosure of material changes to business operations³⁹ should be similarly amended to require marketers to notify the PUCO within 30 days of any new judgments, findings, and rulings regarding affiliates. O.A.C. 4901:1-24-11(B)(7) should read:

(B) Material changes to the information contained in or supplied with a certification or certification renewal application include, but are not limited to, the following:

* * *

(7) Any judgment, finding, or ruling by a court or regulatory agency against a CRES provider or its affiliate that could affect a CRES provider's fitness or ability to provide service in this state.

(8) Any judgment, finding, or ruling by a court or regulatory agency against a CRES provider which a principal, officer, director or partner was employed or owned by or its affiliate that could affect a CRES provider's fitness or ability to provide service in this state.

The same change should be made to O.A.C. 4901:1-27-11(B)(7).

G. The PUCO should amend the rules to allow a more thorough review of applications to market electric and natural gas service to Ohio consumers. 4901:1-24-10, 4901:1-27-10.

The PUCO should not act to approve applications for certificates to market electric or natural gas service when there is not sufficient evidence to demonstrate that the applicant has the managerial, technical, and financial capability to serve Ohio consumers. Under Ohio law, applications to market electric and natural gas service are automatically approved within 30 days

³⁹ O.A.C. 4901:1-24-11 (electric), 4901:1-27-11 (natural gas).

unless the PUCO suspends automatic approval for good cause shown.⁴⁰ If the PUCO suspends automatic approval, it must act to approve or deny the application within 90 days of the date the application was filed.⁴¹ The PUCO's rules reflect these time restrictions.⁴²

However, where the PUCO has suspended an application for good cause shown, it should not rush to approve the application because of the statutory 90-day timeframe. Rather, the PUCO should err on the side on consumer protection and deny certification when the applicant cannot demonstrate that it has the managerial, technical and financial capability to serve Ohio consumers within the 90-day timeframe. The applicant may then refile the application with sufficient evidence. To protect consumers the burden should always remain on *the applicant* to demonstrate that it is fit to serve Ohio consumers. The PUCO should not permit an applicant to market electric or natural gas service before issues regarding its managerial, technical, and financial abilities have been fully addressed.

In addition, when the PUCO has suspended automatic approval of an application for good cause shown, the PUCO should permit parties to conduct discovery regarding the suspended application. R.C. 4903.082 provides that

All parties and intervenors shall be granted ample rights of discovery. The present rules of the public utilities commission should be reviewed regularly by the commission to aid full and reasonable discovery by all parties. Without limiting the commission's discretion the Rules of Civil Procedure should be used wherever practicable.

The Supreme Court of Ohio has also recognized that the PUCO's rules should be "liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter

⁴⁰ R.C. 4928.08(B), 4929.20(A).

⁴¹ *Id.*

⁴² O.A.C. 4901:1-24-10(A), 4901:1-27-10(A).

of the pending proceeding.”⁴³ Thus, parties and intervenors should be permitted to conduct discovery regarding applications to market electric and natural gas service. A 90-day automatic approval does not give enough time for this to occur. Moreover, when the PUCO declines to set an evidentiary hearing, parties and intervenors should at least be permitted file comments regarding the suspended application for the PUCO’s consideration.

Consistent with these recommendations, O.A.C. 4901:1-24-10(A) and 4901:1-27-10(A) should be amended as follows:

- (A) If the commission does not act upon an application for certification or certification renewal within thirty days of the filing date, the application shall be deemed automatically approved pursuant to section 4928.08 of the Revised Code on the thirty-first day after the official filing date.
 - (1) Upon good cause shown, the commission, or an attorney examiner appointed by the commission, may suspend an application.
 - (2) If the commission, or an attorney examiner appointed by the commission, has acted to suspend an application, the commission will:
 - (a) Docket its decision and notify the applicant of the reasons for such suspension and may direct the applicant to furnish any additional information as the commission deems necessary to evaluate the application.
 - (b) Act to approve or deny the application within ninety calendar days from the date that the application was suspended. If the applicant has not presented sufficient information and evidence to warrant approval of the application in accordance with the PUCO’s rules within ninety days, the Commission may deny the application and direct the applicant to refile the application in order to provide the Commission with sufficient information and additional time to fully consider the application.
 - (c) At its discretion, set the matter for hearing. If the Commission does not set the matter for hearing, the Commission will allow parties to file written comments regarding the application.
 - (d) Allow parties and intervenors to conduct discovery regarding the application.

⁴³ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213, ¶¶82-83.

III. SUMMARY OF THE PUCO STAFF’S PROPOSED RULE AMENDMENTS.

As explained above, the PUCO Staff’s proposed rule changes are minor and serve to “clean up” the rules by removing redundant language. Under Chapter 24 and Chapter 27, the PUCO Staff proposed changes to rules 1-24-04/1-27-04 (Expired certificates), 1-24-08/1-27-08 (Protective Orders), 1-24-09/1-27-09 (Certificate renewals), and 1-24-12/1-27-12 (Certificate abandonment).⁴⁴

Regarding expired certificates (Rules 4901:1-24-04 and 4901:1-27-04), PUCO Staff proposed that marketers who fail to renew their certificates under O.A.C. 4901:1-24-09 or 4901:1-27-09 must be required to file a new application in the existing case certification docket number.⁴⁵ PUCO Staff also recommended that an applicant could request, within 60 days after expiration of the certificate, an extension of their certificate by 90 days while its new application is being considered.⁴⁶ This appears to shorten the previous (indefinite) period a certificate could be extended during review. OCC does not oppose either of these proposed rule changes.

Regarding protective orders (Rules 4901:1-24-08 and 4901:1-27-08), PUCO Staff proposed permitting credit reports and credit ratings to be filed under seal.⁴⁷ OCC opposes treating credit reports and credit rating information as confidential and/or trade secret to the extent this information has been previously publicly available. Credit ratings typically are not confidential or trade secret. Indeed, under Ohio law a marketer must demonstrate that it has the financial capability to serve Ohio consumers and a credit rating is a very good indication of a

⁴⁴ Case No. 17-1843-EL-ORD, et. al., Entry, Attachment E, Draft Rule O.A.C. 4901:1-24 (Sept. 8, 2021) (“Draft Rule 24”); Case No. 17-1843-EL-ORD, et. al., Entry, Attachment G, Draft Rule O.A.C. 4901:1-27 (Sept. 8, 2021) (“Draft Rule 27”).

⁴⁵ Draft Rule 24-04 at 6; Draft Rule 27-04 at 6.

⁴⁶ *Id.*

⁴⁷ Draft Rule 24-08 at 11; Draft Rule 27-08 at 12.

company's financial health. There is no basis for a blanket rule to allow the filing such information under seal and withholding it from the public.

Regarding certificate renewals (Rules 4901:1-24-09 and 4901:1-27-09), the PUCO Staff also proposed extending the filing window for changes from between 30 and 60 days to between 30 and 90 days prior to certificate expiration.⁴⁸ And also that applications filed fewer than 30 days before certificate expiration will be automatically extended 31 days beyond the renewal application date.⁴⁹ Regarding certificate abandonment (Rules 4901:1-24-12 and 4901:1-27-12), PUCO Staff proposed that applications for certificate abandonment should be filed in the existing certificate case number.⁵⁰ Lastly, PUCO Staff recommended deleting O.A.C. 4901:1-27-13(f), regarding material defaults, because the language has been moved to O.A.C. 4901:1-13-14(J).⁵¹ OCC does not object to these proposed rule changes.

Under O.A.C. 4901:1-29, PUCO Staff proposed several rule deletions where the language has been moved to O.A.C. 4901:1-13.⁵² Specifically, PUCO Staff recommended that rules O.A.C. 4901:1-29-04 (deletion of record retention requirements for incumbent gas companies);⁵³ 29-06(H)-(I) (deletion of incumbent gas company requirements regarding consumer enrollment and consent);⁵⁴ 29-08(C) (deletion of incumbent gas company requirements regarding consumer questions about certified retail natural gas service issues);⁵⁵ 29-09(C)

⁴⁸ Draft Rule 24-09 at 12; Draft Rule 27-09 at 13.

⁴⁹ *Id.*

⁵⁰ Draft Rule 24-12 at 17; Draft Rule 27-12 at 18.

⁵¹ Draft Rule 27-13 at 19.

⁵² Case No. 17-1843-EL-ORD, et. al., Entry, Attachment K, Draft Rule O.A.C. 4901:1-29 (Sept. 8, 2021) ("Draft Rule 29).

⁵³ Draft Rule 29-04 at 7.

⁵⁴ Draft Rule 29-06 at 18-19.

⁵⁵ Draft Rule 29-08 at 22.

(release of consumer information by natural gas companies);⁵⁶ and 29-13 (coordination between natural gas companies and natural gas marketers) be deleted.⁵⁷ Because this language has been moved to another PUCO rule chapter, OCC does not oppose these changes.

IV. CONCLUSION

The PUCO should give Ohioans more protection than the minor changes its Staff proposes, from abusive sales and marketing practices by energy marketers. The PUCO should clarify and update its rules governing electric and natural gas marketers consistent with OCC's recommendations for consumer protection.

Respectfully submitted,

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⁵⁶ Draft Rule 29-09 at 24-25.

⁵⁷ Draft Rule 29-13 at 39-41.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments has been served electronically upon those persons listed below this 8th day of October 2021.

/s/ Angela D. O'Brien
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Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Month	Res. Savings CAB	Com. Savings CAB	Ind. Savings CAB	Com. Savings GAS	Ind. Savings GAS	Total Monthly Choice Savings	Monthly PIPP Savings	Monthly Savings Including PIPP	Cumulative PIPP Savings	Cumulative Savings (Incl PIPP)	Cumulative Savings (Excl PIPP)
Jan-17	-\$8,602,412	-\$1,932,895	-\$23,094	-\$197,580	\$16,657	-\$10,739,324	\$0	-\$10,739,324	\$23,412,227	-\$1,421,409,259	-\$1,444,821,488
Feb-17	-\$10,479,905	-\$3,212,465	-\$45,344	-\$189,553	\$20,621	-\$13,906,646	\$0	-\$13,906,646	\$23,412,227	-\$1,435,315,906	-\$1,458,728,134
Mar-17	-\$12,403,111	-\$3,981,768	-\$66,462	-\$14,808	\$13,044	-\$16,453,105	\$0	-\$16,453,105	\$23,412,227	-\$1,451,769,011	-\$1,475,181,239
Apr-17	-\$7,152,840	-\$2,079,943	-\$33,637	-\$44,992	\$20,985	-\$9,290,427	\$0	-\$9,290,427	\$23,412,227	-\$1,461,059,438	-\$1,484,471,666
May-17	-\$4,249,551	-\$1,084,496	-\$16,756	-\$19,605	\$51,743	-\$5,318,664	\$0	-\$5,318,664	\$23,412,227	-\$1,466,378,103	-\$1,489,790,331
Jun-17	-\$2,846,544	-\$749,126	-\$12,220	-\$29,457	\$67,299	-\$3,570,047	\$0	-\$3,570,047	\$23,412,227	-\$1,469,948,150	-\$1,493,360,378
Jul-17	-\$2,432,674	-\$673,504	-\$11,964	\$17,247	\$53,984	-\$3,046,912	\$0	-\$3,046,912	\$23,412,227	-\$1,472,995,062	-\$1,496,407,290
Aug-17	-\$2,371,761	-\$675,104	-\$12,487	\$2,572	\$16	-\$3,056,763	\$0	-\$3,056,763	\$23,412,227	-\$1,476,051,825	-\$1,499,464,053
Sep-17	-\$2,539,390	-\$714,249	-\$12,382	\$5,325	\$60,276	-\$3,200,419	\$0	-\$3,200,419	\$23,412,227	-\$1,479,252,244	-\$1,502,664,472
Oct-17	-\$2,648,172	-\$744,642	-\$15,885	\$22,212	\$43,730	-\$3,342,756	\$0	-\$3,342,756	\$23,412,227	-\$1,482,595,000	-\$1,506,007,228
Nov-17	-\$7,587,488	-\$1,966,136	-\$50,909	\$30,457	\$50,781	-\$9,523,295	\$0	-\$9,523,295	\$23,412,227	-\$1,492,118,295	-\$1,515,530,523
Dec-17	-\$12,595,841	-\$3,405,446	-\$73,570	-\$42,110	\$70,159	-\$16,046,808	\$0	-\$16,046,808	\$23,412,227	-\$1,508,165,103	-\$1,531,577,331
Jan-18	-\$22,918,445	-\$6,713,323	-\$115,325	\$16,576	\$56,107	-\$29,674,409	\$0	-\$29,674,409	\$23,412,227	-\$1,537,839,513	-\$1,561,251,741
Feb-18	-\$11,398,416	-\$2,573,054	-\$37,638	\$32,141	\$35,553	-\$13,941,414	\$0	-\$13,941,414	\$23,412,227	-\$1,551,780,927	-\$1,575,193,155
Mar-18	-\$13,701,257	-\$4,102,488	-\$71,874	\$97,706	\$23,532	-\$17,754,381	\$0	-\$17,754,381	\$23,412,227	-\$1,569,535,308	-\$1,592,947,536
Apr-18	-\$14,252,376	-\$4,362,801	-\$80,331	\$48,637	\$20,711	-\$18,626,161	\$0	-\$18,626,161	\$23,412,227	-\$1,588,161,468	-\$1,611,573,696
May-18	-\$6,279,749	-\$1,859,047	-\$35,776	\$20,324	\$15,933	-\$8,138,314	\$0	-\$8,138,314	\$23,412,227	-\$1,596,299,783	-\$1,619,712,011
Jun-18	-\$2,785,837	-\$866,876	-\$13,609	\$15,332	\$43,914	-\$3,607,076	\$0	-\$3,607,076	\$23,412,227	-\$1,599,906,859	-\$1,623,319,087
Jul-18	-\$2,391,788	-\$728,416	-\$12,355	\$17,243	\$71,279	-\$3,044,037	\$0	-\$3,044,037	\$23,412,227	-\$1,602,950,896	-\$1,626,363,124
Aug-18	-\$2,370,543	-\$763,545	-\$11,058	-\$8,968	\$73,229	-\$3,080,885	\$0	-\$3,080,885	\$23,412,227	-\$1,606,031,780	-\$1,629,444,009
Sep-18	-\$2,377,345	-\$747,286	-\$11,546	\$8,187	\$48,877	-\$3,079,113	\$0	-\$3,079,113	\$23,412,227	-\$1,609,110,894	-\$1,632,523,122
Oct-18	-\$3,048,855	-\$877,058	-\$21,557	-\$8,173	\$41,244	-\$3,914,399	\$0	-\$3,914,399	\$23,412,227	-\$1,613,025,293	-\$1,636,437,521
Nov-18	-\$8,245,795	-\$2,195,153	-\$46,857	\$49,759	\$57,367	-\$10,380,680	\$0	-\$10,380,680	\$23,412,227	-\$1,623,405,972	-\$1,646,818,201
Dec-18	-\$7,107,855	-\$486,892	-\$11,127	-\$131,642	\$36,444	-\$7,701,071	\$0	-\$7,701,071	\$23,412,227	-\$1,631,107,044	-\$1,654,519,272
Jan-19	-\$14,432,062	-\$4,330,882	-\$90,482	-\$9,463	-\$117,386	-\$18,980,275	\$0	-\$18,980,275	\$23,412,227	-\$1,650,087,319	-\$1,673,499,547
Feb-19	-\$20,526,817	-\$6,533,568	-\$128,396	\$24,773	\$23,583	-\$27,140,424	\$0	-\$27,140,424	\$23,412,227	-\$1,636,251,318	-\$1,659,663,546
Mar-19	-\$17,106,315	-\$5,386,552	-\$109,858	-\$51,686	-\$1,770	-\$22,656,180	\$0	-\$22,656,180	\$23,412,227	-\$1,658,907,497	-\$1,682,319,726
Apr-19	-\$11,367,867	-\$3,623,774	-\$74,339	\$49,716	\$10,455	-\$15,005,809	\$0	-\$15,005,809	\$23,412,227	-\$1,673,913,306	-\$1,697,325,534
May-19	-\$6,410,621	-\$1,840,759	-\$28,594	\$17,288	\$30,188	-\$8,232,499	\$0	-\$8,232,499	\$23,412,227	-\$1,682,145,805	-\$1,705,558,033
Jun-19	-\$3,592,368	-\$1,200,432	-\$15,590	-\$6,574	\$26,184	-\$4,788,780	\$0	-\$4,788,780	\$23,412,227	-\$1,686,934,584	-\$1,710,346,813
Jul-19	-\$2,998,675	-\$1,087,420	-\$14,994	\$18,709	\$39,386	-\$4,042,994	\$0	-\$4,042,994	\$23,412,227	-\$1,690,977,578	-\$1,714,389,806
Aug-19	-\$2,813,061	-\$1,067,297	-\$15,342	\$18,693	\$40,760	-\$3,836,246	\$0	-\$3,836,246	\$23,412,227	-\$1,694,813,825	-\$1,718,226,053
Sep-19	-\$2,859,421	-\$1,071,283	-\$14,214	\$25,450	\$46,097	-\$3,873,371	\$0	-\$3,873,371	\$23,412,227	-\$1,698,687,196	-\$1,722,099,424
Oct-19	-\$3,348,874	-\$1,102,361	-\$19,762	\$2,084	\$44,122	-\$4,424,791	\$0	-\$4,424,791	\$23,412,227	-\$1,703,111,987	-\$1,726,524,215
Nov-19	-\$8,645,982	-\$2,655,864	-\$57,042	\$107,477	\$56,498	-\$11,194,913	\$0	-\$11,194,913	\$23,412,227	-\$1,714,306,900	-\$1,737,719,128
Dec-19	-\$16,457,094	-\$5,480,208	-\$131,140	\$96,260	\$42,802	-\$21,929,380	\$0	-\$21,929,380	\$23,412,227	-\$1,736,236,280	-\$1,759,648,508
Jan-20	-\$18,659,395	-\$6,818,494	-\$157,018	\$112,697	\$23,420	-\$25,498,789	\$0	-\$25,498,789	\$23,412,227	-\$1,761,735,069	-\$1,785,147,297
Feb-20	-\$20,153,919	-\$7,318,893	-\$164,857	\$119,648	\$8,427	-\$25,498,789	\$0	-\$27,509,594	\$23,412,227	-\$1,789,244,663	-\$1,812,656,891
Mar-20	-\$18,103,090	-\$6,385,425	-\$141,270	\$82,100	\$4,253	-\$25,498,789	\$0	-\$24,543,434	\$23,412,227	-\$1,813,788,097	-\$1,837,200,325
Apr-20	-\$13,271,864	-\$4,320,014	-\$95,686	\$60,573	\$7,402	-\$25,498,789	\$0	-\$17,619,589	\$23,412,227	-\$1,831,407,686	-\$1,854,819,914
May-20	-\$10,105,148	-\$3,022,800	-\$59,180	\$39,324	\$19,243	-\$25,498,789	\$0	-\$13,128,560	\$23,412,227	-\$1,844,536,246	-\$1,867,948,474

Month	Res. Savings CAB	Com. Savings CAB	Ind. Savings CAB	Com. Savings GAS	Ind. Savings GAS	Total Monthly Choice Savings	Monthly PIPP Savings	Monthly Savings Including PIPP	Cumulative PIPP Savings	Cumulative Savings (Incl PIPP)	Cumulative Savings (Excl PIPP)
Jun-20	-\$4,981,287	-\$1,563,980	-\$27,330	\$26,538	\$29,521	-\$25,498,789	\$0	-\$6,516,538	\$23,412,227	-\$1,851,052,783	-\$1,874,465,012
Jul-20	-\$3,427,680	-\$1,231,796	-\$19,076	\$12,545	\$34,018	-\$25,498,789	\$0	-\$4,631,990	\$23,412,227	-\$1,855,684,773	-\$1,879,097,001
Aug-20	-\$2,885,618	-\$1,016,131	-\$16,235	\$14,923	\$37,981	-\$25,498,789	\$0	-\$3,865,080	\$23,412,227	-\$1,859,549,853	-\$1,882,962,081
Sep-20	-\$2,619,833	-\$818,632	-\$10,300	\$28,296	\$18,070	-\$25,498,789	\$0	-\$3,402,399	\$23,412,227	-\$1,862,952,253	-\$1,886,364,481
Oct-20	-\$4,316,431	-\$1,409,642	-\$24,376	\$30,873	\$40,906	-\$25,498,789	\$0	-\$5,678,670	\$23,412,227	-\$1,868,630,922	-\$1,892,043,150
Nov-20	-\$5,812,412	-\$1,607,908	-\$37,387	\$62,014	\$40,068	-\$25,498,789	\$0	-\$7,355,625	\$23,412,227	-\$1,875,986,547	-\$1,899,398,775
Dec-20	-\$11,200,126	-\$3,625,383	-\$80,765	\$106,855	\$47,245	-\$25,498,789	\$0	-\$14,752,175	\$23,412,227	-\$1,890,738,722	-\$1,914,150,950

Month	Res. Savings CAB	Com. Savings CAB	Ind. Savings CAB	Com. Savings GAS	Ind. Savings GAS	Total Monthly Choice Savings	Monthly PIPP Savings	Monthly Savings Including PIPP	Cumulative PIPP Savings	Cumulative Savings (Incl PIPP)	Cumulative Savings (Excl PIPP)
Jan-21	-\$19,491,141	-\$6,666,876	-\$143,223	\$154,450	\$31,771	-\$26,115,017	\$0	-\$26,115,017	\$23,412,228	-\$1,916,853,739	-\$1,940,265,967

DUKE ENERGY OHIO**GAS SHOPPING SAVINGS (TRANSPORTATION RATES) VS DEO GCR****NOTE: PIPP ACCOUNTS ARE NOT ALLOWED TO SHOP****NOTE: SUPPLIER CHARGES INCLUDE OH SALES TAX @6.5%, RIDER CCCR, AND RIDER GSR CREDIT****NOTE: GCR, GSR, AND CCCR INCLUDE 4.89% EXCISE TAX**

Month	Res. Savings / Losses (-)	Com. Savings / Losses (-)	Ind. Savings / Losses (-)	OPA Savings / Losses (-)	Total Monthly Choice Savings / Losses (-)	Cumulative Savings / Losses (-)
Jan-19	-\$2,562,959	-\$937,166	-\$90,779	-\$41,183	-\$3,632,087	-\$3,632,087
Feb-19	-\$4,867,614	-\$1,712,828	-\$180,006	-\$86,159	-\$6,846,607	-\$10,478,694
Mar-19	-\$3,561,223	-\$1,218,817	-\$127,991	-\$62,708	-\$4,970,739	-\$15,449,433
Apr-19	-\$2,227,261	-\$852,191	-\$86,908	-\$35,171	-\$3,201,531	-\$18,650,965
May-19	-\$953,337	-\$406,296	-\$42,252	-\$15,082	-\$1,416,967	-\$20,067,931
Jun-19	-\$447,239	-\$184,489	-\$20,795	-\$3,802	-\$656,325	-\$20,724,256
Jul-19	-\$405,354	-\$191,263	-\$22,242	-\$4,775	-\$623,634	-\$21,347,890
Aug-19	-\$342,987	-\$156,394	-\$19,792	-\$3,235	-\$522,408	-\$21,870,298
Sep-19	-\$455,105	-\$246,022	-\$32,621	-\$6,581	-\$740,329	-\$22,610,627
Oct-19	-\$484,039	-\$225,535	-\$19,126	-\$8,382	-\$737,082	-\$23,347,709
Nov-19	-\$1,744,751	-\$628,085	-\$47,810	-\$37,844	-\$2,458,490	-\$25,806,199
Dec-19	-\$2,325,124	-\$660,626	-\$38,150	-\$23,526	-\$3,047,426	-\$28,853,625
Jan-20	-\$2,575,508	-\$698,792	-\$40,745	-\$26,528	-\$3,341,573	-\$32,195,198
Feb-20	-\$3,257,193	-\$937,393	-\$69,682	-\$46,962	-\$4,311,230	-\$36,506,428
Mar-20	-\$3,721,454	-\$1,200,967	-\$97,394	-\$62,941	-\$5,082,756	-\$41,589,184
Apr-20	-\$2,701,875	-\$978,349	-\$101,932	-\$62,175	-\$3,844,331	-\$45,433,515
May-20	-\$2,122,775	-\$739,334	-\$75,248	-\$42,833	-\$2,980,190	-\$48,413,705
Jun-20	-\$799,752	-\$297,740	-\$36,408	-\$13,983	-\$1,147,883	-\$49,561,588
Jul-20	-\$526,358	-\$237,527	-\$31,575	-\$9,838	-\$805,298	-\$50,366,886
Aug-20	-\$447,188	-\$202,360	-\$28,347	-\$8,903	-\$686,798	-\$51,053,684
Sep-20	-\$385,521	-\$140,813	-\$12,652	-\$5,698	-\$544,684	-\$51,598,368
Oct-20	-\$510,103	-\$159,041	-\$10,070	-\$8,553	-\$687,767	-\$52,286,135
Nov-20	-\$1,168,797	-\$356,106	-\$26,736	-\$21,015	-\$1,572,654	-\$53,858,789
Dec-20	-\$2,502,154	-\$756,777	-\$60,692	-\$44,151	-\$3,363,774	-\$57,222,563
Jan-21	-\$3,943,376	-\$1,232,228	-\$116,451	-\$76,257	-\$5,368,312	-\$62,590,875
Feb-21	-\$4,170,774	-\$1,296,475	-\$129,376	-\$83,631	-\$5,680,256	-\$68,271,131
Mar-21	-\$1,635,838	-\$348,527	-\$7,162	-\$8,214	-\$1,999,741	-\$70,270,872
Apr-21	-\$775,427	-\$140,506	\$10,578	-\$336	-\$905,691	-\$71,176,563
May-21	-\$667,456	-\$179,172	-\$16,645	-\$8,148	-\$871,421	-\$72,047,984
Jun-21	\$262,371	\$313,662	\$84,275	\$22,716	\$683,024	-\$71,364,960 Note 1
Jul-21	\$206,031	\$314,884	\$77,523	\$19,840	\$618,278	-\$70,746,681 Note 1

Note 1: GCR temporary increase related to February 2021 Texas weather event.

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Case No(s). 17-1843-EL-ORD, 17-1844-EL-ORD, 17-1862-EL-ORD, 17-1845-GA-ORD, 17-1846-GA-OR

Summary: Comments Consumer Protection Comments by Office of The Ohio Consumers'
Counsel
electronically filed by Mrs. Tracy J. Greene on behalf of O'Brien, Angela D