**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of Inspire Energy Holdings, LLC | )  ) | Case No. 23-720-GE-UNC |

**APPLICATION FOR REHEARING**

**BY**

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January 12, 2024

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of Inspire Energy Holdings, LLC | )  ) | Case No. 23-720-GE-UNC |

**APPLICATION FOR REHEARING**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

This matter involves a two-party settlement between the PUCO Staff and energy marketer Inspire Energy Holdings (“Inspire”) regarding unconscionable rates being charged to consumers and other misleading, deceptive and unconscionable practices perpetrated against Ohioans by Inspire. However, no one should be inspired by the PUCO’s ruling that deprived consumers a voice and approved a settlement without supporting testimony and without allowing evidence or argument in opposition to the settlement. OCC, the state’s consumer advocate, was denied intervention ***even though no party*** ***opposed OCC’s motion to intervene.***

To uphold its duty to consumers, the PUCO must do what is right by the consumers harmed by Inspire’s unlawful marketing in Ohio. That means the PUCO should (and must) follow the law (R.C. 4903.221) and the PUCO rules and ensure that consumer interests are not sacrificed behind closed doors. Furthermore, the PUCO must let the OCC do its job of representing consumers without unnecessary and unlawful roadblocks. The PUCO should not deny consumers a voice in this case, through their state legal advocate OCC.

The OCC calls upon the PUCO to grant a rehearing in this matter, rectify its numerous procedural errors, and ensure a fair and transparent process that includes:

* Intervention by the OCC to represent consumer interests;
* The opportunity for public testimony;
* A procedural schedule with discovery so that OCC can review the proposed settlement between the PUCO Staff and Inspire;
* The filing of testimony of at least one signatory party that supports the settlement;
* An evidentiary hearing where evidence is properly submitted and examined and parties that do not join the settlement may offer evidence and/or argument in opposition; and
* A thorough examination of the evidence and legal arguments.

Under R.C. 4903.10, OCC applies for rehearing of the Order. The PUCO’s Order was unlawful and unreasonable in the following respects:

ASSIGNMENT OF ERROR 1: The PUCO erred and abused its discretion by denying OCC’s motion to intervene to advocate for residential utility consumers served by Inspire violating R.C. 4903.221, Supreme Court of Ohio precedent in *Ohio Consumers’ Counsel v. PUC*,[[1]](#footnote-1) and O.A.C. 4901-1-11. The PUCO also erred in denying intervention and failing to otherwise consider OCC’s interests in its Order resolving the proceeding.

ASSIGNMENT OF ERROR 2: The PUCO erred by denying OCC’s motion to intervene when it unreasonably construed OCC’s interests as mere policy recommendations and ignored OCC’s recommended modifications to the settlement. The PUCO violated R.C. 4903.09 when it mistakenly construed OCC’s arguments as it rendered an opinion without record support.

ASSIGNMENT OF ERROR 3: The PUCO erred when it failed to establish a procedural schedule, providing for due process for Inspire’s consumers including the opportunity for discovery and an evidentiary hearing. The PUCO unreasonably deprived Ohio residential consumers the opportunity to be heard through their state legal advocate, OCC, regarding the settlement between the PUCO Staff and Inspire. And the PUCO, by failing to hold a hearing violated 4901:1-23-05 and 4901:1-34-06 and deprived members of the public, not parties to the proceeding, the opportunity to offer testimony, violating 4901-1-27(C). The PUCO also did not comply with its own rules related to settlements (4901-1-30(D)) that requires parties who file a stipulation to file or provide testimony of at least one signatory party that supports the stipulation.

ASSIGNMENT OF ERROR 4: The PUCO erred in relying on *Ohio Domestic Violence Network v. Pub. Util. Comm.*, 70 Ohio St.3d 311, 638 N.E.2d 1012 (1994) in denying the OCC intervention, when more recent Supreme Court of Ohio precedent, *Ohio Consumers’ Counsel v. PUC*, 2006-Ohio-5853 overrules that case and provides that intervention should be liberally allowed even where the PUCO does not require a hearing.

ASSIGNMENT OF ERROR 5: The PUCO erred in finding the stipulation reasonable and in finding that the settlement meets the PUCO’s three prong test for approving settlements.

ASSIGNMENT OF ERROR 6: The PUCO erred in permitting its Staff to circumvent its rules and the laws intended to allow for public proceedings, documents and records, violating R.C. 4901.12.

The reasons for OCC’s Application for Rehearing are explained more fully in the following memorandum in support.

Respectfully submitted,

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**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| In the Matter of Inspire Energy Holdings, LLC | )  ) | Case No. 23-720-GE-UNC |

**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# INTRODUCTION

The case involves a settlement entered into by the PUCO’s Staff and marketer Inspire to resolve issues of unfair, deceptive, and unconscionable acts and practices that the PUCO Staff uncovered in its investigation of Inspire. The PUCO’s investigation uncovered evidence of misleading or deceptive statements to Inspire customers and instances of Inspire charging unconscionably high rates –some as high as $699.99 a month for service![[2]](#footnote-2)

Despite the breadth and depth of the violations uncovered by the PUCO Staff, and the harm to consumers, the PUCO Staff and Inspire managed to reach agreement. Their settlement agreement was filed on Sept. 5, 2023 with the PUCO opening up a docket to accept the settlement with a case number being assigned –23-0720-GE-UNC.

The PUCO Staff and Inspire negotiated and agreed to the settlement behind closed doors before the issues ever reached the public docket. This was the beginning of the dark and disturbing PUCO settlement process purposely shielded from public scrutiny, without the input of the consumers who were harmed by Inspire and should have had a say. That process violated R.C. 4901.12 which ensures that all PUCO proceedings and documents in its possession are public.

The cloud of secrecy darkened when the PUCO denied OCC intervention, based on its disingenuous denial of OCC’s motion to intervene. ***No party even opposed OCC’s intervention!*** And given that the OCC meets every provision of R.C. 4903.221 and Ohio Adm. Code 4901-1-11 for intervention – the PUCO’s denial of intervention to OCC to protect consumers is unlawful and unreasonable.

This shadowy process then ended with the PUCO’s rubber-stamp approval of the settlement with *no evidence whatsoever* to support the settlement, but for the self-serving statements in the settlement itself. No party to the settlement filed or provided testimony in support of the settlement, violating O.A.C. 4901-1-30(D). And OCC, who was wrongfully denied party status, was precluded from offering evidence and/or argument opposing the settlement.

Ohio consumers deserve better from their public officials. They deserve a fair and transparent process. They deserve a PUCO that abides by the law instead of side-stepping it. The PUCO should grant rehearing and modify the Order consistent with OCC’s recommendations.

# ASSIGNMENTS OF ERROR

## ASSIGNMENT OF ERROR 1: The PUCO erred and abused its discretion by denying OCC’s motion to intervene to advocate for residential utility consumers served by Inspire violating R.C. 4903.221, Supreme Court of Ohio precedent in *Ohio Consumers’ Counsel v. PUC*,[[3]](#footnote-3) and O.A.C. 4901-1-11. The PUCO also erred in denying intervention and failing to otherwise consider OCC’s interests in its Order resolving the proceeding.

In this matter, the PUCO denied OCC’s motion to intervene, finding the “OCC’s intervention in this case would not advance an expeditious resolution of the proceeding or significantly contribute to the development of the record in this case.”[[4]](#footnote-4) The PUCO’s decision to exclude OCC was unlawful and rehearing should be granted.

Intervention in PUCO matters is governed by R.C. 4903.221, which provides that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. There is no question that residential utility consumers could be adversely affected in this case concerning marketer Inspire’s alleged misleading and deceptive acts and practices.

In ruling on a motion to intervene, R.C. 4903.221(B) requires the PUCO to consider the following criteria (1) the nature and extent of the prospective intervenor's interest, (2) the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, (3) whether the intervention will unduly prolong or delay the proceeding, and (4) whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues. OCC’s motion to intervene fully explains how these standards are satisfied, and no party filed a memorandum contra OCC’s motion arguing otherwise.

The Ohio Supreme Court has interpreted the intervention statute to require the PUCO to grant intervention liberally and found that the PUCO abuses its discretion when it does not do so.[[5]](#footnote-5) More specifically, the Court found OCC should be granted liberal intervention when 1) the matter before the Commission could adversely affect the rights of residential consumers, 2) the Consumers’ Counsel's interests were not represented by any other party to the proceedings, and 3) there is no suggestion in the record that intervention would have unduly delayed the proceedings or caused prejudice to any party then the OCC should be granted liberal intervention.[[6]](#footnote-6)

But the PUCO did not liberally construe the statute. Instead, the PUCO denied intervention after finding that OCC failed to satisfy prongs 3 and 4 of R.C. 4903.221(B). That PUCO ruling is factually incorrect.

With respect to the last two criteria, OCC plainly stated in its memoranda the following:

* “OCC’s intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest”;[[7]](#footnote-7) and
* “OCC’s intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.”[[8]](#footnote-8)

OCC also explained how the settlement between the PUCO Staff and Inspire will adversely affect consumers and violate PUCO precedent. For example, the OCC stated in its memoranda the following:

1. The OCC had unrepresented interest in that it solely represents residential consumers.[[9]](#footnote-9) The PUCO Staff, by contrast, also represents the interests of marketers (like Inspire) and business and industrial consumers;
2. The “OCC’s advocacy for residential consumers will include advancing the position that Inspire Energy must comply with Ohio law and the PUCO’s rules when it markets electric and natural gas service to consumers. OCC’s position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities’ rates and service quality in Ohio;”[[10]](#footnote-10)
3. The “[s]ettlement signed by Inspire and PUCO Staff should be modified in such a manner as to deter Inspire Energy and other marketers from offering future unconscionable rates;”[[11]](#footnote-11) and
4. The OCC sought to scrutinize the adequacy of the stipulation to address the alleged unconscionable rates charged by Inspire, similar to what the Commission itself did in *Smart Energy[[12]](#footnote-12)* matter.[[13]](#footnote-13)

Accordingly, the OCC sought intervention to address the reasonableness of the settlement and to provide input, on behalf of consumers, as to whether the settlement should be adopted. And scrutinizing whether the stipulation was reasonable and should be adopted goes to the proclaimed essence of the PUCO’s Order -- “we focus our attention to the concrete issue at hand: whether the Settlement Agreement between Staff and Inspire Energy docketed in this proceeding is reasonable.”[[14]](#footnote-14)

The PUCO should have granted OCC intervention. OCC had every right, in line with its statutory duty to represent consumers in this very type of matter,[[15]](#footnote-15) to intervene and participate in this proceeding where consumers interests were at issue. OCC easily met all four prongs of R.C. 4903.221(B).

The PUCO abused its discretion when it denied OCC’s intervention. It failed to follow Supreme Court precedent which requires intervention to be liberally granted. And to make matters worse, the PUCO failed to even consider OCC’s interests when it ruled on the Settlement. The PUCO erred. Rehearing should be granted.

## ASSIGNMENT OF ERROR 2: The PUCO erred by denying OCC’s motion to intervene when it unreasonably construed OCC’s interests as mere policy recommendations and ignored OCC’s recommended modifications to the settlement. The PUCO violated R.C. 4903.09 when it mistakenly construed OCC’s arguments as it rendered an opinion without record support.

In denying OCC’s intervention in this case, the PUCO misconstrued OCC’s arguments as to why consumers are adversely affected by the settlement. It mistakenly considered OCC’s arguments as mere “policy recommendations” that would unduly prolong the proceedings.[[16]](#footnote-16) The PUCO’s decision amounts to a mistake which lacks record support, violating R.C. 4903.09. The PUCO’s order was thus unlawful.

The PUCO’s misplaced emphasis on policy remarks as a reason to deny intervention is a mistake. OCC’s discussion of relevant policies *to protect consumers* did not unduly expand the scope of the proceeding. To the contrary, OCC’s specific recommendations were written to be applied to Inspire’s settlement*.[[17]](#footnote-17) OCC was advocating for the settlement to be modified with Inspire removing its unconscionable prices from comparison websites.* The PUCO was just plain wrong to characterize OCC’s recommendations as outside of the scope of the proceeding. And it was unjust and unreasonable, based on that mistaken, unsupported premises, to deny OCC intervention. The PUCO’s decision is without record support and thus violates R.C. 4903.09. Rehearing should be granted.

## ASSIGNMENT OF ERROR 3: The PUCO erred when it failed to establish a procedural schedule, providing for due process for Inspire’s consumers including the opportunity for discovery and an evidentiary hearing. The PUCO unreasonably deprived Ohio residential consumers the opportunity to be heard through their state legal advocate, OCC, regarding the settlement between the PUCO Staff and Inspire. And the PUCO, by failing to hold a hearing violated 4901:1-23-05 and 4901:1-34-06 and deprived members of the public, not parties to the proceeding, the opportunity to offer testimony, violating 4901-1-27 (C). The PUCO also did not comply with its own rules related to settlements (4901-1-30(D)) that requires parties who file a stipulation to file or provide testimony of at least one signatory party that supports the stipulation.

The PUCO erred by failing to establish a procedural schedule that allows for appropriate due process in this case by allowing discovery to be conducted as required by R.C. 4903.082,[[18]](#footnote-18) testimony to be filed, and a public hearing to be held to develop a complete record that will assist the PUCO in a full and fair consideration of the Application.[[19]](#footnote-19) The PUCO routinely relies on testimony in contested cases and a hearing is an important part of any contested matter before the PUCO.

The PUCO’s rules and Ohio law permit ample discovery in PUCO proceedings.[[20]](#footnote-20) Ohio Adm. Code 4901-1-16(H) plainly allows discovery to begin upon the filing of a motion to intervene, even before it is granted. Ohio Adm. Code 4901-1-17(A) further provides that “discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible.” In the instant case, the PUCO should have afforded OCC ample rights to discovery to allow OCC to produce evidence regarding the reasonableness of the settlement reached by Inspire and Staff.[[21]](#footnote-21) Without an opportunity to conduct discovery and present their case at a hearing and be heard, there is not a fully developed record for the PUCO to rely upon.

The PUCO has long held that it is in the public interest for it “to base its decisions on as full and complete a record as possible.”[[22]](#footnote-22) Accordingly, settlement should have been subject to a full hearing where all parties offered testimony and cross-examined witnesses regarding the settlement. Such a hearing would have allowed due process for the parties and resulted in the development of a record upon which the PUCO should base its decision.

Not only did the PUCO fail to provide due process for Inspire’s consumers, it failed to follow its own rules as set forth under the Ohio Administrative Code that are applicable to proceedings involving a marketers non-compliance with Ohio law and PUCO rules.

Rule Violation #1: No Testimony was filed or provided supporting the stipulation. The first clue can be found in the Stipulation itself[[23]](#footnote-23) where PUCO Staff and Inspire refer to the stipulation as being governed by O.A.C. 4901-1-30. Under that rule (subsection (D)), unless otherwise ordered, parties who file a stipulation “must file or provide the testimony of at least one signatory party that supports the stipulation.” Here there was no order otherwise. And there was no testimony filed or provided by either the PUCO Staff or Inspire.

Next, we look to the PUCO rules that govern the PUCO proceedings where energy marketers’ compliance with rules and laws is at issue. Electric marketers’ compliance with marketing rules and laws are governed by O.A.C. 4901:1-23-05. Gas marketers’ compliance with marketing rules and laws are governed by O.A.C. 4901:1-34-05. Both sets of rules contain nearly identical language.

Under section (A) of both the gas and electric marketing rules, the commission “may initiate a compliance *or other proceeding* upon its own initiative, *or after an incident has occurred*, after a complaint is filed pursuant to section 4905.26 of the Revised Code, or *after a staff notice of noncompliance is served*.” The settlement filing on September 5, 2023 created an “*other proceeding*” that the PUCO initiated a*fter an incident has occurred (consumer complaints)* and *after a staff notice of noncompliance was served*.

Rule violation #2: No evidentiary hearing was held. The remaining sections of both the electric and gas marketing compliance proceedings provide further direction to the PUCO, direction that was not followed in this proceeding. Under section (B) “such compliance *or other proceedings*” are to be conducted in accordance with Chapter 4901-1 of the administrative code, which includes the Stipulation testimony requirement of 4901-1-30. (As discussed above, this rule was not followed).

Under Section (D), the PUCO must hold an evidentiary hearing “on all proceedings initiated under this rule.” Section (D) further provides that the hearing may include evidence on issues of proposed corrective action, compliance orders, forfeitures and other remedies. The PUCO failed to order an evidentiary hearing.

Rule violation #3: The PUCO failed to allow members of the public to offer testimony. As explained supra, compliance or other proceedings involving customer complaints about marketers or proceedings following a staff notice of non-compliance are to be conducted in accordance with Chapter 4901-1 of the administrative code.[[24]](#footnote-24) Under O.A.C. 4901-1-27, attorney examiners “shall permit members of the public that are not parties to the proceeding, the opportunity to offer testimony at the portion or session of the hearing designated for the taking of public testimony.” The PUCO failed to offer this opportunity to the public.

This clear violation of due process and PUCO rules renders the Commission's approval of the stipulation in error. The PUCO should grant rehearing. It should grant OCC intervention, schedule new proceedings that afford due process for parties, require the filing of testimony in support of the stipulation, conduct an evidentiary hearing, and permit the public an opportunity to testify. Then once there is a fully developed record before it, the PUCO can assess whether the Inspire/PUCO Staff settlement is just and reasonable and meets the three-prong stipulation standard. Any action short of that is unjust, unreasonable and unlawful.

## ASSIGNMENT OF ERROR 4: The PUCO erred in relying on *Ohio Domestic Violence Network v. Pub. Util. Comm.*, 70 Ohio St.3d 311, 638 N.E.2d 1012 (1994) in denying the OCC intervention, when more recent Supreme Court of Ohio precedent, *Ohio Consumers’ Counsel v. PUC*, 2006-Ohio-5853 overrules that case and provides that intervention should be liberally allowed even where the PUCO does not require a hearing.

The PUCO erred by relying on *Ohio Domestic Violence Network* as a basis for denying OCC intervention. Rehearing should be granted.

*Ohio Consumers’ Counsel v. PUC[[25]](#footnote-25)* supersedes *Ohio Domestic Violence Network[[26]](#footnote-26)* on the crucial issue of the PUCO’s authority to deny intervention when it does not hold a hearing. As clearly stated in *Ohio Consumers’ Counsel v. PUC*, *Ohio Domestic Violence Network* is inapplicable when there are no concerns about delay and OCC has no other recourse for challenging the PUCO’s actions.[[27]](#footnote-27) And such is the case in the current matter.

Any concern on delay is misguided as discussed supra. There is no delay associated with addressing OCC’s recommended modification to the settlement. The delay the PUCO was concerned with just isn’t present. And OCC does not have recourse for challenging the PUCO, contrary to the PUCO assertions otherwise. Delisting Inspire’s offers that are more than 2.5 times the standard offer was a specific modification proposed by OCC to the settlement. OCC loses the opportunity to advocate for that remedy associated with Inspire’s noncompliance with PUCO rules and laws if it is not able to raise the issue in this proceeding.

In such scenarios, *Ohio Consumers’ Counsel v. PUC* controls and is precedent that PUCO must follow. Under *Consumers’ Counsel* the Ohio Supreme Court ruled that intervention should be liberally granted even if there is no hearing scheduled.[[28]](#footnote-28) According to the Court, “[i]ntervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO.”[[29]](#footnote-29)

Rehearing should be granted.

## ASSIGNMENT OF ERROR 5: The PUCO erred in finding the stipulation reasonable and in finding that the settlement meets the PUCO’s three-prong test for approving settlements.

The PUCO lacked the necessary record evidence to assess the Stipulation's reasonableness because it failed to hold any proceedings or require the signatory parties to file or submit testimony in the proceeding. However, even a cursory review of the procedural record reveals the Stipulation's inherent deficiencies. For a stipulation to be deemed reasonable, it must meet three criteria:

1. Product of Serious Bargaining: It must represent the outcome of good-faith negotiations between capable and knowledgeable parties.
2. Public Benefit: It must demonstrably benefit both ratepayers and the public interest as a whole.
3. Regulatory Compliance: It must not violate any essential regulatory principles or practices.[[30]](#footnote-30)

The Stipulation demonstrably fails the first criterion. It cannot be considered the product of serious bargaining because it was reached by Inspire and PUCO staff before the case was even docketed. This intentional exclusion of potentially affected persons, including the OCC, ensured that the affected and significant class of customers (residential consumers) were entirely absent from the settlement discussions. That was wrong.

Such exclusionary tactics have been explicitly condemned by the Supreme Court.[[31]](#footnote-31) Under such circumstances, the Stipulation cannot be considered the outcome of fair and balanced negotiations. It fails the first prong.

The Settlement also is not in the public interest because its provisions fail to protect consumers. The unchallenged stipulation leaves consumers vulnerable to repeated harm by failing to adequately address Inspire's deceptive marketing practices. It allows Inspire to resume offering low introductory rates without any restrictions on duration or subsequent price hikes.[[32]](#footnote-32) It allows Inspire to offer unconscionable rates and advertise those rates on the PUCO’s apples to apples website. As explained in OCC’s motion to intervene, the PUCO should delist Inspire offers that are more than 2.5 times the standard offer. Additionally, the stipulation gives Inspire unilateral discretion to handle future complaints related to these rates, raising concerns about accountability and transparency.[[33]](#footnote-33) Furthermore, the $160,000 forfeiture lacks clarity, failing to specify the scope of violations it covers (i.e. days of violations), making it difficult to assess its effectiveness as a deterrent.[[34]](#footnote-34) Lastly, though not exhaustive, the onus is placed on consumers to request a rate adjustment, instead of the stipulation automatically providing fairer rates, further disadvantaging vulnerable customers.[[35]](#footnote-35) The Stipulation thus, does not benefit the public and is not in the public interest.

The stipulation also violates prong three. It is the legal duty of the PUCO and its Staff to protect consumers from unconscionable rates charged by marketers like Inspire.[[36]](#footnote-36) Again, the stipulation fails to protect consumers from unconscionable rates by allowing Inspire to continue to operate in Ohio and continue to market its prices on apples-to-apples websites. The PUCO has been granted legal discretion (which it should not abuse) to issue forfeitures that act as a deterrent and are appropriate for the scope of violations committed.[[37]](#footnote-37) Again, the $160,000 forfeiture lacks clarity, failing to specify the scope of violations it covers (i.e. days of violations, number of consumers impacted), making it difficult to assess its effectiveness as a deterrent.[[38]](#footnote-38) Furthermore, the scope of the violations was not explained in the amended probable notice of non-compliance that PUCO relied on to approve the forfeiture.[[39]](#footnote-39) The PUCO can’t be sure that it did not abuse its discretion. It is a legal principle that stipulations result from an open process.[[40]](#footnote-40) Yet, this stipulation is the result of a closed process. Ohio Adm. Code 4901-1-30 (A) says “Any two or more parties may enter into a written or oral stipulation concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding.” (emphasis added). Negotiations were had before there were parties, without proceedings, and outside of the knowledge of the public before this case was initiated. And OCC (advocate for residential consumers) was denied intervention to challenge the stipulation. The Stipulation thus, violated essential regulatory principles and practices.

## ASSIGNMENT OF ERROR 6: The PUCO erred in permitting its Staff to circumvent its rules and the laws intended to allow for public proceedings, documents and records, violating R.C. 4901.12.

The “procedural history” of this matter all took place outside of the eyes of the public. As provided in the Settlement:

* On September 8, 2022, the Staff issued a notice of probable non-compliance (“Initial PNC Letter”) outlining alleged violations of the Ohio Administrative Code by Inspire. The Initial PNC Letter was issued after Staff’s review of certain documents submitted by Inspire and following the Staff’s investigation of certain complaints from Ohio Consumers.[[41]](#footnote-41)
* The Parties met in person on September 21, 2022, to discuss the Initial PNC Letter and the steps already taken by Inspire to address Staff’s concerns.[[42]](#footnote-42)
* On September 23, 2022, Inspire submitted to Staff an initial written response to the Initial PNC Letter.[[43]](#footnote-43)
* Inspire subsequently provided additional materials to Staff on October 7, 2022.[[44]](#footnote-44)
* During the Parties’ settlement discussions, and in response to certain additional information, Staff issued the Amended PNC Letter on January 17, 2023.[[45]](#footnote-45)
* On January 31, 2023, Inspire submitted to Staff its written response to the Amended PNC Letter.[[46]](#footnote-46)
* The Parties met again in person on February 28, 2023, to discuss the Amended PNC Letter.[[47]](#footnote-47)
* Inspire subsequently provided additional materials to Staff on March 8, 2023, and April 7, 2023.[[48]](#footnote-48)
* The Signatory Parties have engaged in settlement negotiations with the understanding that Inspire has already implemented or is in the process of implementing the corrective actions agreed to in this Stipulation, which the Signatory Parties believe resolve all of Staff’s concerns raised in the Amended PNC Letter.[[49]](#footnote-49)

A year-long clandestine process taints this case. From September 2022 to April 2023, Inspire and PUCO Staff engaged in private discussions and document exchanges concerning alleged violations, culminating in a settlement only filed in September 2023. This secrecy deprived OCC and other potential intervenors of a year's worth of discovery, intervention opportunities, and access to public records – rights guaranteed by R.C. 4901.12.[[50]](#footnote-50)

R.C. 4901.12 mandates public access to PUCO proceedings and documents. By circumventing this statute, Inspire, Staff, and ultimately the PUCO through its acceptance, erected a wall of secrecy around crucial proceedings. This illegal maneuver denied OCC and others the right to participate and scrutinize the case, undermining public trust and violating the very purpose of open government.

To remedy this injustice and uphold the principles of transparency and fairness, a rehearing is not just warranted – it is imperative. Only through a public and documented process can OCC and the public properly assess the Settlement and ensure a just outcome.

# CONCLUSION

For the reasons explained above, and to protect consumers, the PUCO should grant rehearing to modify the order consistent with OCC’s recommendations.

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 12th day of January 2024.

*/s/ Robert Eubanks*

Robert Eubanks

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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1. *Ohio Consumers' Counsel v. PUC*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940. [↑](#footnote-ref-1)
2. Stipulation (Exhibit A) at p. 2. [↑](#footnote-ref-2)
3. *Ohio Consumers' Counsel v. PUC*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940. [↑](#footnote-ref-3)
4. *In the Matter of Inspire Energy Holdings, LLC*, Case No. 23-720-GE-UNC, Finding and Order (December 13, 2023) at p. 7. [↑](#footnote-ref-4)
5. *Ohio Consumers' Counsel v. PUC*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940. [↑](#footnote-ref-5)
6. *Ohio Consumers' Counsel v. PUC, supra. at ¶*19. [↑](#footnote-ref-6)
7. Case No. 23-720, OCC Motion to Intervene (September 29, 2023) at p. 4. [↑](#footnote-ref-7)
8. *Id*. [↑](#footnote-ref-8)
9. *Id*. at p. 2. [↑](#footnote-ref-9)
10. *Id*. [↑](#footnote-ref-10)
11. *Id*. at pp. 2-3. [↑](#footnote-ref-11)
12. *In the Matter of the Commission’s Consideration of a Settlement Agreement between Smart Energy*

    *Holdings, LLC and the Commission’s Staff (Smart Energy),* Case No. 23-601-EL-UNC, Finding and Order (August 23, 2023) at ¶1 and 8. [↑](#footnote-ref-12)
13. Case No. 23-720, OCC Motion to Intervene (September 29, 2023) at pp. 3. [↑](#footnote-ref-13)
14. Case No. 23-720, Finding and Order (December 13, 2023) at ¶ 12. [↑](#footnote-ref-14)
15. *See* R.C. 4911.02. [↑](#footnote-ref-15)
16. Order, at ¶ 12. [↑](#footnote-ref-16)
17. Case No. 23-720, OCC Motion to Intervene (September 29, 2023) at p. 2-3 - The “[s]ettlement signed by Inspire and PUCO Staff should be modified in such a manner as to deter Inspire Energy and other marketers from offering future unconscionable rates.” [↑](#footnote-ref-17)
18. *See* R.C. 4903.82 (“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.”) [↑](#footnote-ref-18)
19. *See* R.C. 4903.09 (providing that the PUCO must include "a transcript of all testimony" in its written opinion in a contested case); see also Ohio Adm. Code 4901:1-27-10(A)(2)(c). [↑](#footnote-ref-19)
20. R.C. 4903.082, Ohio Adm. Code 4901-1-16(A), Ohio Adm. Code 4901-1-16(B). [↑](#footnote-ref-20)
21. *See Ohio Consumers’ Counsel v. PUC* (2006) 111 Ohio St.3d 300, 320-22 (finding that the PUCO erred in denying OCC’s motion to compel discovery and finding that Ohio law allows broad and ample discovery rights). [↑](#footnote-ref-21)
22. *In the Matter of the Application of Columbus & Southern Ohio Elec. Co. for Auth. to Amend & to Increase Certain of Its Rates & Charges for Elec. Serv.. in the Matter of the Application of Columbus & Southern Ohio Elec. Co. for Auth. to Amend & to Increase Certain of Its Rates & Charges for Elec. Serv. in Various Municipalities in Franklin Cty., Ohio.*, 1976 WL 408123, \*2, Case No. 74-760-EL-AIR, Interim Order (May 27, 1976). [↑](#footnote-ref-22)
23. Stipulation at 1. [↑](#footnote-ref-23)
24. O.A.C. 4901:1-23-05 (B); 4901:1-24-06(B). [↑](#footnote-ref-24)
25. *Ohio Consumers' Counsel v. PUC*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940 [↑](#footnote-ref-25)
26. *Ohio Domestic Violence Network v. Pub. Util. Comm.* (1994), 70 Ohio St. 3d 311, 315, 1994 Ohio 165, 638 N.E.2d 1012. [↑](#footnote-ref-26)
27. *Ohio Consumers' Counsel v. PUC*, supra. at ¶ 19. [↑](#footnote-ref-27)
28. *Id*. at ¶ 20. [↑](#footnote-ref-28)
29. *Id*. [↑](#footnote-ref-29)
30. *See* *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123, 126, 1992 Ohio 122, 592 N.E.2d 1370, and *AK Steel Corp. v. Pub. Util. Comm.* (2002), 95 Ohio St.3d 81, 82-83, 2002 Ohio 1735, 765 N.E.2d 862. [↑](#footnote-ref-30)
31. *Time Warner Axs v. PUC of Ohio, 75 Ohio St. 3d 229, 233 n. 2 (1996).* [↑](#footnote-ref-31)
32. Case No. 23-720, Finding and Order (December 13, 2023) at p. 4. [↑](#footnote-ref-32)
33. *Id*. [↑](#footnote-ref-33)
34. *Id*. at 5, See also R.C. 4905.54 - the public utilities commission may assess a forfeiture of not more than ten thousand dollars for each violation. “Each day's continuance of the violation or failure is a separate offense.”  [↑](#footnote-ref-34)
35. *Id*. at p. 5. [↑](#footnote-ref-35)
36. R.C. 4928.02 (A) and (C). [↑](#footnote-ref-36)
37. R.C. 4905.54. [↑](#footnote-ref-37)
38. *Id*. at 5, See also R.C. 4905.54 - the public utilities commission may assess a forfeiture of not more than ten thousand dollars for each violation. “Each day's continuance of the violation or failure is a separate offense.”  [↑](#footnote-ref-38)
39. Stipulation (Exhibit A). [↑](#footnote-ref-39)
40. Ohio Adm. Code 4901-1-30. [↑](#footnote-ref-40)
41. Stipulation at p. 3 [↑](#footnote-ref-41)
42. *Id*. [↑](#footnote-ref-42)
43. *Id*. [↑](#footnote-ref-43)
44. *Id*. [↑](#footnote-ref-44)
45. *Id*. [↑](#footnote-ref-45)
46. *Id*. [↑](#footnote-ref-46)
47. *Id*. [↑](#footnote-ref-47)
48. *Id*. [↑](#footnote-ref-48)
49. *Id*. [↑](#footnote-ref-49)
50. R.C. 4901.12, states that “Except as provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX of the Revised Code, all proceedings of the public utilities commission and all documents and records in its possession are public records.” [↑](#footnote-ref-50)