BEFORE

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Review of the Commission’s Review of its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code.. | ))))) | Case No. 17-1842-EL-ORD |

**APPLICATION FOR REHEARING**

**BY**

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March 27, 2020 (Willing to accept service by e-mail)

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**APPLICATION FOR REHEARING**

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**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

 On February 26, 2020, the Public Utilities Commission of Ohio (“PUCO”) issued its Finding and Order adopting amendments to Ohio Administrative Code Chapter 4901:1-10 regarding the PUCO’s rules for electrical safety and service standards.[[1]](#footnote-2) These rules represent the minimum service and safety standards that Ohio’s electric utilities are required to provide to Ohio’s electric utility customers, and serve a critical purpose in promoting the state policy that consumers have adequate, reliable, safe, and efficient electric service.[[2]](#footnote-3)

 While the PUCO’s Order made important strides in several areas in improving the transparency in the reporting of electric reliability performance data, key areas of the rules that were identified in the Comments[[3]](#footnote-4) and Reply Comments[[4]](#footnote-5) filed by the Office of the Ohio Consumers’ Counsel (“OCC”) were not adopted. There are four key issues OCC identified in the Order that harm consumers and therefore necessitate this Application for Rehearing.

 The PUCO’s February 26, 2020 Order is unreasonable and unlawful for the following reasons:

ASSIGNMENT OF ERROR 1: The PUCO erred by unreasonably rejecting OCC’s proposal requiring electric distribution utilities to record shadow billing data, and to make such data publicly available.

ASSIGNMENT OF ERROR 2: The PUCO’s Order was unreasonable because it failed to give consumers the right to request a block on their account so that their electric service is not switched to a marketer.

ASSIGNMENT OF ERROR 3: The PUCO erred, in violation of R.C. 4928.10, by not prohibiting the inclusion of non-utility (non-jurisdictional) charges for goods and services on the bills that consumers receive from electric distribution utilities.

**ASSIGNMENT OF ERROR 4: The PUCO erred by not prohibiting the electric utilities from releasing customer contact information to energy marketers unless consumers opt-in to the release of their personal information.**

The reasons in support of this Application for rehearing are set forth in the accompanying memorandum in support. The PUCO should grant rehearing and modify its Entry.

Respectfully submitted,

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Ohio Consumers’ Counsel

*/s/ Amy Botschner O’Brien*

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**MEMORANDUM IN SUPPORT**

# INTRODUCTION

Under the PUCO’s Order, consumers are not protected in several key areas. The PUCO unreasonably failed to adopt a recommendation from its own Staff and supported by OCC[[5]](#footnote-6) that would allow electric utility customers to place a block on their account to prevent switching to or from a marketer. This provision is needed now more than ever, especially given the PUCO’s recent dismal experiences with unscrupulous marketers.[[6]](#footnote-7) The PUCO also unreasonably failed to require shadow-billing data to be recorded and made available to inform customers of the total savings (or lack of savings)[[7]](#footnote-8) that shopping customers are realizing.

In addition, the Order fails to limit the types of non-jurisdictional charges that can be included on customers’ electric bills. And the rules provide consumers with no readily available remedy to dispute the non-jurisdictional charges on the bill. Nowhere in R.C. 4928.10, R.C. 4905, R.C. 4909 or in any other statute is the PUCO vested with the responsibility or authority to establish rules that authorize non-jurisdictional charges to be included on a regulated electric bill. Finally, the PUCO erred in not prohibiting the electric utilities from releasing customer contact information to energy marketers unless consumers opt-in to the release of their personal information.

# STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute provides that within 30 days after issuance of a PUCO order “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.” OCC filed a motion to intervene in this proceeding, which was granted.[[8]](#footnote-9)

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

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “[i]f, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.”

The statutory standard for modifying a portion of the Order is met here. The PUCO should grant rehearing and modify the Order because the PUCO’s ruling was unreasonable and unlawful as described below.

# ERROR

## ASSIGNMENT OF ERROR 1: The PUCO erred by unreasonably rejecting OCC’s proposal requiring electric distribution utilities to record shadow billing data, and to make such data publicly available.

The PUCO found that OCC’s shadow billing requirement is unnecessary because the price-to-compare is already on customers’ bills and that customers themselves can calculate savings or losses related to their experience in the energy market without the need for electric distribution utilities (EDUs) to provide them such data in a report.[[9]](#footnote-10) The PUCO further noted that the applicable standard service offer (“SSO”) rate is displayed on the PUCO’s “apples to apples” website.[[10]](#footnote-11) The PUCO’s finding that shadow billing is “unnecessary” was unjust and unreasonable because that decision does not adequately protect consumers.

Shadow-billing data compares the difference between the utility’s SSO and the rates charged by marketers to determine the total savings or losses by shopping for generation service from a marketer.[[11]](#footnote-12) OCC’s proposal that shadow-billing data be recorded by the EDUs and made available to the PUCO, OCC, and the general public in order to clearly inform customers of the relative total losses or savings being realized in the acquisition of generation commodity service.[[12]](#footnote-13)

Ohio law explicitly requires consumers to be provided adequate, reliable, safe, efficient, nondiscriminatory access to reasonably priced retail electric service.[[13]](#footnote-14) Yet the PUCO denied consumers this important protection proposed by OCC, thus preventing relevant information and transparency from entering the Ohio retail energy market. Shadow billing would assist consumers in understanding whether they are being provided reasonably priced retail electric service.

The PUCO’s remedy that price-to-compare is already on customer bills and that they can go to a website is unjust and unreasonable. It misconstrued and obscured the OCC recommendation as the effectiveness of the price to compare on individual customer bills rather than the broader public policy objectives under Ohio law of ensuring that all customers are provided access to reasonably priced retail electric service.[[14]](#footnote-15) Furthermore, Ohio law requires consumers to be protected against unreasonable sales practices, market deficiencies, and market power.[[15]](#footnote-16) The annual shadow-billing reports as proposed by OCC are essential in making sure that consumers are being protected in the market.

Currently over 50% of the total residential customers in Ohio are shopping with a marketer.[[16]](#footnote-17) And according to a recent search for marketer offers on the PUCO Energy Choice Ohio website, the vast number of available offers were higher than the price-to-compare on the electric bill.

While it may be true that some individual customers might be able to use the price to compare message on the bill to determine their savings or losses compared to the marketer rates as the PUCO suggests, the vast majority of residential shopping customers likely have no idea how their spending compares with the electric distribution utility (“EDU”) standard service offer rate. Add to this, the complexity of how the price-to-compare changes over time on the “apples-to-apples” website, the vast number of customers simply do not have the time or expertise to monitor savings or spending on a monthly basis. As they go about their daily lives, most Ohio residential customers have other life issues to attend to and other concerns that take time and attention away from the nuances of choice decisions and how much they are saving or overpaying. Trying to assess if they are saving or spending more money on their electricity through a marketer is not a priority with Ohio families’ limited time and resources.

The shadow-billing report proposed by OCC permits an annual review of how well customers (as a whole) are faring in obtaining reasonably priced retail electric service. And these reports can help guide the need for developing additional resources that customers may need to further understand their retail electric experience. Shadow billing is an effective way that the PUCO, OCC, and the retail consumer can be informed about the total shopping savings or losses experienced with electric marketers.

Thus, the PUCO erred in not adopting the following rule:

4901:1-10-22 Electric Utility Customer Billing and Payments.

(J) For each electric utility customer shopping with a competitive retail electric service provider, the electric utility shall create a bill as if that customer were on the electric utility’s standard service offer. Each electric utility shall annually file a report with the commission detailing the total customer savings or spending by shopping with competitive retail electric service providers.

The PUCO should adopt OCC’s proposed amendment to Ohio Adm.Code 4901:1-10-22 to provide customers more information regarding their bills for electric utility service. The PUCO should grant rehearing and require the EDUs to provide an annual shadow billing report as recommended by OCC.

## ASSIGNMENT OF ERROR 2: The PUCO’s Order was unreasonable because it failed to give consumers the right to request a block on their account so that their electric service is not switched to a marketer.

The PUCO found that Staff’s proposal, supported by OCC[[17]](#footnote-18), that would allow electric utility customers to place a block on their accounts to prevent switching to or from a marketer was not necessary because “current consumer protections are adequate.”[[18]](#footnote-19) This conclusion is wrong because unfortunately, there have been numerous waiver requests by marketers that are eroding consumer protections.[[19]](#footnote-20) And, unfortunately, Ohio consumers are often the victims of “slamming” or customers being switched to a marketer without their permission.[[20]](#footnote-21)

Staff’s proposed modification to Ohio Admin.Code 4901:1-10-24 would allow customers to request that their electric distribution utility place a supplier block on their electric account. The supplier block would preclude an EDU from switching customers to another marketer without explicit consent first having been provided by the customer to the EDU. A supplier block would finally provide consumers with the peace of mind of knowing that their electric supply would not be switched without proper authorization. While solicitation is currently suspended under the PUCO’s emergency order,[[21]](#footnote-22) going forward such empowerment would especially be helpful for families who are caring for senior parents and are trying to protect their parents from being bombarded with door-to-door marketers and phone calls trying to entice switching.

 In rejecting the Staff proposal, the PUCO stated that “exhaustive procedures” are already in place to protect consumers from “slamming” (customers being switched to a marketer without their permission).[[22]](#footnote-23) But the fact of the matter is that despite the current rules, slamming unfortunately does occur.[[23]](#footnote-24) And Ohio law specifically requires the PUCO to establish rules that prohibit slamming.[[24]](#footnote-25) The very reasonable proposal that the Staff recommended enables customers to proactively request a supplier block on their account to ensure that their electric supply services aren’t slammed. Just as customers have the right to protect their electric information from being disclosed without their authorization,[[25]](#footnote-26) customers have a right to avoid having their supplier of electricity switched without authorization. Like the right customers have to proactively protect their information, the customer block is an opt-in consumer protection, meaning that it gives customers the peace-of-mind provided for under Ohio law that they will not be switched without specific authorization. Customers deserve that protection.

 The marketer abuse of customers that were identified through both the Verde[[26]](#footnote-27) and PALMco[[27]](#footnote-28) investigations are a chilling realization of how marketers can completely ignore Ohio laws and PUCO rules. Thousands of Ohioans were subject to false, misleading and unconscionable sales practices. And these marketing practices severely damaged the emergence of retail choice in energy markets in Ohio and the opportunity for customers to potentially save money on their electric bill.

The PUCO should have adopted the PUCO Staff’s proposed new rule, supported by OCC, in Ohio Adm.Code 4901:1-10-24(H) to allow electric utility customers to place a block on their account to prevent switching to or from a marketer.[[28]](#footnote-29) Rehearing should be granted and the Order modified as follows to reflect this proposal.

4901:1-10-24 Customer safeguards and information.

(H) Each electric utility shall allow any customer to request a competitive retail electric service provider block be placed on their account. The block shall prevent the customer generation service provider from being switched without the customer’s authorization to the electric utility in the form of a customer provided code or other customer identifiable manner. The release shall be provided to the electric utility from the customer or other authorized persons on the account. The code shall be considered confidential customer information.

## ASSIGNMENT OF ERROR 3: The PUCO erred, in violation of R.C. 4928.10, by not prohibiting the inclusion of non-utility (non-jurisdictional) charges for goods and services on the bills that consumers receive from electric distribution utilities.

 The PUCO unreasonably and unlawfully declined to adopt Staff’s proposed prohibition of EDUs being able to list “non-commodity goods and services” charges on EDU-only bills under Ohio Adm.Code 4901:1-10-22. This proposal, supported by OCC,[[29]](#footnote-30) was not only reasonable, but required under Ohio law.[[30]](#footnote-31) The PUCO should grant rehearing to protect consumers and comply with Ohio law R.C. 4928.10 that limits non-commodity goods and services from being included on retail electric customer bills.

Ohio law requires the PUCO to establish rules that protect consumers through the integrity and content of the information that is conveyed in a regulated EDU bill.[[31]](#footnote-32) And Ohio law specifically requires the PUCO rules to specify certain important elements on customer bills all related to the service provided by utilities that is subject to the PUCO jurisdiction. [[32]](#footnote-33)

The PUCO Staff’s proposal that bill formats for bills containing EDU-only charges and consolidated bill formats that contain utility and marketer charges be prohibited from including charges for non-utility goods and services was required by law. The PUCO unreasonably and unlawfully rejected this proposal and allowed electric distribution utilities to include charges for unregulated good on services that are outside the jurisdiction of the PUCO to be included on retail electric customer bills.

The single change that the PUCO mandated in this section of the rules was the substitution of the words “…non-tariffed, non-regulated service,” in Ohio Adm.Code 4901:1-10-22(B)(16) with the terms “…non-jurisdictional service…”[[33]](#footnote-34) As the Order stands, there are basically no limitations on the types of non-jurisdictional charges that can now be included on customers’ retail electric bills. And the rules as adopted by the PUCO provide consumers with no readily available remedy to dispute the non-jurisdictional charges on the bill or determine the accuracy of these charges on the bill. The PUCO not only authorized the inclusion of non-jurisdictional charges on retail electric bills, the PUCO order failed to prohibit the inclusion of non-utility goods or services (or “non-jurisdictional services”) from any purchase of receivables program that an EDU provides when it bills customers on behalf of the non-jurisdictional entity. Therefore, there is no assurance that customers will be protected against paying for non-utility goods and services and other non-jurisdictional service charges in base rates or through uncollectible riders on customers’ bills.

Ohio law specifically requires that PUCO rules specify certain important elements on customer bills related to the service provided by utilities that is subject to the PUCO jurisdiction.[[34]](#footnote-35) Nowhere in 4928.10, R.C. 4905, or R.C. 4909 is the PUCO vested with authority to establish rules that authorize non-jurisdictional charges to be included on a regulated monopoly customer’s electric bill. For this reason, the PUCO should grant rehearing and explicitly prohibit charges for non-utility unregulated charges that are not under the jurisdiction of the PUCO from being included on any EDU bill format.

 The PUCO erred in declining to adopt Staff’s proposal that electric utilities and marketers be prohibited from charging for non-utility goods and services on customer bills. The following language should have been added to Ohio Adm.Code 4901:1-10-22: [[35]](#footnote-36)

 **4901:1-10-22 Electric utility customer billing and payments**

(K) No bill format shall contain charges for non-commodity goods or services from a third-party supplier or the EDU.

The PUCO should grant rehearing to protect consumers and comply with Ohio law that limits non-commodity goods and services from being listed on customer bills.[[36]](#footnote-37)

## ASSIGNMENT OF ERROR 4: The PUCO erred by not prohibiting the electric utilities from releasing customer contact information to energy marketers unless consumers opt-in to the release of their personal information.

The PUCO should protect consumers by changing its rules to prohibit electric utilities from releasing Ohio consumers’ personal contact information unless the consumer opts in to disclosure. That approach will protect consumers’ privacy regarding marketer sales calls on consumers’ telephones. At a minimum, this change should be made during the coronavirus emergency.

If the PUCO finds that R.C. 4928.10(G) does not permit such an opt-out system for protection of Ohioans’ privacy, then the PUCO should revise its rules in other ways, as follows. Under O.A.C. 4901:1-10-24(F)(4), the utility should be required to provide consumers with the ability to use their utility’s website for the purpose of electronically removing his or her name from the personal contact disclosure list. The PUCO’s requirement, in its rule, that an advisory about the use of customer-specific information is to be provided to customers on the approved pre-enrollment list that is displayed on the utility’s website and tariffs, does not go far enough. The rules need to be amended to also permit customers to electronically opt-out of having the information provided to suppliers.

The text in O.A.C 4901:1-10-24(F)(5) should be amended to require the utility to offer customers the electronic option to opt-out instead of its more limited current options. The rules should be amended as follows:

 The list of customer specific information listed on the pre-enrollment shall be displayed in an easily accessible place on each utility’s website for customers to view and electronically opt-out from having the information on the pre-enrollment list provided to suppliers.

Similar to the electronic option that customers should have on the utility website to opt-out from having their customer specific information provided to suppliers, the utilities should also provide customers with automated telephonic means that can be used as a way of choosing to not have their customer specific information provided to suppliers.

# CONCLUSION

 To protect Ohio’s electric utility consumers and help promote the state policy that consumers have adequate, reliable, safe, and efficient electric service,[[37]](#footnote-38) the PUCO should grant rehearing and modify its Order consistent with recommendations made.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of this Application for Rehearing has been served via electronic transmission upon the following parties of record this 27th day of March 2020.

 */s/ Amy Botschner O’Brien*

 Amy Botschner O’Brien

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

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1. *In the Matter of the Commission’s Review of its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1942-EL-ORD, Finding and Order (Feb. 26, 2020) (“Order”). [↑](#footnote-ref-2)
2. R.C. 4928.02(A). [↑](#footnote-ref-3)
3. Comments on Amendments to PUCO Rules to Better Protect Consumers by the Office of the Ohio Consumers’ Counsel (“OCC Comments”), Case No. 17-1842-EL-ORD (Aug.16, 2019). [↑](#footnote-ref-4)
4. Reply Comments by the Office of the Ohio Consumers’ Counsel (“Reply Comments”), Case No. 17-1942-EL-ORD (Aug. 30, 2019). [↑](#footnote-ref-5)
5. OCC Reply Commentsat 17-18. [↑](#footnote-ref-6)
6. See, e.g., *In the Matter of the Commission’s Investigation into PALMco Power Oh, LLC dba Indra Energy and PALMco energy OH, LLC dba Indra Energy’s Compliance with the Ohio Administrative Code and Potential remedial Actions for Non-Compliance*, Case No. 19-0957-GE-COI, Opinion and Order (Jan. 29, 2020). [↑](#footnote-ref-7)
7. <https://www.dispatch.com/article/20160404/NEWS/304049819>.. [↑](#footnote-ref-8)
8. OCC’s motion to intervene was granted in the Order. [↑](#footnote-ref-9)
9. Order at 60*.* [↑](#footnote-ref-10)
10. *Id*. [↑](#footnote-ref-11)
11. OCC Comments at 15. [↑](#footnote-ref-12)
12. OCC Comments at 15. [↑](#footnote-ref-13)
13. R.C. 4928.02(A) [↑](#footnote-ref-14)
14. *Id*. [↑](#footnote-ref-15)
15. R.C. 4928.02(I) [↑](#footnote-ref-16)
16. <https://app.powerbigov.us/view?r=eyJrIjoiZTliZDEzNGEtZjlhYi00YWEzLThjZjktMGZmNDg4OWE4ZDFkIiwidCI6IjUwZjhmY2M0LTk0ZDgtNGYwNy04NGViLTM2ZWQ1N2M3YzhhMiJ9> [↑](#footnote-ref-17)
17. OCC Reply Comments at 17-18. [↑](#footnote-ref-18)
18. Order at 68. [↑](#footnote-ref-19)
19. See, e.g., *In the Matter of the Application of Direct Energy Business, LLC and Direct Energy Services, LLC for Waivers of Certain Provisions of Ohio Adm.Code Chapters 4901:1-21 and 4901:1-29, to Permit Third-Party Verification by Digital Confirmation*, Case No. 18-0382-GE-WVR, Order (Sept. 26, 2019). [↑](#footnote-ref-20)
20. 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*, A Report by the Staff of the Public Utilities Commission of Ohio, Case No. 19-0958-GE-COI (May 3, 2019) at 14-15. [↑](#footnote-ref-21)
21. *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 (March 20, 2020) at 3. [↑](#footnote-ref-22)
22. Order at 68. [↑](#footnote-ref-23)
23. PUCO Staff Report in Verde Energy, Case No. 19-0958. [↑](#footnote-ref-24)
24. R.C. 4928.10(D)(4) [↑](#footnote-ref-25)
25. R.C. 4928.10(G). [↑](#footnote-ref-26)
26. *See*, PUCO Staff Report in Verde Energy, Case No. 19-0598. [↑](#footnote-ref-27)
27. *In the Matter of the Commission’s Investigation into PALMco Power OH, LLC d/b/a Indra Energy’s Compliance with the Ohio Adm.Code and Potential Remedial Actions for Non-Compliance*, A Report by the Staff of the Public Utilities Commission of Ohio, Case No. 19-0957-GE-COI (May 10, 2019). [↑](#footnote-ref-28)
28. Entry (July 17, 2019) at Attachment A, Page 67. [↑](#footnote-ref-29)
29. OCC Reply Comments at 14-16. [↑](#footnote-ref-30)
30. R.C. 4928.10(C). [↑](#footnote-ref-31)
31. *Id*. [↑](#footnote-ref-32)
32. R.C. 4928.10(C). [↑](#footnote-ref-33)
33. Order at 50. [↑](#footnote-ref-34)
34. R.C. 4928.10(C). [↑](#footnote-ref-35)
35. Order at 78. [↑](#footnote-ref-36)
36. *See, e.g.*, 4928.10, R.C. 4905, R.C. 4909. [↑](#footnote-ref-37)
37. R.C. 4928.02(A). [↑](#footnote-ref-38)