**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Commission’s investigation into RPA Energy, Inc.’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance. | ))))) | Case No. 22-441-GE-COI |

**APPLICATION FOR REHEARING**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Energy marketer Green Choice[[1]](#footnote-2) misled and deceived Ohioans when soliciting and enrolling them in natural gas and electric service.[[2]](#footnote-3) The PUCO’s October 18, 2023 Order rescinded Green Choice’s certificates to market natural gas and electric service in Ohio.[[3]](#footnote-4) Given Green Choice’s egregious acts, the PUCO should *permanently* ban Green Choice (or any of its affiliates) from ever again marketing natural gas and electric service in Ohio.

Green Choice’s alleged deceptive marketing and enrollment practices are among the worst OCC has ever seen. Among other abuse of consumers, Green Choice “spoofed” (faked) Caller ID so that consumers believed that someone other than Green Choice was calling them.[[4]](#footnote-5) OCC’s position on spoofing by a marketer is “one and done” – meaning that the PUCO should have zero tolerance for spoofing. Ample evidence demonstrates Green Choice’s spoofing and other abuse of consumers.[[5]](#footnote-6)

 Accordingly, pursuant to R.C. 4903.10, the Office of the Ohio Consumers’ Counsel (“OCC”) applies for rehearing of the PUCO’s October 18, 2023 Order, which is unreasonable in the following respect:

 **ASSIGNMENT OF ERROR NO. 1: The PUCO erred by failing to permanently rescind Green Choice’s certificates to market natural gas and electric service to Ohio consumers to prevent Green Choice or any of its affiliates from ever again harming Ohioans.**

The reasons in support of this Application for Rehearing are set forth in the accompanying Memorandum in Support. The PUCO should grant rehearing and abrogate or modify its Order as proposed by OCC.

Respectfully submitted,

Maureen R. Willis (0020847)

 Ohio Consumers’ Counsel

 */s/ Angela D. O’Brien*

Angela D. O’Brien (0097579)

Counsel of Record

Deputy Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [O’Brien]: (614) 466-9531

angela.obrien@occ.ohio.gov

 (willing to accept service by e-mail)

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Commission’s investigation into RPA Energy, Inc.’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance. | ))))) | Case No. 22-441-GE-COI |

**MEMORANDUM IN SUPPORT**

# I. INTRODUCTION

The PUCO determined in its October 18, 2023 Order that energy marketer Green Choice misled and deceived Ohioans when soliciting and enrolling them in natural gas and electric service. The PUCO found that Green Choice falsified third-party verification (“TPV”) calls and altered sales calls.[[6]](#footnote-7) Green Choice falsified enrollment contracts.[[7]](#footnote-8) Green Choice also misled consumers about variable rates for service.[[8]](#footnote-9) Moreover, when PUCO Staff tried to investigate consumer complaints, Green Choice refused to cooperate and provide information.[[9]](#footnote-10) Green Choice also “spoofed” (faked) Caller ID so that consumers believed that someone other than Green Choice was calling them.[[10]](#footnote-11)

 The PUCO should have zero tolerance for spoofing and other consumer abuse by Green Choice. The PUCO should permanently rescind Green Choice’s certificates to market electric and natural gas to Ohioans and not let them or any affiliate receive a certificate again.

# II. ASSIGNMENT OF ERROR

## ASSIGNMENT OF ERROR NO. 1: The PUCO erred by failing to permanently rescind Green Choice’s certificates to market natural gas and electric service to Ohio consumers to prevent Green Choice or any of its affiliates from ever again harming Ohioans.

 The PUCO did a good thing by rescinding Green Choice’s current certificates to market natural gas and electric service to Ohio consumers. However, the PUCO should have gone a step further. The PUCO should ***permanently*** rescind Green Choice’s (or any affiliate’s) authority to market energy services to Ohio consumers. Such order is more than appropriate in this case given Green Choice’s egregious abuse of consumers (including spoofing) and its refusal to cooperate with the PUCO Staff during its investigation.[[11]](#footnote-12)

The PUCO has authority to permanently rescind Green Choice’s certifications to market natural gas and electric service.[[12]](#footnote-13) The PUCO has authority under R.C. 4928.08(D) to “suspend, rescind, or conditionally rescind the certification” of an electric marketer if the PUCO “determines . . . that the utility, company, cooperative, or aggregator has failed to comply with any applicable certification standards or has engaged in anticompetitive or unfair, deceptive, or unconscionable acts or practices.” The PUCO has similar authority over natural gas marketers under R.C. 4929.20(C)(1).

The term “suspend” indicates a temporary loss of certification, which will inevitably be lifted. Furthermore, the term “conditionally rescind” indicates that such rescission will be lifted upon the meeting of specific conditions, as set by the PUCO, for the reinstatement of certification. Therefore, the term “rescind” is clearly intended to mean a permanent rescission of the Service Provider’s certification. If this were not the case, there would be no need to include both “conditionally rescind” and “rescind” within each of the applicable statutes.

Further, nothing in R.C. 4928.08, R.C. 4929.20, or the PUCO’s rules precludes permanently rescinding Green Choice’s certificates given its victimization of consumers. The PUCO’s rules addressing conditional rescission state that, “the commission will delineate the specific conditions that the [marketer] must meet and establish a date by which the conditions must be met in order for the [marketer] provider to avoid *permanent rescission* of its certificate.”[[13]](#footnote-14)

The lack of limiting language regarding permanent rescission in R.C. 4928.08 and 4929.20, as well as the references to “permanent rescission” in the PUCO’s rules, demonstrate that the PUCO has the authority to permanently rescind the authority of bad actor marketers to serve Ohio consumers. However, the Order does not address a permanent rescission of Green Choice’s certifications. It should.

In the Order, the PUCO found that Green Choice “has committed numerous violations of the [PUCO’s] rules and regulations prohibiting deceptive and misleading practices in marketing, soliciting, selling, and providing [natural gas and electric service].”[[14]](#footnote-15)The PUCO concluded that Green Choice “lacks managerial capability to provide [natural gas and electric service],” and directed Green Choice to “cease” marketing and providing service in Ohio.[[15]](#footnote-16)However, the Order makes no mention of whether Green Choice or an affiliate can obtain new certificates to serve Ohio consumers in the future. The PUCO should therefore grant rehearing and modify the Order to state that Green Choice and its affiliates can never again be certified to market natural gas or electric service in Ohio.

# III. CONCLUSION

 Green Choice’s egregious behavior and victimization of consumers warrants a PUCO order permanently rescinding Green Choice’s authority to market service to Ohioans. The PUCO should protect Ohio consumers from unscrupulous marketers like Green Choice. The evidence demonstrated that Green Choice is bad for consumers and competition in Ohio. The PUCO should grant OCC’s Application for Rehearing and modify the October 18, 2023 Order consistent with OCC’s recommendations.

Respectfully submitted,

Maureen R. Willis (0020847)

 Ohio Consumers’ Counsel

 */s/ Angela D. O’Brien*

Angela D. O’Brien (0097579)

Counsel of Record

Deputy Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [O’Brien]: (614) 466-9531

angela.obrien@occ.ohio.gov

 (willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Application for Rehearing was served by electronic transmission upon the parties below this 17th day of November 2023.

*/s/ Angela D. O’Brien*

Angela D. O’Brien (0097579)

Counsel of Record

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

**SERVICE LIST**

|  |  |
| --- | --- |
| rhiannon.plant@ohioAGO.govAttorney Examiner: jesse.davis@puco.ohio.gov | btrombino@uerus.com whitt@whitt-sturtevant.comelmer@whitt-sturtevant.com |

1. RPA Energy, Inc. d/b/a Green Choice Energy (“Green Choice”). [↑](#footnote-ref-2)
2. PUCO Opinion and Order (October 18, 2023) (“Order”), ¶ 1. [↑](#footnote-ref-3)
3. *Id.* [↑](#footnote-ref-4)
4. *Id.* at ¶ 70. [↑](#footnote-ref-5)
5. *Id.* [↑](#footnote-ref-6)
6. Order, at ¶ 68. [↑](#footnote-ref-7)
7. Order, at ¶ 69. [↑](#footnote-ref-8)
8. *Id.* at ¶ 67. [↑](#footnote-ref-9)
9. *Id.* at ¶ 77. [↑](#footnote-ref-10)
10. *Id.* at ¶ 70. [↑](#footnote-ref-11)
11. Order, at ¶ 77. [↑](#footnote-ref-12)
12. R.C. 4928.08, R.C. 4929.20, O.A.C. 4901:1-24-13, and O.A.C. 4901:1-27-13. [↑](#footnote-ref-13)
13. O.A.C. 4901:1-24-13(C) (emphasis added). *See also* O.A.C. 4901:1-27-13(C)(1). [↑](#footnote-ref-14)
14. Order, at ¶ 81. [↑](#footnote-ref-15)
15. *Id.* [↑](#footnote-ref-16)