**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of RPAEnergy, Inc. for Waivers of CertainProvisions of Chapters 4901:1-21 and4901:1-29, O.A.C., to Permit Third-PartyVerification by Digital Confirmation. | ))))) | Case No. 21-157-GE-WVR  |

**REPLY COMMENTS OPPOSING REQUEST OF MARKETER RPA ENERGY FOR A PUCO WAIVER OF CERTAIN CONSUMER PROTECTIONS**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

**AND**

**PRO SENIORS, INC.**

# I. INTRODUCTION

RPA Energy, an energy marketer that has been offering consumers some of the higher rates for green energy in Ohio, wants the PUCO to grant it a waiver of a consumer protection rule for door-to-door sales. But the PUCO should not cut RPA Energy any slack on rules. And, if Ohio’s rules for consumer protection are unacceptable to RPA Energy, then RPA Energy should stop knocking on consumers’ front doors.

Far from easing consumer protection rules for door-to-door energy sales, the PUCO should not subject Ohioans to door-to-door energy marketing at all. The PUCO should *block the knock.*

The Office of the Ohio Consumers’ Counsel (“OCC”) and Pro Seniors, Inc. (“Consumer Advocates”) filed Comments recommending that the PUCO deny the request of energy marketer RPA Energy, Inc. for a waiver of consumer protection rules. RPA Energy wants to offer consumers what it describes as a choice[[1]](#footnote-2) between verification of

their energy sign-up via a new digital process or the traditional telephonic live third-party verification in the PUCO’s rules. The PUCO should reject RPA Energy’s request because a digital platform lacks the consumer protections of third-party telephonic verification involving back-and-forth interactive human communication, as discussed in Consumer Advocates Amended Comments.

The questions that a consumer asks during the third-party verification telephone call can reveal if they truly understand the terms and conditions in the contract they were sold by energy marketers or if they have any understanding whatsoever. The PUCO’s rules specifically require the independent third-party verifier to structure the verification interview to give the customer adequate time to respond to questions.[[2]](#footnote-3) That interactive process would not be possible through the digital process RPA Energy is proposing.

The Staff of the Public Utilities Commission (“Staff”) also filed Comments. The PUCO Staff recommended that RPA Energy’s request only be granted if the PUCO also adopts additional protections. One of the protections is that the waiver should be limited to the pendency of the rules review currently underway for O.A.C. 4901:1-21-06 and 4901:1-29-06.[[3]](#footnote-4) But the PUCO Staff’s approach is not enough consumer protection.

The rulemaking process is the appropriate venue for addressing enrollment methodology and third-party verification requirements. For consumer protection, the PUCO should reject the waiver request. And RPA can make its proposal in the pending PUCO rulemaking.

Live, independent, telephonic third-party verification should remain the single option for consumers to verify whether they understand the contract they entered and actually want to switch natural gas or electric suppliers.[[4]](#footnote-5)

# II. RECOMMENDATIONS

## Given the many issues surrounding the “switching” of consumers by energy marketers, a waiver of consumer protection rules should not be granted.

To protect consumers, the PUCO should deny RPA Energy’s request. But Consumer Advocates agree with Staff that the ideal venue for evaluating proposed changes to these rules is during the rules review process that is currently underway. However, Consumer Advocates do not agree that the waiver should be effective during the pendency of the rules review for O.A.C. 4901:1-21-06 and 4901:1-29-06,[[5]](#footnote-6) because the duration of this review is unknown.

Consumer Advocates support Staff’s view that the intent of the verification rules is to make sure that, to the greatest extent possible, consumers understand what they are agreeing to and the terms of that agreement.[[6]](#footnote-7) But live, telephonic third-party verification is hands-down the most effective way to verify that consumers are understanding enrollment with the marketer, as discussed in our Amended Comments.

Consumer Advocates do not agree that the waiver should be granted. However, if it is, we support Staff’s recommendation that marketer enrollment should be verified with the consumer in clear, plain language, using a template *uniformly followed by all marketers*.[[7]](#footnote-8) This provides some safeguards for protecting consumers’ interests. In fact, this is another reason why RPA Energy’s waiver should not be granted at this time—there could be a lack of uniformity among marketers’ templates or scripts without a rulemaking that would lead to potential customer confusion and abuse by energy marketers.

Staff Comments included a recommendation that the list of disclosures and permissions required by the rules match those provided to the customer through the digital platform. Staff recommends that the format and content of the digital verification should be submitted for review prior to its availability to consumers.[[8]](#footnote-9)

However, Consumer Advocates note an issue with Staff’s recommendation that RPA Energy submit the format and content of its digital verification to Staff for review prior to being available to customers. It does not identify what happens if Staff’s review reveals that RPA Energy’s digital verification does not match the requirements in the applicable rules. In other words, no consequences are identified for the digital verification not being in compliance with the rules.

Consumer Advocates thus recommend a qualification to Staff’s recommendation. If the waiver is granted (which it should not be) we recommend that RPA Energy may not use the digital verification for consumers until after the marketer obtains a formal acknowledgement from Staff that the format contains all of the disclosures and permissions required by the PUCO’s rules.

The PUCO may waive any rule, other than a requirement mandated by statute, for good cause shown.[[9]](#footnote-10) But in this case, RPA Energy has not shown good cause for its proposed waiver to enroll customers via digital confirmation. The PUCO should deny it to safeguard consumers from deceptive or high-pressure door-to-door and outbound telephonic solicitations. If anything, the welcome mat for RPA Energy should be rolled up, not rolled out with a PUCO waiver.

# III. CONCLUSION

Given the abundant issues involving marketers overcharging Ohioans, it is imperative that the PUCO make certain that existing consumer protections are enforced, if not strengthened. To protect consumers, the PUCO should deny RPA Energy’s request.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of the foregoing Reply Comments was served on the persons stated below via electronic transmission, this 22nd day of April 2021.

 */s/ Amy Botschner O’Brien*

 Amy Botschner O’Brien

 Assistant Consumers’ Counsel

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1. Application (Feb. 18, 2021) at ¶8. [↑](#footnote-ref-2)
2. O.A.C. 4901:1-21-06(D)(1)(h)(iii); O.A.C. 4901:1-29-06(D)(6)(b)(iii). [↑](#footnote-ref-3)
3. Staff Comments at 4. [↑](#footnote-ref-4)
4. *See*, Consumer Advocates Amended Comments (April 9, 2021). [↑](#footnote-ref-5)
5. *See*, Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD. [↑](#footnote-ref-6)
6. Staff Comments at 3. [↑](#footnote-ref-7)
7. *Id*. [↑](#footnote-ref-8)
8. *Id*. at 4. [↑](#footnote-ref-9)
9. O.A.C. 4901:1-21-02(C); O.A.C. 4901:1-29-02(C). [↑](#footnote-ref-10)