

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Proper Procedures and)	
Process for the Commission's Operations and)	Case No. 20-591-AU-UNC
Proceedings During the Declared State of)	
Emergency and Related Matters.)	

In the Matter of the Joint Application for)	
Waiver of the Restrictions on In-Person)	Case No. 20-1040-GE-UNC
Marketing.)	

**APPLICATION FOR REHEARING
TO SUSPEND DOOR-TO-DOOR SALES BY ENERGY MARKETERS
BY
COALITION ON HOMELESSNESS AND HOUSING IN OHIO
NORTHEAST OHIO PUBLIC ENERGY COUNCIL
OFFICE OF THE OHIO CONSUMERS' COUNSEL
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As the PUCO considers our request to reverse its June 17th ruling that allowed marketers to resume door-to-door sales, it should keep some recent developments in the forefront of its review for the public’s protection. One is that it took just a week, after the PUCO’s June 17th ruling, for a marketer (SFE Energy) to be accused by the PUCO Staff of potentially violating the PUCO’s public safety standards in failing to wear a face mask in a door-to-door sale with a consumer.¹ Accordingly, the PUCO’s expectations – in granting marketer requests to resume the privilege of contact with Ohioans in door-to-door sales – are undermined right out of the gate. No one should be surprised. The marketer was caught on video by a residential doorbell camera, which documented other bad acts.

Additionally, a major development this week (July 15) is that Governor Mike DeWine addressed the people of Ohio regarding the threat of the coronavirus, again

showing his great concern for their safety and welfare. (See Attached.)² The Governor advised that “We have now reached THE most critical point in our battle against the coronavirus.” (Original emphasis) He warned that “If all of us do not take immediate action to slow this virus down, the tragedy that we see playing out on our television screens every day in Florida, Texas, Arizona, and California may well be our reality in just a matter of weeks.” He informed that “Clearly – clearly the virus is spreading with a vengeance across many parts of Ohio and lurks, waiting to attack victims in all of our 88 counties. Tragically, in just four months, we have already lost 3,075 Ohioans to this dreaded disease – nearly the same number of Ohioans who died in the Vietnam War (3,094).” (Footnote omitted)

He continued that “Ohio is sliding – sliding down a very dangerous path, with our once flattened-curve starting to sharpen and spike.... Weeks can be the difference between who lives and who dies in Ohio.” And he said “But masks are not enough.... Good decisions will protect the economy and save lives. Reckless ones will hurt and kill.” Just today, there was terrible news that a record 77,000 new coronavirus cases were recorded yesterday in the United States, exceeding the prior single-day record by nearly 10,000 cases.³

¹ Letter of PUCO Staffer Robert Fadley, Case No. 20-1216-GE-COI (June 29, 2020), noting on the second page that a consumer’s doorbell video showed an SFE Energy agent “not wearing a mask, in possible violation...” of the PUCO’s Entry on door-to-door sales. He said a utility also shared a doorbell video showing bad acts by SFE Energy (which may be a separate transaction from the first video). Mr. Fadley stated on the first page that: “...Staff is deeply concerned that CRES and CRNGS providers [marketers] in Ohio would prey upon customers’ anxiety and fears in the middle of the current global pandemic.” No one should be surprised that a consumer could be harmed by a door-to-door energy sale. We certainly appreciate the PUCO Staff’s action upon receiving the video.

² “As Prepared Address to the Citizens of Ohio,” Ohio Governor Mike DeWine (July 15, 2020) (see Attachment).
https://content.govdelivery.com/attachments/OHOOD/2020/07/15/file_attachments/1496675/Address%20to%20the%20People%20of%20Ohio%20As%20Prepared%2007.15.20.pdf.

The PUCO’s rehearing of its door-to-door marketing resumption should be considered against the backdrop of these changed circumstances since the time of the PUCO’s ruling.⁴ In its Entry allowing resumption of door-to-door sales, the PUCO emphasized it was basing its decision on orders of the Director of the Ohio Department of Health, dated in May 2020. The PUCO Commissioners also noted that “we are cognizant of the concerns raised by OCC...” in its opposition to resuming door-to-door sales. And the Commissioners expressed particular concern for the “elderly and the vulnerable [who], due to other health conditions, are at higher risk for severe illness....”⁵

Accordingly, on rehearing under R.C. 4903.10, the PUCO Commissioners should overturn their decision to resume door-to-door sales, suspending such sales indefinitely to protect Ohioans based on the compelling changed circumstances surrounding the health crisis. The PUCO’s Entry is unreasonable and unlawful in the following respects:

Assignment of Error No. 1: The PUCO Commissioners erred by allowing energy marketers to resume door-to-door sales with Ohioans during the worst communicable health illness “in more than 100 years.”⁶ The coronavirus pandemic has considerably worsened since the time of the PUCO’s ruling to resume door to door sales, including its “spreading with a vengeance across many parts of Ohio”⁷ “and with Ohio...sliding down a very dangerous path.”⁸ And the recent doorbell

³ <https://www.cbsnews.com/news/coronavirus-usa-record-cases-77000/>

⁴ The Northeast Ohio Public Energy Council (“NOPEC”) represents about 240 communities in 18 counties with over 950,000 electric and gas aggregation customers, all of which would be affected by a determination to resume door-to-door solicitation during a time when coronavirus infections are spiking. A number of the counties with NOPEC member communities are currently at the red levels reported by the State of Ohio including Cuyahoga, Lorain Summit, Fairfield and Athens.

⁵ Entry, Cases 20-591-AU-UNC and 20-1040-GE-UNC, ¶ 16 (June 17, 2020).

⁶ “As Prepared Address to the Citizens of Ohio,” Ohio Governor Mike DeWine, at 2 (July 15, 2020).

⁷ *Id.* at 3.

⁸ *Id.* at 4.

video showing a door-to-door consumer sale without the marketer wearing a mask is an invalidation of the premise of the PUCO's ruling. So to address the changed circumstances and to perform their duty to "prevent injury to... the public..." under R.C. 4909.16 and to protect "at-risk populations" under R.C. 4928.02 (I), the PUCO Commissioners should reverse their ruling and suspend door-to-door sales until there is a vaccine, a cure or widespread immunity.

Assignment of Error No. 2: The PUCO erred in issuing a decision that lacked evidentiary support and did not contain findings of fact or the reasons prompting its decision to resume door-to-door energy sales to the public, violating R.C. 4903.09.

Consumer groups that seek consumer protection through this application for rehearing are as follows. Coalition on Homelessness and Housing in Ohio ("COHHIO") advocates for state and federal policies to promote affordable housing and end homelessness. The Northeast Ohio Public Energy Council ("NOPEC") represents about 240 communities in 18 counties with over 950,000 electric and gas aggregation customers, all of which would be affected by a determination to resume door-to-door solicitation during a time when coronavirus infections are spiking. A number of the counties with NOPEC member communities are currently at the red levels reported by the State of Ohio including Cuyahoga, Lorain Summit, Fairfield and Athens; Office of the Ohio Consumers' Counsel ("OCC") is the statutory representative of Ohio's approximately 4.5 million residential utility customers; Ohio Poverty Law Center ("OPLC") works to reduce poverty and increase justice by protecting the legal rights of Ohioans living in poverty; Pro Seniors, Inc. is a non-profit legal service provider located in Cincinnati, Ohio that works to expand economic opportunities and improve the quality of life for senior residents of Ohio. Pro Seniors is the only legal service provider in Ohio that is solely dedicated to advocating for the legal needs of Ohio senior citizens. Pro Seniors prioritizes serving low income seniors; Southeastern Ohio Legal Services is an LSC-funded legal services program whose mission is to act as general counsel to a client

community residing throughout thirty rural counties in southeast Ohio and, as such, provide the highest quality of legal services to its clients toward the objective of enabling poor people to assert their rights and interests.

The reasons in support of this application for rehearing are set forth in the accompanying Memorandum in Support. For protection of the lives of Ohioans, the PUCO should *block the knock* by granting rehearing and rescinding or modifying its Entry.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The PUCO originally suspended door-to-door sales by energy marketers at Ohioans' homes, on March 17, 2020.⁷ But then on June 17th, the PUCO responded to petitions from marketers⁸ by lifting the restrictions on door-to-door marketing despite the emergency being far from over.⁹ The only recommendation for the PUCO to resume door-to-door marketing came from the marketing industry itself. The PUCO Staff did not recommend resuming door-to-door sales.¹⁰ And, as stated, OCC opposed allowing marketers to have in-person contact with Ohioans at their homes during the pandemic.

Since the June 17th decision, circumstances for Ohioans in the pandemic have drastically changed for the worse. As of July 16, 2020, there have been 66,540 confirmed cases of coronavirus in Ohio and 2,849 confirmed deaths.¹¹ The Governor warned Ohioans this week that “clearly the virus is spreading with a vengeance across many parts of Ohio and lurks, waiting to attack victims in all of our 88 counties.”¹² He said that “Ohio is sliding – sliding down a very dangerous path, with our once flattened-curve starting to sharpen and spike.... Weeks can be the difference between who lives and who

⁷ Entry (March 17, 2020).

⁸ The petition was principally filed by marketers (IGS Energy Direct Energy, Retail Energy Supply Association, Vistra Corp., and AEP Energy) and the Energy Professionals of Ohio.

⁹ Entry (June 17, 2020).

¹⁰ Staff Comments, Case 20-1040-GE-UNC, at 2 (May 26, 2020); *see also* Entry, Cases 20-591-AU-UNC and 20-1040-GE-UNC at ¶ 11 (June 17, 2020).

¹¹ <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/dashboards/overview>.

¹² “As Prepared Address to the Citizens of Ohio,” Ohio Governor Mike DeWine, at 3 (July 15, 2020).

dies in Ohio.”¹³ He said: “But masks are not enough.... Good decisions will protect the economy and save lives. Reckless ones will hurt and kill.”¹⁴

The PUCO Commissioners should change their ruling based on the changed (worsened) circumstances for Ohioans. On rehearing the PUCO should suspend door-to-door sales until there is a vaccine, a cure, or widespread immunity. Doing so would be consistent with the PUCO’s duty to prevent injury to the public under its emergency powers (R.C. 4909.16) and to protect at-risk populations (R.C.4928.02(l)).

The statutory standard for abrogating or modifying some portions of the PUCO’s Entry, per R.C. 4903.10, is met here. The PUCO should grant rehearing and abrogate or modify the Entry consistent with the consumer groups’ recommendations.

II. MATTERS FOR RECONSIDERATION

Assignment of Error No. 1: The PUCO Commissioners erred by allowing energy marketers to resume door-to-door sales with Ohioans during the worst communicable health illness “in more than 100 years.”¹⁵ The coronavirus pandemic has considerably worsened since the time of the PUCO’s ruling to resume door to door sales, including its “spreading with a vengeance across many parts of Ohio”¹⁶ “and with Ohio...sliding down a very dangerous path.”¹⁷ And the recent doorbell video showing a door-to-door consumer sale without the marketer wearing a mask is an invalidation of the premise of the PUCO’s ruling. So to address the changed circumstances and to “prevent injury to... the public...” under R.C. 4909.16 and to protect “at-risk populations” under R.C. 4928.02 (l), the PUCO Commissioners should reverse their ruling and suspend door-to-door sales until there is a vaccine, a cure or widespread immunity.

¹³ *Id.* at 4.

¹⁴ *Id.* at 6.

¹⁵ “As Prepared Address to the Citizens of Ohio,” Ohio Governor Mike DeWine, at 2 (July 15, 2020).

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4.

Ohioans are facing the worst communicable health illness in a century, without a vaccine, a cure or immunity. The latest reports by the Ohio Department of Health (as of July 16 2020) are 66,540 confirmed cases of coronavirus; 9,324 hospitalizations; 2,280 intensive care unit admissions; and 2,849 confirmed deaths.¹⁸ The Governor required mandatory face masks for nineteen Ohio counties, including the state's three largest counties – Franklin, Cuyahoga and Hamilton¹⁹ and a health order indefinitely extended the state's mass-gathering ban and social-distancing rules for a wide range of businesses.²⁰

At the time of the PUCO's ruling there was some thought that Ohio had navigated the worst of the pandemic. (At that time there were 47,796 confirmed cases, 6,710 hospitalizations, and 2,761 confirmed deaths.²¹ Deaths will lag the spike in confirmed cases and are expected to increase in the coming weeks.) But this dangerous virus persisted and is now spiking in Ohio, at a time when there is no cure, no vaccine and no general immunity.

Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, recently remarked "What was thought to be unimaginable turns out to be the reality we're facing right now; outbreaks happen, and you have to deal with them in a very aggressive, proactive way."²² The Centers for Disease Control have attributed the

¹⁸ <https://coronavirus.ohio.gov/wps/potal/covid-19/home>.

¹⁹ <https://www.post-gazette.com/news/nation/2020/07/07/Ohio-Gov-DeWine-coronavirus-order-masks-mandatory-7-counties/stories/202007070129>.

²⁰ <https://www.cincinnati.com/story/news/2020/07/16/ohio-mask-order-here-19-counties-required-wear-masks/5451871002/>

²¹ <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home>.

²² Remarks before the Senate Health, Education, Labor and Pensions Committee (June 30, 2020): <https://www.cnn.com/politics/live-news/covid-19-school-work-reopening-testimony-06-30-20/index.html>.

spread of the virus to person-to-person contact, with spread being more likely when people are in close contact with one another (within about 6 feet).²³

Allowing door-to-door marketing will needlessly increase personal contact across Ohio. Even if marketers say there is a “touchless” option, that should not be relied upon by the PUCO to conclude that door-to-door sales will be touchless or safe for the public. Door-to-door sales have the risks of unsafe practices, as already seen in the SFE Energy situation. And door-to-door sales can obviously involve the exchange of written materials such as marketing information, sales contracts, pens, other instruments to sign contracts, third-party verification forms, and the consumer’s utility bill. Door-to-door marketing can also involve customers’ interacting with a marketer’s tablet, laptops, and cellular phones. In this regard, the Centers for Disease Control report that it is possible for people to contract the coronavirus by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes. <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Spread>.

There is an overarching need to protect Ohioans from the unnecessary and potentially deadly risk of coronavirus spread that can result from person-to-person contact involved in door-to-door marketing.²⁴ The PUCO should provide that protection by changing its ruling based on the changed (worsened) circumstances for Ohioans that Governor DeWine described this week. The PUCO should use rehearing to suspend door to door sales until there is a vaccine, a cure, or widespread immunity for the public.

²³ <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Spread>.

²⁴ <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Spread> (explaining that the virus is thought to spread mainly from person to person contact.)

To do so, the PUCO need only be of the opinion that the order should be changed for it to modify the order on rehearing. *Columbus Southern Ohio Elec. Co. v. P.U.C.*, 11 Ohio St.3d 12 (1984). So long as the PUCO justifies its changes, it can change or modify earlier orders. *Ohio Consumers' Counsel v. PUC*, 114 Ohio St.3d 340, 2007-Ohio-4276. R.C. 4903.10 itself establishes that the scope of rehearing, once granted, may include additional evidence, but not evidence that could have been offered in the original hearing. Additional evidence that should be considered here is that the virus is spiking, setting Ohio down a very dangerous path, as recently noted by Governor DeWine.²⁵ *And, regardless, the PUCO has its special authority to use under R.C. 4909.16, the emergency statute, for preventing injury to the public.*

There is also precedent for the PUCO to reverse itself on rehearing because of changed circumstances or additional evidence that calls into question the wisdom of the PUCO's initial decision. *See, e.g., Columbus & Southern Ohio Elec. Co., v. PUC*, 10 Ohio St.3d 12 (1984) (Ohio Supreme Court affirmed PUCO's reconsidering CWIP allowance on rehearing, based on subsequent events); *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service offer*, Case No. 14-1297-EL-SSO, First Entry on Rehearing (May 11, 2016)(granting rehearing to consider a modified proposal necessitated by FERC Order); *In the Matter of the Application for Establishment of a Reasonable Arrangement between Ohio Edison Company and V&M Star*, Case No. 09-80-EL-AEC, Entry on Rehearing at ¶ 7 (Apr. 29, 2009) (PUCO modifying its Entry to account for changed circumstances).

²⁵ "As Prepared Address to the Citizens of Ohio," Ohio Governor Mike DeWine, at 4 (July 15, 2020).

Door-to-door marketing, with the coronavirus spiking, creates an unnecessary and highly questionable health risk for Ohioans at a time when their health is under attack by a deadly virus. Marketers have other ways to sell their services to customers that do not create the health risk that door-to-door marketing poses. In fact, the PUCO recently ruled that in-store marketing by energy service providers can resume, so marketers have that opportunity available in a setting where consumers are not confronted at their homes.²⁶ In-store marketing permits the consumer to voluntarily take the risk of in-person contacts, and to take the necessary precautions to mitigate the risk of exposure to the coronavirus. Door-to-door marketing is an involuntary in-person intrusion at a consumer's residence, and the targets of the solicitations (or their children or grandparents) likely don't have the time or opportunity to take necessary precautions.

Marketing can also be done through mail, media, telephone calls and over the internet. And none of these methods of marketing create the health risks posed by uninvited door-to-door marketing.

In other words, the PUCO should act now to close the door on door-to-door energy marketing. As is clear from several recent marketing cases, it is unreasonable for the PUCO to trust that the marketing industry will self-enforce its conduct in the public interest.²⁷ Regulation and enforcement in the public interest are the PUCO's job, not the

²⁶ *In the Matter of the Joint Application for Waiver of the Restrictions on In-Person Marketing*, Case No. 20-1040, Entry (June 3, 2020). (OCC did not seek rehearing of this PUCO Entry.)

²⁷ See, e.g., *In the Matter of the Commission's Investigation into PALMco Power OH LLC*, Case No. 19-957-GE-COI; *In the Matter of the Commission's Investigation into PALMco Power OH, LLC*, Case No. 19-2153-GE-COI; *In the Matter of the Commission's Investigation into Verde Energy USA Ohio LLC.*, Case No. 19-958-GE-COI; *In the Matter of the Motion to Modify the Exemption Granted to the East Ohio Gas Company*, Case No. 18-1419-GA-EXM; *In the Matter of the Commission's Investigation into SFE Energy Ohio, Inc. and Statewise Energy Ohio LLC's Compliance with the Ohio Revised Code*, Case No. 20-1216-GE-COI; *In the Matter of the Motion to Modify the Exemption Granted to the East Ohio Gas Company*, Case No. 18-1419-GA-EXM.

marketers. While the SFE Energy case is a good example of regulation by the PUCO Staff, the circumstance in that case of the Staff being provided a video of the door-to-door marketing is going to be a rarity.

Under the present danger of the coronavirus, the PUCO's resumption of door-to-door sales does not begin to provide adequate protections for Ohioans whose health and lives are literally at risk from the interaction. There are many health fail-points in the transactions for consumers. For example, what if the marketer representative has the coronavirus but is asymptomatic (meaning the salesperson's status is unknown and a simple temperature check isn't revealing/diagnostic)? How often are the marketers being tested? What type of tests? Testing every day? And what do they do in the interim about contact with consumers before test results are returned (which according to media reports can take days or more to obtain test results)?²⁸

And residents likely won't have the N95 masks that protect them as the wearers and not just others as with lesser masks (*which even health care workers have had trouble obtaining*) or the lesser but similar KN95 masks. Those are basically the main masks that protect the *wearer*²⁹ (compared to masks that primarily only protect one way, being protection of others and mostly *not* the wearer). What if the residents don't even have any masks on hand when the marketer comes knocking? What if residents refuse to wear masks, putting the marketer, themselves and the next consumer on the marketer's itinerary at risk?

²⁸ <https://www.cnet.com/health/coronavirus-testing-how-long-does-it-take-to-get-test-results-for-covid-19/>.

²⁹ See, e.g., <https://www.mdvip.com/about-mdvip/blog/which-type-face-mask-can-protect-you-covid-19/>.

How would a marketer agent or employee know if the wipe-down of a tablet computer has really made it free of the virus?³⁰ They wouldn't know. The same goes for high-touch items such as pens and paper contracts. What if the residents don't have gloves? ³¹ What if the residents are outside without masks when the marketer arrives? What if the resident lacks health insurance? What if the residents have the risk factors, like elderly and vulnerable (at-risk) populations, that the PUCO expressed concern about³² in its June 17th Entry? What if a child answers the door to the marketer?

So many questions are left unanswered by the PUCO's ruling and marketers who sought that ruling. And for what? To risk life and health so that consumers can hear sales pitches from marketers during the worst pandemic in a century (when other sales channels are readily available)? *The risk/reward scale is way out of balance here, to the detriment of Ohio families at home.*

Further, for rehearing the PUCO should take note of the marketers' original position in seeking the resumption of door-to-door sales. The marketers argued that the PUCO should adopt the Governor's standards so that the restrictions on their marketing would automatically "be strengthened or loosened...as related science develops."³³ That premise will not work for the public safety, because it would have the PUCO leave

³⁰ The Centers for Disease Control has reported that it is possible that people can get the coronavirus by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes. <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Spread>.

³¹ According to a study published by the National Institute of Health coronavirus can live on plastic and steel for two to three days, on cardboard for up to 24 hours and on copper for up to four hours. <https://www.syracuse.com/coronavirus/2020/03/coronavirus-update-virus-could-live-up-to-24-hours-on-cardboard-3-days-on-plastic-and-steel-study-says.html>.

³² Entry at ¶16 (June 17, 2020).

³³ Marketers' Joint Application to Establish Procedures for In-Person Marketing During State of Emergency, Case 20-1040-GE-UNC, at 1 (May 14, 2020).

interpretation of the Governor's concerns to the marketer special interests. But in a larger context the PUCO should take a cue from the marketers and address when its decisions on the pandemic emergency need to be strengthened because of the Governor's announcements, such as this week. The PUCO should respond to those concerns of the Governor, about the surging coronavirus in the Ohio population, by suspending door-to-door marketing. In the interest of Ohioans and their home life, the PUCO should grant rehearing, reverse its Entry and reinstitute the ban on door-to-door marketing of energy.

Assignment of Error No. 2: The PUCO erred in issuing a decision that lacked evidentiary support and did not contain findings of fact or the reasons prompting its decision to resume door-to-door energy sales to the public, violating R.C. 4903.09.

R.C. 4903.09 requires that a complete record of all proceedings shall be made with findings of fact and written opinions explaining how the findings were made and based upon the findings of fact. The PUCO's June 17, 2020 decision to permit resumption of door-to-door marketing does not comply with R.C. 4903.09 because it did not provide evidentiary support for its decision.

Indeed, self-enforcement by energy marketers is essentially what the industry proposed and the PUCO largely ordered (albeit with improvements). It is self-enforcement because the PUCO is not going to be available at the consumer's door to provide real regulatory oversight. And the availability of a video in the case involving SFE Energy and its transgressions will be a rarity. Marketer self-enforcement is not going to work for the public.

In its initial response to the coronavirus emergency, the PUCO adopted a number of consumer protections, including the immediate suspension of all door-to-door

marketing to customers.³⁴ And, when the PUCO decided to allow in-store marketing to resume, it initially held off in resuming door to door sales, indicating that it “continues to evaluate” that issue.³⁵ Unfortunately for consumers, just two weeks following the PUCO’s order allowing in-store marketing to resume, the PUCO abruptly granted the marketers’ other request to restart door-to-door marketing (over OCC’s consumer protection objections).³⁶ The PUCO’s decision was unreasonable because it allowed door-to-door marketing to resume with no evidence of its evaluation and no rationale supporting its decision to lift the ban on door-to-door marketing.

R.C. 4903.09 requires that a complete record of all proceedings shall be made with findings of fact and written opinions setting forth the reasons prompting the decisions, based on findings of fact. While the PUCO ordered that door-to-door marketing could immediately resume on June 17, 2020,³⁷ it provided no explanation for how its decision was made. The findings of fact merely reference the Orders issued by the Ohio Department of Health as authority to permit the resumption of door-to-door sales.³⁸ Those orders do not address whether the PUCO should allow door-to-door sales to continue.

Additionally, there were no findings of fact or explanation showing what additional evidence or factors that the PUCO was considering in its “evaluation” of door-to-door marketing. Similarly, the PUCO did not provide an explanation as to how or

³⁴ Entry at ¶ 18 (June 17, 2020).

³⁵ *Id.*

³⁶ *Id.*

³⁷ Entry at ¶ 15 (June 17, 2020).

³⁸ *Id.*

whether it considered additional information not documented in the ruling.³⁹ There is merely an Entry saying that the decision was made.

The PUCO's ruling violated R.C. 4903.09, because the Order does not contain findings of fact; nor does it provide reasoning for its decision. *See e.g., Motor Service Co. v. Public Util. Comm.*, 39 Ohio St.2d 5 (1974). For reasons which now must be all too obvious given the video in the SFE Energy case and the good letter of PUCO Staffer Fadley, the PUCO's general reliance on all marketers to self-enforce for resumption of door-to-door sales is not going to work for the public in the middle of a killer pandemic. The PUCO should grant rehearing.

III. CONCLUSION

Things have changed since the PUCO's ruling to allow energy marketers to resume door-to-door sales to Ohioans. The changed circumstances present a clear and present danger to Ohioans from the coronavirus, and door-to-door marketing exacerbates that danger to people's health and lives. The PUCO should grant this application for rehearing and *block the knock* by suspending door-to-door marketing at Ohioans' homes until there is a coronavirus vaccine, a cure or general immunity in the population.

³⁹ OCC issued discovery requests to all parties in Case No. 20-1040-GE-UNC requesting copies of any data requests the Staff may have sent to the Marketers. The Marketers refused to respond to the discovery questions, claiming they were moot because the PUCO had made a decision in this case. The PUCO decision came before the discovery responses were even due. If the PUCO Staff requested information from the Marketers to evaluate whether door-to-door marketing should resume, there is no evidence available for review at this point.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing by the Office of the Ohio Consumers' Counsel was served on the persons stated below via electric transmission this 17th day of July 2020.

/s/ Maureen R. Willis

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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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**AS PREPARED ADDRESS TO THE CITIZENS OF OHIO
OHIO GOVERNOR MIKE DEWINE
OHIO STATEHOUSE CEREMONIAL OFFICE
COLUMBUS, OH
JULY 15, 2020**

Good evening.

I speak to you tonight from the Governor's office in the Ohio State Capitol.

We have now reached THE most critical point in our battle against the corona virus.

If all of us do not take immediate action to slow this virus down, the tragedy that we see playing out on our television screens every day in Florida, Texas, Arizona, and California may well be our reality in just a matter of weeks.

The good news is that this nightmare does not have to be our future.

Some have wondered what new health orders might be issued tonight. That's a discussion for another time.

As your Governor, I will take whatever action is necessary to protect the people of this state. But, the truth is, what your local health department or the Ohio Department of Health, or what I order is not nearly as important as what we all do in these crucial days ahead.

Our future truly lies in our own hands.

Ohioans have faced many challenges throughout time -- wars, floods, tornados -- but really nothing quite like this, since Governor James Cox was our Governor during the Spanish Flu Pandemic of 1918. Governor Cox and I are both from the Miami Valley, but the reason I keep his figure here is to remind me of the resilience and the strength of all the Ohioans who went through that tragedy.

And I know that Governor Cox must have felt, as I do every day, the pain and anguish of each family who lost someone to that virus.

Early this year, we watched as the corona virus erupted in China, then in Europe, then in the United States -- and then in Ohio.

But, in Ohio -- you did what Ohioans always do!

You rallied together!

You did what needed to be done early in this fight.

And you took a collective leap of faith in a battle against an invisible enemy -- the likes of which hadn't been seen in Ohio and this country in more than 100 years.

You made extraordinary sacrifices.

You left school.

You left work.

You stayed home.

You missed loved ones.

You missed milestones.

You missed paychecks.

Because you are Ohioans -- strong, steadfast, selfless -- you also saved lives.

You flattened the curve!

And, with your individual -- and collective -- actions, you bought Ohio time -- precious, finite time for our health care providers to create a statewide hospital system and for doctors and nurses to learn more about this novel illness and how best to respond...

Time for Ohio to procure lifesaving medical equipment, such as ventilators, as well as Personal Protection Equipment (PPE)...

And with no vaccine in sight, time to learn how to better manage this disease so we could carefully and responsibly re-open the state to protect both our lives and our livelihoods.

We sought input from business leaders throughout the state and listened to the scientists and other health experts to develop guiding protocols to open in an incremental, measured way that could protect the safety of employees and customers, alike.

By controlling the spread of the virus early on, we were able to responsibly re-open, and the Ohio economy has started coming back. Ohio's unemployment rate is coming down. While in April, the revised rate was 17.6 percent, in May, the rate dropped to 13.7 percent.¹ And further, for 10 straight weeks, applications for continued unemployment benefits have declined.²

We must keep the virus in check so that we can rebuild consumer confidence and keep this positive economic momentum going.

¹ State Unemployment Rates: Bureau of Labor Statistics: <https://www.bls.gov/news.release/laus.nr0.htm>.

² Ohio Department of Job and Family Services, accessed July 14, 2020, <https://ifs.ohio.gov/ocomm/pdf/Ohio-Initial-Jobless-Claims.pdf>.

So where are we now?

Clearly -- clearly the virus is spreading with a vengeance across many parts of Ohio and lurks, waiting to attack victims in all of our 88 counties.

Tragically, in just four months, we have already lost 3,075 Ohioans to this dreaded disease -- nearly the same number of Ohioans who died in the Vietnam War (3,094).³

Our hospitals are seeing more and more COVID patients. There are 1,027 of our fellow citizens in our hospitals tonight suffering from COVID -- 316 are in intensive care -- 146 are on a ventilator.⁴ And, many of those who have recovered now suffer from long-term -- and in some cases, permanent -- health consequences, such as lung damage, kidney damage, and other significant medical issues.

Ohio is now nearing our April and May peak of just over 1,100 hospital patients, with the Cincinnati and Dayton regions currently seeing more COVID-positive patients in their hospitals than during any previous time during the pandemic and the Cleveland region nearing a similar point⁵

At the beginning of the pandemic, it took Ohio 20 days to reach our first 1,500 total cases. Last week, we saw over 1,500 cases in a single day.⁶ And to think -- just a month ago -- we were at only 400 new cases per day.⁷

Some say that our case numbers are increasing because we are simply doing more testing. Yes -- we are testing more. In fact, our testing has gone up by 87 percent. But, our number of positive cases has skyrocketed by almost 200 percent!⁸

Clearly, our number of new cases is NOT just the result of increased testing!

Let's look again at Ohio and Florida. On June 9th, Florida had 1,200 cases per day -- about the same number of cases that we had in Ohio yesterday.⁹ This past Sunday, just one month later, Florida's case number was at 15,300 new cases in one single day.¹⁰

³<https://www.archives.gov/research/military/vietnam-war/casualty-statistics>.

⁴ Ohio Department of Health, www.coronavirus.ohio.gov.

⁵ Ohio Department of Health, www.coronavirus.ohio.gov.

⁶ Ohio Department of Health, www.coronavirus.ohio.gov.

⁷ Ohio Department of Health, www.coronavirus.ohio.gov.

⁸ Ohio Department of Health, www.coronavirus.ohio.gov.

⁹ State-level Data by Report Date, as compiled by the COVID Tracking Project, <https://covidtracking.com/data/download>.

¹⁰ "Two Days of Record Counts: Florida Adds 12,624 COVID Cases Monday, One Day after U.S.-shattering Record 15,300," by David Fleshler, *South Florida Sun Sentinel*, July 13, 2020.

Similarly, a month ago, Florida averaged 8.3 new cases per 100,000 residents per day, a little bit under what we have in Ohio currently. As of yesterday, Florida's new cases have increased six-fold per day (51.8 cases per 100,000 residents per day).¹¹

A month ago, Arizona was also at 1,200 new cases per day.¹² As of Sunday, Arizona was at 3,400 new cases per day. Further, Arizona averaged almost 18 new cases per 100,000 residents per day last month. That has since increased 2.5 times as of yesterday (45.1 cases per 100,000 residents per day).¹³

And, if we do not change course...Florida and Arizona will be our future.

I have always found history to be a teacher. And so early in the pandemic, I read a book by John Berry called The Great Influenza. It's about the catastrophic Spanish Flu of 1918. He wrote an article yesterday that puts our current reality into sobering perspective:¹⁴

“This is our second chance. We won't get a third. If we don't get the growth of this pandemic under control now, in a few months, when the weather turns cold and forces people to spend more time indoors, we could face a disaster that dwarfs the situation today.”

Ohio is sliding -- sliding down a very dangerous path, with our once flattened-curve starting to sharpen and spike.

This worrisome, disturbing reversal of our progress is a jarring reminder of just how quickly our fate can change.

A matter of weeks can change our trajectory.

Weeks can alter our future.

Weeks can change our lives.

Weeks can be the difference between who lives and who dies in Ohio.

We must act -- and we must act now!

This is not a drill.

This is not a hoax.

¹¹ State-level Data by Report Date, as compiled by the COVID Tracking Project, <https://covidtracking.comdata.download>.

¹² <https://coronavirus.jhu.edu/data/state-timeline/new-confirmed-cases/arizona>.

¹³ State-level Data by Report Date, as compiled by the COVID Tracking Project, <https://covidtracking.comdata.download>.

¹⁴ <https://www.nytimes.com/2020/07/14/opinion/coronavirus-shutdown.html>.

This is not a dress rehearsal.

It's the real thing.

The enemy is here -- and Ohioans have simply come too far in this fight to cede ground now.

My fellow Ohioans, you have changed history with this virus before -- and you can do it again -- but our window of opportunity may soon be closing.

As we have seen in Florida, California, Arizona, and Texas, once things start moving, they move very quickly -- and it is so very hard then to turn things back around.

My fellow Ohioans -- you -- all of us together -- have the power to change our future.

This is a defining time -- THE defining time -- for each one of us. And there has been no greater call in recent times for Ohioans than for us to call upon our "better angels," as President Abraham Lincoln said, and do what is right to protect each other.

Ohioans have always been a people, who have been willing to sacrifice today for a better tomorrow.

I am asking each of you tonight to take action now -- to sacrifice now -- so our kids can be in school this fall...

So, they can at least have a chance to play sports...

So, our businesses can remain open...

So that Ohioans can continue earning a living and a paycheck and support their families...

What am I asking you to do?

Let's start with masks. I am asking each one of you, wherever you live in Ohio -- whatever the alert color of your county -- to wear a mask when you go out in public.

Some may still question the wisdom of wearing masks, but as we used to say when I was a prosecuting attorney, "The jury is back. The verdict is in."

There is a broad consensus today in the medical, health, and business communities that masks are critical.

Yesterday, Dr. Robert Redfield, Director of the Centers for Disease Control and Prevention, said,

“If all of us would put on a face covering now for the next four weeks, six weeks, we could drive this epidemic to the ground.”¹⁵

Wearing masks is also our best way to protect Ohio jobs.

A recent Goldman Sachs report shows that wearing face masks can be viewed as an alternative to lockdowns. They found, that in most cases, within a couple of weeks of people consistently wearing facemasks, there was a slowdown in the spread of the virus. Further, the study suggests that to curb the spread of the virus as successfully as wearing face masks does, we would have to consider a lockdown that essentially would subtract five percent of the country’s Gross Domestic Product.¹⁶

But masks are not enough.

Let’s be honest, all of us have started to let our guard down. I know sometimes I have. We’re tired. We want to go back to the way things were – and that’s very understandable.

But when we do, we are playing Russian Roulette with our lives.

Good decisions will protect the economy and save lives. Reckless ones will hurt and kill.

These are tough questions, but ask yourselves: Will that family reunion be worth it if your grandmother later tests positive for COVID and dies?

Will that neighborhood cookout be worth it if your neighbor ends up alone, on a ventilator, in intensive care?

Will that play date be worth it, if the kids can’t go back to school in the fall?

We’re all tired of being cooped up. I know your kids want to be with their friends. And, Fran and I know our grandchildren certainly do.

But, what’s better? Knowing you did all you could to keep your family and neighbors safe and our economy open -- or taking risks that lead to illness, death, and another economic shutdown?

Don’t we all want to be around to meet our future children and grandchildren not yet born? To attend their Baptisms? To watch our kids and grandkids graduate from school? To attend their future weddings?

¹⁵ <https://www.usatoday.com/story/news/health/2020/07/15/covid-19-california-testing-moderna-vaccine-best-buy-requires-masks/5436928002/>.

¹⁶ Face Masks and GDP: Goldman Sachs, <https://www.goldmansachs.com/insights/pages/face-masks-and-gdp.html>.

This virus will end. It will end! And we all want to be around when it does, so we can enjoy life, enjoy our families, and enjoy our friends.

None of us can do this, alone. In words often attributed to Ronald Reagan, “We can’t help everyone, but everyone can help someone.”¹⁷

These are once-in-a-hundred-years sacrifices -- short-term inconveniences, for long-term freedoms.

In his January 1941 State of the Union Address to Congress, President Franklin Roosevelt began to make his case to end the isolation policies that emerged following World War I. He spoke of America’s need to sacrifice in times of crisis -- and the unity that comes with a nation’s collective actions. Here is what said:

“No one can tell the exact character of the emergency situations that we may be called upon to meet. The nation's hands must not be tied when the nation's life is in danger. [All of us] must prepare to make the sacrifices that the emergency -- almost as serious as war, itself -- demands. . . . Our strength is our unity of purpose...[and] to that high concept, there can be no end save victory.”¹⁸

Our state’s life is now in danger -- and our own strength lies in our unity of purpose.

Early in this pandemic, Ohioans came together. You showed extraordinary kindness, care, compassion your families, friends, neighbors, and strangers, alike.

You rose to the occasion.

You answered the call.

I am calling on all Ohioans to once again unite.

This virus is real.

It is killing our family members, our friends, our co-workers.

We must take the long-view in our response to it and remember that Ohioans have always been a strong, determined, resilient people, who, time and time again, have overcome adversity and beat the odds.

From the Native Americans, who created intricate and massive earthworks...

To the pioneers, who navigated their way along the Ohio River and constructed the National Road...

¹⁷https://en.wikiquote.org/wiki/Ronald_Reagan.

¹⁸ <https://www.americanrhetoric.com/speeches/PDFFiles/FDR%20-%20Four%20Freedoms.pdf>.

To the abolitionists and African Americans, who worked together to create an underground railroad leading those in slavery to freedom...

To the immigrants, who built our cities...

To the African Americans and those from Appalachia, who migrated to Ohio to work, raise a family, and start a better life...

At the start of this pandemic, Ohioans set the example for the rest of our country. Though this has been a trying time for all Ohioans, you showed the world what was possible when people work together!

You showed the world our Ohio grit!

I remain an optimist and truly believe that we will rise out of the great tragedy of this virus and all it has laid bare. Positive things will come out of our struggle -- American and Ohio ingenuity, innovation, and creativity; deeper relationships with family and friends; and a stronger, renewed sense of community and our obligations to one other.

Out of this struggle, we will learn.

And, we will emerge stronger, better, and more resilient.

As the Bible tells us in Galatians, "Let us not grow weary of doing good, for in due season, we will reap -- if we do not give up."

Ohioans never give up.

And Ohioans will not grow weary of doing good and helping to protect each other.

We are Buckeyes.

We are strong.

And we will not relent, as we forge a path forward -- united -- in building Ohio's future.

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Case No(s). 20-0591-AU-UNC, 20-1040-GE-UNC

Summary: App for Rehearing Application for Rehearing to Suspend Door-to-Door Sales by Energy Marketers by Coalition on Homelessness and Housing in Ohio, Northeast Ohio Public Energy Council, the Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.