BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code.	))))	Case No. 19-1429-GA-ORD

APPLICATION FOR REHEARING TO PROTECT NATURAL GAS CONSUMERS BY OFFICE OF THE OHIO CONSUMERS' COUNSEL

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March 26, 2021

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The minimum gas service standards rules found in O.A.C. Chapter 4901:1-13 are designed to "promote reliable and reasonably priced natural gas services and goods to millions of Ohio consumers." Although the PUCO's February 24, 2021 Finding and Order ("Order") provided some protections for consumers, the PUCO should have done more. The PUCO should have adopted its Staff's proposed rules and OCC's recommendations[1] that were designed to adapt these PUCO rules to the needs of the consumers and to protect all residential customers.

The PUCO's order was unlawful or unreasonable in the following respects:

ASSIGNMENT OF ERROR NO. 1: The PUCO erred when it unlawfully failed to adopt OCC's "shadow-billing" proposal for two reasons.

ASSIGNMENT OF ERROR NO. 2: The PUCO erred when it unreasonably failed to protect consumers by rejecting Staff's recommendation to amend O.A.C. 4901:1-13-01 to define the term "commodity charge," and by rejecting Staff's recommendation to amend O.A.C. 4901:1-13-1 (K) to only include "commodity" charges on regulated natural gas bills.

ASSIGNMENT OF ERROR NO. 3: The PUCO erred when it unlawfully and unreasonably failed to require the current standard choice offer or gas cost recovery rate to be printed on gas bills, which violates state policy in R.C. 4929.02 (A)(1).

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[1] *See* OCC Comments (January 17, 2021); Reply Comments (January 31, 2021).

ASSIGNMENT OF ERROR NO. 4: The PUCO erred when it unreasonably failed to protect consumers by rejecting Staff's and OCC's recommendations to include a switching block provision to customer rights and obligations as a new rule O.A.C. 4901:1-13-12(G). This results in consumers having less education as to their rights and less ability to protect themselves against slamming.

Respectfully submitted,

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TABLE OF CONTENTS

PAGE

I. INTRODUCTION 1

II. MATTERS FOR REHEARING 2

ASSIGNMENT OF ERROR NO. 1: The PUCO erred when it unlawfully failed to adopt OCC's "shadow-billing" proposal for two reasons.....2

A. The PUCO erred when it based its decision to reject OCC's "shadow-billing" proposal on the Utilities' and marketers assertion that it would require "significant billing system changes" and without any record evidence of what the changes would be and what the associated costs of the changes would be. This violates R.C. 4903.09 and the Ohio Supreme Court precedent in Tongren…….2

B. The PUCO also erred when it unreasonably found that "there are a number of existing resources, such as the Commissions' Energy Choice Ohio website, that provide substantial amount of information for customers to compare pricing and available offers."……5

ASSIGNMENT OF ERROR NO. 2: The PUCO erred when it unreasonably failed to protect consumers by rejecting Staff's recommendation to amend O.A.C. 4901:1-13-01 to define the term "commodity charge," and by rejecting Staff's recommendation to amend O.A.C. 4901:1-13-1 (K) to only include "commodity" charges on regulated natural gas bills. 7

A. The PUCO erred when it unreasonably failed to protect consumers by rejecting Staff's proposal that O.A.C. 4901:1-13-01 definitions should include the term "commodity charge" (Staff only proposed that a definition was needed, but did not propose any wording to define the term)…….7

B. The PUCO unreasonably failed to protect consumers by refusing to adopt the Staff's proposed new rule in O.A.C. 4901:1-13-11(K)……..8

ASSIGNMENT OF ERROR NO. 3: The PUCO erred when it unlawfully and unreasonably failed to require the current standard choice offer or gas cost recovery rate to be printed on gas bills, which violates state policy in R.C. 4929.02 (A)(1). 10

ASSIGNMENT OF ERROR NO. 4: The PUCO erred when it unreasonably failed to protect consumers by rejecting Staff's and OCC's recommendations to include a switching block provision to customer rights and obligations as a new rule O.A.C. 4901:1-13-12(G). This results in consumers having less education as to their rights and less ability to protect themselves against slamming. 11

III. CONCLUSION.....12

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The minimum gas service standards serve the important purpose of promoting, , the availability of adequate, reliable, and reasonably priced natural gas services for millions of Ohio natural gas consumers.[2] The PUCO rules should consistently implement solutions that serve these purposes and protect residential customers. These rules are even more crucial for consumers in these times where they are suffering from financial and health crises caused by the global pandemic.[3]

The PUCO in its Order should have done more to protect consumers. It should have adopted Staff's and OCC's recommendations[4] that were designed to adapt these PUCO rules to the needs of consumers. The PUCO's failure to protect consumers was unreasonable and the Order should be modified.

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[2] R.C. 4929.02(A)(1).

[3] https://www.nytimes.com/2020/04/15/opinion/coronavirus-stimulus-check-payment.html; https://www.dispatch.com/story/news/2020/09/25/hunger-among-ohio-families-increasing-covid-19-pandemic-persists/3519850001/.

[4] *See* OCC Comments (January 17, 2021); Reply Comments (January 31, 2021).

II. MATTERS FOR REHEARING

ASSIGNMENT OF ERROR NO. 1: The PUCO erred when it unlawfully failed to adopt OCC's "shadow-billing" proposal for two reasons.

A. The PUCO erred when it based its decision to reject OCC's "shadow-billing" proposal on the Utilities' and marketers assertion that it would require "significant billing system changes" and without any record evidence of what the changes would be and what the associated costs of the changes would be.[5] This violates R.C. 4903.09 and the Ohio Supreme Court precedent in Tongren.[6]

Shadow-billing is an important consumer protection tool. Shadow-billing shows the difference between what shopping customers paid for natural gas and what the customers would have paid had they chosen the utility standard choice offer or gas cost recovery rate. This data provides consumers with the ability to determine the savings or lack of savings they are getting from the gas choice program.[7] And as a recent Wall Street Journal article—titled "*Deregulation Aimed to Lower Home-Power Bills. For Many, it Didn't*"—found, consumers are mostly receiving a lack of savings from the choice program—to the tune of $19.2 billion.[8]

The PUCO turned its back on consumers when it rejected OCC's "shadow-billing" proposal. The PUCO's Order is unlawful and unreasonable.[9] It is unlawful because it failed to make findings of fact based on record evidence. This violates R.C.

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[5] Order at 27.

[6] *See Tongren v. PUC*, 85 Ohio St.3d 87, 1999-Ohio-206, 706 N.E.2d 1255.

[7] *See* OCC's Comments at 3-4 and Reply Comments at 2-5.

[8] Scott Patterson & Tom McGinty, *Deregulation Aimed to Lower Home-Power Bills. For Many, it Didn't*, The Wall Street Journal, (March 8, 2021, 12:24 PM), https://www.wsj.com/articles/electricity-deregulation-utility-retail-energy-bills-11615213623 (U.S. consumers who signed up with retail energy companies that emerged from deregulation paid $19.2 billion more than they would have if they'd stuck with incumbent utilities from 2010 through 2019, a Wall Street Journal analysis of U.S. Energy Information Administration data found).

[9] Order at 27-28.

4903.09 and Ohio Supreme Court precedent in *Tongren*.[10] In particular, the Order is unreasonable because it failed to determine what "significant billing system changes" entail and what the associated costs of these changes are.

R.C. 4903.09 requires that the PUCO decisions must be based on findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.[11] This concept has been confirmed by the Ohio Supreme Court in *Tongren*.[12]

In *Tongren,* the Ohio Supreme Court determined that a PUCO order must provide "in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion."[13] The Court also clarified that some factual support for PUCO determinations must exist in the record, and this is an obligation which the PUCO itself has recognized in its orders.[14] In this case, the PUCO failed to provide "in sufficient detail, the facts in the record upon which the order is based, and the reasoning it followed in reaching its conclusion.

Tongren requires that the PUCO provide reasoning based on facts *on the record* in *this* case for its decision to reject "shadow-billing." The PUCO failed to do so when it

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[10] *See Tongren v. PUC*, 85 Ohio St.3d 87, 1999-Ohio-206, 706 N.E.2d 1255.

[11] R.C. 4903.09.

[12] *See Tongren v. PUC*, 85 Ohio St.3d 87, 1999-Ohio-206, 706 N.E.2d 1255.

[13] *See id; see also MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 311, 513 N.E.2d 337, 344; *Allnet Communications Serv., Inc. v. Pub. Util. Comm.* (1994), 70 Ohio St.3d 202, 209, 638 N.E.2d 516, 521.

[14] *See Tongren* at 89-90; *see*, *e.g., In re Petition of Studer & Numerous Other Subscribers of Neapolis Exchange of ALLTEL Ohio*, PUCO Case No. 88-481-TP-PEX, Entry on Rehearing (September 6, 1990).

found that shadow-billing would "require significant billing changes" (the Utilities' and marketers' argument).[15] And it couldn't have because no data or costs were provided.

The PUCO's order states that "consistent with our decisions in prior cases, the Commission declines to adopt OCC's shadow-billing proposal…its proposal would require significant billing system changes."[16] But none of the "significant billing system changes," nor their implementation costs were provided. The only costs were do know are how much consumers are over-paying—$19.2 billion.[17]

Without the utilities' costs for their "significant billing system" changes and information on the record, the PUCO failed to base its decision on findings of fact and record evidence. And in this specific case—it cannot just make a blanket rejection statement merely because "it did so before."[18] This decision violates R.C. 4903.09 and the Ohio Supreme Court precedent in *Tongren.*[19] The PUCO's Order is unreasonable and OCC's application for rehearing should be granted.

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[15] Order at 27-28.

[16] Order at 28.

[17] Scott Patterson & Tom McGinty, *Deregulation Aimed to Lower Home-Power Bills. For Many, it Didn't*, The Wall Street Journal, (March 8, 2021, 12:24 PM), https://www.wsj.com/articles/electricity-deregulation-utility-retail-energy-bills-11615213623 (U.S. consumers who signed up with retail energy companies that emerged from deregulation paid $19.2 billion more than they would have if they'd stuck with incumbent utilities from 2010 through 2019, a Wall Street Journal analysis of U.S. Energy Information Administration data found).

[18] Order at 27 ("Consistent with our decisions in prior cases, the Commission declines to adopt OCC's shadow-billing proposal").

[19] *See Tongren v. PUC*, 85 Ohio St.3d 87, 1999-Ohio-206, 706 N.E.2d 1255.

B. The PUCO also erred when it unreasonably found that "there are a number of existing resources, such as the Commissions' Energy Choice Ohio website, that provide substantial amount of information for customers to compare pricing and available offers."20

The PUCO's statement that "there are a number of existing resources, such as the Commissions' Energy Choice Ohio website, that provide substantial amount of information for customers to compare pricing and available offers"[21] contradicts the PUCO's reasoning later in the Order, when addressing the price-to-compare on the bill.

The PUCO reasoned when adopting Staff's price-to-compare proposal that "[a]s some of the commenters have noted, the Commission's Energy Choice Ohio website provides information intended to facilitate a comparison of rates that will enable customers to make informed decisions about their choice of supplier. <u>However, as the COVID-19 pandemic has made clear, there are many Ohioans with insufficient or no internet access."</u>[22] <u>(emphasis added)</u>. And even more concerning is the occurrences of marketers providing misleading information about variable rates; it's difficult to rely on the Energy Choice Ohio website when marketers are providing misleading information and harming consumers.[23]

It is unclear why consumers must rely on the Energy Choice Ohio website to compare pricing in lieu of shadow-billing when the PUCO acknowledged that for the

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[20] Order at 27-28.

[21] Order at 27-28.

[22] Order at 19.

[23] Scott Patterson & Tom McGinty, *Deregulation Aimed to Lower Home-Power Bills. For Many, it Didn't*, The Wall Street Journal, (March 8, 2021, 12:24 PM), https://www.wsj.com/articles/electricity-deregulation-utility-retail-energy-bills-11615213623 (The PUCO is investigating whether retail energy providers PALMco Energy and Verde Energy USA, a Spark Energy Inc. affiliate, provided misleading information about variable rates, among other possible violations. The two providers were "very misleading about the nature of the price and the variable nature of it," said Matt Schilling, public-affairs director with the agency, who said the rate they eventually charged was as much as four times the standard utility charge).

price-to-compare, "there are many Ohioans with insufficient or no internet access."[24] The PUCO must determine if—considering its own determination that many Ohioans lack sufficient internet access—that the Energy Choice Ohio website is a sufficient substitution for shadow-billing, when it is not for the price-to-compare. The answer is the Energy Choice Ohio website is not sufficient to inform all Ohioans of their utility choices and associated costs. Moreover, it is illogical for the PUCO to reject a recommendation for the same reason that it adopted a similar recommendation.

The protection of both "shadow-billing" and the "price-to-compare" must be added to the tools available to consumers to make informed decisions about their utility services. All customers get a bill, regardless of whether they have internet access. And customers should not have less information and choices available to them because they do not have internet access. "Shadow-billing" and the "price-to-compare" provide the most straightforward and reliable way to provide consumers with access to pricing to help decide what is the best option for them.

The PUCO's decision to decline adoption of shadow-billing as proposed by OCC was unreasonable and harms consumers. OCC's application for rehearing should be granted, and the Order modified consistent with our recommendations.

[24] Order at 27-28.

ASSIGNMENT OF ERROR NO. 2: The PUCO erred when it unreasonably failed to protect consumers by rejecting Staff's recommendation to amend O.A.C. 4901:1-13-01 to define the term "commodity charge," and by rejecting Staff's recommendation to amend O.A.C. 4901:1-13-1 (K) to only include "commodity" charges on regulated natural gas bills.

A. The PUCO erred when it unreasonably failed to protect consumers by rejecting Staff's proposal that O.A.C. 4901:1-13-01 definitions should include the term "commodity charge" (Staff only proposed that a definition was needed, but did not propose any wording to define the term).[25]

The PUCO erred when it unreasonably failed to protect consumers by rejecting Staff's proposal to include the definition for "commodity charge" in O.A.C. 4901:1-13-01.[26] It also erred by declining to adopt OCC's strong consumer protection definition that " "commodity charge" includes the portion of the natural gas bill that is based on the cost of the actual natural gas supplied to the customer by either the natural gas utility or competitive retail natural gas supplier." "[27] Without these consumer protections, consumers may be confused about what unpaid charges for which they can be disconnected.

The definition of what constitutes a "commodity charge" versus a "non-commodity" charge is necessary for disclosing what consumers can and cannot be disconnected for. Consumers may be disconnected for failing to pay for their natural gas (the commodity charge) but cannot be disconnected for not paying for any extras (meaning not just the natural gas commodity) offered by marketers (non-commodity charges). The PUCO failed to protect consumers by declining to adopt a definition for "commodity charge." Even if the PUCO does not adopt OCC's proposed definition

[25] Order at 25.

[26] Order at 25.

[27] OCC Comments at 11.

(which it should), it should provide a clear definition for the meaning of "commodity charge" in O.A.C. 4901:1-13-01.

The PUCO's decision was unreasonable and OCC's application for rehearing should be granted, and the Order modified consistent with our recommendations.

B. The PUCO unreasonably failed to protect consumers by refusing to adopt the Staff's proposed new rule in O.A.C. 4901:1-13-11(K).[28]

The PUCO also unreasonably failed to protect consumers by rejecting Staff's proposed new rule O.A.C. 4901:1-13-11(K).[29] The proposed rule limits the charges that can be imposed on a natural gas bill to contain only natural gas company or competitive retail natural gas "commodity charges" (which the PUCO refused to define in O.A.C. 4901:1-13-01)[30] and a tariff-approved distribution charge or service.[31] OCC supported the addition of this rule because it is an important consumer protection that helps limit the types of charges that can be included on a natural gas bill.[32] It also reduces—if not eliminates—consumer exposure to scams and cramming.

The PUCO stated that the proposed rule would "impose an outright prohibition" of charges for non-commodity goods and services and should not be adopted.[33] But this is exactly why it *should* be adopted. IGS claimed that that there is no harm in having non-commodity charges on the bill because customers are not eligible for disconnection if these charges are not paid.[34] But many customers are not aware of different consumer

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[28] Order at 25.

[29] Order at 25.

[30] *See* Assignment of Error 2 at p. 11, *supra.*

[31] OCC Comments at 19.

[32] OCC Comments at 19; OCC Reply Comments at 15-18.

[33] Order at 25.

[34] IGS Comments at 3 (January 17, 2021).

protection rights that apply for unregulated charges that appear on a regulated natural gas bill. The marketers will not be harmed by removing unregulated products and services from the regulated bill. Consumers still have access to the plethora of unregulated products and services available through the market; however, they would not be bombarded with this confusing information on their regulated gas bill. The PUCO should not sacrifice consumer protection for marketer convenience.

Staff's proposed rule to limit what can be included on natural gas bills to "commodity charges" and OCC's proposed definition of "commodity charges" are important to help prevent natural gas bills from being misused (e.g. as the vehicle for presenting marketer monthly service fees, miscellaneous charges, or other charges for products and services to customers for collection. These charges have nothing to do with the natural gas service being provided by the gas utility).[35] It would also prevent cramming charges to consumer bills that they did not authorize.

The PUCO erred by declining to adopt Staff's proposed Rule (K) to limit what appears on the natural gas bill to protect consumers against slamming and cramming. The PUCO should have adopted the simple and straight-forward proposal by Staff to facilitate using the regulated natural gas bill for its intended purpose: billing customers for natural gas charges and services. Consumer regulated utility bills should include only those charges that are specific to natural gas service that are under PUCO oversight. This would go one step further towards avoiding any uncertainty as to what can be on the bill (only the natural gas commodity) and what charges consumers can be disconnected for nonpayment (only the natural gas commodity).

[35] OCC Comments at 11; OCC Reply Comments at 15-18.

The PUCO's decision was unreasonable and OCC's application for rehearing should be granted, and the Order modified consistent with our recommendations.

ASSIGNMENT OF ERROR NO. 3: The PUCO erred when it unlawfully and unreasonably failed to require the current standard choice offer or gas cost recovery rate to be printed on gas bills, which violates state policy in R.C. 4929.02 (A)(1).

The PUCO adopted Staff's price-to-compare statement on customer bills and recognized that "as the COVID-19 pandemic has made clear, there are many Ohioans with insufficient or no internet access."[36] And OCC supported Staff's proposed language. However, the PUCO modified the language of the Staff's proposed price-to-compare statement. In doing so, the PUCO failed to require the actual current standard choice offer or gas cost recovery *rate* to be printed on bills.[37] Instead, the PUCO directs consumers to compare supplier offers to the standard choice offer and other marketer offers at energychoice.ohio.gov or by contacting the PUCO.

The purpose of including the price-to-compare with the standard choice offer ("SCO") or the gas cost recovery rate ("GCR"), is so consumers can make the comparison based on their bill, without needing to check the internet to see which price is better. Adding the price-to-compare language without the rate removes any benefit gained by adding the price-to-compare message to the bill. This omission violates state policy in R.C. 4929.02 (A)(1) to promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods. It also harms consumers that do not have internet access by forcing them to contact the PUCO or check the PUCO's Energychoice website—which is the reason (lack of internet) the PUCO gave for adopting a price-to-

[36] Order at 19.

[37] Order at 19.

compare statement.[38] The PUCO erred by failing to include the SCO or GCR rate in the price-to-compare.

OCC's application for rehearing should be granted, and the Order modified consistent with our recommendations.

ASSIGNMENT OF ERROR NO. 4: The PUCO erred when it unreasonably failed to protect consumers by rejecting Staff's and OCC's recommendations to include a switching block provision to customer rights and obligations as a new rule O.A.C. 4901:1-13-12(G). This results in consumers having less education as to their rights and less ability to protect themselves against slamming.

The PUCO erred and unreasonably failed to protect consumers when it rejected Staff's and OCC's recommendation to adopt Staff proposed new rule 4901:1-13-12(G).[39] The current rule requires the customer to contact the Utility to cancel the unauthorized enrollment once they receive the seven-day right to rescind from the Utility. This is not the best way to protect consumers against utility slamming.

Staff's proposed rule is proactive and would enable consumers to block a switch in their gas supply without first providing the Utility with a code or pin number prior to the switch.[40] Staff's proposal was supported by OCC because it would prevent slamming from occurring rather than placing the burden on customers to cancel an unauthorized enrollment. Staff's proposal is also more aligned with Ohio law[41] because it provides consumers with a proactive way to prevent slamming without the need to rely exclusively on the seven-day notice[42]

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[38] Order at 19.

[39] Order at 34.

[40] OCC Comments at 7; OCC Reply Comments at 8.

[41] R.C. 4929.22.

[42] R.C. 4929.22.

The Utilities said it will cost them money to implement,[43] but failed to provide the cost information for the record in this proceeding. The marketers said the change was unnecessary and could restrict competition and favor the Utility.[44] But the supplier block would protect both utility customers and shopping customers from being slammed. The PUCO's decision stated there are ways customers can protect themselves,[45] and while true, Staff's proposal is better protection for consumers—the right to block the switch before it happens. While customers can request to not be solicited by marketers, this is not going to protect customers from being slammed. Additionally, the marketers will not be harmed because they have alternative ways to attract and keep customers. There is plenty of advertising through the mail and online that is available to market to consumers without the added risk and frustration of being slammed. The customer rights and obligations document should reflect this important right. The PUCO erred by failing to require inclusion of information regarding the ability for consumers to place a switching block on their account to avoid unapproved changes to their gas services.

OCC's application for rehearing should be granted. The PUCO should reverse its decision to and adopt Staff's proposed new rule O.A.C. 4901:1-13-12 (G) to better educate consumers about slamming and protect them from it.

III. CONCLUSION

Rules regarding residential billing and reasons for disconnection are especially important for residential customers. Especially in this financially challenging time, it is

[43] Order at 33-34.

[44] Order at 33-34.

[45] Order at 34.

important to protect consumers as much as possible. OCC's recommendations will protect residential customers. The PUCO should have adopted them. An application for rehearing must set forth the specific grounds upon which it considers the PUCO order to be unreasonable or unlawful. The PUCO's Order in this case was both unlawful and unreasonable because it failed to adopt Staff's and OCC's consumer protection recommendations in violation of Ohio law and Supreme Court of Ohio precedent.

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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 26th day of March 2021.

/s/ Ambrosia E. Wilson
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Summary: App for Rehearing Application for Rehearing to Protect Natural Gas Consumers by Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Wilson, Ambrosia E.