

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|--|---|-------------------------|
| In the Matters of the Applications of Duke |) | Case No. 14-375-GA-RDR |
| Energy Ohio, Inc., for Adjustments to Rider |) | Case No. 15-452-GA-RDR |
| MGP Rates. |) | Case No. 16-542-GA-RDR |
| |) | Case No. 17-596-GA-RDR |
| |) | Case No. 18-283-GA-RDR |
| |) | Case No. 19-174-GA-RDR |
| |) | Case No. 20-53-GA-RDR |
| | | |
| In the Matters of the Applications of Duke |) | Case No. 14-376-GA-ATA |
| Energy Ohio, Inc. for Tariff Approval. |) | Case No. 15-453-GA-ATA |
| |) | Case No. 16-543-GA-ATA |
| |) | Case No. 17-597-GA-ATA |
| |) | Case No. 18-284-GA-ATA |
| |) | Case No. 19-175-GA-ATA |
| |) | Case No. 19-1086-GA-UNC |
| |) | Case No. 20-54-GA-ATA |
| | | |
| In the Matter of the Application of Duke |) | Case No. 18-1830-GA-UNC |
| Energy Ohio, Inc., for Implementation of the |) | |
| Tax Cuts and Jobs Act of 2017. |) | |
| | | |
| In the Matter of the Application of Duke |) | Case No. 18-1831-GA-ATA |
| Energy Ohio, Inc., for Approval of Tariff |) | |
| Amendments. |) | |
| | | |
| In the Matter of the Application of Duke |) | Case No. 19-1085-GA-AAM |
| Energy Ohio, Inc., for Authority to Defer |) | |
| Environmental Investigation and |) | |
| Remediation Costs. |) | |

**MEMORANDUM CONTRA JOINT APPLICATION FOR REHEARING OF THE
RETAIL ENERGY SUPPLY ASSOCIATION AND INTERSTATE GAS SUPPLY, INC.
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

RESA and IGS do not like the Settlement.¹ They are disappointed that it includes three market-related provisions. They are disappointed that they were not part of settlement negotiations (which is interesting given they did not intervene in these cases until after the Settlement was filed). But their disappointment does not make the Settlement fail the PUCO's three-part settlement test. No matter how much they complain, the truth is as follows:

All parties who intervened in these cases at the time of the negotiations are either a signatory party or a non-opposing party.

There is no law, rule, policy, procedure, or convention that would require (or even allow) parties to a case to invite non-parties to confidential settlement negotiations.

The Settlement contains numerous benefits to consumers, including substantial financial benefits related to Duke's manufactured gas plant cleanup and tax benefits stemming from the Tax Cuts and Jobs Act of 2017.²

The Settlement's market-related provisions are one piece of a larger settlement package. The provisions will benefit the development of a competitive market for Duke's natural gas customers, not hinder it.

The PUCO found as much and approved the Settlement on April 20, 2022.³ Now, the Marketers have applied for rehearing of the Opinion and Order approving the consumer-friendly Settlement. But the only thing that the Marketers have shown in their joint application for rehearing is that they dislike the Settlement. They have not provided

¹ Joint Ex. 1 (Settlement).

² *See generally* Initial Brief by Office of the Ohio Consumers' Counsel (December 9, 2021).

³ Opinion and Order (April 20, 2022).

the PUCO with any reason to find that its Opinion and Order was unreasonable or unlawful based on the signatory parties' evidence showing that the Settlement was the product of serious bargaining. They have not provided the PUCO with any reason to find that its Opinion and Order was unreasonable or unlawful based on the signatory parties' evidence showing that the Settlement will provide substantial benefits to consumers and the public interest. And they have not provided the PUCO with any reason to find that its Opinion and Order was unreasonable or unlawful based on the signatory parties' evidence that the Settlement is consistent with important regulatory principles and practices.

The PUCO was right in approving the consumer-friendly Settlement. If anything, the PUCO should be adopting more consumer protections from energy marketing, not less. Consumers would benefit from less complaining and more competing by the energy marketers. The Marketers' application for rehearing should be denied.

II. ARGUMENT

A. The Settlement was the product of serious bargaining among capable and knowledgeable parties.

The Marketers argue that the Settlement was not the product of serious bargaining because they were not invited to settlement negotiations.⁴ They also argue that the PUCO acted unreasonably and unlawfully by concluding that there “appears to be” serious bargaining among capable, knowledgeable parties.⁵ These arguments have no merit.

⁴ Joint Application for Rehearing at 19-26.

⁵ *Id.* at 19.

The Marketers believe that they should have been invited to settlement negotiations so that they could provide input on the market-related provisions.⁶ They cite no PUCO cases for this claim—not a single case in which the PUCO ruled that *non-parties* must be invited to settlement negotiations. The only precedent they cite for this is *Time Warner AXS v. PUCO*.⁷ But *Time Warner* does not apply.

The Ohio Supreme Court in *Time Warner* stated that it was concerned that “an entire *customer class* was intentionally excluded” from settlement negotiations.⁸ Marketers are not a *customer* class, despite their arguments to the contrary. The Marketers assert that they are “a class of consumers or a class worthy of the protections of *Time Warner*”⁹ But the purported evidence that the Marketers point to contradicts their argument. The Marketers point to tariff schedules as evidence that marketers are consumers of Duke.¹⁰ But the applicability language of the tariff states “[t]hese charges apply to Retail Natural Gas Suppliers and Aggregators providing Competitive Retail Natural Gas Service to *Customers* located in the Company’s service territory.”¹¹ If the Marketers were customers of Duke as they assert, then the tariff would not specifically reference customers separately from marketers. The Marketers are not a customer class for purposes of *Time Warner*. The PUCO correctly confirmed this in the Opinion and Order.¹²

⁶ *See id.*

⁷ 75 Ohio St.3d 229 (1996).

⁸ 75 Ohio St.3d at 233, footnote 2 (emphasis added).

⁹ Joint Application for Rehearing at 22.

¹⁰ *Id.*

¹¹ *Id.* at 24 (emphasis added).

¹² Opinion and Order at ¶88.

Further, in applying *Time Warner*, the PUCO has said that the “primary focus” of the first prong of its settlement test “is whether each *party* was afforded the opportunity to participate in settlement discussions and whether any *class of customers* was *intentionally* excluded from settlement discussions.”¹³ The Marketers were not parties at the time of settlement negotiations. They do not represent a class of customers (or any customers). And there is no evidence that they were intentionally excluded.

The Marketers’ theory seems to be that the signatory parties should have known that the Marketers would be interested in the Settlement, so the signatory parties should have invited them to participate in settlement negotiations, even though they were not parties to the cases.¹⁴ But this proposed “duty to invite” standard would be impossible to implement or enforce – not to mention it would violate the confidentiality of settlement negotiations.

First, if parties had a duty to invite others who might be interested in a settlement, then settlement negotiations could be deterred as parties engage in a search for potential parties that might be interested. This is unreasonable and not feasible.

Second, even in the limited context of this case, who should the signatory parties have invited? IGS and RESA say that they should have been invited. But what about other marketers? There are 60 marketers licensed to provide retail service for Duke’s natural gas customers.¹⁵ Were the signatory parties required to invite every single one? When the Marketers’ witness was asked how the signatory parties should determine

¹³ See *In re Application of Ohio Power Co.*, Case No. 17-1230-EL-UNC, Opinion & Order ¶ 27 (February 27, 2019) (emphasis added).

¹⁴ See generally Joint Application for Rehearing at 19-26.

¹⁵ See RESA/IGS Ex. 3 at 5 (Crist Testimony).

which marketers to invite, he responded only that RESA should be invited.¹⁶ And notably, IGS and RESA do not represent the interests of *all* marketers. RESA, for example, represents the interests of RESA members, whose interests might not align with other marketers.¹⁷ The Marketers provided no testimony that they reached out to other marketers to invite them to participate in this case—which one would have expected if the Marketers were as concerned as they claim to be about all interested parties participating in PUCO proceedings.¹⁸

The PUCO necessarily must make its findings of fact and conclusions of law based on the record in the case.¹⁹ The Commissioners did not attend the various and numerous settlement meetings. Thus, they relied on the record in the cases. And the record, witness testimony, a wide range of settlement participants and signatory and non-opposing parties representing a wide-range of interests. The give and take described in the testimony and case record all demonstrate serious bargaining. IGS/RESA’ attempt to parse the words “appears to be” is unpersuasive.

The PUCO determined that it is “not required to evaluate settlement negotiations to the granular level suggested by RESA/IGS or determine whether such negotiation were inclusive in terms of the parties’ positions on various provisions.”²⁰ And consistent with the PUCO’s determination, the only plausible way of doing things is as they were done. Parties who have intervened are invited to negotiate. Then, if they reach a settlement, it is

¹⁶ See Tr. at 191:18-192:5, 192:21-193:11 (Cawley).

¹⁷ See Tr. at 182:25-183:15 (Cawley) (testifying that he doesn’t know whether other marketers agree with IGS and RESA and that he did not speak with any other marketers about IGS and RESA’s positions).

¹⁸ See Tr. at 194:10-13 (Cawley); Tr. at 262:24-263:3 (Lacey).

¹⁹ [*Tongren v. PUC*, 85 Ohio St.3d 87 \(1999\)](#).

²⁰ Opinion and Order at ¶105.

publicly filed and available for all to see. Then, if anyone who had not previously intervened is interested in the settlement, they have an opportunity to seek intervention to address any aspects of the settlement. Then, they have an opportunity to oppose the settlement by filing testimony, participating in a hearing, and briefing the case. That the Marketers did.

The PUCO's Opinion and Order approving the consumer-friendly Settlement was lawful and reasonable. The Marketers' application for rehearing should be rejected.

B. The Settlement as a package benefits consumers and the public interest.

The second prong of the PUCO's settlement test requires the PUCO to determine whether the Settlement, *as a package*, benefits consumers and the public interest.²¹ As the PUCO described in its Opinion and Order, it is *not* "whether there are different or additional provisions that would otherwise benefits [consumers] and the public interest"²² The Marketers claim that the PUCO unreasonably and unlawfully shifted the burden to them of showing that the Settlement *does not* benefit consumers and the public interest.²³ The Marketers also claim that the Settlement fails the second prong because the competitive market provisions were included to the detriment of consumers.²⁴

The Marketers are incorrect. Though their intervention was rightfully limited, they were not prohibited from arguing that the Settlement, as a package, fails the second prong of the PUCO's settlement test. The Marketers were well within their rights to acknowledge the tax and MGP benefits under the Settlement (without challenging those

²¹ *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992).

²² Opinion and Order at ¶117.

²³ See Joint Application for Rehearing at 17-19.

²⁴ See *id.* at 32-36.

benefits) and to then argue that notwithstanding those many benefits, the Settlement—as a package—still fails the PUCO’s three-prong test because of the market-related.

Instead, they *chose* to evaluate the merits of each market-related provision in isolation, debating the merits of each on its own.²⁵ They elected not to consider those provisions in the context of the larger Settlement package and the many benefits MGP and tax benefits to consumers. This failure to consider the Settlement as a package is fatal to the Marketers’ complaints on rehearing about the market-related provisions.

Further, the PUCO evaluates Settlements as a package. Here, contrary to the Marketers’ assertions, it concluded based *on the evidence* that the Settlement, as a package, benefits consumers and the public interest.

There is no detriment to consumers from the competitive provisions as IGS/RESA allege. The Settlement was signed by OCC (the statutory representative of residential consumers); the PUCO Staff, whose function is to represent the public interest; Ohio Energy Group, that represents several large industrial energy users; and Duke, which represents its shareholder interests. Other entities that participated extensively in the Settlement discussions and agreed formally to not oppose the Settlement included the Ohio Manufacturers Association Energy Group, the Kroger Company, and the Ohio Partners for Affordable Energy. This diverse group that often finds its members at odds over benefit or detriment to consumers all found the Settlement to be a just and reasonable resolution to the numerous and contentious cases at issue here. And they found no detriment to consumers.

²⁵ See generally Marketer Brief at 34-42 (making arguments under the second prong without considering the Settlement as a package).

The SSO would benefit consumers. Marketer witness Crist testified that Duke should transition to a Standard Choice Offer instead of a Standard Service Offer. But he admitted that an SSO was an improvement over a GCR. In responding to a hypothetical about whether he would choose a GCR or an SSO if those were the only two options, he testified: “I would say an SSO is a step better than a GCR.”²⁶ According to Mr. Crist, an SSO is better than a GCR because an “SSO involves competitive bidding and auction format.”²⁷ Thus, even the Marketers have admitted that a transition to SSO is a benefit to customers, which supports approval of the Settlement.²⁸

Duke witness Spiller also testified that an SSO benefits customers, saying that “transition to a competitive auction structure” under an SSO was a “significant benefit” of the Settlement that “furtheres the competitive natural gas market.”²⁹ And indeed, the other major natural gas distribution utilities (Dominion, CenterPoint, and Columbia) all initially transitioned from a GCR to an SSO.³⁰ The PUCO should follow this precedent and find it would benefit customers for Duke to similarly transition from a GCR to an SSO.

The Marketers’ arguments regarding transitioning to an SSO are also premature because approval of the Settlement does not require Duke to transition to an SSO. The Settlement merely requires Duke to *file an application* to transition to an SSO: “Within

²⁶ Tr. at 328:11-23 (Crist).

²⁷ Tr. at 328:23-329:2 (Crist).

²⁸ Marketer witness Crist was impeached on this issue. After testifying under oath at his deposition, without objection, that an SSO was better than a GCR, he changed his testimony at the hearing to claim that a GCR and SSO were equally beneficial. *See* Tr. at 326:4-327:25 (Crist). The PUCO should give no weight to Mr. Crist’s self-serving testimony at the hearing contradicting his under-oath deposition testimony.

²⁹ Duke Ex. 7 at 20 (Spiller Testimony).

³⁰ Tr. at 236:16-19 (Lacey) (Columbia transitioned to SSO); Tr. at 237:7-13 (Lacey) (Dominion transitioned to SSO); Tr. at 237:14-22 (Lacey) (Vectren transitioned to SSO). Later, the SCO was adopted.

five business days of the Commission’s approval of this Stipulation without material modification, Duke Energy Ohio shall file its application to transition to an SSO.”³¹ Thus, any complaints the Marketers might have about Duke’s transition to an SSO are more properly raised after Duke files that future application.³²

Additionally, the price-to-compare benefits consumers. *The PUCO should note that the price-to-compare is already a beneficial staple of electric service competition for consumers in Ohio, per O.A.C. 4901:1-10-22(B)(24).* And regarding the claim that the SSO product is not identical to marketer products, two products need not be identical for their comparison to be relevant to consumer decision-making. Consumers routinely evaluate products that are different and consider both their similarities and differences in deciding which one to purchase. Knowing the difference in price between two products is relevant, even if the products have differences other than price.

Further, even if the SSO rate is historical, it is still highly relevant for consumers. People rely on historical data all the time for purposes of decision-making. It is not credible for the Marketers to claim that historical price data is irrelevant and has no bearing whatsoever on future prices.

Customers receiving price-to-compare messaging can give it whatever weight they deem fit, along with other factors, and use that data to make an informed decision. This information is good for customers—even if it might be bad for those marketers who charge high prices. And that gets to the real effect of the Marketers’ position, to avoid the

³¹ Joint Ex. 1 at 16.

³² See *In re Application of Ohio Power Co. for an Increase in Elec. Distrib. Rates*, Case No. 20-585-EL-AIR, Opinion & Order ¶ 131 (November 17, 2021) (rejecting marketers’ complaints about a price-to-compare settlement because it required the utility to make a future filing, and the marketers’ concerns would be addressed then).

transparency that consumers need about their pricing. If anything, the PUCO should be focused on greater consumer protections from energy marketing, not fewer protections as the Marketers would prefer.

The Marketers' complaints about the alleged flaws in aggregate shadow billing data are unpersuasive. The Settlement provides that "Duke Energy will begin promptly providing the OCC, upon OCC's request, shadow billing information for natural gas customers in a format to be mutually agreed upon by the OCC and the Company."³³ Duke is required to provide OCC with "twenty-four months of data comparing aggregate shopping customer costs to what those customers would have paid had they been served on Duke Energy Ohio's GCR or SSO."³⁴

The Marketers' complaints are unpersuasive for the PUCO's three-prong test. This is because the Settlement requires nothing more than Duke providing data to OCC. The Settlement does not require OCC (or anyone else) to do anything in particular with the data. Going forward, the Marketers can tell their story about shadow billing if that's what they want to do. If there is a shortcoming here, it's that Ohioans across the state need more shadow billing information for energy choices, not less.

Additionally, shadow billing data benefits consumers. Shadow billing data is a financial comparison showing the difference between what consumers actually paid to marketers and what they would have paid under the utility's GCR or SSO. Shadow billing is an important data point for consumers. If consumers were aware that in the aggregate, shopping for their natural gas commodity has resulted in higher bills, that

³³ Joint Ex. 1 (Settlement) at 19.

³⁴ Joint Ex. 1 (Settlement) at 19.

would be *one* piece of relevant educational information. Shadow billing can be much more relevant and informational to consumers than other so-called education that merely explains the choice process and invites consumers to choose a marketer (potentially at their financial peril).

Likewise, if consumers were to find out that shopping for natural gas has resulted in savings, that, too, would be one piece of relevant information. They can consider that information, along with whatever other factors are important to them (carbon offsets, term length, fixed vs. variable rates, etc.).

For consumers, the Marketers' argument—that shadow billing data should be denied because it is not an all-encompassing, single, perfect data point—makes no sense. There is no satisfying the Marketers on the subject of shadow billing, for reasons that should be obvious based on what shadow billing can be expected to reveal about marketer pricing and consumer choice.

The PUCO noted in its Opinion and Order that as “verified by the record evidence, the [Settlement] provides a significant benefit with the resolution of 18 total proceedings addressing cost recovery of more than \$85 million in MGP remediation costs, while lowering customer rates and providing bill credits to natural gas customers.”³⁵ This illustrates the fact that the PUCO got it right in concluding that the Settlement *as a package* is in the public interest.

The PUCO's Opinion and Order approving the consumer-friendly Settlement was lawful and reasonable. The Marketers' application for rehearing should be rejected.

³⁵ Opinion and Order at ¶118.

C. The Settlement does not violate important regulatory principles and practices.

The Marketers argue that the PUCO unreasonably and unlawfully found that they had not shown that the Settlement violates regulatory principles and practices. They assert that the PUCO considered issues “outside the scope” of this proceeding. They assert that the Settlement violates regulatory principles and practices because it includes alleged “alien provisions,” meaning the market-related provisions (SSO transition, aggregate shadow billing, and price to compare).³⁶ The Marketers are wrong.

The PUCO routinely approves settlements that include such provisions (often over OCC’s objection). In a recent case involving DP&L, for example, where the subject matter was DP&L’s significantly excessive earnings, a quadrennial review of its electric security plan, and its smart grid plan, the PUCO approved a settlement that included numerous provisions unrelated to these issues, including smart thermostat rebates (with no requirement that smart thermostats be used in any way in conjunction with DP&L’s smart grid investments), eliminating data fees to marketers like IGS and RESA members, cash payments for weatherization, funding for a water heater pilot program, funding for loans for energy upgrades, “economic development” cash payments and discounts to various signatory parties, *and \$1 million in cash to none other than IGS so that IGS can build a solar farm.*³⁷ The bottom-line is that the PUCO encourages parties to engage in negotiations, including agreeing to settlements that address issues unrelated to the underlying subject matter of the case.

³⁶ See Joint Application for Rehearing at 10-14; 28-32.

³⁷ *In re Application of the Dayton Power & Light Co. for Approval of its Plan to Modernize its Distribution Grid*, Case No. 18-1875-EL-GRD, Opinion & Order (June 2, 2021).

Further, the “evidence” provided by the Marketers regarding purported violations of regulatory principles and practices was the testimony of Mr. Cawley. The PUCO should give no weight to this testimony because Mr. Cawley was unqualified to give it. He lacks any experience whatsoever with settlements or the settlement process in Ohio. He has never participated in a settlement negotiation in a case before the PUCO.³⁸ He had never even heard of the PUCO’s three-part settlement test until he was hired for this case.³⁹ And in fact, other than the Settlement filed in this case, Mr. Cawley has never reviewed a single settlement filed with the PUCO:

Q. In fact, other than the Stipulation at issue in this proceeding, you have never viewed any other settlement filed in an Ohio case, correct?

A. Correct.⁴⁰

The PUCO was considering a Settlement filed by the parties in this case. In order to evaluate the justness and reasonableness of the Settlement and whether it met the PUCO’s three-part test for evaluating settlements, the PUCO necessarily had to evaluate all of the Settlement’s terms. And the Settlement filed by the parties included the competitive market terms that IGS/RESA take issue with. Therefore, the PUCO had to review the competitive market issues along with the rest of the Settlement terms. And the PUCO correctly agreed with Duke “that there are many Commission proceedings, including proceedings which specifically relate to the TCJA, where stipulations included provisions not directly related to the reason the proceeding was originally initiated. *See,*

³⁸ *See* Tr. at 180:15-18 (Cawley) (never participated in a settlement negotiation in a case before the PUCO).

³⁹ Tr. at 181:19-22 (Cawley).

⁴⁰ Tr. at 168:1-4 (Cawley).

e.g., FirstEnergy Grid Mod Case, Opinion and Order (July 17, 2019).”⁴¹ Thus, contrary to IGS/RESA’s contentions, the PUCO acted entirely consistent with its prior precedents.

The PUCO’s Opinion and Order approving the consumer-friendly Settlement was lawful and reasonable. The Marketers’ application for rehearing should be rejected.

D. The PUCO correctly affirmed the Attorney Examiners’ procedural ruling limiting the Marketers’ intervention.

The Marketers assert that the PUCO acted unreasonably and unlawfully by affirming the Attorney Examiners’ procedural rulings limiting their intervention.⁴² The Marketers are wrong.

The Marketers were granted limited intervention to address only the market-related aspects of the Settlement (SSO transition, price-to-compare, and shadow billing).⁴³ The Marketers themselves admit that they have no interest whatsoever in the other issues in these cases (Duke’s MGP cleanup and costs and the Tax Cuts and Jobs Act). In their brief, they concede that as to the MGP and tax issues, “there was no reason for either the Retail Energy Supply Association (‘RESA’), Interstate Gas Supply Inc. (‘IGS’) or any supplier to become involved in these proceedings....”⁴⁴ If they were interested in those issues, they should have intervened long ago, which they did not.

Further, the ruling limiting the Marketers’ intervention was consistent with the Ohio Revised Code. R.C. 4903.221(B)(1) provides that the PUCO may consider, in deciding whether to grant intervention, the “nature and extent of the prospective intervenor’s interest.” The PUCO considered the limited “nature and extent” of the

⁴¹ Opinion and Order at ¶137.

⁴² See Joint Application for Rehearing at 14-17.

⁴³ Entry (October 15, 2021).

⁴⁴ Marketer Brief at 1.

Marketers' interests in these proceedings and acted accordingly in limiting their intervention.⁴⁵

Also, the ruling limiting the Marketers' intervention was consistent with the Ohio Administrative Code. O.A.C. 4901-1-11(D) allows the PUCO to grant "limited intervention, which permits a person to participate with respect to one or more specific issues, if the person has no real and substantial interest with respect to the remaining issues...." That is precisely what happened here. The Marketers concede that they have no interest in anything but the market-related provisions of the Settlement.⁴⁶ So the PUCO was right to limit their intervention to only those issues affecting the Marketers' interests.

The October 15, 2021 Entry in no way suggests that the Marketers had the burden of proof, as they suggest. The statements in that Entry serve only to limit the scope of the Marketers' intervention, which was appropriate under the circumstances (as described above). The PUCO explained in its Opinion and Order that the "Entry merely acknowledged this fact [that IGS and RESA, in their respective motions to intervene provided assurances that their late intervention would not unduly prolong or delay the proceedings] and notes that the attorney examiner would scrutinize future actions from either party that would result in delay in these proceedings."⁴⁷ And the PUCO confirmed that as is always the case when there is a contested settlement, the signatory parties had the burden of proving (through testimony, a hearing, and briefs) that the settlement passes

⁴⁵ Entry at ¶32 (October 15, 2021).

⁴⁶ Marketer Brief at 1 (as to the MGP and tax issues, "there was no reason for either the Retail Energy Supply Association ('RESA'), Interstate Gas Supply Inc. ('IGS') or any supplier to become involved in these proceedings....").

⁴⁷ Opinion and Order at ¶39.

the PUCO's three-part test.⁴⁸ And any opposing parties had an opportunity to explain to the PUCO (through testimony, a hearing, and briefs) why they believe that burden has not been met. Regardless of anything the Marketers might or might not do in this case, the PUCO determined that the signatory parties met their burden of proof.⁴⁹

The PUCO's Opinion and Order approving the consumer-friendly Settlement was lawful and reasonable. The Marketers' application for rehearing should be rejected.

III. CONCLUSION

The PUCO's approval of the consumer-friendly Settlement was reasonable and lawful. If anything, the PUCO should be adopting more consumer protections from energy marketing, not less. Consumers would benefit from less complaining and more competing by retail energy marketers.

⁴⁸ *Id.*

⁴⁹ *Id.* at ¶86.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Memorandum Contra was served by electronic transmission upon the parties below this 31st day of May 2022.

/s/ William J. Michael
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1831-GA-ATA, 19-1085-GA-AAM**

Summary: Memorandum Memorandum Contra Joint Application for Rehearing of
The Retail Energy Supply Association and Interstate Gas Supply, Inc. by Office of
The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on
behalf of Michael, William J.