

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Inspire Holdings, LLC for Waivers of)
Certain Provisions of Chapters 4901:1-12) Case No. 22-29-GE-WVR
and 4901:1-29, O.A.C., to Permit Third-)
Party Verification by Digital)
Confirmation.)

**REPLY COMMENTS OPPOSING REQUEST OF INSPIRE ENERGY
HOLDINGS, LLC, FOR A PUCO WAIVER OF CERTAIN CONSUMER
PROTECTIONS
BY
LEGAL AID SOCIETY OF COLUMBUS
LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC
OFFICE OF THE OHIO CONSUMERS' COUNSEL
OHIO POVERTY LAW CENTER
PRO SENIORS, INC. AND
SOUTHEASTERN OHIO LEGAL SERVICES**

I. INTRODUCTION

Inspire Energy Holdings, LLC (“Inspire”) is an energy marketer that makes money from selling electric and natural gas service to Ohio consumers. Inspire wants the Public Utilities Commission of Ohio (“PUCO”) to waive the requirement of conducting live, independent, telephonic third-party verifications when it signs up consumers for service. The PUCO Staff initially supported Inspire’s request to sidestep this important consumer protection for consumers enrolled through door-to-door or in-store sales.¹ However, based on “several” recent consumer complaints regarding Inspire, the PUCO Staff has revised its recommendation, requesting now that the PUCO *deny* the waiver

¹ *In the Matter of the Application of Inspire Energy Holdings, LLC for Waivers of Certain Provisions of Chapters 4901:1-21 and 4901:1-29, O.A.C. to Permit Third-Party Verification by Digital Confirmation, Case No. 22-0029-GE-WVR, PUCO Staff Comments (May 31, 2022).*

until the consumer complaints are resolved and the PUCO Staff reviews Inspire’s operations.² Consumer Groups³ support the PUCO Staff’s amended recommendation to deny Inspire’s waiver request.

Consumer Groups, however, oppose the PUCO Staff’s recommendation that Inspire be allowed to reapply for a waiver of the telephonic third-party verification rules.⁴ Such waiver is a horrible idea for consumer protection.

Third-party verification of enrollments through digital confirmation will never come close to providing the same consumer protection as telephonically recorded third-party verifications in memorializing deceptive marketing and improper enrollments. The PUCO should enforce its rules requiring telephonic third-party verifications. Consumers are emerging from a once in a lifetime pandemic and face soaring inflation, energy, food, and gas costs. Now more than ever, consumers deserve *more* – not less – protection from the PUCO. Inspire’s waiver request should be denied.

II. THE PUCO SHOULD NEVER GRANT INSPIRE’S WAIVER REQUEST.

As Consumer Groups explained in comments,⁵ telephonic third-party verification requirements set forth in the Ohio Administrative Code are necessary to protect consumers from marketers illegally switching consumers’ suppliers without proper consent. This predatory practice is known as “slamming,” and it is a real problem facing

² Case No. 22-0029-GE-WVR, Motion of leave to file Instanter Staff’s Amended Comments and Extend Procedural Schedule (June 10, 2022) (“Amended Comments”), at 9.

³ Consumer Groups include Office of the Ohio Consumers’ Counsel (“OCC”), Pro Seniors, Inc., Legal Aid Society of Southwest Ohio, LLC, Southeastern Ohio Legal Services, Legal Aid of Columbus, and the Ohio Poverty Law Center.

⁴ Amended Comments, at 9-10.

⁵ Consumer Groups’ May 31, 2022 Comments opposing Inspire’s Application are incorporated by reference.

Ohio consumers. In fact, the PUCO recently initiated an investigation into the marketing practices of another marketer that was found to have slammed more than *one thousand* consumers.⁶ And this is not the only instance of marketers slamming consumers. There have been several marketers served with notices of probable non-compliance in recent years.⁷ Given the harm marketers have caused Ohioans, it is unclear why the PUCO Staff would ever support a waiver of the telephonic third-party verification requirements.

Indeed, in the Amended Comments recommending a denial of Inspire’s waiver request, the PUCO Staff explained that the “current” third-party verification process and “customer voice verification” helped identify misleading and deceptive enrollment practices by Inspire.⁸ That is the exact purpose of telephonic third-party verification calls: to make sure that consumers understand the terms of the contract that they agreed to with a marketer. While digital confirmation of third-party verifications may demonstrate that consumers can click a “yes” or “no” prompt on a computer screen or smart phone, it is unhelpful in determining whether consumers actually understand the terms of a contract they were just sold by a marketer.

Moreover, the PUCO Staff claims that Inspire’s waiver request applies only to “TPV [third party verification] requirements for the door-to-door enrollment process and not for telephonic enrollments.”⁹ But that is not what Inspire’s Application says.

⁶ *In the Matter of the Commission’s Investigation into XOOM Energy Ohio, LLC’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance. Notice of Probable Non-Compliance Letter*, Case No. 22-267-GE-COI, PUCO Staff letter at Attachment A (April 18, 2022).

⁷ *See infra* note 15.

⁸ Staff Amended Comments, at 9.

⁹ PUCO Staff Comments, at 3; PUCO Staff Amended Comments, at 8.

The Application expressly references and proposes changes to O.A.C. 4901:1-21(d)(2)(a) and O.A.C. 4901:1-29-06(E)(1),¹⁰ both of which govern *telephonic* enrollments. Inspire’s waiver requests would exempt it from making date and time-stamped audio recordings of the sales portion of calls to consumers.¹¹ Inspire’s waiver requests would eliminate the requirement for an “audio recording” by an independent third-party verifier of the purpose of the “call.”¹² Inspire’s waiver requests would waive all requirements for “verbal” communications between the third-party verifier and the consumer regarding the terms of the agreement and even the consumer’s consent to switch suppliers.¹³ The PUCO Staff’s initial and amended comments do not address these waiver requests by Inspire at all.

Inspire’s waiver requests with respect to telephonic enrollments should be denied. Audio recordings of the sales portion of telephonic solicitations are crucial to the consumer and the PUCO in the event there is a dispute in enrollment and to determine whether a marketer has engaged in deceptive marketing. Requiring verbal acknowledgement that the consumer understands the material terms of the contract and agrees to switch suppliers is also important to prevent deceptive marketer practices. Inspire failed to provide good cause for waiving these important consumer protections.

For the enrollment of consumers through door-to-door or in-store sales, the PUCO Staff initially recommended that Inspire be granted a waiver allowing it to conduct digital third-party verifications until the PUCO adopts final electric and natural gas marketing

¹⁰ Inspire Application, at ¶¶ 4, 17.

¹¹ Inspire Application, ¶ 17.

¹² *Id.*

¹³ *Id.*

rules in Case Nos. 17-1843-EL-ORD and 17-1847-EL-ORD.¹⁴ The PUCO Staff changed its recommendation to support denying the waiver until consumer complaints against Inspire are resolved.

But the PUCO should *never* grant Inspire's waiver request. The need for telephonically recorded third-party verification requirements has never been greater. Accordingly, Consumer Groups recommend that the PUCO deny not only Inspire's waiver request, but also waiver requests by any other marketer that would undermine the PUCO's telephonic third-party verification protections.

The PUCO should err on the side of protecting consumers, not marketers, by prohibiting third-party verifications that are not independently telephonically recorded. Any waiver of rules should be outright rejected if no credible assessment has been performed regarding the impact of digital third-party verifications on slamming as compared to telephonic third-party verifications. The PUCO has initiated several investigations of marketers for deceptive marketing practices including slamming.¹⁵ Those investigations suggest that marketers are becoming more brazen in their attempts

¹⁴ PUCO Staff Comments, at 3-4.

¹⁵ See e.g. *In the Matter of Commission's Investigation Into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI; *In the Matter of the Commission's Investigation into Verde Energy USA Ohio, LLC's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-958-GE-COI; *In the Matter of Commission's Investigation Into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-2153-GE-COI; *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 and Ohio Administrative Code and Potential Remedial Action*, Case No. 20-1216-GE-COI; *In the Matter of the Commission's Investigation into XOOM Energy Ohio, LLC's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance. Notice of Probable Non-Compliance Letter*, Case No. 22-267-GE-COI; and *In the Matter of the Commission's Investigation into RPA Energy, Inc.'s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 22-441-GE-COI.

to scam consumers, and they have even tried to deceive a PUCO Staff member!¹⁶ Now is not the time to relax consumer protections.

The PUCO Staff's Amended Comments leave the door open for Inspire to reapply for a waiver of the third-party verification rules after Inspire resolves its consumer complaints and marketing/enrollment process issues.¹⁷ That door should be slammed shut given the apparent consumer complaints against Inspire. Resolving the current complaint cases is likely the tip of the iceberg as compared to the total number of consumers Inspire may have deceived.

In rejecting the waiver request, the PUCO should also order a full investigation and audit of Inspire's in-store and door-to-door customer enrollments, including a review of telephonic third-party verifications to identify additional consumers who may have been deceived by Inspire.

Finally, Ohio law requires the PUCO to set rules with the minimum service requirements that include consumer protections to prevent slamming, "which may include independent, third-party verification procedures."¹⁸ The minimum service requirements involving telephonic independent third-party verifications are set forth in the PUCO's rules and apply to all marketers. These minimum requirements should be followed, not waived. Consumers deserve more, not less, protection.

¹⁶ See *In the Matter of the Commission's Investigation into RPA Energy, Inc.'s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 22-441-GE-COI, Entry (April 20, 2022), at ¶ 7. See also *In the Matter of the Commission's Investigation into Verde Energy USA Ohio, LLC's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-958-GE-COI, Corrected Staff Report (May 29, 2019), at 9.

¹⁷ Amended Staff Comments, at 10.

¹⁸ R.C. 4928.10(D)(4) and 4929.22(D)(3).

III. CONCLUSION

Inspire has failed to demonstrate that good cause exists to waive important third-party verification requirements to protect consumers from slamming. The PUCO should deny Inspire's waiver request to be allowed to use digital third-party verifications. There is no good reason to relax consumer protections – especially in these difficult times.

Consumers deserve strong protection by the PUCO. For the reasons explained above and in Consumer Groups' comments, the PUCO should deny Inspire's Application and any other waiver request that weakens the consumer protection requirements for marketers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was served on the persons stated below via electronic transmission, this 21st day of June 2022.

/s/ Angela D. O'Brien
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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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Summary: Reply Reply Comments Opposing Request of Inspire Energy Holdings, LLC, for a PUCO Waiver of Certain Consumer Protections by Legal Aid Society of Columbus, Legal Aid Society of Southwest Ohio, LLC, Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc. and Southeastern Ohio Legal Services electronically filed by Ms. Alana M. Noward on behalf of O'Brien, Angela D.