

In the Matter of the Application of RPA)
Energy Inc. d/b/a/ Green Choice Energy) Case No. 16-893-GA-CRS
for Renewal Certification as a Retail)
Natural Gas Supplier.)

Green Choice Energy (“Green Choice”) is under investigation by the Public Utilities Commission of Ohio (“PUCO) for violating Ohio consumers’ rights through abusive energy marketing. Green Choice has allegedly victimized Ohioans by spoofing phone numbers, altering phone recordings, and making false statements to consumers.¹

¹ *In the Matter of the Application of Energy, Inc dba Green Choice Energy*, Case No. 22-0441, PUCO Staff Report (June 10, 2022) at 13, 15.

By forcing OCC to await a ruling on this motion, Green Choice obstructs consumer protection. OCC cannot adequately prepare its case without Green Choice's discovery responses.

A memorandum in support is attached.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ William J. Michael
William J. Michael (0070921)
Counsel of Record
Connor D. Semple (0101102)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone: [Michael] (614) 466-1291
Telephone: [Semple] (614) 466-9565
william.michael@occ.ohio.gov
connor.semples@occ.ohio.gov
(willing to accept service by e-mail)

In the Matter of the Application of RPA)
Energy Inc. d/b/a/ Green Choice Energy) Case No. 16-893-GA-CRS
for Renewal Certification as a Retail)
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I. INTRODUCTION

Green Choice, accused by the PUCO Staff of deceptively marketing residential electric and natural gas services,² refuses to answer OCC's discovery requests. That is unlawful. The PUCO should promptly order Green Choice to comply with discovery law and respond to OCC's discovery requests.

Within a week of Green Choice’s application to continue as a marketer of natural gas service in Ohio, OCC filed a motion to intervene on behalf of Ohio’s consumers.³ On July 1, 2022, OCC served its first set of discovery requests to Green Choice.⁴ The discovery requests included a set of interrogatories and a set of requests for production of documents.⁵ Green Choice’s responses were due on July 21, 2022.⁶ Yet, Green Choice flat-out refuses to answer OCC’s discovery requests. Further, Green Choice has not

² *In the Matter of the RPA Energy, Inc., dba Green Choice Energy's Compliance with the Ohio Administrative Code and Proposed Remedial Action*, PUCO Entry (April 20, 2022).

³ OCC Motion to Intervene (June 24, 2022).

⁴ See Exhibit A, attached.

⁵ *Id.*

⁶ O.A.C. 4901-1-19(A); 4091-01-20(C).

sought legal process to stop the discovery, such as by the filing of a motion for protection.

Green Choice's refusal to cooperate in the discovery process contradicts Ohio law and the PUCO's discovery rules, which explicitly allow a party to fully participate in the discovery process as soon as it moves to intervene.⁷ In addition to violating PUCO rules, Green Choice prevents OCC from preparing to represent consumers in this matter. For this reason, OCC asks the PUCO to order Green Choice to respond to discovery expeditiously.

II. LAW AND ARGUMENT

A. Ohio law and the Ohio Administrative Code require Green Choice to answer OCC's discovery.

Ohio law provides that, "[a]ll parties and intervenors shall be granted ample rights of discovery" in PUCO proceedings.⁸ In accordance with this law, the PUCO adopted discovery rules designed to "encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings."⁹ To accomplish expeditious discovery, the PUCO rules further provide that "discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible."¹⁰

⁷ O.A.C. 4901-1-16(H).

⁸ R.C. 4903.082.

⁹ O.A.C. 4901-1-16(A).

¹⁰ O.A.C. 4901-1-17(A).

A party that moves to intervene in a proceeding before the PUCO is entitled to immediately participate in the discovery process.¹¹ For purposes of discovery, “the term ‘party’ includes any person who has filed a motion to intervene which is pending at the time a discovery request or motion is to be served or filed.”¹² The right to participate in discovery includes the right to serve interrogatories and requests for the production of documents.¹³

Once discovery is served, the party served must provide answers or objections to the written interrogatories within 20 days of service or within a longer or shorter time as the PUCO may allow.¹⁴ With respect to requests for production of documents, the party served must produce the documents or permit inspection of the documents requested, or provide objections within 20 days of service or within a longer or shorter time as the PUCO may allow.¹⁵

Thus, in accordance with the PUCO’s discovery rules, OCC was entitled to serve interrogatories and requests for production of documents upon Green Choice as soon as OCC moved to intervene in this matter. Yet, when OCC served its discovery requests as permitted, Green Choice refused to answer.¹⁶ Additionally, Green Choice did not take actions required when outright opposing discovery –Green Choice did not file a motion for a protective order (O.A.C. 4901-1-24(A)(1) asking that discovery not be had.

¹¹ O.A.C. 4901-1-16(H).

¹² *Id.*

¹³ O.A.C. 4901-1-19; 4091-01-20.

¹⁴ O.A.C. 4901-1-19(A).

¹⁵ O.A.C. 4901-1-20(C).

¹⁶ Exhibit B, Affidavit of William J. Michael.

The plain language of the PUCO's discovery rules unequivocally give a party that has moved for intervention the right to full and immediately participation in the discovery process. Green Choice's blanket refusal to answer any OCC's discovery defies PUCO rules.

Additionally, Green Choice's delay upsets the purposes of those rules: to provide for expeditious discovery and encourage adequate preparation for hearings. Without answers to its outstanding discovery requests, OCC cannot prepare to represent Ohio consumers in response to Green Choice's alleged harmful sales tactics used against Ohioans. Thus, the longer Green Choice is permitted to flout the PUCO's rules and violate its discovery obligations, the longer the resolution of this case will be delayed. To preserve the intent of the PUCO's discovery process and ensure this matter is resolved justly, Green Choice should immediately be required to answer OCC's discovery requests.

B. OCC's discovery requests are directly relevant to this proceeding to continue Green Choice's certification as a retail natural gas provider.

The PUCO's rules provide that "any party to a commission proceeding may obtain discovery on any matter, not privileged, which is relevant to the subject matter of the proceeding."¹⁷

All of OCC's unanswered interrogatories and requests for production of documents are directly relevant to the pending proceeding. Both of OCC's interrogatories seek information about any witnesses Green Choice chooses to call at hearing.

¹⁷ O.A.C. 4901-1-16(B).

Additionally, all of OCC's four requests for production of documents concern documents that Green Choice has *already provided* in this proceeding.

OCC is entitled to answers to its requests. OCC's discovery is reasonable calculated to lead to the discovery of admissible evidence.

C. OCC has made reasonable efforts to resolve this discovery dispute.

As detailed in the attached affidavit, OCC made reasonable efforts to resolve this dispute without involving the PUCO.¹⁸ Specifically, OCC offered to negotiate extensions to Green Choice's deadlines to answer discovery. However, Green Choice would not negotiate and said that it would not respond to OCC's consumer protection discovery. Having exhausted all other reasonable means of resolving differences with Green Choice, OCC seeks PUCO involvement, asking the PUCO to order Green Choice to respond to OCC discovery post haste.

III. CONCLUSION

As a party that has moved for intervention in this case, OCC has a right to fully participate in the discovery process. It did so by serving Green Choice with interrogatories and requests for production of documents that are reasonably calculated to lead to the discovery of admissible evidence. Green Choice refuses to answer this discovery and will not negotiate.

As a result, OCC has been unable to adequately prepare to represent consumers. Additionally, Green Choice's conduct undercuts the PUCO's discovery rules and their

¹⁸ Exhibit B, Affidavit of William J. Michael.

purpose. In response, the PUCO should grant this motion to compel and order Green Choice to answer OCC's discovery with all due haste.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ William J. Michael
William J. Michael (0070921)
Counsel of Record
Connor D. Semple (0101102)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone: [Michael] (614) 466-1291
Telephone: [Semple] (614) 466-9565
william.michael@occ.ohio.gov
connor.semple@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Ohio Consumers' Counsel's Motion to Compel Green Choice to Respond to Discovery was served on the persons stated below via electronic transmission, this 3rd day of August 2022.

/s/ William J. Michael

William J. Michael

Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

john.jones@ohioAGO.gov

btrombino@greenchoiceenergy.com

whitt@whitt-sturtevant.com

Attorney Examiner:

sarah.parrot@puco.ohio.gov

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of RPA)
Energy Inc. d/b/a Green Choice Energy) Case No. 16-0893-GA-CRS
for Renewal Certification as a Retail)
Natural Gas Supplier.)

**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED UPON RPA ENERGY, INC. D/B/A GREEN CHOICE ENERGY
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

**FIRST SET
(JULY 01, 2022)**

The Office of the Ohio Consumers' Counsel in the above-captioned proceeding before the Public Utilities Commission of Ohio submits the following Interrogatories and Requests for Production of Documents pursuant to Sections 4901-1-19 and 4901-1-20 of the Ohio Administrative Code for response from RPA Energy, Inc. d/b/a Green Choice Energy ("Green Choice" or "Company") within 20 days. An electronic, non-pdf (*e.g.*, Excel) response should be provided to Office of the Ohio Consumers' Counsel at the following address:

William J. Michael (0070921)
Counsel of Record
Connor D. Semple (0101102)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215-4213
Telephone: [Michael]: (614) 466-1291
Telephone: [Semple]: (614) 466-9565
william.michael@occ.ohio.gov
connor.semples@occ.ohio.gov
(willing to accept service by e-mail)

Additionally, Green Choice must follow the instructions provided herein in responding to the inquiries. Definitions are provided that are used in the Office of the Ohio Consumers' Counsel's discovery.

DEFINITIONS

As used herein the following definitions apply:

1. "Document" or "Documentation" when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punch cards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets,

articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. “Communication” shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or

- discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.
3. The “substance” of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
 4. “And” or “Or” shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
 5. “You,” and “Your,” or “Yourself” refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venture of such party.
 6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
 7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.
 8. “Person” includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
 9. “Identify,” or “the identity of,” or “identified” means as follows:
 - A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;

- B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (*e.g.*, corporation, partnership, single proprietorship), and its present or last known address;
 - C. When used in reference to a document, to state the date, author, title, type of document (*e.g.*, letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
 - D. When used in reference to a communication, to state the type of communication (*i.e.*, letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;
 - E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present; and
 - F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (*e.g.*, a room number, file cabinet, and/or file designation).
10. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General's Office), and offices.

11. The term “*e.g.*” connotes illustration by example, not limitation.
12. “OCC” means Office of the Ohio Consumers’ Counsel.
13. “Green Choice” and “Company” mean RPA Energy, Inc. d/b/a Green Choice Energy.
14. “Proceeding” means Case No. 16-893-GA-CRS.
15. “Application” means the filings made by Green Choice in this proceeding on June 21, 2022, and any later amendments to the Renewal Application.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (*e.g.*, models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
 - A. Microsoft Excel worksheet files on compact disk;

- B. other Microsoft Windows or Excel compatible worksheet or database diskette files;
 - C. ASCII text diskette files; and
 - D. such other magnetic media files as your organization(s) may use.
7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; *e.g.*, data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2000 through and including the date of your response.
9. Responses must be complete when made and must be supplemented with subsequently acquired information at the time such information is available.
10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (*i.e.*, provide a privilege log). Respondent to the discovery must a) identify (*see* definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

INTERROGATORIES

In accordance with Ohio Administrative Code 4901-1-16(D)(5), OCC requests that all responses be supplemented with subsequently acquired information at the time such information is available.

INT-01-001. Pursuant to O.A.C. 4901-1-16(C), please identify each expert witness that Green Choice expects to testify at any hearing in this proceeding.

RESPONSE:

INT-01-002. For each expert witness identified in your response to INT-01-001, please state the subject matter in this case on which the expert is expected to testify.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

In accordance with Ohio Adm. Code 4901-1-16(D)(5), OCC is specifically requesting that all responses be supplemented with subsequently acquired information at the time such information is available.

RPD-01-001. Please provide copies of all formal and informal requests (*e.g.*, interrogatories, data requests) made to the Company by the Commission, the PUCO Staff, and the PUCO's Attorneys General in this proceeding, and the Company's responses to those requests.

RPD-01-002. Please provide copies of all documents and workpapers provided to or by the Commission, the PUCO Staff, and/or the PUCO's Attorneys General in connection with this proceeding, including schedules in Excel format.

RPD-01-003. Please provide copies of all discovery received by the Company from other parties in this proceeding, and the Company's response to that discovery.

RPD-01-004. Please provide copies of all Communications (*e.g.*, email, memos) related to this proceeding between the Company and the Commission, the PUCO Staff, and/or the PUCO's Attorneys General.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Interrogatories and Requests for Production of Documents Propounded upon RPA Energy, Inc. d/b/a Green Choice Energy by Office of the Ohio Consumers' Counsel, First Set, was served upon the persons listed below by electronic transmission this 1st day of July 2022.

/s/ William J. Michael
William J. Michael
Assistant Consumers' Counsel

SERVICE LIST

john.jones@ohioAGO.gov

whitt@whitt-sturtevant.com

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of RPA)	
Energy Inc. d/b/a Green Choice Energy)	Case No. 16-893-GA-CRS
for Renewal Certification as a Retail)	
Natural Gas Supplier.)	
)	

**AFFIDAVIT OF WILLIAM J. MICHAEL
IN SUPPORT OF MOTION TO COMPEL**

I, William J. Michael, Associate Consumers' Counsel for the Ohio Consumers' Counsel ("OCC") in the above-captioned case, being first duly sworn, depose and state that, based on knowledge and information, the following efforts have been made to resolve the differences with RPA Energy, Inc., d/b/a Green Choice Energy ("Green Choice") from whom discovery is sought:

1. On June 24, 2022, OCC filed a motion to Intervene in this proceeding in accordance with R.C. 4903.221 and Ohio Adm. Code 4901-1-11.
2. On July 1, 2022, OCC served its first set of discovery on Green Choice.
3. Under Ohio Adm. Code 4901-1-19(A) and 4901-1-20(C), Green Choice's responses or objections to OCC's first set of discovery were due on July 21, 2022.
4. Before the due date, Green Choice's counsel requested that discovery be held in abeyance. OCC responded that although we would not agree to hold discovery in abeyance, we would agree to an extension of the deadline for responding to our discovery. Counsel for Green Choice rejected our offer and said that Green Choice would not respond to OCC's first set of discovery.

5. The discovery dispute between OCC and Green Choice cannot be resolved without intervention by the PUCO.

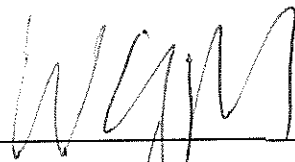
STATE OF OHIO)
)
COUNTY OF FRANKLIN)

SS:

The undersigned, being of lawful age and duly sworn by oath, hereby certifies,
deposes and states the following:’

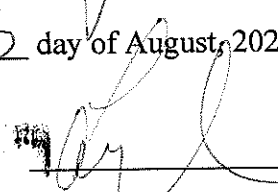
I have caused to be prepared the attached written affidavit for OCC in the above-
referenced docket. This affidavit is true and correct to the best of my knowledge,
information and belief.

Further affiant sayeth naught.



William J. Michael, Affiant

Subscribed and sworn to before me this 3 day of August, 2022.



Notary Public



LARRY STEVEN SAUER, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

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in

Case No(s). 16-0893-GA-CRS

Summary: Motion Motion to Compel Green Choice to Respond to Discovery by
Office of the Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene
on behalf of Michael, William J.