

**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.)

**REPLY TO GREEN CHOICE’S MEMORANDUM CONTRA
OCC’S MOTION TO COMPEL DISCOVERY
BY
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

Green Choice Energy (“Green Choice”) has been accused by the PUCO Staff of perpetrating on Ohioans “a pattern of misleading and deceptive practices” in “door to door and telephonic sales....”¹ The PUCO Staff has witnessed Green Choice’s misleading tactics firsthand, as the marketer solicited the PUCO’s own Barbara Bossart on her personal cellphone twice in June 2021. During one call, Green Choice “spoofed a number to make it appear that someone local was calling” and made “several misleading and deceptive statements.”² Upon request by a PUCO Staff investigator, Green Choice then provided a recording of a call that was missing parts of Ms. Bossart’s conversation.³ Clearly, Green Choice is no friend of Ohio consumers.

For energy marketers, doing business in Ohio is a privilege, not a right. Green Choice has allegedly abused that privilege by misleading consumers through deceptive

¹ *In the Matter of the Application of Energy, Inc dba Green Choice Energy*, Case No. 22-0441, PUCO Staff Letter (April 18, 2022) at 2.

² *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.

³ *Id.*

marketing. Now, Green Choice is refusing to answer OCC's discovery requests.

Consumer protection demands that the PUCO not abide these violations of its rules. The PUCO should grant OCC's Motion to Compel.

OCC is entitled to discovery, per R.C. 4903.082. Under O.A.C. 4901-1-16, OCC is permitted to conduct discovery immediately upon moving to intervene in this case.

After moving to intervene, OCC properly served Green Choice with discovery requests on July 1, 2022. Green Choice failed to respond within 20 days as PUCO rules require.⁴ Green Choice still refuses to provide the information OCC properly sought.

Green Choice has provided no legitimate reason for its failure to respond. According to Green Choice, OCC is not entitled to timely discovery because the issues in this case overlap with those the parties are litigating in Case No. 22-441-GE-COI ("the enforcement proceeding"). Green Choice also argues OCC's requests are unduly time-consuming and costly. Those words better describe the deceptive marketing that OCC is investigating. The PUCO should reject these arguments.

Green Choice misrepresents what information OCC requests. Green Choice also contravenes PUCO rules that require expeditious discovery responses for the purpose of giving parties adequate time to prepare for litigation. Finally, Green Choice overstates the burden OCC's discovery requests impose on it. OCC is entitled to timely responses to requests reasonably calculated to lead to discovery of admissible evidence. The PUCO should grant OCC's motion to compel.

⁴ O.A.C. 4901-1-19(A), O.A.C. 4901-1-20(C).

II. ARGUMENT

A. **Green Choice’s withholding of discovery responses is denying OCC adequate preparation to represent Ohio consumers.**

Green Choice argues it need not provide timely discovery because this case and the enforcement proceeding concern similar issues.⁵ That is not a reason to withhold discovery responses. Further, the enforcement proceeding will not necessarily reveal the information OCC seeks to discover.

The information OCC requested is specific to this case. OCC requested documents Green Choice already provided the PUCO in *this proceeding*, not in the enforcement proceeding. OCC also requested a list of witnesses Green Choice expects to testify in *this proceeding*, not in the enforcement proceeding. The record in the enforcement proceeding may not fully provide OCC this information, despite overlapping issues. Consequently, the enforcement proceeding does not justify Green Choice’s refusal to answer OCC’s discovery requests.

B. **In withholding information OCC seeks to discover, Green Choice is violating PUCO rules requiring it to answer “as expeditiously as possible” and to provide discovery responses within twenty days.**

Green Choice demands that the parties delay discovery until the enforcement proceeding concludes. That position is not supported by authority, as O.A.C. 4901-1-17(A) provides that discovery “should be completed as expeditiously as possible.”

Green Choice has not shown it cannot possibly answer OCC’s discovery requests until after the enforcement proceeding. Green Choice can provide OCC the documents it already gave the PUCO in this case. The marketer can also create an expert witnesses list

⁵ Green Choice’s Memorandum Contra OCC’s Motion to Compel (“Memo. Contra”) at 5.

before the enforcement proceeding ends. More expeditious discovery is possible, and PUCO rule requires Green Choice to provide it.

Green Choice's position can also be expected to thwart OCC's case preparation. Green Choice's tactic is to delay discovery until the enforcement case is resolved. If Green Choice is not banned from the state (which should be the result of the enforcement case), the marketer can be expected to push the PUCO to immediately renew its certificates with little opportunity for due process.

For this reason, Green Choice's delayed response undermines the purpose of the PUCO's discovery rules, which is to "to facilitate thorough and adequate preparation for participation in commission proceedings."⁶ In withholding vital information, Green Choice denies OCC time to adequately prepare for any hearing in this matter, which may occur shortly after the enforcement proceeding. The PUCO should not permit Green Choice to contravene the purpose of its discovery rules by refusing to answer OCC's requests.

C. OCC's discovery requests impose minimal burden on Green Choice.

Green Choice argues it would suffer "undue burden" responding to OCC's discovery requests, claiming that doing so could require "five-figures in legal expenses."⁷ This is a huge exaggeration. At issue here are just four requests for production of documents and two interrogatories. Green Choice is spending the time of two state agencies over, in total, just six discovery requests.

⁶ O.A.C. 4901-16(A).

⁷ Memo. Contra at 5-6.

Moreover, Green Choice chose to open itself to these requests. Ohio has a state advocate to speak for consumers that Green Choice's business practices impacted. Ohio also has discovery law and rules. Green Choice signed on for such Ohio regulation when it obtained a certificate in Ohio. It should not complain about that regulation now, after allegedly violating state law and rule in operations that affect the Ohio public.

In addition, OCC's discovery requests are narrow in scope. OCC's production requests concern documents that Green Choice *already provided to the PUCO Staff* in this matter. Consequently, Green Choice need not "track down *additional* information" to respond to these requests, as it claims.⁸ (Emphasis added). Further, OCC's two interrogatories request the identity of experts Green Choice expects to call at hearing and the subjects about which they will testify. Green Choice warns that, to answer, it must engage multiple company personnel to "identify responsive information."⁹ However, there is no uncertainty about what information is or is not responsive to OCC's interrogatories. All Green Choice must do to respond is create a simple witness list. These requests are limited.

Because OCC's discovery requests are few and narrow, the PUCO should not take seriously Green Choice's claim that it will be costly for them to be "reviewed and evaluated by counsel for potential objections..."¹⁰ In any event, responding to discovery is expected when violations of Ohio law and rules designed to protect consumers are alleged. Green Choice continues to elevate itself over Ohio regulatory practices that protect the public. Consequently, the PUCO should deny Green Choice's claims and

⁸ *Id* at 6.

⁹ *Id.*

¹⁰ *Id* at 5.

compel discovery responses. As OCC waits for delayed discovery responses, consumers are denied justice.

III. CONCLUSION

Green Choice's arguments opposing OCC's discovery requests should be rejected. OCC's discovery requests are reasonably calculated to lead to discovery of admissible evidence under O.A.C. 4901-1-16. Without responses, OCC and consumers are denied their right to justice through adequate case preparation.¹¹ For these reasons, the PUCO should grant OCC's motion to compel.

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¹¹ *In re Suvon, L.L.C.*, 166 Ohio St.3d 519, 2021-Ohio-3630, 188 N.E.3d 140, ¶ 42.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply was served on the persons stated below via electronic transmission, this 24th day of August 2022.

/s/ William J. Michael
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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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8/24/2022 3:02:41 PM

in

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

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