

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Santanna Natural Gas Corporation d/b/a)
Santanna Energy Services for Waivers of)
Certain Rules in Ohio Adm. Code) Case No. 23-171-GE-WVR
4901:1-21-06 and 4901:1-29-06 to)
Authorize Electronic Enrollment and)
Third-Party Verification by Digital)
Confirmation.)

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

I. INTRODUCTION

Santanna, a marketer that makes its money by selling energy service to Ohio residential consumers, wants an exemption from rules in O.A.C. 4901:1-21-06 and 4901:1-29-06 that protect consumers in door-to-door marketing.¹ These rules protect consumers from “slamming,” *i.e.*, having their energy service switched by marketers without the consumers’ proper consent.

Santanna’s sales agents (employed by third-party vendors) interact directly with consumers in door-to-door sales. Yet Santanna refuses to provide information in response to OCC’s discovery about the sales agents and how they will protect consumers if Santanna’s waiver request is granted. That is a red flag. The PUCO should grant OCC’s motion to compel and order Santanna to respond immediately to OCC’s discovery requests.

¹ Santanna Second Amended Application (June 5, 2023), at 1.

II. SANTANNA’S ARGUMENTS IN OPPOSITION TO OCC’S DISCOVERY HAVE LITTLE MERIT AND SHOULD BE REJECTED. OCC’S DISCOVERY IS PROPER AND THE PUCO SHOULD GRANT OCC’S MOTION TO COMPEL.

OCC’s discovery seeks to obtain nonprivileged information that is relevant or reasonably calculated to lead to the discovery of admissible evidence.² The discovery addressed in OCC’s motion to compel meets this standard because it seeks information about how Santanna’s waiver request and proposed digital/electronic enrollment and verification process will impact consumers.

OCC has “ample rights of discovery” under Ohio law (R.C. 4903.082) to seek information about Santanna’s waiver request. The Supreme Court of Ohio has affirmed OCC’s right under Ohio law to “*broad discovery* on nonprivileged matters.”³ Santanna ignores this precedent.

Santanna makes little effort in its memorandum contra to defend its objections to OCC’s discovery. Santanna states that OCC’s requests are irrelevant or beyond the scope of this proceeding, with little explanation. For example, Santanna does not dispute the connection between its compensation of third-party sales agents and the risk of aggressive sales tactics in door-to-door marketing. Santanna also does not explain how its training materials for sales agents are irrelevant to its ability to prevent misleading and deceptive sales practices by third-party sales agents. Santanna’s bald claims that OCC’s discovery is improper (it is not) are not enough for the PUCO to deny OCC’s “ample rights of discovery” under R.C. 4903.082.

² OAC 4901-1-16(B).

³ *In re Suvon, LLC*, 2021-Ohio-3630, ¶ 42. (Emphasis added)

Santanna states no good reason for avoiding OCC’s discovery requests. Santanna instead makes several baseless arguments as to why it should not have to respond. All should be summarily rejected.

First, Santanna claims that OCC “demands information regarding Santanna’s operations in *other states*.”⁴ Santanna is simply wrong. As a matter of fact, *none* of OCC’s discovery requests addressed in the motion to compel request information for states other than Ohio.⁵

Second, Santanna argues that OCC’s discovery improperly seeks privileged and competitively sensitive information.⁶ Santanna provides no explanation as to why the information sought by OCC in discovery is privileged (because it is not). As to information Santanna claims is competitively sensitive, OCC explained in its motion to compel that it executed a protective agreement with Santanna in order to exchange confidential information in discovery.⁷ OCC even agreed to review competitively sensitive materials that Santanna deems “highly confidential” at the offices of Santanna’s counsel.⁸ OCC is a state agency – it is not a competitor to Santanna. Confidential information provided to OCC in accordance with the protective agreement will not harm Santanna’s business operations. There is no legitimate reason to deny discovery to OCC based on Santanna’s confidentiality objections.

⁴ Santanna Memorandum Contra, at 7 (emphasis original).

⁵ See OCC Motion to Compel, Exhibit A (OCC-INT-01-012 through 01-015, OCC-INT-01-018 through 01-020, OCC-INT-01-022, OCC-RPD-01-05, and OCC-RPD-01-008 through 01-010).

⁶ Santanna Memorandum Contra, at 7.

⁷ OCC Motion to Compel, at 5-6.

⁸ *Id.*

Third, Santanna argues that OCC's discovery is unnecessary because the PUCO Staff "did not deem [it] similarly necessary in order to evaluate Santanna's Application and recommend approval."⁹ What the PUCO Staff does or does not do to investigate Santanna's waiver request should not determine the outcome of OCC's motion to compel. In making its recommendations, the PUCO Staff must also consider the interests of utilities and marketers like Santanna.

Fourth, Santanna complains that OCC filed comments in this proceeding (along with other Consumer Parties) ahead of the scheduled due date.¹⁰ That has nothing to do with whether Santanna should respond to OCC's discovery. Nothing in the PUCO's rules or the procedural schedule in this case precluded Consumer Parties from filing initial comments ahead of schedule. Nor does filing the comments early demonstrate that OCC's discovery is unnecessary as Santanna claims.¹¹

Consumer Parties explained in the initial comments that a major issue with Santanna's waiver request is that Santanna has not been forthcoming with information sought by OCC in discovery.¹² To be sure, OCC would have preferred to receive timely discovery responses from Santanna to fully discuss in comments. But Santanna's opposition to OCC's motion to intervene and its motion for protective order made clear that OCC would not receive discovery responses before the deadline for comments.

⁹ Santanna Memorandum Contra, at 2.

¹⁰ Santanna Memorandum Contra, at 7-8.

¹¹ Santanna Memorandum Contra, at 7.

¹² See Consumer Parties' Comments Recommending the PUCO Deny the Request of Marketer Santanna to Waive and Weaken Certain PUCO Protections for Ohio Consumers (May 23, 2023) ("Consumer Parties' Comments"), at 18-20.

Santanna also claims that the early filing of Consumer Parties' Comments show that OCC's discovery is nothing more than a "fishing expedition" to support OCC's advocacy for a ban in door-to-door sales by marketers.¹³ Santanna is wrong.

While it is true that OCC has advocated for an end to door-to-door marketing to protect consumers in this case (and others), Consumer Parties' Comments described how until a ban occurs, "wet signatures, audio recordings, and verbal third-party verification of consumers' intent to enroll with the marketer provides a greater level of protection than Santanna's proposal."¹⁴ Thus, while OCC advocates for an industry-wide ban of door-to-door marketing, OCC recognizes that door-to-door marketing is still allowed under the PUCO's rules. That does not somehow estop OCC from arguing that Santanna's waiver request is harmful to consumers. Nor does it preclude OCC from conducting discovery regarding Santanna's waiver request. Santanna's claims that OCC's discovery is beyond the scope of this proceeding should be rejected.

Finally, Santanna claims that OCC is "imposing on Santanna additional undue burden and expense" because OCC filed its motion to compel while Santanna's motion for protective order is still pending.¹⁵ Again, this has nothing to do with whether OCC's discovery seeks information that is relevant or reasonably calculated to lead to the discovery of admissible evidence in accordance with O.A.C. 4901-1-16(B). Santanna's argument should be rejected.

¹³ Santanna Memorandum Contra, at 2-3.

¹⁴ Consumer Parties Comments at 8.

¹⁵ Santanna Memorandum Contra, at 3, 10.

Santanna’s argument is also contrary to the argument it recently made where it faulted OCC (in a separate pleading) for *not* filing a motion to compel.¹⁶ Santanna’s claim that OCC should have just “waited” for the PUCO to resolve Santanna’s motion for protective order¹⁷ is also misplaced. Discovery matters may not even be resolved until the PUCO issues a final order. But regardless, Santanna’s arguments have no merit because the PUCO’s rules do not preclude OCC from filing a motion to compel to protect its discovery rights while a motion for protective order is pending.

III. CONCLUSION

Ohio law (R.C. 4903.082) and Supreme Court of Ohio precedent affirm OCC’s broad rights of discovery.¹⁸ Santanna provides no good reason for refusing to respond to OCC’s proper discovery requests for information about its application to be exempt from rules that protect consumers from misleading and deceptive marketing practices in door-to-door sales. For consumer protection, the PUCO should grant OCC’s motion to compel and direct Santanna to respond immediately to OCC’s discovery.

Respectfully submitted,

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¹⁶ See Santanna’s Reply to OCC’s Memorandum Contra Santanna’s Motion for Protective Order (May 30, 2023), at 4.

¹⁷ Santanna Memorandum Contra, at 7.

¹⁸ *In re Suvon, LLC*, 2021-Ohio-3630, ¶ 42.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to Santanna’s Memorandum
Contra OCC’s Motion to Compel was served via electronic transmission upon the parties
listed below this 22nd day of June, 2023.

/s/ Angela D. O’Brien _____
Angela D. O’Brien
Deputy Consumers’ Counsel

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Summary: Reply Reply to Santanna'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 O'Brien, Angela D..