

**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 Provisions of Ohio Adm. Code) Case No. 23-171-GE-WVR
Chapters 4901:1-21 and 4901:1-29, to)
Permit Electronic Enrollment and Third-)
Party Verification by Digital)
Confirmation.)

**REPLY COMMENTS RECOMMENDING THE PUCO DENY
THE REQUEST OF MARKETER SANTANNA TO WAIVE AND WEAKEN
CERTAIN PUCO PROTECTIONS FOR OHIO CONSUMERS
BY
LEGAL AID SOCIETY OF COLUMBUS
LEGAL AID SOCIETY OF SOUTHWEST OHIO
OFFICE OF THE OHIO CONSUMERS' COUNSEL
OHIO POVERTY LAW CENTER AND
SOUTHEASTERN OHIO LEGAL SERVICES**

I. INTRODUCTION

Santanna is a marketer that makes money by selling energy service to Ohio residential consumers. Santanna wants to be exempt from certain 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 having their energy service switched by marketers without the consumers' proper consent. This deceptive marketing practice, called "slamming," is a real problem for Ohio consumers even under the existing rules. *Weakening* the rules by waiving them for Santanna is a bad idea for consumers.

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

On May 23, 2023, Consumer Parties² filed comments identifying a raft of problems with Santanna’s waiver request and proposal to use digital/electronic verifications of consumer enrollments. Consumer Parties’ arguments are incorporated by reference here.

Santanna did not file initial comments regarding its application. Santanna instead filed a *third* application regarding its waiver request,³ presumably to respond to issues raised by Consumer Parties. However, *none* of Santanna’s applications adequately address the potential harm to consumers in waiving the rules. Santanna has provided very little information about *how* it will make sure its third-party sales agents protect consumers (over profit) if the PUCO relaxes the rules.

The PUCO Staff is well aware of slamming and other misleading and deceptive practices by marketers. In several cases, the PUCO Staff has asked the PUCO to open investigations into marketers after consumer complaints of slamming and other marketing

² The “Consumer Parties” include: the Office of the Ohio Consumers’ Counsel (“OCC”), the state legal advocate for Ohio residential utility consumers (*see* R.C. Chapter 4911); the Legal Aid Society of Columbus (“LASC”), which is a non-profit provider of free civil legal services to low-income persons in a broad range of substantive legal issues, including utility-related issues, across six counties in Central Ohio; the Legal Aid Society of Southwest Ohio (“LASSO”), which is a non-profit organization that serves low-income families and individuals in southwest Ohio to resolve serious legal problems, to promote economic and family stability, and to reduce poverty through effective legal assistance; the Ohio Poverty Law Center (“OPLC”), which works to reduce poverty by protecting and expanding the legal rights of Ohioans living, working, and raising their families in poverty; and Southeastern Ohio Legal Services (“SEOLS”), which is a non-profit provider of free civil legal services to low-income persons and seniors in a broad range of substantive legal issues including utility-related issues in 33 counties throughout Appalachian Southeastern Ohio.

³ *See* Santanna Second Amended Application for Waiver of Certain Enrollment and Verification Requirements (June 5, 2023) (“Amended Application”).

abuse.⁴ Unfortunately for consumers, the PUCO Staff filed comments in support of Santanna’s request to weaken the consumer protection rules.⁵

The PUCO should reject the recommendations of its Staff, and instead take action to protect consumers. There should be a presumption against waiving rules meant to protect consumers from misleading and deceptive marketing practices. Consumers need *more*, not less, consumer protection, especially when it comes to door-to-door marketing. Santanna’s application, even as amended, should be denied.

II. THE PUCO SHOULD REJECT ITS STAFF’S RECOMMENDATION TO APPROVE SANTANNA’S WAIVER REQUEST

The PUCO Staff recommends approval of Santanna’s request to waive certain enrollment and verification requirements in O.A.C. 4901:1-21-06 and 4901:1-29-06 “to the extent these rules require wet signatures, audio recordings, or verbal [third-party verifications] following a door-to-door sale.”⁶ The PUCO should reject the Staff’s recommendation. Given the harm marketers have caused Ohioans in recent years, it is unclear why the PUCO Staff would now support such waivers, ***particularly in door-to-door sales where consumers must interact directly with uninvited sales agents.***

⁴ See e.g. *In the Matter of the Investigation of RPA Energy, Inc. d/b/a Green Choice Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 22-441-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*, Case No. 22-267-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 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; and *In the Matter of 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.

⁵ PUCO Staff Comments (June 8, 2023).

⁶ PUCO Staff Comments, at 5.

The Staff has in the past recommended that the PUCO deny a marketer waiver request just like Santanna's. In Case No. 22-29-GE-WVR, marketer Inspire also sought a waiver of the enrollment and verification rules so that it could conduct digital/electronic enrollments and verifications in door-to-door sales.⁷ However, after receiving consumer complaints about Inspire's marketing and third-party verification process, the PUCO Staff recommended that Inspire's waiver request be denied. The PUCO Staff stated in comments that:

Although the current [third-party verification] process did not prevent these issues from occurring, ***the current [third-party verification] process did help Staff effectively identify misleading and deceptive enrollment. Further, the provided customer voice verification confirmed improper enrollment.*** Due to these issues, ***Staff recommends that the waiver should be denied until a more thorough review of Applicant's policies and procedures is possible.*** Staff recommends that these issues are resolved for the consumers of Ohio.⁸

The PUCO has not yet ruled on Inspire's waiver request. But the PUCO Staff's observation that the current rules helped to "effectively identify misleading and deceptive enrollment" was directly on point, and it is one of the many reasons why the PUCO should deny Santanna's waiver request now.

As Consumer Parties explained in comments,⁹ the enrollment and verification rules requiring wet signatures, audio recordings, and verbal third-party verifications provide important evidence for investigating consumer complaints of marketer wrongdoing. For example, RPA Energy is another marketer that requested a waiver like

⁷ See *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. 22-29-GE-WVR, Inspire Application (January 11, 2022).

⁸ Case No. 22-29-GE-WVR, PUCO Staff's Amended Comments (June 10, 2022), at 9. (Emphasis added).

⁹ Consumer Parties' Comments (May 23, 2023) at 5, 7.

Santanna's.¹⁰ The PUCO Staff recommended approval of RPA Energy's waiver request.¹¹ But that was a mistake, because the PUCO Staff later asked the PUCO to open a formal investigation into RPA Energy's marketing practices. In the investigation, RPA Energy's audio recordings (that were required under existing rules) provided valuable evidence that someone impersonated a consumer in a third-party verification of enrollment call.¹² The audio recordings also provided evidence showing that the RPA Energy sales calls were altered. The current consumer protections, including the use of an audio recording of the verbal third-party verification (that Santanna now wants to avoid), worked as intended to uncover RPA Energy's deceptive marketing practices.

Audio recordings 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. Wet signatures also protect consumers against forged digital signatures. Anyone can type initials or a name for a digital signature.

Santanna has failed to provide good cause for waiving these important consumer protections. The PUCO should not weaken the rules by eliminating these requirements.

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. The PUCO Staff itself recognizes that the purpose of the consumer protection rules is "to make sure that, *to the greatest extent possible*, consumers

¹⁰ *In the Matter of the Application of RPA Energy, Inc. for Waivers of Certain Provisions of Ohio Adm. Code Chapters 4901:1-21 and 4901:1-29, to Permit Third-Party Verification by Digital Confirmation*, Case No. 21-157-GE-WVR.

¹¹ Case No. 21-157-GE-WVR.

¹² *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, Tr. Vol. I at 52-53, PUCO Staff Ex. 3 (Audiotape Beauregard).

understand the nature and terms of any agreement they enter.”¹³ Digital confirmation of third-party verifications may demonstrate that consumers can click a “yes” or “no” prompt on a smart phone, but it is much less helpful in demonstrating whether consumers understand the terms of a contract they were just sold by a marketer.

The PUCO should err on the side of protecting consumers, not marketers, by prohibiting third-party verifications that are not independently audio recorded. And 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. As stated, the PUCO has initiated several investigations of marketers for deceptive marketing practices including slamming. Those investigations demonstrate that marketers and/or the third-party sales agents soliciting and enrolling consumers are becoming more brazen in their attempts to scam consumers.¹⁴ Now is not the time to relax consumer protections.

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.”¹⁵ The *minimum* requirements regarding consumer enrollments and verifications are set forth in the PUCO’s rules should apply equally to *all marketers*. These minimum requirements should be followed, not waived.

¹³ PUCO Staff Comments, at 4. (Emphasis added).

¹⁴ 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.

¹⁵ R.C. 4928.10(D)(4) and 4929.22(D)(3).

Finally, the PUCO Staff states (correctly) that “the rule review process outlined in Case Nos. 17-1843-EL-ORD and 17-1847-GA-ORD is far more beneficial to the Commission and the industry to use to set universal standards” with respect to marketers’ waiver requests to conduct digital/electronic enrollments and verifications.¹⁶ Yet the PUCO Staff recommends granting Santanna’s waiver request before the resolution of those cases because the rulemaking “process is timely [sic].”¹⁷

That is not fair to consumers, and the PUCO Staff’s recommendation should be rejected. Consumer protections should not be compromised in favor of marketer convenience simply because the rulemaking process takes a long time. The PUCO should protect consumers from potential misleading and deceptive marketing practices now by enforcing (not waiving) the minimum requirements for marketer enrollments and verification.

III. CONCLUSION

Santanna has failed to demonstrate that good cause exists to waive important enrollment and verification rules that protect consumers from slamming and other misleading and deceptive marketing practices. The PUCO should deny Santanna’s waiver request. There is no good reason to relax consumer protections given the harm marketers have caused Ohioans. Consumers deserve strong protection by the PUCO. For the reasons explained above and in Consumer Parties’ initial comments, the PUCO should deny Santanna’s application and any other waiver request that weakens the consumer protection requirements for marketers.

¹⁶ PUCO Staff Comments, at 4.

¹⁷ *Id.*

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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 23rd day of June 2023.

/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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Case No(s). 23-0171-GE-WVR

Summary: Reply Reply Comments Recommending the PUCO Deny the Request of Marketer Santanna to Waive and Weaken Certain PUCO Protections for Ohio Consumers by Legal Aid Society of Columbus, Legal Aid Society of Southwest Ohio, Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center and Southeastern Ohio Legal Services electronically filed by Ms. Alana M. Noward on behalf of O'Brien, Angela D..