

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Direct Energy) Case No. 22-583-GE-UNC
Services, LLC)

**REPLY COMMENTS
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

On June 10, 2022, the PUCO Staff and energy marketer Direct Energy submitted a Settlement to resolve the PUCO Staff's findings that Direct Energy had engaged in improper marketing to consumers. The Staff findings included misleading and deceptive marketing, failure to maintain accurate records, and incomplete enrollment information.¹

Direct Energy has agreed to implement the following actions if the PUCO approves the Settlement²:

1. Provide the PUCO Staff with a plan to come into compliance with Commission rules. The plan should address, at least, enrollment practices, an auditing process for enrollments, and any corrective actions to be implemented by Direct Energy.
2. Submit to the PUCO Staff a list of all vendors, contact information, and agents that have marketed on behalf of Direct Energy for the period of December 1, 2020, through May 31, 2021. Also include the number of attempted enrollments for the identified agents along with the number of successful enrollments.
3. Review all door-to-door enrollments completed within the 3 months preceding the Notice Letter, and has taken/will take the following actions:
 - a. Review each contract, third-party verification, and other enrollment documentation for completeness, accuracy, and customer consent.

¹ See Settlement.

² *Id.*

- b. Contact each customer where enrollment documents are not complete, or the customer's consent is not certain.
 - c. Give each customer contacted in 3.b. above, the option to cancel without any penalties or to re-enroll with Direct Energy, in which case, new enrollment and consent must be obtained in accordance with Ohio Adm.Code 4901:1-21-06 and/or 4901:1-29-06.
 - d. Review all customer complaints that noted similar issues with the sales representatives to determine patterns of misleading and deceptive practices.
- 4. Provide the PUCO Staff with telemarketing calls for the period of January 31, 2021 through February 6, 2021, 3 including a listing of all vendors.
 - 5. Review all marketing and sales scripts for compliance with rules and has submitted updated versions of these documents to the PUCO Staff for review. If Direct Energy modifies its scripts in the six months following the PUCO's approval of the Settlement, Direct Energy will submit the updated scripts to the PUCO Staff.³

In addition, Direct Energy has agreed to pay a forfeiture of \$275,000.⁴

OCC appreciates the PUCO Staff's issuance of its notice of probable non-compliance to Direct Energy in response to consumer complaints filed through the PUCO Call Center. Direct Energy has filed comments supporting the Settlement.⁵ However, the PUCO should modify the Settlement to achieve adequate protection for Ohio consumers, as described below.

³ *Id.*

⁴ *Id.*

⁵ Initial Comments of Direct Energy Services, LLC in Support of the Joint Stipulation and Recommendation (July 12, 2023).

II. CONSUMER PROTECTION RECOMMENDATIONS

A. **To protect consumers, the Settlement should be modified to revoke the waiver that the PUCO granted Direct Energy regarding third-party verification rules in the Ohio Administrative Code for enrolling consumers.**

On September 26, 2019, the PUCO unfortunately granted Direct Energy's request for a temporary waiver of third-party verification (TPV) rules (O.A.C. 4901:1-21-06(D)(1)(h), 4901(D)(2)(a), 4901:1-29-06(D)(6)(b), 4901:1-29-06(E)(1)) for electric and natural gas.⁶ The waiver allowed Direct Energy to offer consumers a choice to complete the TPV digitally or orally (telephone) after the completion of a telephone or door-to-door sale.⁷ In the Entry approving the waiver, the PUCO stated that Direct Energy has shown "good cause" to offer an optional digital TPV.⁸

The PUCO Staff's notice of probable non-compliance came after the waiver. It included complaints from consumers who were provided misleading information by Direct Energy.⁹ The consumer complaints demonstrated that Direct Energy should be required to comply with the TPV rules. In the notice of probable non-compliance, the PUCO Staff references a complaint where the consumer received a robocall opening with this is "an apology from the utility."¹⁰ After the robocall, the consumer was transferred to an agent ("Steve") claiming to be with the "supply department."¹¹

⁶ Case No. 18-382-GE-WVR, Entry (September 26, 2019).

⁷ *Id.*

⁸ *Id.*

⁹ *See* Settlement, Exhibit A.

¹⁰ *See* Settlement.

¹¹ *Id.*

Given there is evidence that Direct Energy sales agents provided misleading information during at least one sales interaction, there is a good chance it is occurring more often. In particular, the use of a robocall is an indicator of wider mismarketing. Further, the mismarketing may be occurring during the TPV process (including potentially not providing the consumer a choice on how to complete the TPV).

Any marketer that, after seeking and obtaining a waiver of the state's TPV rules, then violates those rules, should be subject to the strictest scrutiny and the least leniency by the PUCO. Any marketer that obtained a waiver of third-party verification (or any waiver for that matter) and then violates the PUCO's waiver should have the waiver automatically revoked. The PUCO should modify the Settlement by revoking Direct Energy's waiver of TPV rules.¹²

B. To protect consumers, the Settlement should be modified to require more review of Direct Energy's marketing and sales scripts.

Direct Energy states that it would continue to provide the PUCO Staff updated sales scripts up to 6-months after the Settlement is approved.¹³ This does not go far enough to prevent Direct Energy from going back to its old ways of not complying with PUCO rules governing sales interactions with the public.

The PUCO should modify the Settlement to require Direct Energy to provide any updated versions of all marketing and sales scripts for review for two years.¹⁴ This would

¹² 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, PUCO Staff's Amended Comments (June 10, 2022), at 9 (recommending against waiver).

¹³ See Settlement.

¹⁴ *In the Matter of the Commission's Consideration of a Settlement Agreement between Josco Energy USA, LLC and the Commission's Staff*, Case No. 22-170-GE-UNC, Finding and Order (May 18, 2022) at ¶ 5.

be an appropriate protection for Ohio consumers. And it would impose little effort upon Direct Energy to provide its scripts.

Ohio consumers should be given the protection that, for the next two years, all updated marketing and sales scripts have been reviewed for compliance by the PUCO Staff. The PUCO has previously stated that its “Staff...is well-versed in reviewing action plans within the context of investigatory actions . . . including examining third-party verification scripts, sales scripts, and contracts; monitoring of third-party vendors; and reviewing...internal complaint resolutions process.”¹⁵

C. To protect consumers, the PUCO should modify the Settlement to require monitoring of call center complaints involving Direct Energy.

Direct Energy asserts that its compliance plan would prevent non-compliance during the enrollment process.¹⁶ The compliance plan is a first step in remedying enrollment non-compliance that the PUCO Staff outlined in the notice of probable non-compliance. But it does not go far enough to protect consumers.

The PUCO should modify the Settlement to require the PUCO Staff to give stricter scrutiny to monitoring PUCO call center complaints against Direct Energy for two years after the Settlement is approved.¹⁷ The PUCO Staff should be required to publicly report its findings in years one and two.

¹⁵ *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, Opinion & Order (February 26, 2020) at ¶ 68.

¹⁶ See Settlement.

¹⁷ See *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, Opinion and Order (December 21, 2020) at 8.

D. To protect consumers, the PUCO should modify the Settlement to prohibit Direct Energy from marketing door-to-door.

In its notice of probable non-compliance, the PUCO Staff found:

instances of door-to-door agents providing misleading and deceptive information to consumers. Multiple consumers complained that agents were being untruthful, including agents stating they needed to see the utility bill to verify that everything was correct, implying the agent was with the utility, and that the customer's contract needs to be renewed even though the customer was not currently with Direct Energy. Finally, Staff found that the acknowledgment form required as part of door-to-door natural gas enrollments was not completed.¹⁸

Direct Energy asserts that it has conducted the review of the door-to-door enrollments, consistent with the Settlement and taken remedial action.¹⁹ More consumer protection is necessary.

The PUCO should modify the Settlement to prohibit Direct Energy from marketing door-to-door for one year after the Settlement is approved. But what is really needed for consumer protection is a ban on *all* marketer door-to-door sales. Decisions about buying energy are complex and best made after careful research of information not immediately available on a consumer's doorstep. A consumer's doorstep is not the place where a consumer can make well-informed decisions about buying energy.

¹⁸ See Settlement, Exhibit A.

¹⁹ Initial Comments of Direct Energy Services, LLC In Support of the Joint Stipulation and Recommendation (July 12, 2023) at 7-8.

III. CONCLUSION

The Settlement does not go far enough to protect Ohio consumers from Direct Energy. To protect consumers, the PUCO should modify the Settlement as recommended herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Reply Comments was served on the persons stated below via electronic transmission, this 26th day of July 2023.

/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:

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electronically filed by Ms. Alana M. Noward on behalf of Michael, William J..