

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Inspire Energy Holdings,        )     Case No. 23-720-GE-UNC  
LLC.    )

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

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**I. INTRODUCTION**

The Ohio Consumers' Counsel (OCC) intervention and participation critical issues previously unknown to the public. Before OCC became involved to protect consumers harmed by Inspire's manipulative and deceptive marketing, the extent of Inspire's transgressions remained hidden:

- **15,932 Consumers Enrolled in Unlawful Products:** Inspire enrolled a significant number of consumers in a flat monthly rate product that violates PUCO rules.<sup>1</sup>
- **Massive Rate Hikes:** Shockingly, nearly 1,000 of these consumers experienced rate increases exceeding five times their initial teaser rate.<sup>2</sup>
- **Deceptive Marketing and Contracting:** Consumers were misled, with their flat monthly rate products marketed and contracted as variable rate products.<sup>3</sup>

These revelations raise a crucial question: how will the PUCO respond?

The PUCO should respond by rejecting the Settlement between Inspire and the PUCO Staff. That would be most protective of the many residential consumers harmed by Inspire. And

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<sup>1</sup> *In the Matter of Inspire Energy Holdings, LLC.*, Case No. 23-720-GE-UNC, Direct Testimony of Stephanie F. Donner (“Donner’s Direct Testimony”) on page 5; See also, OCC’s Brief at pp. 11-12.

<sup>2</sup> Andy Tinkham’s Direct Testimony at p. 21.

<sup>3</sup> See Donner’s Cross Examination, Transcript at p. 38, lines 19-20 – When asked why she believes that Inspire’s product is variable, the witness states, “We marketed this as a variable contract because we informed the customer that it [the flat monthly rate] would then change [after the first one or two months].”

it might put the damper on the behind-closed-door settlement process that the PUCO Staff and marketers have engaged in, intentionally excluding OCC.

“There is no room for misleading or deceptive practices in Ohio’s competitive electricity or natural gas markets,” stated PUCO Chair Jenifer French after the PUCO order in the *RPA Energy* case.<sup>4</sup> “We take these violations seriously and will not tolerate suppliers taking advantage of Ohioans.”<sup>5</sup> Yet, few of these cases are resolved through a full trial on the merits, as was the case in *RPA Energy*. Most of these matters are decided through settlements. So, if the PUCO Chair’s words are to be truly effectuated, the PUCO must ensure all stakeholders, including the consumers’ representatives, OCC, are included in the settlement process. Otherwise, violators like Inspire will take advantage of a behind-closed-door settlement process with PUCO Staff and secure for themselves sweetheart deals at the expense of consumers. We agree with Chair French.

But the Parties to the Settlement, the PUCO Staff and Inspire (along with non-signatory RESA, a marketer organization) argue that the PUCO should overlook Inspire’s numerous marketing violations and the defective, non-public settlement process. They want the Settlement approved. The PUCO, however, should not turn a blind eye to Inspire’s numerous and serious violations which harmed many residential consumers. Nor should the PUCO approve a non-public settlement process.

The OCC instead urges the PUCO to deny or modify the Settlement because the current settlement does not pass muster under the PUCO’s three-prong settlement test. Inspire should be held accountable for its deceptive and manipulative marketing practices with the PUCO ordering

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<sup>4</sup> [PUCO issues \\$1.44 million fine to RPA Energy, revokes authority to operate in Ohio | Public Utilities Commission of Ohio](https://puco.ohio.gov/news/puco-fine-rpa-energy); <https://puco.ohio.gov/news/puco-fine-rpa-energy>.

<sup>5</sup> *Id.*

appropriate corrective measures to address Inspire’s misdeeds. The PUCO should also put an end to the behind-closed-door settlement process involving its Staff and marketers.

## II. ARGUMENT

### A. The Settlement violates the three-prong test.

#### 1. It’s uncontested – OCC was barred from serious bargaining with PUCO Staff and Inspire. This violates the first prong of the three-prong test.

OCC’s claim of being excluded from serious bargaining with the PUCO Staff and Inspire goes unchallenged. An agreement that arises from settlement talks from which an entire customer class is intentionally excluded violates the three-prong test established by the PUCO and approved by the Court.<sup>6</sup>

RESA mischaracterizes OCC’s position concerning negotiation.<sup>7</sup> The question OCC is concerned with, and all parties should focus on, is whether there was serious bargaining.<sup>8</sup> And there was no serious bargaining.<sup>9</sup> There could be no serious bargaining because OCC was forced to enter bargaining, on rehearing, after a settlement had already been reached, *and the signatory parties were obligated to defend the Settlement on rehearing*.<sup>10</sup> This error can only be corrected if the Settlement is modified, as recommended in OCC Witness Tinkham’s testimony or the Settlement is rejected.<sup>11</sup>

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<sup>6</sup> *Time Warner Axs v. PUC of Ohio*, 75 Ohio St. 3d 229, 233 n. 2 (1996) – “The partial stipulation arose from settlement talks from which an entire customer class was intentionally excluded. This was contrary to the commission’s negotiations standard in *In re Application of Ohio Edison to Change Filed Schedules for Electric Service*, case No. 87-689-EL-AIR (Jan. 26, 1988) at 7, and the partial settlement standard endorsed in *Consumers’ Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123, 125-126, 592 N.E.2d 1370, 1373.”

<sup>7</sup> Andy Tinkham’s Testimony at p. 4, line 17-22.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

The PUCO Staff never even mentions the words “serious bargaining. The PUCO Staff simply points to three past cases in which the PUCO Staff has excluded OCC from settlement negotiations with marketers.<sup>12</sup> Of course two wrongs (three here) don’t make a right. But even ignoring this adage, the orders cited by the PUCO Staff are distinguishable because OCC was not involved and the settlements were not objected to or litigated. The PUCO Staff argues that the competitive retail electric service rules allow for PUCO Staff and marketers to enter into Settlement agreements to resolve marketer violations. But the PUCO Staff overlooks the fact that those Settlements must occur during proceedings.<sup>13</sup> Once proceedings are established, others can intervene and participate in settlement negotiations if they would like.<sup>14</sup>

Inspire dismisses OCC’s claim that it was precluded from serious bargaining due to the Settlement’s terms by *incorrectly* asserting that OCC had no right to be involved in the initial settlement discussions.<sup>15</sup> Contrary to Inspire’s assertions, PUCO rules and Supreme Court precedent specifically prohibit PUCO Staff and Inspire from excluding the OCC from settlement negotiations in competitive retail electric service (CRES) matters.

OCC’s Initial Brief fully explains the inclusive settlement process required for the settlement of CRES compliance matters before the PUCO. OCC summarizes the points made in its Initial Brief below:

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<sup>12</sup> See PUCO Staff’s Brief at pp. 3-4 and 9-10, citing *In re the Commission’s Consideration of a Settlement Agreement Between Ambit Northeast LLC and Commission’s Staff*, Case No. 22-128-EL-UNC, Finding and Order (May 18, 2022); *In re the Commission’s Consideration of a Settlement Agreement Between ENGIE Retail, LLC d/b/a Think Energy and the Commission’s Staff*, Case No. 18-938-GE-UNC, Finding and Order (July 11, 2018) at ¶ 6; *In re the Commission’s Consideration of a Settlement Agreement Between Provision Power & Gas, LLC and Commission’s Staff*, 20-1107-GE-UNC, Finding and Order (July 1, 2020) at ¶7).

<sup>13</sup> See OCC’s Initial Brief at Section A. 1.

<sup>14</sup> Ohio Adm.Code 4901-1-11 (A)(2).

<sup>15</sup> See Inspire Initial Brief at p. 16. Nothing in the CRES rules or general rules governing Settlements require PUCO Staff of CRES violators to include in their settlement agreements that they are precluded from engaging in serious bargaining with intervening parties on rehearing. OCC could have engaged in serious bargaining on rehearing, even though it was excluded initially, had Section V: E not been included as a part of the Settlement.

- PUCO’s general settlement rules (O.A.C. 4901-1-10 to 4901-1-30) require settlements to be signed by “parties” in a docketed case, with public filings establishing “parties” and “issues” (O.A.C. 4901-1-30(A)). Inspire’s and PUCO Staff’s pre-proceeding settlement bypassed these steps, excluding interested parties like OCC from serious bargaining.
- PUCO rules specifically governing CRES matters (O.A.C. 4901:1-23-01 to 4901:1-23-09) must also comply with these general settlement procedures. O.A.C. 4901:1-23-05(B) explicitly states that CRES-specific procedural rules must adhere to the general procedures outlined in Chapter 4901-1 of the Administrative Code. Therefore, the requirement for settlements to be signed by parties in a docketed case applies to CRES compliance matters as well.
- Public records laws in Ohio (R.C. 4901.12 & 4901.13) mandate open and transparent proceedings, including settlements that affect consumers. The PUCO’s settlement process should reflect this commitment to transparency.
- Ohio Supreme Court precedent in *Time Warner Axs v. PUC* (1996) aligns with this principle, rejecting settlements that exclude entire customer classes (75 Ohio St. 3d 229, 233 n. 2).

Inspire and PUCO Staff’s pre-proceeding settlement violated the spirit of public participation and transparency enshrined in PUCO rules and Ohio law. The exclusion of OCC from initial negotiations *combined with* the Settlement provision that obligated Inspire and PUCO Staff to defend the Settlement on rehearing<sup>16</sup> precluded serious bargaining and harmed consumers.

## **2. The Settlement does not benefit the public interest.**

The Settlement reached between the PUCO Staff and Inspire is not in the public interest. The Settlement does not benefit the public interest for a number of reasons, as fully explained in OCC’s initial brief.<sup>17</sup> The Settlement unjustly limits rerates. The Settlement unjustly limits the return of Inspire’s consumer to default service. The Settlement does not benefit the public interest because it does not address Inspire’s pending waiver of the PUCO’s “anti-slamming”

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<sup>16</sup> Settlement at Section V: E.

<sup>17</sup> OCC Initial Brief at p. 14-21.

rules in case no. 22-29-GE-WVR.<sup>18</sup> The forfeiture imposed in the Settlement is inadequate to deter future bad acts by Inspire or other marketers. The forfeiture fails to adequately consider the seriousness of the overcharges to consumers – some of whom paid rates ten times the introductory rate.<sup>19</sup> The forfeiture fails to account for Inspire deceptively marketing its subscription flat monthly rate product as a variable rate product.<sup>20</sup> The forfeiture did not fully address the scope of violations referenced in the Amended Notice of Probable Non-compliance because PUCO did not specifically outline the scope.<sup>21</sup>

The PUCO Staff and Inspire futilely point back to the remedies, notices, re-rates, and forfeiture required by the Settlement terms as support for the fact that the Settlement benefits the public interest. The Settlement terms are painfully one-sided in favor of Inspire and against consumers. The Settlement’s terms concerning remedies, notices, forfeiture, and re-rates:

- Do not require Inspire to re-rate all 15,932<sup>22</sup> consumers signed up to Inspire’s unlawful flat monthly rate product.<sup>23</sup> Instead, it resulted in re-rates totaling \$1771.81 (approximately 9 cents per unlawfully enrolled consumer).<sup>24</sup>
- Resulted in a forfeiture of \$160,000<sup>25</sup> (approximately \$10<sup>26</sup> per unlawfully enrolled consumer). This is not a deterrence; instead, it encourages future noncompliance.

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<sup>18</sup> OCC Initial Brief at p. 19-21.

<sup>19</sup> Andy Tinkham’s Direct Testimony at Q and A 23.

<sup>20</sup> Discussed further in this Section A.2. and also, in Section A.3 of this Reply.

<sup>21</sup> Settlement, Exhibit A – The Settlement uses terms like few, numerous, and for example, when describing the scope of violations. There are no exact numbers that would let the PUCO know the scope of the violations in order to decide whether the forfeiture is appropriate. See also, Andy Tinkham’s Direct Testimony at Q and A 24.

<sup>22</sup> *In the Matter of Inspire Energy Holdings, LLC.*, Case No. 23-720-GE-UNC, Direct Testimony of Stephanie F. Donner (“Donner’s Direct Testimony”) on page 5.

<sup>23</sup> Settlement at Section IV: Provisions B, C, and D.

<sup>24</sup> Donner’s Direct Testimony at p. 7.

<sup>25</sup> Settlement at Section IV: Provisions G.

<sup>26</sup> Given the additional violations discussed in Section A:1 of this Reply, the figure is approximately \$3 per violation established by OCC.



- Resulted in renewal notices going to only 1,211<sup>27</sup> of the 15,932 consumers enrolled in Inspires unlawful flat monthly rate product. As discussed in OCC’s Initial Brief, these notices were not designed to alert consumers that they could receive re-rates.<sup>28</sup> They don’t even use the word “re-rate”.<sup>29</sup> Yet, PUCO Staff’s Brief perplexingly flaunts as proof of customer satisfaction the fact that no one requested re-rates as a result of these notices.<sup>30</sup>
- Resulted in notification letters going to only 4,502<sup>31</sup> of the 15,932 consumers enrolled in Inspire’s unlawful flat monthly rate product.  
Allows Inspire to begin its unlawful offering its unlawful flat monthly rate product again, upon its prerogative.

By comparison, the *RPA Energy* case<sup>32</sup>, based on 144 discreet CRES and CRNGS violations related to unfair, misleading and deceptive marketing and contracting practices, resulted in 1) forfeiture of \$1.44 million, 2) re-rates for all consumers enrolled during a six-month window, 3) returning all such consumers to default service, and 4) RPA losing its retail electric service and retail natural gas service certificates.<sup>33</sup>

This Inspire matter has, at least, 47,796<sup>34</sup> violations that resulted in 1) a \$160,000 forfeiture; 2) drop-in-the-bucket re-rates; and 3) Inspire continuing to service its unlawfully obtained retail electric service contracts through renewals.

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<sup>27</sup> See PUCO Staff’s Brief at p. 8

<sup>28</sup> See OCC Initial Brief at p. 14, n. 35.

<sup>29</sup> *Id.*

<sup>30</sup> See PUCO Staff’s Brief at p. 8.

<sup>31</sup> See PUCO Staff’s Brief at p. 8.

<sup>32</sup> *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, Opinion and Order (October 18, 2023).

<sup>33</sup> *Id.* at ¶¶ 63 and 79.

<sup>34</sup> 15,932 unlawfully enrolled consumers + the 31,864 violations Inspire admitted to on cross-examination as explained in Section A.2. of this brief.

*RPA Energy* should be a guide. The forfeiture should have at least been \$1.6 million for this case. Global violations should require global re-rates. Consumers Inspire unlawfully signed onto contracts and then renewed<sup>35</sup> should be returned to default service.

In an attempt to promote the Settlement as beneficial, the PUCO Staff states that OCC presented no evidence “at the hearing of any outstanding or continuing enforcement issues<sup>36</sup>...” However, Andy Tinkham’s cross-examination testimony solicited by the PUCO Staff’s counsel noted continuing consumer complaints regarding deceptive misleading, and unconscionable practices that continued until, at least, February of 2024.<sup>37</sup> These are the very same types of practices that were identified in PUCO Staff’s Amended Notice of Probable Non-compliance.<sup>38</sup> The hearing testimony also revealed a critical flaw in the Settlement: it failed to even ensure that consumers who experienced significant rate hikes were rerated and returned to default service.<sup>39</sup> Nor could Inspire’s witness remember Inspire taking steps to address consumers hit with rate hikes ten times or more than their initial teaser rates.<sup>40</sup> This is particularly egregious because consumers were required to know upfront their monthly rates for the duration of their contracts.

Moreover, the hearing evidence uncovered additional violations concerning Inspire’s marketing and contracting practices that were not accounted for in the forfeiture assessed to Inspire. Specifically, Inspire marketed and contracted its subscription flat-monthly rate product as a variable rate product. On cross-examination, Inspire admitted that it deceptively and

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<sup>35</sup> Only lawful contracts can be renewed.

<sup>36</sup> OCC agrees with PUCO Staff’s position that the issues of these proceedings extend beyond the window of PUCO Staff’s investigation.

<sup>37</sup> Andy Tinkham’s Cross, Tr. at p. 152, lines 21-23.

<sup>38</sup> See Andy Tinkham’s Direct at p. 22.

<sup>39</sup> See Donner’s Cross Examination, Transcript at p. 25, lines 6-12.

<sup>40</sup> *Id.*

misleadingly marketed<sup>41</sup> and contracted<sup>42</sup> its subscription flat monthly rate product as a variable rate product<sup>43</sup>, in violation of Ohio Adm.Code 4901:1-21-03(A)(1) and (2). Inspire’s marketing and contracting of its subscription product as variable is inherently misleading, deceptive, and unconscionable. Given that 15,932 consumers were enrolled into the product, Inspire violated both rules at least 15,932 times.

Additionally, Inspire’s disregard for the PUCO’s flat monthly rate rules is egregiously premeditated, calling for a stiff forfeiture. Inspire initiated its relabeling scheme because the Ohio market wasn’t conducive to Inspire offering its customized flat monthly rate product without an initial teaser rate.<sup>44</sup> Inspire claims it needed the teaser rate to give it time to collect and access the information needed to formulate the customized rate.<sup>45</sup> The teaser rate also served to lock customers in and place the onus on consumers to opt-out before the permanent rate went into effect.<sup>46</sup> Inspire then moved forward with its plan and when investigated by PUCO Staff argues that its product is variable.<sup>47</sup> As will be shown below, Inspire had no legal justification for such a claim and should have had a stiff forfeiture recommended to the PUCO by PUCO Staff.

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<sup>41</sup> See Donner’s Cross Examination, Transcript at p. 38, lines 19-20 – When asked why she believes that Inspire’s product is variable, the witness states, “We marketed this as a variable contract because we informed the customer that it [the flat monthly rate] would then change [after the first one or two months].”

<sup>42</sup> See Donner’s Cross Examination, Transcript at p. 36, line 20 - When asked why she believes that Inspire’s product is variable, Inspire’s witness, Stephanie F. Donner, stated, “That’s what the contract says.”

<sup>43</sup> Ohio Adm. Code 4901:1-21-03(A) states, “Competitive retail electric service (CRES) providers shall not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to, without limitation, the following activities: (1) Marketing, solicitation, or sale of a CRES. (2) Administration of contracts for CRES.”

<sup>44</sup> Donner’s Cross Examination, Tr. at p. 42, line 18 – p. 43, line 19.

<sup>45</sup> Donner’s Direct Testimony at p. 8.

<sup>46</sup> Id. at p. 8 – “After the first or second month, depending on the specific plan the customer enrolled in, following notice to the customer of their customized subscription price and their opportunity to terminate without penalty or fees, the member’s flat monthly introductory price would adjust to the customized flat monthly price for the remainder of the 12-month term.”

<sup>47</sup> Donner’s Cross Examination - Transcript at p. 36, lines 13-17.

The Settlement does not benefit consumers with appropriate re-rates, the forfeiture does not deter future noncompliance, and the forfeiture does not account for Inspire's 47796 violations identified by OCC. The Settlement violates the public interest prong of the PUCO's three-prong test for Settlements.

### **3. The Settlement violates regulatory principles and practices.**

OCC's Initial Brief raised serious concerns about how the Settlement violated regulatory principles and practices to the harm of Ohio consumers.

The main issue is Inspire's deceptive flat-rate product. Inspire lured consumers in with a low introductory rate, then hit them with a big price jump one or two months later. This is a clear violation of Ohio regulations (O.A.C. 4901:1-21-05(A)(4) & 4901:1-21-12(B)(7)(e)). These rules require marketers to disclose the flat rate for the duration of the contract upfront, while Inspire has multiple flat rates within one contract. It's an unlawful bait-and-switch tactic that the rules don't allow.

What is worse is that the proposed settlement lets Inspire keep doing this! Existing customers are stuck in this unfair plan, and Inspire could even offer the same scheme in the future with just a heads-up to the PUCO Staff. On top of that, the settlement allows them to automatically renew these unlawful contracts and only removes customers who specifically request to drop out.

This is simply not good enough. It doesn't fix the original problem. Customers who are already locked into this plan might not even know they're getting ripped off after the intro period ends. The Settlement lets Inspire profit from misleading consumers and doesn't hold them accountable for breaking the rules. OCC demand a fair outcome for Ohio consumers, and this settlement just doesn't deliver.

The Settlement violates regulatory practices and principles as described in OCC’s Initial brief.<sup>48</sup>

RESA does not address OCC’s assertion that the Settlement violates regulatory principles or practices. The PUCO Staff only espouses that the Settlement advances the PUCO’s regulatory “goals.”<sup>49</sup> That is not enough.

The most important regulatory goal the PUCO should try to advance is compliance with its rules. Yet PUCO Staff fails to address OCC’s assertion that the terms of the Settlement allow Inspire to continue contracting<sup>50</sup> and renewing<sup>51</sup> its unlawful<sup>52</sup> subscription flat monthly rate product, which violates O.A.C. 4901:1-21-12(B)(7)(e) and O.A.C. 4901:1-21-05(A)(4). Given Staff Witness Bossart’s testimony on cross-examination<sup>53</sup>, it would seem that PUCO Staff agrees with OCC’s assertion, but there is Section V: E of the Settlement hanging over the PUCO Staff’s head. Ms. Bossart’s Direct Testimony only takes the position that the agreement does not violate any important regulatory principles or practices based on the advice of legal counsel.<sup>54</sup> Yet, her legal counsel is unexplainably silent on the matter.

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<sup>48</sup> OCC Brief at pp. 11-12.

<sup>49</sup> See PUCO Staff Brief at pp. 10-12.

<sup>50</sup> *In the Matter of Inspire Energy Holdings, LLC.*, Case No. 23-720-GE-UNC, Joint Application and Recommendation (September 5, 2023) (“Settlement”) at Section IV: Provision A.

<sup>51</sup> Settlement at Section IV: Provision B.

<sup>52</sup> See *In the Matter of Inspire Energy Holdings, LLC.*, Case No. 23-720-GE-UNC, OCC’s Initial Brief (June 21, 2024) (“OCC’s Initial Brief”) at pp. 11-12. - Inspire’s subscription flat monthly rate product violates O.A.C. 4901:1-21-12(B)(7)(e) and O.A.C. 4901:1-21-05(A)(4), which both expressly require flat monthly rate products to offer one upfront transparent rate for the duration of the contract. Inspire’s product offered two flat monthly rates and only one rate was presented to the consumer before signing their contracts.

<sup>53</sup> Bossart’s Cross Examination, Transcript at pp. p. 65, lines 10-16; Transcript at p. 72, lines 1-13, Transcript at p. 66-67.

<sup>54</sup> See Barbara Bossart’s Direct at p. 7, line 2-4.

Inspire attempts to address OCC's assertion that the Settlement violates the PUCO's flat monthly rate rules by claiming that its product is a variable rate product – not a flat monthly rate product. This is a claim with which Ms. Bossart could not agree.<sup>55</sup>

Ms. Bossart contests Inspire's claim that its subscription rate, long-term customized flat monthly rate product is somehow a variable rate product. She has practiced as a regulator with the PUCO from 1999 to the present.<sup>56</sup> She is currently the Chief of the Reliability and Service Analysis Division (RSAD) within the Service Monitoring and Enforcement Department (SMED).<sup>57</sup> She is aware of flat monthly rate products.<sup>58</sup> Yet, she could not recall a flat monthly rate product ever being called a variable product.<sup>59</sup> She could only recall per-kilowatt hour rates being referred to as variable.<sup>60</sup> Inspire admits that its product is not a per-kilowatt hour product.<sup>61</sup> Indeed, Bossart testified the initial 1 to 2-month subscription rate was a flat monthly rate<sup>62</sup> – not a variable rate (per-kilowatt hour). The same is, therefore, necessarily true for the 10 to 11-month customized flat monthly rate.

In its initial brief, Inspire cites to *In the Matter of the Commission-Ordered Investigation of Marketing Practices in the Competitive Retail Elec. Serv. Mkt.*, Case No. 14-568-EL-COI, Finding and Order (Nov. 18, 2015) to support its claim that its subscription flat monthly rate

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<sup>55</sup> Bossart's Cross Examination, Transcript at p. 72, lines 1-13.

<sup>56</sup> *In the Matter of Inspire Energy Holdings, LLC.*, Case No. 23-720-GE-UNC, Direct Testimony of Barbara Bossart ("Bossart's Direct Testimony") at pp. 2-3.

<sup>57</sup> Bossart's Direct Testimony at p. 3.

<sup>58</sup> Bossart's Cross Examination, Transcript at p. 65, lines 10-16.

<sup>59</sup> Bossart's Cross Examination, Transcript at p. 72, lines 1-13.

<sup>60</sup> *Id.*

<sup>61</sup> Donner Cross Examination, Transcript at p. 38, lines 10-13.

<sup>62</sup> Bossart's Cross Examination, Transcript at p. 66-67.

product is a variable rate.<sup>63</sup> However, the cited case only serves to affirmatively contradict Inspire’s un-inspiring argument. Quoting the Finding and Order verbatim “Variable Price: An all-inclusive per kWh price that can change, by the hour, day, month, etc., according to the terms and conditions in the supplier’s disclosure statement.”<sup>64</sup> Variable rate products are per kWh products that vary over time. They are not flat monthly rate products. The Finding and Order in PUCO Case No. 14-568, cited in Inspire’s brief, never uses the word “flat”<sup>65</sup> once.

Inspire offered a flat monthly rate product that impermissibly 1) included two separate flat monthly rates and 2) did not make the customized flat monthly rate known upfront. For both reasons, the product violates Ohio Adm. Code 4901:1-21-12(B)(7)(e) and 4901:1-21-05(A)(4).<sup>66</sup> Simply mislabeling these two flat monthly rates as “variable” doesn’t absolve Inspire of the violations. *If such a relabeling were allowed, it would render the PUCO’s flat monthly rate rules meaningless!*

Unfortunately, the PUCO Staff did not hold Inspire accountable. OCC has sought to do so through its participation in the hearing, admittedly after the settlement was a done deal.<sup>67</sup> Rules, however, must be followed, no matter who is watching. The Settlement violates the regulatory principles and practices prong of the PUCO’s three-prong test.<sup>68</sup> It should be rejected.

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<sup>63</sup> Inspire’s Initial Brief at p. 18, fn. 72.

<sup>64</sup> *In the Matter of the Commission-Ordered Investigation of Marketing Practices in the Competitive Retail Elec. Serv. Mkt.*, Case No. 14-568-EL-COI, Finding and Order (Nov. 18, 2015) at p. 14 (emphasis added).

<sup>65</sup> Inspire tries to conflate fixed rates with flat monthly rates, but they are not the same. Flat monthly rates are rates charged per month regardless of how much energy the consumer uses. *See* Ohio Adm.Code 4901:1-21-12(B)(7)(e). Fixed rates are fixed per kWh rates that lead to monthly charges that vary based on the consumers’ usage. *See* Ohio Adm.Code 4901:1-21-12(B)(7)(a). *See also* Andy Tinkham’s Re-direct Testimony at pp. 164-165.

<sup>66</sup> *See* OCC Brief at B. 1.

<sup>67</sup> *See* Inspire’s Initial Brief at p. 18-19 - Inspire does not like the fact that OCC was allowed to intervene.

<sup>68</sup> *Consumers’ Counsel v. Pub. Util. Comm’n.* (1992), 64 Ohio St.3d 123, 126.

**B. Even if the PUCO applies a mere reasonableness standard - and it should not - the Settlement is not reasonable.**

PUCO Staff nor Inspire accept the three-prong test as the appropriate test for the PUCO to apply for when considering the Settlement. This is in stark contrast to the position both parties initially took when they sought PUCO approval of the Settlement.<sup>69</sup> The Settlement, itself, says that the proper standard for the approval of the Settlement is the three-prong test.<sup>70</sup> PUCO Staff and Inspire's testimony now argues for a reasonableness standard. The Settlement agreement provisions should control, despite the parties' later renegeing.

The PUCO Staff Brief<sup>71</sup> and pre-filed testimony<sup>72</sup> list the following reasons for why the Settlement is reasonable (followed by OCC's response):

1. The Settlement resolves all issues under investigation.

**OCC's response** – The scope of this compliance matter before the PUCO includes not only the violations that are listed in the Amended Notice, but also includes “additional noncompliances relate[d] to the same incident, investigation, or safety audit(s) referenced in the initial or amended staff notice.”<sup>73</sup> The Settlement does not address the violations identified in this Reply and OCC's Initial Brief related to the flat monthly rate rules. These violations arise from the same incidents and investigations as those related to the Amended Notice.

2. Inspire responded timely to PUCO Staff concerns and promptly took action to stop marketing the product.

**OCC Response:** By the time Inspire ceased offering its unlawful subscription flat monthly rate product, it had already signed up 15,932 consumers to the product. Unless the consumers requested to be taken off the product, Inspire was able to keep all of these consumers as customers. Inspire is also able to resume offering the product whenever it pleases.

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<sup>69</sup> Settlement at pp. 1-3.

<sup>70</sup> *Id.*

<sup>71</sup> See PUCO Staff's Brief at pp. 10-12.

<sup>72</sup> Barbara Bossart's Testimony at p. 7-8.

<sup>73</sup> See Ohio Adm.Code 4901:1-23-05 (C)(1)(a).



3. Inspire was willing to cooperate and met with PUCO Staff several times to discuss the product in question and the marketing of the product.

**OCC's Response:** The negotiations took place for over a year by non-parties outside of proceedings and excluded consumers' statutory representative, OCC, from the settlement process. Despite the year of investigation, PUCO Staff failed to identify the 47,796<sup>74</sup> violations related to the flat monthly rate rules identified by OCC.

4. Inspire has no prior enforcement actions before the PUCO or other retail state jurisdictions as confirmed in its application for certification as a CRES and CRNGS provider.

**OCC's Response:** Inspire may not be a prior offender, but the number of offenses it committed the first time far surpasses the number of violations previously seen by one marketer offering services in Ohio.

5. The forfeiture amount was based on the nature and extent of the violations and the cooperation of the Company.

**OCC's Response:** The PUCO Staff can't possibly believe that \$3 per violation is a forfeiture based on the nature and extent of the violations that Inspire committed. Even if the PUCO Staff does, the PUCO is not obligated to agree with the PUCO Staff. It should not.

6. The Settlement advances the PUCO's goals of protecting Ohio consumers while still encouraging fair competition in Ohio's energy choice program.

**OCC's Response:** Consumers cannot possibly be protected nor is fair competition advanced by a Settlement that sanctions Inspire to continue violating the law. Consumers cannot possibly be protected by a Settlement that has a forfeiture that does not deter future violations by Inspire and other marketers.

7. The Settlement is in line with similar agreements approved by the PUCO, such as, Ambit Northeast, LLC case number 22-0128-11 EL-UNC and Provision Power and Gas, LLC case number 20-1107-12 GE-UNC.

**OCC's Response:** These are cases in which OCC did not intervene and no party contested the settlement. With that said, they are disturbingly similar to the current case in which the PUCO Staff and the marketer excluded intervenors and engaged in settlement discussions before either were parties and before there were any proceedings. This is not a reasonable, just or lawful practice.

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<sup>74</sup>15,932 unlawfully enrolled consumers + the 31,864 violations Inspire admitted to on cross-examination as explained in Section A.2. of this brief.

Inspire adds as reasons why the Settlement is reasonable 1) its cessation of marketing and 2) its cessation of relationships with problematic third parties. However, these are minimal consequences that Inspire had to face in response to the violations outlined in the PUCO Staff Report and the 47,796 violations the OCC has identified. Moreover, the Settlement did not impose rerate or halt-service requirements concerning problematic third parties.<sup>75</sup> The Settlement could have, but did not, require Inspire to rerate and return to default service all consumers who were obtained through interactions with problematic third parties.<sup>76</sup>

The Settlement violates the three-prong test that the settling parties agreed to when they wrote that very test in the Settlement. Their words can and should be used against them. Even so, if the PUCO wrongly accepts the reasonableness standard, it should find the Settlement fails. The PUCO and Staff have not shown the Settlement passes their newly adopted reasonableness standard.

**C. The PUCO has the authority to deny and modify the Settlement and to consider noncompliances related to the investigations and incidents in the Amended PNC.**

Inspire argues that the PUCO has no jurisdiction to do anything other than approve the Settlement on rehearing. Inspire first argues that the PUCO cannot consider any violation not listed in the Amended Notice on rehearing.<sup>77</sup> Second Inspire argues that the PUCO does not have jurisdiction to review this matter because Inspire has completed its obligations under the terms of the Settlement.<sup>78</sup> Both assertions are incorrect.

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<sup>75</sup> Donner's Cross-Examination at p. 14, lines 10-22. See also, Settlement.

<sup>76</sup> *Id.*

<sup>77</sup> Inspire's Brief at p. 12.

<sup>78</sup> Inspire's Brief at p. 13.

The PUCO appropriately allowed OCC's intervention on rehearing to challenge the Settlement.<sup>79</sup> The Settlement attempted to address the violations listed in PUCO Staff's Amended Notice of Probable Non-compliance.<sup>80</sup> However, the review of the Settlement is not limited to the violations in the Amended Notice.<sup>81</sup> OCC can challenge the Settlement on the grounds that the Amended PNC and Settlement did not address "additional noncompliances relate[d] to the same incident, investigation, or safety audit(s) referenced in the initial or amended staff notice."<sup>82</sup> Accordingly, even if the Settlement had appropriately addressed the violations listed in the Amended Notice, the PUCO could deny or modify the Settlement because it did not address all of the violations that it should have.

The Settlement does not address Inspire's violation of the flat monthly rate rules.<sup>83</sup> It should have. Additionally, it should address Inspire's deceptive, misleading, and unconscionable practice of marketing and contracting its unlawful flat monthly rate product as a variable rate.

Inspire argues compliance with the settlement shields it from changes on rehearing (citing Ohio Revised Code 4903.10). The statute contains no such language.<sup>84</sup> Even if the statute protected Inspire from modification of the terms related to the violations noted in the Amended Notice, it would not prevent the PUCO from addressing the 47,796 additional violations that OCC has identified. OCC challenges the Settlement for not addressing all violations related to

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<sup>79</sup> In the Matter of Inspire Energy Holdings, LLC, Case No. 23-720-GE-UNC, Entry on Rehearing (Feb. 7, 2024) at ¶ 26.

<sup>80</sup> See Settlement, Exhibit A, pp. 3-4 (Probable Non-Compliance Violations).

<sup>81</sup> See Ohio Adm.Code 4901:1-23-05 (C)(1)(a).

<sup>82</sup> See Ohio Adm.Code 4901:1-23-05 (C)(1)(a).

<sup>83</sup> See Settlement, Exhibit A, pp. 3-4 (Probable Non-Compliance Violations).

<sup>84</sup> *Id.*

the investigation. Complying with the issues the Settlement addressed doesn't prevent further action for unaddressed violations.

### III. CONCLUSION

The PUCO should reject the Inspire Settlement. It is uninspiring. It doesn't address Inspire's deceptive marketing, unlawful flat-rate product, or the massive scope of violations that harmed Ohioans unlucky enough to be subscribed to Inspire. As PUCO Chair Jenifer French stated, "Misleading and deceptive behavior by retail energy providers will not be tolerated in Ohio."<sup>85</sup> The PUCO should live up to its words. To do so, it must reject or modify the Settlement as OCC has requested for the thousands of consumers harmed by Inspire's manipulative and deceptive marketing.

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<sup>85</sup> See [Retail energy supplier SmartEnergy fined for misleading and deceptive behavior | Public Utilities Commission of Ohio](https://puco.ohio.gov/news/smartenergyholdings-23601); <https://puco.ohio.gov/news/smartenergyholdings-23601>.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Reply Brief was served on the persons stated below via electronic transmission this 15<sup>th</sup> day of July, 2024.

/s/ Robert Eubanks  
Robert Eubanks  
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