

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of Direct)	
Energy Services, LLC,)	
Direct Energy Business, LLC, Dominion Energy)	
Solutions, Inc., Interstate Gas Supply, Inc., and)	Case No. 17-2358-GA-WVR
SouthStar Energy Services, LLC)	
for a Waiver of a Provision of Rule 4901:1-29-)	
06(E) of the Ohio Administrative Code.)	

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

To protect consumers from an unlawful change of their natural gas supplier, Ohio Adm. Code 4901:1-29-06(E) contains requirements when natural gas marketers solicit customers by telephone. Among other things, the rule requires that a consumer's enrollment for a marketer's service be verified through a time and date stamped recording by an independent third party.¹ This rule has been in effect for three years² and is currently under review in Case No. 17-1847-GA-ORD. Nevertheless, the applicants in this case now seek a waiver of the existing rule as it applies to calls from a consumer to a natural gas marketer.

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case on behalf of Ohio's 3.1 million residential natural gas consumers.³ The reasons why the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

¹ Ohio Adm. Code 4901:1-20-06(E)(1).

² The rule has an effective date of December 1, 2014.

³ See R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11.

Respectfully submitted,

BRUCE WESTON (0016973)
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/s/ Terry L. Etter

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MEMORANDUM IN SUPPORT

The rule at issue in this case helps to protect Ohioans from an unlawful change in their natural gas supplier, by requiring that a consumer’s enrollment for a marketer’s service be verified through a time and date stamped recording by an independent third party. OCC has authority under law to represent the interests of Ohio’s 3.1 million residential natural gas customers, under R.C. Chapter 4911.

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential consumers may be “adversely affected,” especially if they were unrepresented in a proceeding where their protections against unlawful changes of their natural gas supplier might be reduced. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor’s interest;

- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is making sure that consumers are adequately protected against unlawful changes to their natural gas supplier. This interest is different from that of any other party and especially different from that of the applicants, whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that consumers' protections against unlawful changes of their natural gas supplier should not be diminished. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, which is the authority with regulatory control over the marketing and solicitation of retail natural gas service in Ohio.⁴

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC, with its longstanding expertise and experience in PUCO proceedings and matters regarding utility rates, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information

⁴ R.C. 4929.22.

that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility consumers, OCC has a very real and substantial interest in this case where the PUCO is considering whether to diminish residential consumers’ protections against an unlawful change of their natural gas supplier.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO shall consider the “extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that OCC should have been granted intervention in both proceedings.⁵

⁵ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio's residential customers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electronic transmission this 1st day of December 2017.

/s/ Terry L. Etter

Terry L. Etter

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Summary: Motion Motion to Intervene by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Etter, Terry Mr.