**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| 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 |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-2) where the Public Utilities Commission of Ohio (“PUCO”) will investigate electric and natural gas marketer XOOM Energy Ohio, LLC (“XOOM”). XOOM stands accused, by the PUCO Staff, of unfair, deceptive, and unconscionable acts and practices in marketing energy services to Ohio consumers.

Specifically, the PUCO Staff has accused XOOM of “slamming” consumers.[[2]](#footnote-3) Slamming occurs when a marketer (like XOOM) switches a consumer’s energy supplier without the consumer’s proper consent. Slamming is a horrible predatory sales practice that should not be tolerated by the PUCO. If the PUCO determines that XOOM has engaged in slamming as a general business practice, then the PUCO Commissioners should permanently revoke XOOM’s authority to market service to Ohio consumers. In short, the PUCO should kick XOOM out of the state.

OCC is filing on behalf of residential utility consumers in Ohio. The reasons the PUCO should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Angela D. O’Brien*

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## MEMORANDUM IN SUPPORT

The PUCO has initiated an investigation of electric and natural gas marketer XOOM’s alleged misleading and deceptive solicitation and enrollment of Ohio utility consumers. The PUCO’s Service Monitoring and Enforcement Division (“PUCO Staff”) received 21 consumer contacts from January 1, 2022 to March 1, 2022 regarding XOOM.[[3]](#footnote-4) From January 1, 2021 to June 21, 2021, the PUCO Staff received 19 consumer complaints regarding XOOM.[[4]](#footnote-5) These consumer contacts and complaints to the PUCO Staff primarily concern enrollment disputes, including claims that consumers were slammed (switched to XOOM without proper consent).[[5]](#footnote-6)

The PUCO Staff claims that XOOM’s deceptive and misleading practices include the following scenario. XOOM solicits consumers by telephone. Then, using information gleaned from its telephone calls, XOOM’s sales agents make online enrollments of the consumers (through XOOM’s website) by impersonating the consumers.[[6]](#footnote-7) This gives the

false appearance that consumers completed the online service enrollments, when in fact they did not.[[7]](#footnote-8)

This is also misleading to consumers who may believe the XOOM representatives are acting on behalf of the utility or another energy marketer.[[8]](#footnote-9) It also facilitates switching a consumer to XOOM without consent (slamming).

Additionally, the PUCO Staff described a consumer complaint where XOOM called a consumer to purportedly “finish her enrollment,” despite the consumer having not initiated an enrollment. This alleged sleight of hand led the consumer to believe she was speaking with a different marketer, one with which she had previously enrolled. It allegedly led to the consumer being tricked into enrolling with XOOM.[[9]](#footnote-10)

The PUCO should have zero tolerance for these predatory sales practices by XOOM or any other marketer. XOOM and other marketers that engage in such practices should be kicked out of the state.

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” by this case, especially if the consumers were unrepresented in a proceeding to investigate XOOM’s unfair, deceptive, and unconscionable marketing and enrollment practices. 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 representing residential utility consumers. This interest is different than that of any other party and especially different than that of XOOM whose advocacy includes its own financial interest.

Second, OCC’s advocacy for residential consumers will include advancing the position that XOOM must comply with Ohio law and the PUCO’s rules when it markets electric and natural gas service to consumers. OCC’s position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities’ rates and service quality in Ohio.

Third, OCC’s intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, 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 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 O.A.C. 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where the PUCO Staff has alleged that XOOM has violated Ohio law and the PUCO’s rules by marketing service to and enrolling Ohio consumers.

In addition, OCC meets the criteria of O.A.C. 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.

O.A.C. 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 the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.[[10]](#footnote-11)

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

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Angela D. O’Brien*

Angela D. O’Brien (0097579)

Counsel of Record

Ambrosia Wilson (0096598)

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(willing to accept service by e-mail)

**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 29th day of April 2022.

*/s/ Angela D. O’Brien*

Angela D. O’Brien

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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1. *See* R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11. [↑](#footnote-ref-2)
2. *See* PUCO Staff’s Letter to the PUCO (April 18, 2022) (“Staff Letter”), Attachment A. [↑](#footnote-ref-3)
3. Staff Letter, at 2. [↑](#footnote-ref-4)
4. *Id.* [↑](#footnote-ref-5)
5. *Id.*; PUCO Entry (April 20, 2022), at ¶ 7. [↑](#footnote-ref-6)
6. Staff Letter, at 2; PUCO Entry (April 20, 2022), at ¶ 7. [↑](#footnote-ref-7)
7. Staff Letter, at 2. [↑](#footnote-ref-8)
8. *Id.* [↑](#footnote-ref-9)
9. *Id.* [↑](#footnote-ref-10)
10. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-11)