**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers Counsel (“OCC”) moves to intervene[[1]](#footnote-2) on behalf of Ohio consumers. In this matter, the Public Utilities Commission of Ohio (“PUCO”) will consider whether a Settlement between the PUCO Staff and the marketer is reasonable. The case involves issues of alleged unfair, deceptive, and unconscionable acts and practices that Inspire Energy Holdings, LLC (“Inspire Energy”) allegedly committed when it marketed and enrolled Ohio electric and gas consumers. Consumers should not be “inspired” by this marketer inaptly named Inspire.

The PUCO Staff and consumers accuse Inspire Energy of unfair, deceptive, and unconscionable acts and practices against Ohio consumers, including, but not limited to:

1. Marketing to consumers low introductory prices (as low as $59 per month) without informing consumers of the factors that will impact their future rates;
2. Notifying consumers, only after enrollment, of unconscionably high future rates (as high as $599 per month);
3. Fraudulently enrolling consumers;
4. Marketing savings and discounts to consumers when there were none; and
5. Using sales agents who represented themselves as city officials.[[2]](#footnote-3)

Consistent with the *SmartEnergy* case in which the PUCO modified an unreasonable settlement, the PUCO should modify the Settlement in this case as well. Particularly troubling, among the various anti-consumer practices identified by the PUCO Staff, is Inspire Energy’s offering of unconscionably high variable rates. Inspire’s offers were without providing a clear and understandable explanation of how such rates are tethered to the market – not that they were tethered to the market.[[3]](#footnote-4) As in the *SmartEnergy* matter, the Settlement signed by Inspire Energy and the PUCO Staff must be modified to deter Inspire Energy and other marketers from offering future unconscionable rates. OCC’s intervention can facilitate such an outcome.

The *SmartEnergy* Order noted the need “to discipline the competitive supplier’s market behavior,” “if a competitive supplier’s commodity price manifests a lack of self-discipline in regard to price determination.”[[4]](#footnote-5) “Healthy and effective competition should allow for profit potential but should also introduce price discipline into the market.”[[5]](#footnote-6) “[P]rice points among the supplier prices should fall within some reasonable range and should not include excessive or outlier prices.”[[6]](#footnote-7) Given that matters involving unconscionable rates are before the PUCO with increasing frequency, the *SmartEnergy* Order’s call to discipline the competitive supplier’s market should be put to action across Ohio. If energy marketers are going to charge Ohioans extreme energy prices that are not market-based, then the very premise of allowing retail marketing should be questioned.

Action should start but not end with *delisting* from the apples-to-apples website all unconscionable prices, being those higher than 2.25 times the standard offer for natural gas. For electric, during the remainder of the standard offer delivery year, there should be a benchmark market rate determined, because the standard offer is an anomaly (at a very high rate) now. For example, the electric benchmark during this standard offer delivery year could be the 20th percentile lowest price offered on the electric Apples-to-Apples price comparison charts. The 2.25 times threshold for the electric Apples-to-Apples price comparison charts would reference the benchmark, given that the current standard offer is historically anomalous.

OCC is filing to intervene in this case on behalf of residential utility consumers. 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/ Robert Eubanks*

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## MEMORANDUM IN SUPPORT

This case concerns the PUCO Staff’s investigation of electric and natural gas marketer Inspire Energy and its alleged misleading and deceptive solicitation and enrollment of Ohio utility consumers. The PUCO’s Service Monitoring and Enforcement Division (“PUCO Staff”) received complaints from consumers beginning in March 2022 regarding Inspire Energy’s misleading marketing and enrollment practices.[[7]](#footnote-8) Inspire Energy allegedly committed its unlawful acts, in part, by regularly using agents that had been previously disciplined and/or were eventually dismissed for unfair, deceptive, and unconscionable marketing and enrollments.[[8]](#footnote-9)

According to the PUCO Staff, Inspire Energy has, among other things, enrolled consumers for unconscionably high rates: 1) at times without the consumer’s consent; 2) at other times without the consumer’s informed consent; and 3) yet at other times by gaining a consumer’s consent through the promise of nonexistent savings or by posing as government officials.[[9]](#footnote-10) OCC has authority under law, pursuant to R.C. Chapter 4911, to represent the interests of Ohio residential utility consumers who Inspire Energy solicits and serves.

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 allegations of unfair, deceptive, and unconscionable marketing and enrollment practices by Inspire Energy. 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 Inspire Energy whose advocacy includes its own financial interest.

Second, OCC’s advocacy for residential consumers will include advancing the position that Inspire Energy 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.

The PUCO Staff and consumers accuse Inspire Energy of unfair, deceptive, and unconscionable acts and practices against Ohio consumers, including, but not limited to:

1. Marketing to consumers low introductory prices (as low as $59 per month) without informing consumers of the factors that will impact their future rates;
2. Notifying consumers, only after enrollment, of unconscionably high future rates (as high as $599 per month);
3. Fraudulently enrolling consumers;
4. Marketing savings and discounts to consumers when there were none; and
5. Using sales agents who represented themselves as city officials.[[10]](#footnote-11)

The *SmartEnergy* case, in which the PUCO modified an unreasonable settlement, is a reference point (among other points) for OCC’s consumer advocacy. Particularly troubling is Inspire Energy’s offering of unconscionably high variable rates. These rates seem untethered to the market.[[11]](#footnote-12) If energy marketers are going to charge Ohioans extreme energy prices that are not market-based, then the very premise of allowing retail marketing should be questioned.

As noted in the *SmartEnergy* Order, “healthy and effective competition should allow for profit potential but should also introduce price discipline into the market.”[[12]](#footnote-13) “[P]rice points among the supplier prices should fall within some reasonable range and should not include excessive or outlier prices.”[[13]](#footnote-14) As in the *SmartEnergy* matter, the Settlement signed by Inspire Energy and PUCO Staff should be modified in such a manner as to deter Inspire Energy and other marketers from offering future unconscionable rates. The PUCO’s

admonishment in the SmartEnergy Order should be converted into action for consumer protection.

Action should start with delisting from the apples-to-apples website all unconscionable prices by Inspire and other, being prices higher than 2.25 times the standard offer for natural gas. For electric, during the remainder of the standard offer delivery year, there should be a benchmark market rate determined, because the standard offer is an anomaly (at a high rate) now. For example, the electric benchmark during this standard offer delivery year could be the 20th percentile lowest price offered on the electric Apples-to-Apples price comparison charts. The 2.25 times threshold for the electric Apples-to-Apples price comparison charts would reference the benchmark, given that the current standard offer is historically anomalous.

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 Inspire Energy has violated Ohio law and the PUCO’s rules in its marketing service to and enrollment of 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.[[14]](#footnote-15)

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/ Robert Eubanks*

Robert Eubanks (0073386)

Counsel of Record

Donald J. Kral (0018689)

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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 September 2023.

*/s/ Robert Eubanks*

Robert Eubanks

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

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1. *See*, R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-1. [↑](#footnote-ref-2)
2. Joint Stipulation and Recommendation (September 5, 2023), Exhibit A, p.2. [↑](#footnote-ref-3)
3. *In the Matter of the Commission’s Consideration of a Settlement Agreement between SmartEnergy Holdings, LLC and the Commission’s Staff (SmartEnergy),* Case No. 23-601-EL-UNC, Finding and Order (August 23, 2023) at ¶1 and 8. [↑](#footnote-ref-4)
4. *SmartEnergy, supra.* at ¶ 8, citing Comments of Commissioner Larry Friedeman, July 12, 2023 Commission Meeting. [↑](#footnote-ref-5)
5. *Id*. [↑](#footnote-ref-6)
6. *Id*. [↑](#footnote-ref-7)
7. *Id*. [↑](#footnote-ref-8)
8. *Id*. [↑](#footnote-ref-9)
9. *Id*. [↑](#footnote-ref-10)
10. Joint Stipulation and Recommendation (September 5, 2023), Exhibit A, p.2. [↑](#footnote-ref-11)
11. *SmartEnergy, supra.* at 8. [↑](#footnote-ref-12)
12. *Id*. [↑](#footnote-ref-13)
13. *Id*. [↑](#footnote-ref-14)
14. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20. [↑](#footnote-ref-15)