

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of United)
Energy Trading, LLC Application for) Case No. 16-853-GA-WVR
Waiver of Audio Recording Requirement)
in Rules 4901:1-29-06(E)(1).)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case in which United Energy Trading, LLC d/b/a Kratos Gas and Power ("KGP") seeks a waiver of the requirement that it provide customers with telephone verification following enrollment through KGP's door-to-door solicitations.¹ OCC files this motion on behalf of KGP's residential natural gas customers.² The Public Utilities Commission of Ohio (the "PUCO") should grant OCC's motion for the reasons set forth in the attached memorandum in support.

¹ See Application for a Waiver of Audio Recording Requirement in Rule 4901:1-29-06(E)(1) of the Ohio Administrative Code of United Energy Trading, LLC (Apr. 21, 2016) (the "Application").

² See R.C. Chapter 4911; R.C. 4903.221; Ohio Adm. Code 4901-1-11.

Respectfully submitted,

BRUCE J. WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey

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

The Ohio Administrative Code requires competitive retail natural gas suppliers ("Marketers"), like KGP, to confirm door-to-door customer enrollments via telephone. The rules provide specific details regarding the telephone procedures and the information that must be provided through the telephone confirmation. In this case, KGP requests that it not be required to provide customers with telephonic confirmation of enrollment.

Ohio law authorizes OCC to represent the interests of all of the Marketer's residential electricity customers.³ R.C. 4903.221 provides that any person "who may be adversely affected" by a PUCO proceeding is entitled to intervene in that proceeding. The interests of Ohio's residential consumers may be adversely affected by this case because KGP seeks to eliminate the telephone confirmation process that is required by the PUCO rules to protect customers. If customers do not receive the protection that the PUCO rules provide, their choice to sign up with a Marketer may be less informed, and their natural gas bills may increase. This is the purpose of the rules which are meant to "provide customers with sufficient information to make informed decisions"⁴ and "protect consumers against deceptive, unfair and unconscionable acts and practices in the

³ See R.C. Chapter 4911.

⁴ Ohio Admin. Code. 4901:1-29-02(3)(b).

marketing...of competitive retail natural gas service[.]”⁵ 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 KGP's residential consumers and ensuring that the rates that they pay are just and reasonable. This interest is different from that of any other party and especially different than that of the Marketer, whose advocacy includes its own financial interest.

Second, OCC's advocacy for consumers will include, among other things, advancing the position that KGP's customers should receive adequate service at a reasonable rate under Ohio law.⁶ OCC's position is therefore directly related to the merits of this case, which is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

⁵ Ohio Admin Code. 4901:1-29-02(3)(c).

⁶ See R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . .").

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." *See* Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a real and substantial interest in this case in which the PUCO must address whether the Marketer should be permitted to bypass PUCO rules that are designed to protect consumers.

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), which OCC already has addressed and which 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." Although OCC does not concede that the PUCO must consider this factor, OCC satisfies it because OCC has been uniquely designated as the state representative of the interests of Ohio's residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, in deciding two consolidated appeals regarding OCC's right to intervene, the Supreme Court of Ohio has confirmed that "intervention ought to be liberally allowed."⁷ In those cases, OCC explained in its motion to intervene that the proceeding could negatively impact residential consumers, and OCC established that the interests of consumers would not be represented by existing parties.⁸ Because there was no evidence disputing OCC's position, nor any evidence that OCC's intervention would unduly delay the proceedings, the Supreme Court found that the PUCO could not deny OCC the right to intervene.⁹

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 residential consumers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey

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⁷ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20 (2006).

⁸ *Id.* ¶¶ 18-20.

⁹ *Id.* ¶¶ 13-20.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electric transmission this 19th day of May 2016.

/s/ Christopher Healey
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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 Healey, Christopher Mr.