

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Commerce Energy,)
Inc. d/b/a Just Energy.)

Case No. 16-2006-GE-UNC

**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 where the misleading marketing practices of Just Energy have affected consumers.¹ The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Ajay Kumar

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

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MEMORANDUM IN SUPPORT

On October 11, 2016, the Staff of the PUCO signed a Stipulation and Recommendation (“Settlement”) with Just Energy regarding a Notice of Probable Non-Compliance that the PUCO sent to Just Energy on November 16, 2015. This Settlement addresses unfair and misleading marketing practices (among other conduct) by Just Energy. OCC has authority under R.C. Chapter 4911 to represent the interests of Ohio’s residential utility customers, who could be affected by Just Energy’s marketing practices.

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 customers may be “adversely affected” by what is alleged in this case, especially if gas or electric service is being marketed to customers in a manner that is unfair or misleading. Misleading and unfair marketing and soliciting practices harm the residential customers who are intended to be protected by the PUCO’s rules. So this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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 to represent Ohio residential customers, who may be affected by the unfair and misleading marketing practices. This interest is different than that of any other party and especially different than that of Just Energy (a marketer) whose advocacy includes the advancing its own financial interests.

Second, OCC's advocacy for residential customers will include advocating that consumers should be protected from unfair, misleading and deceptive marketing practices. OCC's position is directly related to the merits of this case that is pending before the PUCO. The PUCO is the authority tasked with protecting consumers against unfair and deceptive marketing practices related to marketers' offerings of competitive retail electric and natural gas service.²

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will allow for the efficient processing of the case with consideration of the public interest. In fact, the OCC has intervened before when there have been serious concerns about Just Energy's conduct.³

² R.C. 4928.10.

³ See *In the Matter of the Application of Commerce Energy, Inc. d/b/a Just Energy for Certification as a Competitive Retail Natural Gas Provider*, Case No. 02-1828-GA-CRS, Entry at 2 (Sep. 30, 2010).

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 cases 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 customers, OCC has a very real and substantial interest in this case where a marketer's practices affecting consumers are at issue.

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 Commission 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. OCC is the state representative of Ohio's residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

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.⁴

⁴ 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 residential customers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Ajay Kumar
Ajay Kumar, Counsel of Record
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Assistant 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 email, this 2nd day of November 2016.

/s/ Ajay Kumar _____

Ajay Kumar

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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 Kumar, Ajay Mr.