

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Commerce Energy, Inc.                    )  
d/b/a Just Energy.    )                   16-2006-GE-UNC

**APPLICATION FOR REHEARING OF  
COMMERCE ENERGY, INC. D/B/A JUST ENERGY**

In accordance with R.C. 4903.10 and Ohio Admin. Code 4901-1-35, Commerce Energy, Inc. d/b/a Just Energy (Just Energy) files this Application for Rehearing of the November 3, 2016 Finding and Order (Order) in this case. The Order is unreasonable and unlawful because:

- A. The Order decided a motion to intervene of the Office of the Ohio Consumers' Counsel (OCC) without providing Just Energy a meaningful opportunity to respond to the motion; and
- B. The Order erroneously granted intervention to OCC.

By treating OCC's motion as if it were unopposed and granting the motion in the same order approving the Stipulation, Just Energy has been forced into a position it did not bargain for when agreeing to the Stipulation. Specifically, Just Energy agreed to submit to *Commission Staff* oversight with respect to the remedial actions and compliance measures outlined in the Stipulation. In giving OCC the rights of a party, the Commission has given OCC the right not only to seek rehearing on those remedial actions and compliance measures, but also to second-guess the interpretation and enforcement of the Stipulation. The Order is thus clearly prejudicial to Just Energy.

Accordingly, the Commission should grant this application for rehearing and issue an order: (i) vacating its prior approval of OCC's motion to intervene, and (ii) affirming approval of the Stipulation. A Memorandum in Support follows.

## **MEMORANDUM IN SUPPORT**

### **I. INTRODUCTION**

This case arises from a notice of probable non-compliance issued in November 2015. Following a lengthy period of investigation and discussion, Just Energy and Commission Staff reached an agreement that both resolves Staff's concerns and minimizes the likelihood of re-occurrence. The agreement was reduced to a Stipulation and filed on October 11, 2016. The November 3 Order approved the Stipulation as filed, with no modifications. Just Energy has no issue with the portion of the Order approving the Stipulation.

Just Energy *does* have an issue with the portion of the Order granting OCC's motion to intervene. (*See* Order ¶ 7.) OCC filed the motion on November 2, and the Commission granted it when it approved the Stipulation on November 3. Granting the motion without providing an opportunity to respond was unreasonable, unlawful, and prejudicial to Just Energy.

Had it been given the opportunity to respond, Just Energy would have established that OCC does not meet the standard for intervention. OCC has nothing to contribute to a just resolution of this case. The case was resolved before OCC sought intervention. The Commission found that the resolution agreed to between the company and Staff is just and reasonable. Staff will monitor Just Energy's compliance with the terms of the Stipulation—under threat of additional monetary sanctions if those terms are not met. In granting intervention, the Commission (perhaps unwittingly) has potentially given OCC the ability to prolong, delay, and otherwise complicate the compliance period by second-guessing what the Stipulation means, how it should be enforced, and whether its terms have been fulfilled. In other words, granting intervention has deprived both Just Energy *and* Staff of the benefit of their bargain in reaching the Stipulation.

For these reasons, Just Energy respectfully request that the Commission grant rehearing for the limited purpose of denying intervention to OCC.

## **II. ARGUMENT**

### **A. The Commission acted unreasonably and unlawfully by granting OCC's Motion to Intervene before Just Energy had an opportunity to respond.**

Commission rules generally entitle parties to respond to motions within 15 days of service. Ohio Admin. Code 4901-1-11(B)(1). Two exceptions allow a motion to be granted without a response from opposing parties: (1) where the moving party requests an expedited ruling and opposing parties agree to the immediate issuance of an order, or (2) the Commission, upon its own motion, issues an expedited ruling “where the issuance of such a ruling will not adversely affect a substantial right of any party.” *Id.* at (C) and (F). Neither exception applies here.

First, despite filing its motion the day before the Order came to be heard, OCC did not include a request for an expedited ruling. Even if it had, Just Energy would not have agreed to waive its right to file a memorandum contra.

Second, the grant or denial of intervention necessarily affects substantial rights—of both the party seeking intervention and any parties in opposition. By granting OCC the rights of a party, OCC has the right to seek rehearing of the Order. Rehearing could be sought to challenge the amount of the fine, question the scope of the investigation, or otherwise second-guess the judgment of the Commission and Staff. Even if OCC does not seek rehearing, granting intervention has opened the door for OCC to assert a right to monitor compliance with the Stipulation, in duplication of Staff's efforts. To be clear, Just Energy does not concede that OCC has this right. But the scope of OCC's right, if any, to monitor compliance with the Stipulation is an issue the Commission may have to resolve as a consequence of granting intervention.

Thus, the grant of intervention to OCC is not inconsequential or harmless. The Stipulation has been approved, but there are lingering consequences to the decision to afford OCC the status of a party. The Commission should have denied the motion to intervene, or at the very least, pulled the case from the agenda so the parties could fully brief the intervention issue. Since neither of those courses of action were taken, the appropriate remedy now is to grant rehearing, for the limited purpose sought by this application.

**B. OCC does not meet the standard for intervention.**

A party seeking intervention must show that it “may be adversely affected by a public utilities commission proceeding.” R.C. 4903.221. OCC claims to meet this requirement because “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.” (OCC Motion at 1.) OCC does not explain how it or any residential customers could be adversely affected if intervention is denied; it just claims that they may. OCC’s conclusory assertion is not sufficient to allow intervention.

None of the factors listed in R.C. 4903.221(B) support intervention. OCC describes its interest in this proceeding as “different than that of any other party” because its interest is to “represent Ohio residential customers, who may be affected by the unfair and misleading marketing practices.” (OCC Motion at 2.) The assertion that no other party in this proceeding represents the interest of residential customers is patently untrue, as is evidenced by the very existence of the proceeding itself. The Staff of the Commission are tasked with investigating and determining compliance with Commission rules and requirements, including marketing practices. *See* Ohio Admin. Code 4901:1-23 and 4901:1-34. Staff investigated Just Energy and came to the determination outlined in the Stipulation. There is no need for OCC’s representation, which would at most duplicate the efforts already made by Staff.

Similarly, OCC states that its participation in this proceeding “will include advocating that consumers should be protected from unfair, misleading and deceptive marketing practices.” (OCC Motion at 2.) There is simply no need for such advocacy at this point of the proceeding, because Staff has completed its review, made its recommendation, and Just Energy has agreed to modify its practices in accordance with those recommendations. As OCC itself states, “The PUCO is the authority tasked with protecting consumers against unfair and deceptive marketing practices...” (*Id.*) The Commission has already exercised that authority in this proceeding. OCC’s advocacy is a moot point.

OCC also argues that its intervention will not unduly prolong or delay the proceedings. This is, again, untrue. Just Energy and Staff have already reached a settlement. By intervening the day before the Order was scheduled to be issued, OCC either intends to prolong the proceedings with its own application for rehearing, or recognizes that its involvement has no practical consequence. Either way, OCC’s intervention is not supported by the rules, and should therefore be denied.

This proceeding is not a civil lawsuit to determine legal rights and liabilities. It is a compliance enforcement proceeding solely comprising an already-settled agreement between Just Energy and Staff. There are no facts at issue and no need for OCC to “obtain and develop information” so that the Commission may “equitably and lawfully” decide the case. The Commission has made its decision, and OCC’s intervention at this late stage is no longer appropriate. The Commission should modify its Order and deny intervention to OCC.

### **III. CONCLUSION**

For the foregoing reasons, Just Energy respectfully requests that the Commission grant rehearing and deny OCC’s motion to intervene.

Dated: December 2, 2016

Respectfully submitted,

/s/ Mark A. Whitt

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Application for Rehearing was served by electronic mail this 2nd day of December, 2016 to the following:

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Summary: Application for Rehearing electronically filed by Ms. Rebekah J. Glover on behalf of Commerce Energy, Inc. d/b/a Just Energy