

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Direct Energy)
Business, LLC and Direct Energy Services, LLC) Case No. 18-0382-GE-WVR
for Waivers of Certain Provisions of Chapters)
4901:1-21 and 4901:1-29, O.A.C., to Permit Third-)
Party Verification by Digital Confirmation.)

**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 a utility marketer seeks PUCO approval to avoid complying with rules that protect consumers.¹ OCC is filing on behalf of Ohio's residential utility customers. The reasons the Public Utilities Commission of Ohio ("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/ Terry L. Etter

Terry L. Etter (#0067445), Counsel of Record
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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

Several PUCO rules help protect consumers against unlawful changes of their utility service provider. Two PUCO rules require that changes to a consumer’s utility service provider resulting from a door-to-door solicitation must be verified through a telephone call to an independent third-party verifier.² In this case, Direct Energy Business, LLC and Direct Energy Services, LLC seek to replace the consumer protection of a telephone call to an independent third-party verifier with electronic verification of consumers’ changes to their utility service provider. OCC has authority under law to represent the interests of all Ohio residential utility consumers, pursuant to R.C. Chapter 4911.

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 this case, especially if the customers were unrepresented in a proceeding involving a vital protection for consumers who face being solicited in-person, at their homes, to change their utility service providers. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

² Ohio Adm. Code 4901:1-20-06(D)(1)(h) (electric) and Ohio Adm. Code 4901:1-29(D)(6)(b) (natural gas).

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;
- (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 Ohio's residential consumers in this case involving a vital protection for consumers who face in-person solicitations by marketer representatives, at their homes, to change their utility service providers. This interest is different from that of any other party and especially different from that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that vital protections for consumers who are solicited in-person, at their homes, to change their utility service providers should not be diminished. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, which has adopted rules to protect Ohio consumers in the marketing of utility services.³

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.

³ See R.C. 4928.10; R.C. 4929.22.

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 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 seeks to avoid complying with a vital protection for consumers who are solicited in-person, at their homes, to change their utility service providers.

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 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.⁴

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/ Terry L. Etter

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⁴ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

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 22nd day of March 2018.

/s/ Terry L. Etter _____
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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 Etter, Terry Mr.