

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of)	
Constellation NewEnergy, Inc. and)	
Constellation NewEnergy – Gas Division,)	Case No. 18-0604-GE-WVR
LLC for Waivers of Enrollment)	
Requirements in Rules 4901:1-21-06(C))	
and 4901:1-29-06(B), Ohio)	
Administrative Code.)	

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

In this case, a marketer, Constellation New Energy, Inc. and Constellation NewEnergy – Gas Division, LLC (collectively, “Constellation”), seeks to short cut consumer protections adopted by the Public Utilities Commission of Ohio (“PUCO”). PUCO rules protect residential customers by requiring independent proof of consumers’ consent to change service providers. Constellation wants to enroll customers through on-line chat technology instead of through the process required by the PUCO.¹

But marketers’ offers can be higher (even much higher) than a utility’s standard offer, and customers can be confused or misled about changing service providers. The PUCO should maintain protections for consumers who may not have the time or the inclination to research their energy options.

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case involving consumer protections in the marketing of electric and natural gas service to

¹ See Application (April 10, 2018) at 1.

residential customers.² OCC is filing on behalf of Ohio's 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/ Terry L. Etter

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

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MEMORANDUM IN SUPPORT

Ohio Adm. Code 4901:1-21-06(C) and 4901:1-29-06(B) help protect consumers in the marketing of electric and natural gas service. The rules provide that consumers must consent to a change in their utility supplier and that marketers must obtain proof of consumers’ consent. Constellation contends that the PUCO’s rules do not allow for the use of online “chat” technology to comply with the rules.³ Constellation has applied for a waiver of the rules. OCC has authority under law to represent the interests of all Ohio residential utility customers to whom Constellation may market utility service using the “chat” technology, if approved by the PUCO.⁴

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 consumer protections in the marketing of electric and natural gas service. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

³ See Application at 2.

⁴ R.C. Chapter 4911.

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 proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing Ohio's residential utility consumers in this case involving consumer protections in the marketing of electric and natural gas service. This interest is different from that of any other party and especially different from that of Constellation, whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that new technologies may be used to market utility services to residential consumers only if consumer protections are maintained. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, which by law must provide consumer protections in the marketing of residential electric and natural gas service.⁵

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.

⁵ R.C. 4928.10; R.C. 4929.22.

Fourth, OCC's intervention will significantly contribute to 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 involving consumer protections in the marketing of electric and natural gas service.

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 "[t]he 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.⁶

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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⁶ 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 3rd day of May 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.