

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Astral)	
Energy, LLC for a Waiver of Rule 4901:1-)	Case No. 18-0743-EL-WVR
21-05(A)(4) of the Ohio Administrative)	
Code.)	

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

In this request, the marketer, Astral Energy, LLC (“Astral”), seeks to bypass the consumer protections adopted by the Public Utilities Commission of Ohio (“PUCO”). PUCO rules protect residential customers by requiring that marketers provide sufficient information in their marketing materials to allow customers to make intelligent cost comparisons.¹ Part of the information needed by consumers for comparing costs is the monthly rate charged for electric service. But Astral wants to enroll customers using an individual flat-rate price based on a “propriety algorithm.”² To do so, Astral seeks a waiver of PUCO rules (Ohio Adm. Code 4901:1-21-05), that require a marketer to specifically identify the rate to be charged per month for flat-rate monthly rate offers.

Because marketers’ offers can be higher (if not much higher) than a utility’s standard service offer, it is important that consumers be provided sufficient information to enable them to compare the available competitive options. Price information is essential for customers to determine if they can save money on their energy bills.

¹ Ohio Adm. Code 4901:1-21-05.

² Application at 2.

Astral's proposed electric service waiver could materially and adversely impact many of the more than four million residential consumers that the Office of the Ohio Consumers' Counsel ("OCC") represents.

OCC moves to intervene in this case to support the PUCO maintaining consumer protections, including price disclosure, in the marketing of electric service to residential customers.³ OCC is filing on behalf of Ohio's residential utility consumers who may be marketed by Astral. 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/ Amy Botschner-O'Brien
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³ 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 4901:1-21-05 helps protect consumers from false or misleading marketing that can occur during the solicitation of competitive retail electric service. The rules spell out specific provisions regarding marketing, solicitation and customer information to which marketers must adhere when providing service to residential or small commercial customers. The rules state that a marketer must “provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make intelligent cost comparisons against offers they received from other CRES providers.”⁴ Subsection (4) requires that for flat monthly rate offers, “a specific listing of the rate to be charged per month for the duration of the contract.”

Astral has applied for a waiver of these important consumer protection rules. Astral is a certified provider of electric service in the state of Ohio, currently providing electric service to commercial customers in Ohio through fixed-rate kWh contracts.⁵ Astral’s proposed electric service waiver in this case applies to residential service and could materially and adversely impact many of the more than four million residential consumer that OCC represents. OCC has authority under law to represent the interests of

⁴ Ohio Adm. Code 4901:1-21-05.

⁵ Application at 3.

all Ohio residential utility customers to whom Astral may market utility service under the conditions of its proposed application, if approved by the PUCO.⁶ The PUCO should grant OCC's motion to intervene in this case to protect those customers' interests.

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 consumers may be adversely affected by this case, especially if customers were unrepresented in a proceeding involving consumer protections in the marketing of electric service.

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.

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

⁶ R.C. Chapter 4911.

Second, OCC is advancing the position that consumer protections must be followed and enforced regarding marketer proposals. OCC's position is therefore directly related to the merits of the proposal that is pending before the PUCO, which by law must provide consumer protections in the marketing of residential electric service.⁷

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC, with its longstanding expertise and experience in PUCO proceedings, will contribute to 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's intervention will provide the PUCO with information relating to the interests of residential consumers. OCC will obtain and develop information that the PUCO should consider to equitably and lawfully decide 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."⁸ As the advocate for residential utility customers, OCC has a real and substantial interest in this case involving consumer protections in the marketing of electric 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), which OCC has already 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

⁷ R.C. 4928.10; R.C. 4929.22.

⁸ Ohio Adm. Code 4901-1-11(A)(2).

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.⁹ That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio (“Court”) 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.¹⁰

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 WESTON (0016973)
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⁹ R.C. Chapter 4911.

¹⁰ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 13-20 (2006).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Motion to Intervene has been served upon the below-named persons via electronic transmission this 10th day of May 2018.

/s/ Amy Botschner-O'Brien
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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel
electronically filed by Ms. Deb J. Bingham on behalf of Amy Botschner-O'Brien