

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's	)	
Investigation into RPA Energy, Inc.'s	)	
Compliance with the Ohio	)	Case No. 22-441-GE-COI
Administrative Code and Potential	)	
Remedial Actions for Non-Compliance.	)	

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

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case. Here, the Public Utilities Commission of Ohio ("PUCO") will investigate electric and natural gas marketer RPA Energy, Inc. d/b/a Green Choice Energy ("Green Choice") for unfair, deceptive, and unconscionable acts and practices in marketing energy services to Ohio consumers.<sup>1</sup>

Green Choice has been accused of spoofing consumers to trick them into answering their calls. Spoofing phone numbers involves calling consumers while using a fake phone number that will show on consumers' Caller ID displays. Spoofing is an outrageous predatory marketing practice against Ohioans that should have no indulgence by the PUCO. If the PUCO finds that Green Choice indeed spoofed phone numbers when calling consumers, then justice should be served by kicking it out of the state for good.

As OCC has been saying, spoofing should have a "one and done" result for offending marketers. That means their operating certificates should be permanently revoked for spoofing phone numbers against Ohio consumers.

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<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11.

OCC is filing on behalf of residential utility consumers in Ohio who Green Choice solicits and serves. 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/ Angela D. O'Brien  
Angela D. O'Brien (0097579)  
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**MEMORANDUM IN SUPPORT**

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This case concerns the PUCO's investigation of electric and natural gas marketer Green Choice's alleged misleading and deceptive solicitation and enrollment of Ohio utility consumers. The PUCO's Service Monitoring and Enforcement Division ("PUCO Staff") received 35 contacts from consumers from January 1, 2021 to October 1, 2021 regarding Green Choice's misleading practices in conducting telephonic and door-to-door sales.<sup>2</sup> Green Choice even attempted to deceive the Chief of the PUCO's Reliability and Service Analysis Division.<sup>3</sup>

According to the PUCO Staff, Green Choice has, among other things: engaged in "spoofing" (using fake Caller ID information to make it appear that a call is local or from someone else); provided misleading information through Robocalling to entice a customer to speak with a sales agent; manipulated recordings of sales calls; and failed to provide signed contracts to consumers enrolled in service through door-to-door marketing.<sup>4</sup> OCC has authority under law, pursuant to R.C. Chapter 4911, to represent the interests of Ohio residential utility consumers who Green Choice solicits and serves.

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<sup>2</sup> PUCO Entry (April 20, 2022), at ¶ 7.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at ¶¶ 7-8.

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 the consumers were unrepresented in a proceeding to investigate allegations of unfair, deceptive, and unconscionable marketing and enrollment practices by Green Choice. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

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; 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 representing residential utility consumers. This interest is different than that of any other party and especially different than that of Green Choice whose advocacy includes its own financial interest.

Second, OCC’s advocacy for residential consumers will include advancing the position that Green Choice must comply with Ohio law and the PUCO’s rules when it markets electric and natural gas service to consumers. OCC’s position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities’ rates and service quality in Ohio.

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.

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 O.A.C. 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where the PUCO Staff has alleged that Green Choice has violated Ohio law and the PUCO's rules by marketing service to and enrolling Ohio consumers.

In addition, OCC meets the criteria of O.A.C. 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.

O.A.C. 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.<sup>5</sup>

Green Choice has been accused of spoofing consumers to trick them into answering their calls. Spoofing phone numbers involves calling consumers while using a fake phone number that will show on consumers' Caller ID displays. Spoofing is an outrageous predatory marketing practice against Ohioans that should have no indulgence by the PUCO. If the PUCO finds that Green Choice indeed spoofed phone numbers when calling consumers, then justice should be served by kicking it out of the state for good.

OCC meets the criteria set forth in R.C. 4903.221, O.A.C. 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,

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/s/ Angela D. O'Brien  
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<sup>5</sup> 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 27<sup>th</sup> day of April 2022.

/s/ Angela D. O'Brien  
Angela D. O'Brien  
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Summary: Motion Motion to Intervene by Office of the Ohio Consumers' Counsel  
electronically filed by Mrs. Tracy J. Greene on behalf of O'Brien, Angela D