

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY TO GREEN CHOICE'S MEMORANDUM CONTRA
OCC'S MOTION TO INTERVENE TO PROTECT CONSUMERS
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

RPA Energy, Inc. d/b/a Green Choice Energy ("Green Choice") has been accused by the PUCO Staff of deceiving Ohioans. If true, Green Choice is a *bad choice* for Ohioans' energy needs and for the PUCO to allow to continue operating in Ohio. To give consumers another data point about a Green Choice bad attitude toward consumer protection, it wants to deny Ohioans their state voice, the Ohio Consumers' Counsel, in this investigation.¹ Green Choice's opposition to OCC's intervention has no merit. The PUCO should grant OCC intervention to protect consumers.

Green Choice is accused of "spoofing"² (faking) Caller ID so people think someone other than Green Choice is calling them. The PUCO Staff wrote that Green Choice even tried this on a call to a PUCO Staffer.³ OCC's stated position on spoofing by

¹ Green Choice's Memorandum Contra Office of Consumers' Counsel's Motion to Intervene (May 10, 2022).

² PUCO Staff Letter (April 18, 2022) ("PUCO Staff Letter"), at 2.

³ PUCO Staff Letter, at 2.

marketers is that it should be *one and done*. That means Green Choice (if found to be using Caller ID to fake out Ohio consumers) should be kicked out of the state.

Green Choice misrepresents OCC's authority under Ohio law to intervene in investigation cases to protect consumers. Green Choice ignores controlling Supreme Court of Ohio precedent⁴ regarding interventions generally and OCC's interventions specifically. Green Choice ignores precedent where the PUCO granted OCC interventions and rejected the same arguments by others that Green Choice makes in its memorandum contra.⁵

There is no basis for denying residential consumers the opportunity to be heard through OCC in this investigation of Green Choice. OCC satisfies the standards for intervention. The PUCO should grant OCC's motion to intervene.

II. ARGUMENT

- A. Green Choice's claim that OCC has no legal authority to intervene in this proceeding to protect consumers has no merit. The law gives OCC the authority to protect Ohio consumers from Green Choice. The PUCO has previously granted OCC's intervention to protect consumers in PUCO investigations of marketers, even where the marketer opposed OCC's intervention.**

The PUCO's Entry initiating this investigation into Green Choice's deceptive and misleading marketing practices set a procedural schedule requesting motions to intervene

⁴ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 388 (2006).

⁵ See *In the Matter of the Commission's Investigation Into SFE Energy Ohio, Inc. and Statewise Energy Ohio, LLC's Compliance with the Ohio Revised Code and Ohio Administrative Code and Potential Remedial Action*, Case No. 20-1216-GE-COI ("SFE Investigation"), Entry (September 28, 2020), at ¶¶ 11, 13; and *In the Matter of Commission's Investigation Into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-2153-GE-COI, ("PALMco 2 Investigation"), Entry (April 6, 2020), at ¶¶ 10, 19.

by May 18, 2022.⁶ In accordance with the PUCO’s directive, OCC filed its motion to intervene (ahead of time) on April 27, 2022. Despite the PUCO’s Entry, Green Choice wrongly asserts that OCC has no authority to intervene and that “[r]esidential consumers do not have a legally protectable interest in the outcome” of this investigation.⁷

Green Choice claims that OCC should be denied intervention because OCC’s “powers and duties” with respect to intervention are limited to those set forth in R.C. 4911.02.⁸ Green Choice asserts that the law does not expressly include OCC’s intervention in enforcement proceedings concerning the services and charges of electric and natural gas marketers.⁹ Green Choice is the wrong choice for decision-making about OCC’s authority.

The General Assembly wrote into R.C. 4911.02(B)(2) that the Consumers’ Counsel has rights to protect consumers “*Without limitation because of enumeration....*” (Emphasis added.) Green Choice ignores those most important words and then claims OCC cannot intervene in an enforcement action because it is not enumerated in the law. That makes no sense. Even what is enumerated in the law, such as R.C. 4911.02(B)(2)(b), allows OCC to intervene. But again, the law has no “limitation because of enumeration.” And the PUCO has found that [t]his language conveys the intent of the legislature that the provisions of Section 4911.02 should be construed *as broadly as possible*.¹⁰

⁶ April 20 Entry, at ¶ 10.

⁷ Green Choice Memorandum Contra, at 1.

⁸ Green Choice Memorandum Contra, at 4.

⁹ Green Choice Memorandum Contra, at 3-6.

¹⁰ *In the Matter of the Complaint of the Office of Consumers’ Counsel on Behalf of the Residents of Copley Village Condominium Association I and Copley Village Condominium Association II v. Ohio Edison Company*, Case No. 89-1031-EL-CSS, 1989 Ohio PUC LEXIS 1100, *5 (emphasis added).

The PUCO rejected this same argument in the PALMco 2 Investigation when marketer PALMco opposed OCC's intervention in that PUCO initiated enforcement proceeding.¹¹ The PUCO granted OCC's intervention in PALMco 2 stating: "Upon consideration of OCC's motion to intervene in this proceeding, the attorney examiner finds that OCC's motion is supported by statute, the Commission's intervention rule, and prior Commission precedent, and should be granted."¹²

The PUCO also rejected similar arguments by marketer SFE in the SFE Investigation when it opposed OCC's motion to intervene in that case.¹³ There, not only did the PUCO grant OCC's motion to intervene, it also denied SFE's request to limit OCC's participation in discovery.¹⁴

Green Choice argues that OCC should be denied intervention because residential consumers' interests are already adequately represented by the PUCO Staff.¹⁵ But the PUCO previously rejected that argument in the PALMco 2 and SFE Investigations as well.¹⁶ The PUCO Staff considers the interests of all consumers *and* marketers in this PUCO investigation. Only OCC, as the statutory representative of Ohio's residential utility consumers, is in the unique position of representing the interests of the residential consumers harmed by Green Choice.

¹¹ See PALMco 2 Investigation, PALMco Memorandum Contra Office of the Ohio Consumers' Counsel's Motion to Intervene (January 13, 2020), at 5-6.

¹² PALMco 2 Investigation, Entry (April 6, 2020), at ¶ 19.

¹³ SFE Investigation, Entry (September 28, 2020), at ¶ 13.

¹⁴ *Id.*

¹⁵ Green Choice Memorandum Contra, at 6-7.

¹⁶ See *supra* note 5.

In the *Matter of the Complaint of Jeffrey Pitzer v. Duke Energy Ohio, Inc.*, Case No. 15-298-GE-CSS, an investigation into a utility's misdeeds, the PUCO granted OCC's motion to intervene over Duke's opposition. The PUCO rejected Duke's argument that OCC was precluded from intervening in matters not specifically enumerated in R.C. 4911.02.¹⁷ Green Choice ignores this precedent as well. OCC has authority under Ohio law to intervene in this case to represent the interests of residential utility consumers.¹⁸

Green Choice's claim that OCC has no authority to intervene in "an enforcement proceeding" also ignores the plain language of R.C. 4903.221, which provides "[a]ny other person who may be adversely affected by a public utilities commission *proceeding* may intervene in such *proceeding* []." (Emphasis added). R.C. 4903.221 makes no distinction between an enforcement or any other type of PUCO proceeding. OCC regularly intervenes in proceedings concerning bad acts like what the Staff alleges about Green Choice. And the PUCO has granted OCC intervention, even when the marketer has opposed OCC's participation.¹⁹ The PUCO should grant OCC's motion to intervene here.

B. OCC satisfies the standards for intervention in this proceeding and should be allowed to participate to protect consumers.

Green Choice argues separately that OCC does not demonstrate that it satisfies the intervention standards of R.C. 4903.221 and O.A.C. 4901-1-11. Green Choice argues that OCC's intervention will prejudice the existing parties and cause delay.²⁰ What Green

¹⁷ See *In the Matter of the Complaint of Jeffrey Pitzer v. Duke Energy Ohio, Inc.*, Case No. 15-298-GE-CSS, Entry (July 10, 2015).

¹⁸ R.C. 4911.02(B).

¹⁹ See *supra* note 5.

²⁰ Green Choice Memorandum Contra, at 8-10.

Choice describes as prejudice and delay is what in America is known as *due process*. The Staff has accused Green Choice of deception that should be terminal for its certificate to operate in Ohio. Green Choice tries to play the victim but it's bad job of acting.

Moreover, the PUCO rejected similar arguments in the PALMco 2 and SFE Investigations.²¹ And it should reject Green Choice's arguments too.

Intervention in PUCO proceedings is governed by R.C. 4903.221. That statute expressly states that "[a]ny other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding, provided []" that the motion to intervene is timely filed in accordance with R.C. 4903.221(A) and that the PUCO considers the criteria set forth in R.C. 4903.221(B). The Supreme Court of Ohio has held that "intervention ought to be *liberally allowed* so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO."²² In the "absence of some evidence in the record calling those claims into doubt or showing that intervention would unduly prolong or delay the proceedings, intervention should [be] granted."²³

OCC's motion to intervene demonstrates that it meets the criteria set forth in R.C. 4903.221 and the precedent established by the Supreme Court of Ohio for intervention. After investigating 35 consumer contacts regarding Green Choice, the PUCO Staff "identified a pattern of misleading and deceptive practices in both [Green Choice's] door-to-door and telephonic sales practices."²⁴ Particularly egregious practices by Green

²¹ See *supra* note 5.

²² *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 388 (2006) (emphasis added).

²³ *Id.* Green Choice claims that OCC's intervention would unduly prolong and delay the proceedings in this case. Below, OCC explains why Green Choice's argument should be rejected.

²⁴ PUCO Letter, at 2.

Choice include but are not limited to: spoofing (tricking consumers by using fake Caller ID information); manipulating third party verification calls to misrepresent proper customer consent; initialing (signing) written contracts for the consumer when there was no consent; and misrepresenting itself to consumers as the public utility.²⁵ The PUCO Staff also found that Green Choice resumed door-to-door marketing during the coronavirus pandemic without notifying the PUCO in violation of the PUCO's orders in Case No. 20-591-AU-UNC.²⁶ There can no doubt that Ohio's residential consumers "may be adversely affected" if they are not allowed to be heard through OCC in this investigation. In reality, it seems consumers would be adversely affected if the PUCO fails to kick Green Choice out of Ohio.

Green Choice claims that OCC's intervention in this case would prejudice the existing parties and unduly prolong or delay the proceedings.²⁷ That argument should also be rejected. The PUCO previously granted Green Choice the *privilege* of marketing energy to Ohio consumers. And it is Green Choice's alleged "pervasive" and abusive conduct that prompted the PUCO Staff to request a PUCO investigation into Green Choice's mistreatment of consumers.²⁸

Indeed, despite what Green Choice represents as "a lengthy Staff investigation [that] preceded the commencement of this action,"²⁹ the PUCO Staff *still* "continues to receive contacts from [Green Choice's] customers."³⁰ Green Choice has no basis in law

²⁵ *Id.* at Attachment A.

²⁶ *Id.*

²⁷ Green Choice Memorandum Contra, at 8-10.

²⁸ PUCO Staff Letter, at 2.

²⁹ Green Choice Memorandum Contra, at 8.

³⁰ PUCO Staff Letter, at 2.

or reason to complain about OCC's motion to intervene to give residential consumers a voice in this investigation.

Green Choice's claims that OCC's intervention will unduly prolong the proceedings are also unjustified. If this case does not get resolved as quickly as Green Choice would like, that is not an *undue* delay. That is due process. As OCC explained in its motion to intervene, OCC's longstanding expertise and experience in PUCO proceedings, and marketer investigations specifically, will duly allow for the efficient processing of the case with consideration of the public interest.

Finally, Green Choice disputes that OCC will significantly contribute to the full development and equitable resolution of the factual issues in this case.³¹ Green Choice's arguments should be rejected. Green Choice states that it has been "going back-and-forth [with PUCO Staff] over matters addressed in the notice of probable noncompliance for *well over a year*."³² If so, what a sad turn of events for consumers that Green Choice has been allowed to continue operating during that time, if the allegations are true.

The PUCO Staff's efforts thus far to investigate its allegations of Green Choice's abuse of consumers have been commendable. Now the PUCO Staff determined that it was necessary for the PUCO to initiate an investigation to resolve the matter. The PUCO did just that in its April 20 Entry, which invited motions to intervene, and set a date for testimony and an evidentiary hearing. OCC's intervention and participation in this investigation will help fully develop and resolve the factual issues. OCC's motion to intervene should be granted.

³¹ Green Choice Memorandum Contra, at 10.

³² *Id.* (emphasis added).

III. CONCLUSION

Green Choice's arguments opposing OCC's intervention are wrong and should be rejected. OCC's motion to intervene should be granted. 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. Granting OCC intervention would also be consistent with the PUCO's prior decisions granting OCC's intervention in PUCO investigations regarding marketers. OCC's intervention should be granted to give a voice to Ohio consumers – including those that Green Choice is alleged to have abused, among others.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply was served on the persons stated below
via electronic transmission, this 17th day of May 2022.

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