

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of RPA)
Energy Inc. d/b/a Green Choice Energy) Case No. 16-0893-GA-CRS
for Renewal Certification as a Retail)
Natural Gas Supplier.)

**MOTION TO INTERVENE
AND
MOTION TO SUSPEND THE PUCO’S AUTOMATIC APPROVAL OF GREEN
CHOICE ENERGY’S APPLICATION TO RENEW ITS NATURAL GAS
CERTIFICATE
AND
MOTION TO DENY GREEN CHOICE ENERGY’S APPLICATION TO RENEW
ITS NATURAL GAS CERTIFICATE TO SERVE OHIO CONSUMERS
BY
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Here is another sad story about harm to Ohioans by an energy marketer (RPA/Green Choice) that obtained a PUCO certificate to operate. Any marketer that uses its certificate as a license to steal from Ohioans should be kicked out of the state.

The Staff of the Public Utilities Commission of Ohio filed a letter on April 18, 2022, that listed abuses by RPA Energy, Inc. d/b/a Green Choice Energy (“Green Choice”) in marketing electricity and natural gas to Ohioans. The PUCO Staff wrote that it “identified a pattern of misleading and deceptive practices in both RPA’s door to door and telephonic sales practices....”¹ Under law and rule,² consumers must be protected against fraudulent, misleading, and unfair practices in the marketing of products and services.

¹ *In the Matter of the Application of Energy, Inc dba Green Choice Energy*, Case No. 22-0441, PUCO Staff Letter (April 18, 2022) at 2.

² *See* R.C. 4929.20(C)(1); 4929.22; O.A.C. 4901:1-2105(C); O.A.C. 4901:1-29-05(D).

Accordingly, the Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case on behalf of Ohio residential utility consumers.³ OCC also moves for the PUCO to suspend an automatic approval of Green Choice's application to renew its certificate. Green Choice itself has moved to suspend automatic approval of its renewal application and has waived the 90-day deadline for considering the application.⁴

Lastly, OCC moves for the PUCO to deny Green Choice a renewal of its certificate to operate as a natural gas marketer in Ohio. In advance of the expiration of Green Choice's certificate, the PUCO should take all actions appropriate for transferring consumers to their applicable utilities' standard offers. And the PUCO should secure Green Choice's resources for any reparations for harm it caused to consumers.

The reasons the PUCO should grant OCC's Motions to intervene, to suspend automatic approval of Green Choice's application to renew its certificate, and to deny Green Choice a renewal of its certificate to operate in Ohio are further set forth in the attached Memorandum in Support.

³ See R.C. Chapter 4911, R.C. 4903.221, and O.A.C. 4901-1-11.

Respectfully submitted,

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⁴ Motion to Suspend Automatic Approval Of Renewal Application (June 23, 2022).

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MEMORANDUM IN SUPPORT

I. TO PROTECT CONSUMERS, OCC SHOULD BE GRANTED INTERVENTION IN THIS PROCEEDING.

Green Choice is under PUCO investigation for unfair, deceptive, and unconscionable practices in marketing natural gas services to Ohio consumers.⁵ In a show of poor timing, Green Choice asks the PUCO to renew its certificate so it can continue serving Ohioans as a Retail Natural Gas Supplier (“CRNGS” or “marketer”). In brief, the PUCO Staff found that Green Choice had engaged in “spoofing,” failing to maintain records, and contract-related skullduggery.⁶

OCC has authority under law (R.C. Chapter 4911) to represent the interests of residential utility consumers in Ohio. 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. This is especially so if consumers are unrepresented in a proceeding where a marketer (under PUCO investigation for deceptive marketing

⁵ *In the Matter of the Application of Energy, Inc dba Green Choice Energy*, Case No. 22-0441.

⁶ *In the Matter of the Application of Energy, Inc dba Green Choice Energy*, Case No. 22-0441-GE-COI, Staff Report (June 10, 2022) (“Staff Report”) at 4.

practices) is seeking to renew its certificate to sell Ohioans natural gas. 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 the residential consumers of Green Choice in this certificate case involving whether Green Choice should be allowed to continue serving consumers in Ohio. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential consumers will include advancing positions to protect consumers from Green Choice, including but not limited to the position that the PUCO should deny Green Choice a renewal of its certificate to operate. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the agency with regulatory authority over energy marketers seeking to supply competitive retail natural gas service to consumers in this state.

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 consumers, OCC has a real and substantial interest in this case to renew Green Choice's CRNGS certificate despite its deceit regarding its identity and rates.

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 consumers. 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.⁷

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 consumers, the PUCO should grant OCC's Motion to Intervene.

II. GOOD CAUSE EXISTS FOR IMMEDIATE SUSPENSION OF A PUCO AUTOMATIC APPROVAL OF GREEN CHOICE'S APPLICATION TO RENEW ITS CERTIFICATE.

The rule governing applications for certification renewal is O.A.C. 4901:1-27-10. It provides that "[i]f the commission does not act upon an application for . . . certification renewal within thirty days of the filing date, the application shall be deemed automatically approved . . ."⁸ But for "good cause shown, the commission, or an attorney examiner appointed by the commission, may suspend its consideration of an application."⁹ Good cause exists here to suspend PUCO automatic approval of Green Choice's application to renew its certificate.

The PUCO's rules prohibit electric and natural gas marketers from engaging in unfair, misleading, deceptive, or unconscionable sales practices.¹⁰ Yet, as evidenced by

⁷ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

⁸ O.A.C. 4901:1-27-10(A).

⁹ *Id.* at (A)(1).

¹⁰ O.A.C. 4901:1-2105(C); O.A.C. 4901:1-29-05(D).

the PUCO's enforcement action against Green Choice,¹¹ Green Choice is not complying with the PUCO rules governing retail gas suppliers, thus calling into question its fitness to provide service to Ohioans. The existence of an enforcement action against a marketer should be reason enough to immediately suspend the automatic approval process.

In this regard, the PUCO Staff noted that between January 1, 2021 and October 1, 2021, the PUCO received 35 complaints regarding Green Choice's sales practices.¹² The complaints involved disputes with Green Choice concerning enrollment, misleading information, and Green Choice falsely representing itself as another utility.¹³ Green Choice used misleading caller ID to obscure its identity while soliciting consumers.¹⁴ Green Choice also failed to inform consumers of the principal terms and conditions of their services contracts, specifically variable rates that more than doubled after one month.¹⁵ Green Choice's sales scripts informed consumers they would be enrolled in a competitive variable rate based on "market conditions."¹⁶ Green Choice then charged consumers a rate near \$.05/kWh for one month and billed all subsequent months above \$0.12kWh.¹⁷ PUCO Staff found no "market conditions" to justify this misleading practice.¹⁸

¹¹ *In the Matter of the Application of Energy, Inc dba Green Choice Energy*, Case No. 22-0441.

¹² *In the Matter of the Application of Energy, Inc dba Green Choice Energy*, Case No. 22-0441, PUCO Staff Letter (April 18, 2022) at 2.

¹³ PUCO Staff letter, Attachment A at 1.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

Based on the number and type of complaints against Green Choice, and the existence of an enforcement action against Green Choice, the PUCO should suspend an automatic approval of Green Choice’s application to renew its certificate. Doing so would be consistent with Green Choice’s own motion to suspend automatic approval of its renewal application.¹⁹

III. THE PUCO SHOULD DENY GREEN CHOICE’S APPLICATION TO RENEW ITS AUTHORITY TO PROVIDE GAS MARKETING SERVICES TO OHIO CONSUMERS.

R.C. 4929.20(A) requires that gas marketers (such as Green Choice) have the “managerial, technical, and financial capability” to provide service to Ohio consumers. In addition, O.A.C. 4901:1-27-09(D) permits the PUCO to deny an application for certification renewal. The PUCO may deny a gas marketer the authority to serve Ohio consumers for a number of reasons including, but not limited to:

(4) A finding by the commission that any information reported to the commission subsequent to granting a certificate adversely affects a retail natural gas supplier’s or governmental aggregator’s fitness or capability to provide any service covered by its certificate.

* * *

(7) A finding by the commission that a retail natural gas supplier or governmental aggregator has violated any applicable commission rule or order adopted pursuant to Chapter 4929 of the Revised Code.

* * *

(9) A finding by the commission that a retail natural gas supplier or governmental aggregator has engaged in an anticompetitive act.

* * *

(11) A finding by the commission that a retail natural gas supplier or governmental aggregator has failed to comply with state laws or rules

¹⁹ Motion to Suspend Automatic Approval Of Renewal Application (June 23, 2022).

designed to protect consumers in this state, or has otherwise engaged in any fraudulent, misleading or unfair practices.²⁰

The PUCO Staff wrote in its Report that Green Choice has repeatedly violated the PUCO’s minimum standards governing gas marketing to consumers. The Staff concluded that Green Choice engaged in a “concerning pattern of misleading and deceptive practices by both door-to-door sales agents and telemarketing agents.”²¹ The PUCO Staff filed a comprehensive Staff Report in the Green Choice Investigation case finding that Green Choice violated Ohio law and the PUCO’s rules by:

- Engaging in unfair, misleading, deceptive, or unconscionable activities, including the “spoofing” of phone numbers for marketing calls to consumers and lying to consumers about the basis of their rates;²²
- Failing to maintain required records and evidence of consumer consent to contract for service;²³
- Failing to include required elements in third party verification (“TPV”) door-to-door and telephonic solicitation for consumer enrollment;²⁴ and
- Failing to provide consumers with required contracts.²⁵

²⁰ O.A.C. 4901:1-27-13(E)(4), (7), (9) & (11).

²¹ *In the Matter of the Application of Energy, Inc dba Green Choice Energy*, Case No. 22-0441-GE-COI, Staff Report (June 10, 2022) (“Staff Report”) at 4.

²² *Id.* at pp. 4-6.

²³ *Id.* at pp. 6-7.

²⁴ *Id.* at pp. 6.

²⁵ *Id.* at pp 7.

The Staff Report concluded that Green Choice’s misleading and deceptive sales practices “appear to be a systematic issue under management oversight and possible direction.”²⁶ The Staff wrote that Green Choice’s anticompetitive practices are “not related to one rogue agent or vendor,” rather, they are “companywide.”²⁷ Based on its investigation, the PUCO Staff recommended that the PUCO suspend or rescind Green Choice’s authority to provide service.²⁸ The PUCO Staff also recommended that Green Choice be required to issue refunds to consumers and to pay a separate forfeiture of \$1.5 million.²⁹

Given the PUCO Staff’s findings in its investigation of Green Choice, Green Choice’s request for the PUCO to renew its natural gas certificate to continue serving Ohio consumers should be outright denied. The PUCO must protect Ohio consumers from Green Choice’s abuses. Protecting consumers should include returning them to the utilities’ standard offers.

IV. CONCLUSION

OCC is the state voice of residential utility consumers. OCC’s voice is authorized by law and needed by consumers in this case. OCC’s intervention should be granted.

At the outset, the PUCO should suspend the automatic approval process. Green Choice has already moved to do so in its June 23, 2022 motion. OCC supports that motion.

²⁶ *Id.* at pp. 7.

²⁷ *Id.*

²⁸ *Id.* at pp. 10.

²⁹ *Id.*

Green Choice has abused its PUCO-granted authority to provide natural gas services to Ohio consumers. The evidence in the PUCO's Green Choice Investigation shows this. Green Choice's certificate to provide gas marketing services to Ohio consumers is a privilege, not a right. The PUCO should deny Green Choice the privilege of marketing energy to Ohioans that it seeks in its Renewal Application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene et al.* was served on the persons stated below *via* electronic transmission, this 24th day of June 2022.

/s/ William J. Michael
William J. Michael
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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Motion Motion to Intervene and Motion to Suspend the PUCO's Automatic Approval of Green Choice Energy's Application to Renew Its Natural Gas Certificate and Motion to Deny Green Choice Energy's Application to Renew Its Natural Gas Certificate to Serve Ohio Consumers by Office of the Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Michael, William J.