

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Direct Energy Services,     )  
LLC.   )

Case No. 22-583-GE-UNC

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

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Here is another unfortunate PUCO investigation case involving an energy marketer (Direct Energy, LLC.) that has harmed Ohioans. The opportunity to market its services to Ohioans is a privilege, not a right. And any marketer that abuses this privilege and harms Ohioans should face serious repercussions from the state regulator up to and including being kicked out of the state.

There has been a parade of marketers that the PUCO found to be abusing the public. That unfortunate situation is on top of shadow-billing information from Columbia Gas, AEP and Duke (gas) showing that, in the aggregate, Ohioans are charged much more money by marketers than by utility energy standard offers. These results should lead the state to question its approach to allowing the marketing of energy to millions of Ohioans. The state's approach is not working to provide adequate protection for consumers in its current form. What is working for consumers are the competitive standard offers of electric and natural gas utilities.<sup>1</sup>

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<sup>1</sup> McGinty, Tom and Patterson, Scott. "Deregulation Aimed to Lower Home-Power Bills. For Many, It Didn't." *The Wall Street Journal*, March 8, 2021 and Gerino, Dan. "Ohio Customers Losing Big on Unregulated Natural Gas Plans." *The Columbus Dispatch* April 4, 2016.

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene<sup>2</sup> in this case. Direct Energy, LLC ("Direct Energy") seeks to resolve findings of the PUCO Staff that it provided misleading and deceptive information to consumers, that it failed to maintain accurate records, and that its information about consumers who signed up for service is incomplete.<sup>3</sup> OCC is filing on behalf of residential utility consumers. The reasons the Public Utilities Commission of Ohio ("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/ William J. Michael*  
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<sup>2</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

<sup>3</sup> Case No. 22-583-GE-UNC, Joint Stipulation and Recommendation (June 10, 2022) at Ex. A.

**BEFORE  
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**MEMORANDUM IN SUPPORT**

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Direct Energy seeks to resolve allegations by the state regulator (“PUCO”) that it provided misleading and deceptive information to consumers, that it failed to maintain accurate records and that its information about consumers who signed up for service is incomplete. OCC has authority under law to represent the interests of all the residential utility consumers of Direct Energy, pursuant to R.C. Chapter 4911.

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 utility consumers may be “adversely affected” by this case. This is especially so if consumers are unrepresented in this proceeding to impose penalties and corrective actions on Direct Energy for deceiving consumers. 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. Direct Energy stands accused by the PUCO Staff of repeatedly providing misleading and incomplete information to consumers. This interest is different than that of any other party and especially different than that of the marketer whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential consumers will include advancing the position that marketers may not engage in misleading marketing practices and must maintain records sufficient to verify compliance with PUCO rules. 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 marketers' business practices 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 Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility consumers, OCC has a real and substantial interest in this case where Direct Energy persistently provided Ohio consumers deceptive and incomplete information.

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 “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.<sup>4</sup>

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.

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<sup>4</sup> See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20.

Respectfully submitted,

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(willing to accept service by e-mail)

**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 1st day of July 2022.

*/s/ William J. Michael*

William J. Michael

Assistant Consumers' Counsel

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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 Michael, William J.