

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|                                  |   |                        |
|----------------------------------|---|------------------------|
| Mark A. Whitt,                   | ) |                        |
|                                  | ) |                        |
| Complainant,                     | ) |                        |
|                                  | ) |                        |
| v.                               | ) |                        |
|                                  | ) | Case No. 15-697-EL-CSS |
| Nationwide Energy Partners, LLC, | ) |                        |
|                                  | ) |                        |
| Respondent.                      | ) |                        |
|                                  | ) |                        |
|                                  | ) |                        |

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

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The Office of the Ohio Consumers' Counsel ("OCC" or "Consumers" Counsel") moves to intervene in this case where the Complainant alleges that Nationwide Energy Partners, LLC ("NEP" or "the Company") is unlawfully providing utility services at rates in excess of what would otherwise be charged by utilities or other service providers.<sup>1</sup> The Complaint involves allegations that NEP is unlawfully operating as an electric, water, and sewage disposal service utility and charging unjust and unreasonable rates. In fact, it was reported that NEP stated in 2010 that "NEP is the new utility. We do everything that a utility does except generate power."<sup>2</sup>

The Consumers' Counsel is filing on behalf of Ohio residential utility customers. The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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<sup>1</sup> Complaint at ¶ 21.

<sup>2</sup> "Shocking cost investigation: Utility middle men charge renters inflated prices," Columbus Dispatch (Oct. 20, 2013).

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

*/s/ Michael J. Schuler*

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Michael J. Schuler, Counsel of Record  
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**MEMORANDUM IN SUPPORT**

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This case is important to the residential utility customers of Ohio because the Complainant is asking the PUCO to determine whether NEP, a company that resells public utility services to residential customers, is acting unlawfully under Title 49. Specifically, the PUCO will review allegations that NEP is a public utility as it is defined under R.C. 4905.02(A).<sup>3</sup> And the PUCO will review, among other things, whether the rates being charged by NEP are unjust and unreasonable violating R.C. 4909.18 and R.C. 4905.22,<sup>4</sup> which requires that, “no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service.” The PUCO also has a duty to, among other things, “[e]nsure the availability to consumers of ...reasonably priced retail electric service.”<sup>5</sup> OCC has authority under law to represent the interests of residential utility customers.<sup>6</sup>

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<sup>3</sup> Complaint at ¶ 25.

<sup>4</sup> Complaint at ¶¶ 29, 44, 49, Prayer for Relief.

<sup>5</sup> R.C. 4928.02 (A).

<sup>6</sup> R.C. 4911.02(B).

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 residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in a case where the PUCO will be determining whether NEP should be considered a public utility—and a public utility that is charging unjust and unreasonable rates. 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 customers in this case involving issues related to whether NEP is a public utility and whether the rates that NEP is charging are just and reasonable as required under R.C. 4905.22 and 4909.18. This interest is different than that of NEP, which has its own financial interests. And OCC’s interest as an advocate for all residential customers is different than the more limited interests of the individual Complainant.

Second, OCC’s advocacy for residential customers will include, among other things, advancing the position that NEP should not be permitted to charge untariffed rates that are unjust and unreasonable. OCC’s position is therefore directly related to the merits of this case that is pending before the PUCO.

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 customers, OCC has a very real and substantial interest in this case where there are issues related to whether the Company is a public utility and, if so, whether the rates that NEP is charging are just and reasonable as required under R.C. 4905.22 and 4909.18.

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 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>7</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 customers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

*/s/ Michael J. Schuler*

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<sup>7</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 6th day of May 2015.

/s/ Michael J. Schuler

Michael J. Schuler  
Assistant Consumers' Counsel

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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 Schuler, Michael J.