

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**MEMORANDUM OF OHIO POWER COMPANY
IN RESPONSE TO THE COMMISSION’S NOVEMBER 18, 2015 ENTRY**

In a November 18, 2015 Entry, the Commission granted the motion of Ohio Power Company (“AEP Ohio”) to intervene in this proceeding. AEP Ohio appreciates the ability to participate in this proceeding in order to provide the Commission AEP Ohio’s unique perspective as the utility which, “in the geographic area of this complaint, . . . has the exclusive right to provide retail electricity.” Entry of Nov. 18, 2015, at 7, *Whitt v. Nationwide Energy Partners*, Case No. 15-697-EL-CSS (“Entry”).

Also in the November 18, 2015 Entry, the Commission directed the parties to file “a memorandum in this case by December 18, 2015 elaborating on the nature of the agency relationship between the parties and [North Bank Condominium Owners Association (“NBCOA”)], and indicating whether NBCOA is a necessary or indispensable party to this case.” Entry 7. AEP Ohio submits this Memorandum in response to the Commission’s directive.

I. The Nature of the Agency Relationship Between the Parties and NBCOA

As to “the nature of the agency relationship between the parties and NBCOA,” Entry 7, AEP Ohio submits that this question is better addressed by the other parties – Mr. Whitt and

Nationwide Energy Partners (“NEP”) – who are better positioned to describe the precise legal relationship between themselves and NBCOA.

Nonetheless, as the utility that, “in the geographic area of this complaint, . . . has the exclusive right to provide retail electricity,” Entry 7, AEP Ohio can provide the Commission some limited factual context on this question. As an initial matter, AEP Ohio notes that it submits bills for the North Bank building directly to Respondent NEP.

Moreover, AEP Ohio wishes to point out that, for condominium complexes in other parts of AEP Ohio’s territory that do *not* have so-called “submetering” arrangements such as the one at issue here, each individual condominium owner is an AEP Ohio customer for his or her condominium, and the condominium association is typically another customer of AEP Ohio for electrical service to condominium common areas. It is AEP Ohio’s understanding that the cost of electrical service to common areas is typically recovered from condominium residents in the form of condominium association dues.

II. Whether NBCOA Is a Necessary or Indispensable Party to This Case

As to “whether NBCOA is a necessary or indispensable party to this case,” Entry 7, AEP Ohio notes that neither NEP nor Mr. Whitt appear to have claimed that NBCOA is an indispensable party. NBCOA may have information relevant to this proceeding, but that does not necessarily make it an indispensable party, so long as there are other appropriate means for the parties and the Commission to obtain that information. In addition, it is difficult for AEP Ohio to provide an opinion as to whether NBCOA is an indispensable party without further information from the parties in response to the Commission’s first question, “the nature of the agency relationship between the parties and NBCOA.” Entry 7.

Nonetheless, based on information currently available, NBCOA does not appear to meet any of the three definitions of “indispensable” party set forth in Rule 19(A) of the Ohio Rules of Civil Procedure. First, “complete relief” can be afforded Mr. Whitt without NBCOA’s presence, *see* Ohio R. Civ. P. 19(A), because the relief Mr. Whitt seeks – a finding that *NEP* is a “public utility” under R.C. § 4905.02 and has unlawfully provided utility services – can be provided without NBCOA becoming a party. Second, NBCOA has not “claim[ed] an interest relating to the subject of the action.” *See* Ohio R. Civ. P. 19(B). And third, NBCOA does not appear to have any “interest relating to the subject of the action as an assignor, assignee, subrogor, or subrogee.” *See* Ohio R. Civ. P. 19(C).

In sum, based on available information, NBCOA does not appear to be an indispensable party, but AEP Ohio reserves the right to provide further analysis on reply, after the parties have further explicated “the nature of the agency relationship between the parties and NBCOA.”

Entry 7.

December 18, 2015

Respectfully submitted,

/s/ Steven T. Nourse

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum Of Ohio Power Company in Response to the Commission's November 18, 2015 Entry* was served by email upon the following counsel of record for all parties on this 18th day of December 2015.

/s/ Steven T. Nourse

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Summary: Memorandum electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company