

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Cynthia Wingo,)	
)	
Complainant,)	
)	
v.)	Case No. 16-2401-EL-CSS
)	
Nationwide Energy Partners, LLC,)	
)	
Respondent.)	

**NATIONWIDE ENERGY PARTNERS, LLC’S MEMORANDUM CONTRA
COMPLAINANT’S MOTION TO HOLD BRIEFING IN ABEYANCE**

Complainant’s motion to hold in abeyance her opposition to Nationwide Energy Partners, LLC’s motion to dismiss should be denied. Complainant believes that there is no reason to address NEP’s motion to dismiss the complaint regarding her allegations related to the Gateway Lakes apartment complex. But Complainant moved out of that complex earlier this year so there is no reason to delay application of the Commission’s *Shroyer Test* along with its safe harbors as to the allegations relating to Gateway Lakes. As the Commission has stated, “[w]e conclude that the *Shroyer Test*, as clarified herein, continues to provide an appropriate test to use in making case-by-case determinations.” See e.g. *In re Commission Investigation of Submetering in the State of Ohio*, Case No. 15-1594-AU-COI, Second Entry on Rehearing, June 21, 2017, at ¶ 22.

Because the *Shroyer Test* is applied on a case by case basis, NEP has submitted evidence to the Commission to resolve Complainant’s allegations at Gateway Lakes. That evidence consists of a sworn affidavit and includes a table showing that Complainant was always charged less for her electricity usage than what she would have paid the public utility for the same usage under the public utility’s default rates. That is a dispositive fact under the *Shroyer Test* as to any claim that NEP is a regulated electric light company. If Complainant disagrees with that conclusion, or any other argument NEP has raised, she can file a memorandum contra in

accordance with the time permitted under the Commission's rules. NEP will reply and this proceeding will be ripe for a decision on the application of the *Shroyer Test* to an apartment that Complainant no longer leases.

It makes no difference that Complainant has filed a motion for leave in this proceeding to amend her complaint. First, she has moved out of Gateway Lakes and she has not raised any new claims against NEP in her proposed amended complaint alleging that NEP is a public utility. For example, she has included claims of federal statute violations in her proposed amended complaint, claims that have no place before this Commission and that will not change the Commission's application of the *Shroyer Test*. Second, the amended complaint she seeks to file is woefully deficient and should not be accepted for filing.¹ Her proposed amended complaint would add additional defendants, 100 unnamed defendants and a natural gas cooperative to this proceeding and include claims related to a separate apartment complex called the Creekside where she recently leased an apartment. There is no reason to delay a prompt application of the *Shroyer Test* in this case to dismiss a complaint that was filed in December 2016. *See In re Commission Investigation of Submetering in the State of Ohio*, Case No. 15-1594-AU-COI, Second Entry on Rehearing, June 21, 2017, at ¶ 41 (indicating that complaints on submetering should be resolved promptly).

Rather, both NEP and Complainant would benefit from a prompt and final resolution of those allegations relating to Gateway Lakes before Complainant moves on to raising new allegations at a different apartment complex. Complainant no longer resides at Gateway Lakes and raises no new claims as to NEP in her proposed amended complaint that warrant a delay in applying the *Shroyer Test*. Now is the appropriate time to finish briefing NEP's motion to

¹ Her motion for leave seeks to file the complaint *instanter*, meaning she is asking the Commission to accept her amended complaint as presented.

dismiss and allow the Commission to promptly apply the *Shroyer Test*. Complainant should not be allowed to hide from the facts that show NEP is not a public utility under the *Shroyer Test*. Her motion to hold briefing in abeyance should be denied.

Respectfully submitted,

/s/ Michael J. Settineri

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Summary: Memorandum Contra Complainant's Motion to Hold Briefing in Abeyance
electronically filed by Mr. Michael J. Settineri on behalf of Nationwide Energy Partners, LLC