

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Cynthia Wingo,)	
)	
Complainant,)	
)	
v.)	Case No. 17-2002-EL-CSS
)	
Nationwide Energy Partners, LLC, <i>et al.</i> ,)	
)	
Respondents.)	

MOTION TO INTERVENE OF OHIO POWER COMPANY

Pursuant to R.C. 4903.221 and Ohio Adm. Code 4901-1-11, Ohio Power Company (“AEP Ohio”) moves to intervene in these proceedings, which concern allegations that Respondents have unlawfully provided retail electric service within AEP Ohio’s certified territory. As set forth more fully in the accompanying memorandum in support, AEP Ohio has a direct, real, and substantial interest in these proceedings that is not adequately represented by existing parties. AEP Ohio is situated such that the disposition of this case may impair or impede its ability to protect that interest. AEP Ohio’s participation in these proceedings will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just resolution of the issues raised in this case.

Accordingly, AEP Ohio respectfully requests that the Public Utilities Commission of Ohio grant this timely request to intervene and that AEP Ohio be made a party of record in this case.

Respectfully submitted,

/s/ Christen M. Blend

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MEMORANDUM IN SUPPORT

The Commission should permit Ohio Power Company (“AEP Ohio”) to intervene in these complaint proceedings against resellers of retail electric service in AEP Ohio’s certified territory. R.C. 4903.221 broadly permits any “person who may be adversely affected by a public utilities commission proceeding [to] intervene in such proceeding.” R.C. 4903.221. As the Ohio Supreme Court has repeatedly made clear, “intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20, 856 N.E.2d 940.

The statute establishes four “criteria” that the Commission should consider “in ruling upon applications to intervene in its proceedings”:

- (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 proceedings; and
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

R.C. 4903.221(B). The Commission’s rules establish an additional fifth criterion: “The extent to which the person’s interest is represented by existing parties.” Ohio Adm. Code 4901-1-11(B)(5). Each of these criteria supports AEP Ohio’s intervention in these proceedings.

A. Ms. Wingo’s Complaint directly implicates AEP Ohio’s interests in several respects, and AEP Ohio’s legal position will be closely related to the merits of this case.

As for the first and second factors – the “nature and extent of the prospective intervenor’s interest” and the “legal position advanced by the prospective intervenor and its probable relation to the merits of the case,” R.C. 4903.221(B)(1)-(2) – AEP Ohio’s intervention is merited because Ms. Wingo’s Complaint raises significant issues that directly affect AEP Ohio’s legal rights and business operations.

As an initial matter, the Complaint implicates AEP Ohio’s interests because it alleges that Respondents have unlawfully provided electric service within AEP Ohio’s certified territory. *See* Compl. ¶ 77 (Count III) (“As an ‘electric supplier’ providing ‘electric service’ to an ‘electric load center’ *within the ‘certified territory’ of AEP [Ohio]*, Respondents are engaged in a knowing, continuing violation of R.C. 4933.83(A).” (emphasis added)). Resolution of that claim will determine the scope of AEP Ohio’s rights under the Certified Territory Act, Ohio Revised Code 4933.81 *et seq.*, and the Commission should not decide this issue without hearing the legal position of the utility whose territory is at issue.

Relatedly, the Complaint implicates AEP Ohio’s interests because it alleges that Respondents have unlawfully provided retail electric service, *see* Compl. ¶¶ 63-72 (Counts I & II), in situations where AEP Ohio would have provided those services but for Respondents’ allegedly unlawful actions. Throughout its territory, AEP Ohio provides retail electric service (including noncompetitive distribution service and a standard service offer) to numerous individual apartments within apartment complexes. AEP Ohio would have provided such service to Complainant and the other residents of her apartment complex were it not for the fact that Respondents resell electric service to the individual residents. Thus, the question of

whether Respondents have unlawfully provided retail electric service to Complainant directly implicates AEP Ohio's rights – and obligations – to provide such service itself. As an electric distribution utility, AEP Ohio is responsible for delivering safe and reliable power to all retail customers in its service territory, and it may not be able to ensure the safe delivery of power under certain submetering situations. Moreover, AEP Ohio is responsible for helping to administer certain public benefit programs like the Percentage of Income Payment Program, and some customers who would otherwise be eligible to participate in those programs might be precluded from doing so under certain submetering configurations. Thus, the Commission should not resolve this proceeding without first hearing from the utility which, according to the Complaint, was the only entity authorized to provide retail electric service (i.e., noncompetitive distribution service and a standard service offer) to Complainant.

Finally, the Complaint has the potential to affect AEP Ohio's interests and business operations throughout its service territory because it raises substantial questions regarding the statutory definition of "public utility," R.C. 4905.02, and "electric light company," R.C. 49053.03(C), as applied to apartment complexes, "submetering" companies such as Respondent Nationwide Energy Partners, LLC, and other resellers of public utility services. As mentioned above, AEP Ohio often provides individual residential service to apartment tenants, but recently, AEP Ohio has witnessed an increase in so-called "submetering" arrangements for multi-resident buildings in its territory – i.e., arrangements under which AEP Ohio provides "master meter" service to the building and that service is resold to individual residents. The manner in which the Commission applies the definition of "public utility" and "electric light company" in this proceeding is likely to have a direct impact on whether this trend toward submetering continues – and, therefore, the type of service that AEP Ohio will provide to multi-

resident buildings in its territory. This proceeding thus will directly affect AEP Ohio's interests and business operations. The Commission should not proceed without the benefit of AEP Ohio's views.

B. AEP Ohio's intervention will not delay these proceedings.

As to the next factor – whether “the intervention by the prospective intervenor will unduly prolong or delay the proceeding,” R.C. 4903.221(B)(3) – there is no indication that AEP Ohio will unduly delay this proceeding. To the contrary, as a frequent participant in Commission proceedings, AEP Ohio values the efficient resolution of Commission matters and will participate in this case in accordance with that important objective. As set forth above, the Complaint raises critical issues regarding AEP Ohio's Certified Territory Act rights and the definition of “public utility” as applied to so-called “submetering” companies and other resellers of public utility services. Hearing AEP Ohio's views on those issues in the normal course of this case will not unduly delay the proceedings but will aid the Commission in making a fully-informed decision.

C. AEP Ohio's intervention will significantly contribute to the full development and equitable resolution of this case.

As to whether “the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues,” R.C. 4903.221(B)(4), AEP Ohio submits that its presence in this case is critical to the full development and consideration of the issues raised by the Complaint. As discussed above, many of the claims raised in the Complaint directly implicate AEP Ohio's interests as the electric utility in whose territory Complainant resides. As such, AEP Ohio will bring a unique and important perspective to the issues in this proceeding, and the Commission's resolution of this Complaint will significantly benefit from considering AEP Ohio's legal positions.

D. AEP Ohio's interests are not represented by the existing parties.

As to "[t]he extent to which [AEP Ohio]'s interest is represented by existing parties," Ohio Adm. Code 4901-1-11(B)(5), there is no other party who represents AEP Ohio's interests as the electric utility in whose service territory Complainant resides. AEP Ohio's interests are not represented by Respondents. Neither are AEP Ohio's interests represented by Complainant. The interests of AEP Ohio are those of the public utility that could have served Complainant but for Respondents' allegedly unlawful actions. The interests of a public utility are necessarily unique and deserving of intervention here.

CONCLUSION

In sum, all of the criteria the Commission considers support AEP Ohio's intervention in these proceedings. Accordingly, for the foregoing reasons, the Commission should grant AEP Ohio's motion and permit AEP Ohio to participate as a party in this case.

Respectfully submitted,

/s/ Christen M. Blend

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CERTIFICATE OF SERVICE

Pursuant to Ohio Adm. Code 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Motion to Intervene* was sent by, or on behalf of, the undersigned counsel to the following parties and counsel of record via e-mail on this 29th day of September, 2017.

/s/ Christen M. Blend
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Case No(s). 17-2002-EL-CSS

Summary: Motion to Intervene of Ohio Power electronically filed by Ms. Christen M. Blend on behalf of Ohio Power Company