

**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.	)	

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**REPLY MEMORANDUM IN SUPPORT OF  
MOTION TO INTERVENE OF OHIO POWER COMPANY**

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In its September 29, 2017 Motion to Intervene (“Motion”), Ohio Power Company (“AEP Ohio”) demonstrated that it satisfies each of the criteria for intervention set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11(B)(5). In response to AEP Ohio’s Motion, Respondent Nationwide Energy Partners, LLC (“NEP”) tellingly does not dispute that AEP Ohio’s legal position will be closely related to the merits of this case, that AEP Ohio’s intervention will not unduly prolong or delay these proceedings, that AEP Ohio will significantly contribute to the full development and equitable resolution of the factual issues in this case, or that AEP Ohio’s interests are not represented by existing parties. *See* R.C. 4903.221(B); Ohio Adm. Code 4901-1-11(B). Rather, NEP contends only that AEP Ohio’s interest is insufficient to merit intervention.

NEP’s arguments lack merit and do nothing to diminish that AEP Ohio should be permitted to intervene and participate fully in this case. The Commission should grant AEP Ohio’s Motion.

As an initial matter, AEP Ohio did not – as NEP contends – argue that it should be permitted to intervene because “this case has precedential value.” (NEP Mem. Contra at 3.) Rather, AEP Ohio’s Motion recognized, correctly, that the manner in which the Commission decides this case will directly affect AEP Ohio’s present interests and business operations because it will impact the type of service that AEP Ohio will provide to multi-resident buildings in its territory. (Mem. Supp. AEP Ohio Mot. at 3-4.) That interest is far more significant than the sorts of broad policy and precedential interests that the Commission has found to be insufficient to merit intervention in previous cases.

Indeed, in the *Whitt* case that NEP cites (and as NEP passingly acknowledges), the Commission directly addressed this very issue. *See In re Complaint of Mark A. Whitt*, Case No. 15-697-EL-CSS, Entry at ¶ 9 (Nov. 18, 2015) (cited in NEP Mem. Contra at 3 fn. 8). In denying The Office of the Ohio Consumers’ Counsel’s, Ohio Partners for Affordable Energy’s, and Industrial Energy Users-Ohio’s motions to intervene, the Commission found that those entities’ interests “regarding the broad policy and precedent that may be set as a result of [the] complaint” were insufficient because those entities had “no actual interest in the particular facts” of that case. *Id.* In contrast, the Commission recognized that:

AEP Ohio has a real and direct interest \* \* \* because it has the exclusive right to provide electric service to the customer in this case. Regardless of any determination that we may make about who the consumer of electric service is \* \* \*, AEP Ohio has the exclusive right to provide retail electric service to that consumer.” \* \* \* AEP Ohio’s intervention will significantly contribute to the full development and equitable resolution of this proceeding. The issue presented in this proceeding is the scope of the Commission’s jurisdiction over public utility services, and in the geographic area of this complaint, AEP Ohio has the exclusive right to provide retail electricity. Further, any determination made by this Commission regarding the scope of its jurisdiction could also impact the extent of AEP Ohio’s service territory.

(Emphasis added.) *Id.* The Commission’s findings in *Whitt* apply with equal force to, and support granting, AEP Ohio’s present Motion. AEP Ohio’s interest here is much more than for the precedential value of this case.

NEP’s *ipse dixit* contention that AEP Ohio’s “interest within the Creekside complex will only arise if the property converts from a master metered complex back to a utility metered complex, and whether the property converts back is not an issue in this proceeding” (NEP Mem. Contra at 2) reflects a fundamental misunderstanding of AEP Ohio’s business and the *Shroyer* Test that the Commission will apply in this case. AEP Ohio’s interest as to the Creekside complex exists regardless of Creekside’s current status as a master metered complex. AEP Ohio’s master meter customer and its agents will be determined either to have engaged in a course of conduct that constitute operation as a “public utility” under the *Shroyer* Test during the time following conversion of the complex to a master meter configuration, or not; the conversion of the complex itself does not determine the outcome of Respondents’ course of conduct and cannot be the basis for a conclusion that AEP Ohio has no right to participate in this proceeding.

AEP Ohio continues to provide electric service to Creekside, and it has the exclusive right to do so. R.C. 4933.83(A). If the Commission determines that NEP (and/or any other Respondent) is or was operating as a “public utility” under the *Shroyer* Test, then NEP (and/or any other Respondent) has violated the Certified Territory Act, R.C. 4933.81-4933.90, among other provisions of Revised Code Title 49, by providing electric service within AEP Ohio’s certified territory. Clearly, the allegations in this case directly implicate AEP Ohio’s rights. The determination of whether a master meter customer and/or its agents act as a “public utility” for tenants, residents, and/or property owners is fact-specific and can only be made upon the Commission’s application of the *Shroyer* Test in the first instance. That exercise, as to

Respondents' conduct, is a primary purpose of this case and is a determination in which AEP Ohio is vitally interested. That some issues and conduct specifically implicated in this proceeding are also broadly within the scope of the Commission's investigation into submetering in Ohio<sup>1</sup> (*see* NEP Mem. Contra at 1, 3) is not relevant to, and has no impact on, AEP Ohio's legitimate and substantial interest in this particular case.

As AEP Ohio explained in its Motion to Intervene, and as further set forth above, all of the criteria that the Commission considers support AEP Ohio's intervention in these proceedings. NEP's attempts to diminish the nature and extent of AEP Ohio's legitimate interest lack merit. Accordingly, the Commission should grant AEP Ohio's Motion to Intervene and permit AEP Ohio to participate as a party in this case.

Respectfully submitted,

/s/ Christen M. Blend

Steven T. Nourse (0046705)

Counsel of Record

Christen M. Blend (0086881)

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

Telephone: (614) 716-1608 / 1915

Fax: (614) 716-2950

[stnourse@aep.com](mailto:stnourse@aep.com)

[cmbblend@aep.com](mailto:cmbblend@aep.com)

(willing to accept service by e-mail)

**Counsel for Ohio Power Company**

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<sup>1</sup> *In the Matter of the Commission's Investigation of Submetering in the State of Ohio*, Case No. 15-1594-AU-COI.

### **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 *Reply Memorandum in Support of 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 20th day of October, 2017.

/s/ Christen M. Blend  
Christen M. Blend

#### EMAIL SERVICE LIST

[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)  
[campbell@whitt-sturtevant.com](mailto:campbell@whitt-sturtevant.com)  
[glover@whitt-sturtevant.com](mailto:glover@whitt-sturtevant.com)  
[sjorgan@organcole.com](mailto:sjorgan@organcole.com)  
[jmfeasel@organcole.com](mailto:jmfeasel@organcole.com)  
[cmlymanstall@organcole.com](mailto:cmlymanstall@organcole.com)  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
[smhoward@vorys.com](mailto:smhoward@vorys.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)  
[barthroyer@aol.com](mailto:barthroyer@aol.com)  
[callwein@keglerbrown.com](mailto:callwein@keglerbrown.com)

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