

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY MEMORANDUM OF CRAWFORD HOYING, LTD., AND CRAWFORD COMMUNITIES, LLC**

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**I. Introduction**

Respondents Crawford Hoying, LTD., and Crawford Communities, LLC (collectively, “Crawford Hoying”) respectfully submit this Reply Memorandum (“Reply”) to the Public Utilities Commission of Ohio (“PUCO” or “Commission”) pursuant to Ohio Administrative Code Rule 4901-1-12(B)(2). Complainant Cynthia Wingo (“Complainant”) submitted a memorandum contra on December 26, 2017, in response to Crawford Hoying’s *Motion to Dismiss the Complaint for Lack of Jurisdiction and Failure to State a Claim Upon Which Relief can be Granted* (“*Motion to Dismiss*”), submitted on December 8, 2017.

**II. Complainant does not dispute Crawford Hoying’s assertion that it is not operating as a Public Utility under the *Shroyer* Test.**

It is important to note that in its memorandum contra, Complainant does NOT argue or assert that Crawford Hoying, in any form, is acting as a public utility. In the *Motion to Dismiss*, Crawford Hoying provided sufficient information for the Commission

to determine that Crawford Hoying is not acting as a public utility under these circumstances. The basic application of the *Shroyer* test is sufficient to defeat the Complainant's assertions about any Crawford Hoying entity involved in this case. As presented in its *Motion to Dismiss*, Crawford Hoying has not manifested an intent to be a public utility by availing itself of special benefits available to public utilities.<sup>1</sup> The utility services as received by Complainant are not available to the general public.<sup>2</sup> Most important, Crawford Hoying *does not provide the utility services*.<sup>3</sup> Therefore, as explained in Crawford Hoying's *Motion to Dismiss*, the Commission may appropriately determine that Crawford Hoying is not a public utility, and not subject to the Commission's jurisdiction. Complainant does not argue or dispute this. Thus, the Complaint should be dismissed.

**III. Complainant does not dispute that Crawford Hoying meets the Commission's "Safe Harbors" and is not subject to the Commission's jurisdiction.**

In addition, Crawford Hoying noted that both of the Commission's "safe harbors" apply to Complainant's cost of service, rendering the circumstances – and any entities involved – outside of the Commission's jurisdiction. Crawford Hoying explained in its *Motion to Dismiss* that Complainant is paying less than she would as an AEP standard

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<sup>1</sup> Case No. 17-2002-EL-CSS, Cynthia Wingo v. Nationwide Energy Partners, et al, *Crawford Hoying Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim upon which Relief can be Granted* at 6-7 (December 8, 2017).

<sup>2</sup> *Id.*, at 7.

<sup>3</sup> *Id.*, at 8.

service offer customer (as demonstrated in NEP’s motion to dismiss)<sup>4</sup> and that the costs of utility service are simply being passed through to the Complainant as a resident of the facilities. Complainant does not dispute these assertions in its memorandum contra. Therefore, the Commission may appropriately find that Crawford Hoying is not subject to the Commission’s jurisdiction and dismiss this case, as it appropriately dismissed the Complainant’s previous case.<sup>5</sup>

**IV. Complainant does not dispute that it stated NO claims against Crawford Hoying upon which relief could be granted.**

In its *Motion to Dismiss*, Crawford Hoying stated that Complainant “failed to allege any facts that implicate Crawford Hoying in any violation of Ohio law or Commission rule.”<sup>6</sup> Complainant does not dispute this assertion. Complainant does not provide any explanation as to what law or violation of Commission rule it believes that Crawford Hoying may have violated. Instead, the Complainant only alleges one item: That there may be a dispute about whether Crawford Hoying is a party to or beneficiary of one or more Commodity Coordination Service Agreements (“CCSAs”). This is irrelevant in the Commission’s determination as to whether the case should be dismissed.

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<sup>4</sup> *Crawford Hoying Motion to Dismiss* at 8-9, citing *Nationwide Energy Partners, LLC’s Motion to Dismiss for Lack of Jurisdiction*, page 7, citing the Affidavit of John Calhoun, NEP Account Manager at paragraph 20 (November 7, 2017).

<sup>5</sup> See *In the Matter of the Complaint of Cynthia Wingo v. Nationwide Energy Partners, LLC, et al*, Case No. 16-2401-EL-CSS, Finding and Order at 9 (paragraphs 25 and 26) (November 21, 2017).

<sup>6</sup> *Crawford Hoying Motion to Dismiss* at 9.

**V. Crawford Hoying is not currently a party to or beneficiary of either CCSA proffered by the Complainant – and it wouldn't matter if they were.**

Complainant's assertion that Crawford Hoying is "a party to or beneficiary of" either CCSA (represented by the cover pages attached to its memorandum contra) is false.<sup>7</sup> Both appear to be dated December 3, 2010 – over seven years ago. Neither Crawford Hoying, nor any of its affiliates or subsidiaries, is currently a party (or beneficiary) to either agreement. Even if they were, the signatures – and the agreements – are irrelevant to the case at hand. Utility services currently provided to the Complainant meet both "safe harbor" tests established by the Commission, and therefore, no entity – whether currently or previously involved in the development, ownership, or management of the Creekside facilities where Complainant currently resides – is subject to Commission jurisdiction:

A Reseller will overcome the rebuttable presumption and thus will **not be subject to Commission jurisdiction** under the third prong of the Shroyer Test if the Reseller demonstrates that (1) the Reseller is simply passing through its annual costs of providing a utility service charged by a local public utility and competitive retail service provider (if applicable) to its submetered residents at a given premises; or (2) the Reseller's annual charges for a utility service to an individual submetered resident do not exceed what the resident would have paid the local public utility for equivalent annual usage, on a total bill basis, under the local public utility's default service tariffs. (Emphasis Added)<sup>8</sup>

Under these circumstances, no Crawford Hoying entity is subject to the Commission's jurisdiction because the Complainant is simply paying pass-through costs of the commodities and in fact paying less than the electric utility's standard service offer.

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<sup>7</sup> Wingo *Memorandum Contra* at 1-2 (December 26, 2017).

<sup>8</sup> *In the Matter of the Commission's Investigation of Submetering in the State of Ohio*, Case No. 15-1594-AU-COI, Second Entry on Rehearing at page 15, paragraph 40 (June 21, 2017).

Thus, the signatures on the CCSAs, even if they constituted documents accurately reflecting the current facts, are irrelevant. According to the Commission's most recent decision involving submetering, application of the *Shroyer* test and the "safe harbor" provisions determine whether the Commission will exercise jurisdiction.<sup>9</sup>

### III. CONCLUSION

Complainant brought this complaint alleging that Crawford Hoying is a reseller of utility services. The facts, however, when evaluated under the *Shroyer Test*, establish that Crawford Hoying is not operating as a public utility because it cannot exercise the special benefits and rights of a public utility; its services are not available to the general public and it does not provide any utility services. The "safe harbor" provisions – established by the Commission in its recent investigation - relieve the Commission of jurisdiction in these cases, according to the PUCO's most recent Finding and Order in Complainant's other recently dismissed case. Finally, Complainant has failed to level any actual claim against Crawford Hoying upon which relief can be granted.

Accordingly, Crawford Hoying now respectfully repeats its request that the Public Utilities Commission of Ohio dismiss Cynthia's Wingo's complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.

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<sup>9</sup> *In the Matter of the Complaint of Cynthia Wingo v. Nationwide Energy Partners, LLC, et al*, Case No. 16-2401-EL-CSS, Finding and Order at 9 (paragraphs 25 and 26) "...Complainant has failed to meet her burden of proof...invoiced charges were less than what Ms. Wingo would have paid for the same period...under the default service tariff on an annualized basis. [...] Thus, even accepting all material allegations of the complaint as true, and construing such allegations in favor of the complaining party, the Commission finds that the resale of utility service...**falls within the safe harbor provisions of the *Shroyer* test.**" (Emphasis added) (November 21, 2017).

Respectfully submitted,

/s/Christopher J. Allwein

Christopher J. Allwein (0084914)

Timothy Kelley (0088362)

KEGLER, BROWN, HILL + RITTER CO.

A Legal Professional Association

65 E State St., Ste. 1800

Columbus, Ohio 43215

Telephone: (614) 462-5400

Facsimile: (614) 464-2634

callwein@keglerbrown.com

(Willing to accept service via email)

*Attorneys for Crawford Hoying, Ltd., and  
Crawford Communities, LLC*

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing *Reply* has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail January 2, 2018.

/s/Christopher J. Allwein  
Christopher J. Allwein

Mark A. Whitt  
whitt@whitt-sturtevant.com  
Andrew J. Campbell  
campbell@whitt-sturtevant.com  
Rebekah J. Glover  
glover@whitt-sturtevant.com  
Steven T. Nourse  
stnourse@aep.com  
Christen M. Blend  
cmblend@aep.com  
Ilya Batikov  
ibatikov@vorys.com

Shawn J. Organ  
sjorgan@organcole.com  
Joshua M. Feasel  
jmfeasel@organcole.com  
Carrie M. Lymanstall  
cmlymanstall@organcole.com  
Barth E. Royer  
BarthRoyer@aol.com  
Michael J. Settineri  
mjsettineri@vorys.com  
Gretchen L. Petrucci  
glpetrucci@vorys.com

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Summary: Reply Memo electronically filed by Mr. Christopher J. Allwein on behalf of Crawford Hoying, Ltd. and Crawford Communities, LLC