

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	
Duke Energy Ohio, Inc., for an Increase)	Case No. 21-887-EL-AIR
in Electric Distribution Rates.)	
In the Matter of the Application of)	
Duke Energy Ohio, Inc., for Tariff)	Case No. 21-888-EL-ATA
Approval.)	
In the Matter of the Application of)	
Duke Energy Ohio, Inc., for Approval)	Case No. 21-889-EL-AAM
to Change Accounting Methods.)	

**DUKE ENERGY OHIO, INC.'S MEMORANDUM CONTRA MOTION TO
INTERVENE OF NATIONWIDE ENERGY PARTNERS, LLC**

On October 1, 2021, Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) filed its application (Application) in this case for an increase in electric distribution rates, tariff approval, and approval to change accounting methods. On November 23, 2021, Nationwide Energy Partners, LLC (NEP) filed a motion to intervene (Motion) pursuant to R.C. 4903.221 and O.A.C. 4901-1-11. Duke Energy Ohio opposes NEP's intervention. For the reasons detailed below, the Public Utilities Commission of Ohio (Commission) should deny NEP's Motion.

I. NEP does not meet the criteria for intervention.

The Commission's intervention rule, O.A.C. 4901-1-11, allows intervention only when the prospective intervenor shows either (1) a state or federal statutory right to intervene or (2) that the prospective intervenor has a real and substantial interest in the proceeding and is so situated that the disposition of the proceeding may impair or impede his or her ability to protect that interest,

unless the interest is adequately represented by existing parties.¹ As an initial matter, NEP has identified no statutory right to intervene, so any intervention may only be pursuant to (2) above. To determine whether intervention is proper in this instance, the Commission must consider five criteria set forth in statute and rule:

- (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.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties.²

NEP fails to satisfy any of the five criteria, and intervention should be denied.

A. Nature and Extent of NEP's Interest

NEP does not articulate a "real and substantial interest"³ unique to it that is related to Duke Energy Ohio's Application. Rather, NEP vaguely states that it has an interest in ensuring that the Company's rates and tariffs are just and reasonable and that any unjust or unreasonable changes to the Company's rates and tariffs could harm NEP, the customers it serves, and its ability to provide services.⁴ These conclusory allegations do not show an interest warranting intervention. First, ensuring just and reasonable rates is the charge of the Commission⁵ and hardly an interest unique to NEP or this case. If this were a reasonable basis for intervention, then any and all

¹ O.A.C. 4901-1-11(A).

² R.C. 4903.221(B); O.A.C. 4901-1-11(B).

³ O.A.C. 4901-1-11(A)(2).

⁴ NEP Motion at 2-3.

⁵ R.C. 4909.15(A).

customers would in theory be able to intervene in rate proceedings. Indeed the Commission Staff, who impartially represents all stakeholder interests, surely shares that same interest.⁶

Second, other than mentioning that it provides services in Duke Energy Ohio's service territory, NEP fails to explain in any substantive manner how the Company's Application could harm NEP, the customers it serves, or its ability to provide services. This failure to identify an interest warranting intervention is cause for the Commission to deny NEP's Motion.⁷

B. NEP's Legal Position and Its Probable Relation to the Merits of the Case

NEP fails to discuss this criterion in any respect. NEP does not identify any legal position it might take related to the actual merits of Duke Energy Ohio's Application. Indeed, NEP's Motion appears to entirely ignore this requirement. Nor is a plan to advocate for just and reasonable rates a "legal position" (if in fact this is what NEP is trying to argue); rather, establishing just and reasonable rates is the overall purpose of a rate proceeding. Broadly ensuring just and reasonable rates to prevent an undetermined and ill-defined harm is not a legal position warranting intervention, and the Commission should deny NEP's Motion.

C. Undue Delay by NEP

NEP claims its intervention will not unduly prolong or delay the proceedings because its Motion was timely filed.⁸ However, filing a timely motion to intervene is a necessary but not sufficient step to avoiding undue delay. In this instance, NEP's intervention will indeed cause undue delay. As explained above, NEP has no real and substantial interest in this case. Accordingly, any participation by NEP would only serve to require parties with defined interests

⁶*In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Withing the Rate Schedules of Duke Energy Ohio, Inc., and Related Matters*, Case No. 15-218-GA-GCR, *et al.*, Opinion and Order, pp. 32-33 (September 7, 2016).

⁷ See *Columbia Gas of Ohio, Inc.*, Case No. 16-1309-GA-UNC, Entry, ¶ 16 (Sept. 27, 2006) (denying motion to intervene where the prospective intervenor "substantially failed to address" the criteria).

⁸ NEP Motion at 3.

to invest unnecessary time and resources to address any issues NEP may raise, thereby unduly delaying the disposition of this case.

D. Significant Contribution by NEP

NEP also claims that because it is “knowledgeable of the Company’s market and the issues involved with rate setting and tariffs,” it will “contribute significantly to the full development and equitable resolution of the factual and legal issues presented in these proceedings.”⁹ These conclusory statements add nothing to the case. The point is not whether a party proposing to intervene has knowledge of the utility’s market, rate setting, or tariffs, because knowledge of these issues would be common among any prospective intervenor to this case. As such, NEP’s “knowledge” says nothing about the degree of significance of NEP’s purported contribution—let alone what individual or unique contribution NEP will make. NEP also fails to provide any specific information about what it intends to contribute to the record or how it will actually contribute to development of the record. Again, as explained above, NEP has no real and substantial interest in this case. NEP’s failure to identify any significant contribution is again cause for the Commission to deny intervention.

E. Representation by Existing Parties

NEP substantially fails to address this criterion, simply stating that the Company, Staff, and other parties do not represent its interest.¹⁰ Contrary to this assertion, NEP’s purported interest—ensuring that the Company’s rates and tariffs are just and reasonable—appears to be shared by every party to this case. And more specifically, to the extent NEP’s interest is commercial in nature, such interest is already adequately represented by a number of other commercial parties, including the Ohio Energy Group, IGS Energy, One Energy Enterprises, LLC,

⁹ Id.

¹⁰ Id.

and ChargePoint, Inc. Similarly, the Office of the Ohio Consumers' Counsel already adequately represents any residential customer interest. Because existing parties adequately represent NEP's purported interest, intervention should be denied.

II. NEP should not be permitted to remedy deficiencies in its Motion by introducing new facts or issues on reply.

NEP's Motion fails to satisfy all five criteria and is insufficient to support intervention in this case. Both Commission and Ohio precedent recognize that it is inappropriate to use a reply to raise new facts or issues for the first time, including because the opposing party will not have an opportunity to respond.¹¹ Thus, should NEP attempt to address its failure by introducing new facts or issues in a reply, the Commission should strike and disregard such facts and issues. Alternatively, Duke Energy Ohio should be permitted to file a surreply.

III. Conclusion

For the reasons stated herein, Duke Energy Ohio respectfully requests that the Commission deny NEP's Motion to intervene in this case for failure to satisfy the criteria for intervention in R.C. 4903.221 and O.A.C. 4901-1-11.

¹¹ See *Air Touch Paging/New Par*, Case No. 99-130-CT-ZCO, Entry, ¶ 5 (Mar. 5, 1999) (permitting a surreply to new issues raised for the first time in a reply); *Ameritech Ohio*, Case No. 95-75-TP-ATA, Entry, ¶ 5 (May 11, 1995) (agreeing it was "inappropriate" to raise new issues in a reply); *Huffer v. Brown*, 10th Dist. Franklin No. 12AP-1086, 2013-Ohio-4384, ¶ 10 (finding it improper to add new facts and assertions in a reply).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 8th day of December, 2021, upon the persons listed below.

/s/ Elizabeth M. Brama

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