**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

Ohio Power Company )

 )

 Complainant, )

 ) Case No. 21-990-EL-CSS

 v. )

 )

Nationwide Energy Partners, LLC )

 )

 Respondent. )

**MOTION FOR LEAVE TO FILE INSTANTER AN APPLICATION FOR REHEARING**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) files this motion for leave to file the attached Application for Rehearing of the PUCO’s September 6, 2023 Order in this case.[[1]](#footnote-2) The PUCO’s Order could result in over one thousand residential utility consumers at five apartment complexes that use Nationwide Energy Partners’ (“NEP”) submetering services losing important consumer protections under Ohio law.[[2]](#footnote-3)

OCC intervened in this case to give a voice to the residential consumers who will be harmed by the PUCO’s Order. OCC’s intervention was wrongfully denied.[[3]](#footnote-4) In the Entry denying OCC’s intervention, Attorney Examiner Sandor stated that participation by the consumer advocate (OCC) will not “significantly contribute to the full development and equitable resolution of the case.”[[4]](#footnote-5) However, there will be no equity for the residential consumers (who OCC represents) who may lose consumer protection rights because of the PUCO’s September 6 Order.

Residential utility consumers deserve to be heard and protected by the PUCO. Thus, the PUCO should grant OCC leave to file the attached Application for Rehearing in accordance with R.C. 4903.10. The reasons the PUCO should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Maureen R. Willis (0020847)

 Ohio Consumers’ Counsel

*/s/ Angela D. O’Brien*

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## MEMORANDUM IN SUPPORT

The PUCO issued an Order that harms over one thousand apartment complex residents who receive submetered electric utility service from Nationwide Energy Partners (“NEP”). The PUCO plainly states in the Order that these consumers will ***lose rights under Ohio law*** when their landlords use NEP for submetering electric utility service.[[5]](#footnote-6) These residential consumers should have had an opportunity to have their voices heard through their state legal advocate (OCC) during the proceeding. The PUCO should grant OCC’s motion for leave to file the attached Application for Rehearing.

Residential utility consumers affected by the Order will lose important consumer protections under Ohio law that they would otherwise receive if they were served directly by PUCO-regulated electric utility AEP Ohio. The only reason these consumers are losing their legal rights is because they happen to live in an apartment complex where the landlord uses NEP’s submetering service.[[6]](#footnote-7) The PUCO directs the landlords of these NEP-submetered apartment complexes to notify consumers in their leases that they will “lose[] the rights under law associated with being under the [PUCO’s] jurisdiction.”[[7]](#footnote-8) That is wrong and patently unfair to consumers.

OCC moved to intervene in this case to give a voice to the residential consumers adversely affected by the PUCO’s Order. Not surprisingly, NEP opposed OCC’s participation to protect consumers. What was surprising was ***the PUCO’s decision to silence residential consumers’ voice*** in this matter by denying OCC’s intervention.[[8]](#footnote-9) OCC filed an Interlocutory Appeal to the PUCO Commissioners challenging the Attorney Examiner’s decision to deny OCC’s intervention in this case.[[9]](#footnote-10) But the PUCO upheld the Attorney Examiner’s decision.[[10]](#footnote-11) OCC filed an application for rehearing of the PUCO’s decision.[[11]](#footnote-12) The PUCO never ruled on OCC’s application for rehearing, and it was denied by operation of law.[[12]](#footnote-13)

Because OCC was denied intervention, it is not a “party” to this case.[[13]](#footnote-14) Thus, R.C. 4903.10 requires OCC to seek leave from the PUCO to file the Application for Rehearing of the PUCO’s Order. The PUCO should grant OCC’s Motion for Leave to file the attached Application for Rehearing Instanter. Residential consumers harmed by the PUCO’s Order have the right to be heard.

The Ohio Supreme Court has held that under R.C. 4903.221, “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.”[[14]](#footnote-15) In *Ohio Consumers’ Counsel v. PUC*, the Ohio Supreme Court held that the PUCO abused its discretion in denying intervention to OCC and reversed the PUCO. The Court relied on the reasons stated in OCC’s memoranda supporting intervention to conclude that intervention should have been granted.[[15]](#footnote-16)

The PUCO wrongfully denied residential consumers the opportunity to have their voice heard and their positions considered through their state legal advocate, OCC. The PUCO should grant OCC’s Motion for Leave to file an Application for Rehearing Instanter of the PUCO’s September 6 Order. Residential consumers subjected to NEP’s submetering services deserve to be heard.

Respectfully submitted,

Maureen R. Willis (0020847)

 Ohio Consumers’ Counsel

*/s/ Angela D. O’Brien*

Angela D. O’Brien (0097579)

Deputy Consumers’ Counsel

Counsel of Record

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 (willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of this Motion for Leave to File Instanter an Application for Rehearing was served on the persons stated below via electronic transmission, this 6th day of October 2023.

 */s/ Angela D. O’Brien*

 Angela D. O’Brien

 Deputy Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

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1. R.C. 4903.10. [↑](#footnote-ref-2)
2. Opinion and Order (September 6, 2023), at ¶ 224. [↑](#footnote-ref-3)
3. *Id.*, at¶ 6; *see also* OCC Application for Rehearing (August 26, 2022); PUCO Entry (July 27, 2022); OCC Interlocutory Appeal (February 7, 2022). [↑](#footnote-ref-4)
4. Attorney Examiner Entry (January 31, 2022), at ¶ 38. [↑](#footnote-ref-5)
5. Order, at ¶ 224. [↑](#footnote-ref-6)
6. Order, at ¶ 224. [↑](#footnote-ref-7)
7. *Id.*, at ¶ 224(1). [↑](#footnote-ref-8)
8. *See* Order, at¶ 6; OCC Application for Rehearing (August. 26, 2022); PUCO Entry (July 27, 2022); OCC Interlocutory Appeal (February 7, 2022). [↑](#footnote-ref-9)
9. *See* OCC’s Interlocutory Appeal (to Commissioners) of PUCO’s Ruling Denying OCC’s Intervention to Represent Consumers (February 7, 2022). [↑](#footnote-ref-10)
10. PUCO Entry (July 27, 2022). [↑](#footnote-ref-11)
11. *See* OCC’s Application for Rehearing (August 26, 2022). [↑](#footnote-ref-12)
12. R.C. 4903.10. [↑](#footnote-ref-13)
13. O.A.C. 4901-1-10. [↑](#footnote-ref-14)
14. *Ohio Consumers Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶ 20 (emphasis added). [↑](#footnote-ref-15)
15. *Id.* at ¶¶ 18; 20. [↑](#footnote-ref-16)