**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Power Company for Authority to New or Amended Rate Schedules and Tariffs  In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods. | )  )  )  )  )  ) | Case No. 24-106-EL-ATA  Case No. 24-107-EL-AAM |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case where AEP Ohio is modifying its tariffs in response to a PUCOorder that allows submeterers to provide utility service to consumers without standard consumer protections*.*[[1]](#footnote-3) In the order, the PUCO determined it has no jurisdiction to regulate third party submetering companies like Nationwide Energy Partners (“NEP”). The PUCO recognized that when residential consumers are forced by their landlords to give up their PUCO-regulated utility service to be served by NEP, they will “lose[] the rights under law associated with being under the Commission’s jurisdiction.”[[2]](#footnote-4)

The modifications the PUCO has required AEP Ohio to make to its resale tariff do little to restore the legal rights that residential consumers lose when they are required to take submetered utility service from a company like NEP. As AEP Ohio correctly recognizes in its Application “[t]he just and reasonable solution to address the scourge of big business third-party submetering companies ***is to prohibit the unlawful practice, not to enable it through ineffective tariff provisions.***”[[3]](#footnote-5) OCC agrees.

OCC is filing on behalf of the residential utility consumers who are the victims in this case –where they are forced to take submetered electric utility service under the “ineffective” tariffs AEP Ohio proposes in this case. Apartment complex residents (including low-income consumers) with submetered service lose the ability to participate in the Percentage of Income Payment Plan (“PIPP”). This is a critical issue. For example, AEP reported 286 residential consumer accounts at the Northtowne Apartments which NEP seeks to convert to submetering.[[4]](#footnote-6) More than 25% of those residential consumers participate in the PIPP program.[[5]](#footnote-7) This is a significant number of low-income consumers who will lose the ability to participate in the PIPP program if Northtowne is converted to NEP submetering. The reasons the PUCO should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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Ohio Consumers’ Counsel

*/s/ Donald J. Kral*

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**MEMORANDUM IN SUPPORT**

This case concerns AEP Ohio’s modifications to its electric resale tariff to comply with the PUCO’s directives in Case No. 21-990-EL-CSS.[[6]](#footnote-8) In that case, the PUCO determined that it has no jurisdiction over third party submetering companies like NEP. That means that residential consumers served by NEP will “lose[] the rights under law associated with being under the Commission’s jurisdiction.”[[7]](#footnote-9) Essentially, the PUCO’s order created a “second class” of residential utility consumers, those who live in apartment complexes where the landlord has decided to submeter utility service. Apartment complex residents (including low-income consumers) with submetered service lose the ability to participate in the PIPP, the ability to “shop” for competitive energy supply, and other rights that consumers served by the PUCO-regulated utility (AEP Ohio) receive.

One example of the harm caused by submetering is NEP’s proposal to submeter Northtowne Apartments which are currently served by AEP. NEP seeks to convert Northtowne to submetering including 286 residential consumer accounts.[[8]](#footnote-10) More than 25% of those residential consumers participate in the PIPP program.[[9]](#footnote-11) Fifty-four percent of the AEP accounts at Northtowne are shopping for competitive generation services. And 14 consumers avail themselves of AEP Ohio’s average monthly payment plan.[[10]](#footnote-12) These consumers will lose these rights that they receive under a PUCO regulated electric utility if submetering takes place.

To restore some protections to residential consumers who are forced by their landlords to take submetered service, the PUCO directed AEP Ohio to file updated reseller tariffs.[[11]](#footnote-13) But the tariff modifications ordered by the PUCO fall woefully short when it comes to protecting consumers. As AEP Ohio’s correctly stated in its Application “[t]he just and reasonable solution to address the scourge of big business third-party submetering companies ***is to prohibit the unlawful practice, not to enable it through ineffective tariff provisions.***”[[12]](#footnote-14)

OCC has authority under R.C. Chapter 4911 to represent the interests of residential utility consumers who may be forced to take submetered electric utility service under the tariffs AEP Ohio proposes in this case.

R.C. 4903.221 provides the standard for permissive intervention – where the PUCO may exercise discretion in ruling upon a party’s motion to intervene. That law provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding.

The interests of AEP Ohio’s residential consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding where the PUCO may adopt inadequate terms and conditions under which landlords and submetering companies may resell electricity to residential consumers. The extent to which residential consumers will suffer the loss of protections under Ohio law may very well be determined by the specific terms and conditions of any updated electric service tariff approved by the PUCO in this case. Thus, this element of the permissive intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on permissive intervention:

(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 proceeding; and

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

First, the nature and extent of OCC’s interest is representing the residential consumers of AEP Ohio who will receive electric utility service under the inadequate tariff terms and conditions proposed by AEP Ohio under protest in this case. This interest is different than that of any other party and different than that of the utility whose advocacy includes its own financial interest. This interest is also clearly different from intervenor NEP whose advocacy is on behalf of itself and the landlords who seek to submeter essential electric utility service to residential consumers.

Second, OCC’s advocacy for residential consumers will include, among other things, advancing the position that the PUCO should, through AEP Ohio’s electric resale tariff, maximize consumer protections to residential consumers. OCC’s advocacy will further include that AEP Ohio’s residential utility consumers forced to take submetered service should not pay unreasonable rates for essential electric utility service while giving up rights and protections under Ohio law. This is especially important given that many residential consumers are being switched from PUCO-regulated service to submetered service and will lose the legal protections they receive from the PUCO-regulated utility service provided by AEP Ohio. OCC’s position is therefore directly related to the merits of this case, which is pending before the PUCO, the authority with regulatory control of public utilities’ rates and service quality in Ohio.

Third, OCC’s intervention will not unduly prolong or delay the proceedings. Delay in and of itself does not mean that intervention should be denied. The key consideration is whether the intervention will cause “undue delay.” Here OCC’s intervention will not cause undue delay.

OCC promptly seeks leave to intervene. The Application to amend its electric tariff was filed on February 5, 2024. The PUCO has not set any procedural schedule for review of the application. No hearing has been scheduled such that granting intervention would delay the hearing. The PUCO Staff has not filed its Review and Recommendation regarding the proposed electric service tariff. The PUCO has not issued any dispositive rulings.

OCC will attempt to avoid duplicative discovery in the proceeding. The issues OCC will raise fall clearly within the scope of the proceeding which include whether the protections in AEP Ohio’s proposed electric resale tariffs are sufficient for residential utility consumers who receive submetered service. In addition, OCC will also use its best efforts to comply with any procedural schedule that the PUCO may adopt for this proceeding.

Further, OCC, with its longstanding expertise and experience in PUCO proceedings and consumer protection advocacy, will duly allow for the efficient processing of the case with consideration of the public interest. OCC has already intervened and filed comments in a recent case before the PUCO regarding AEP’s proposed abandonment of electric service lines in a similar situation regarding submetering.[[13]](#footnote-15) There will be no prejudice to the PUCO Staff, AEP, or other intervening parties in granting OCC intervention.

Fourth, OCC’s intervention will significantly contribute to full development and equitable resolution of the factual issues. OCC’s interest in protecting residential consumers will lead it to examine issues fully and carefully regarding the impact of AEP Ohio’s proposed amendment to the resale provisions of its electric tariff on residential consumers. No other party is solely focused on the needs of residential consumers and thus, there can be no equitable resolution of the factual issues in this case absent OCC’s participation. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in O.A.C. 4901-1-11(A) which sets the standard for *intervention as of right*, mirroring Ohio Civil Rule 24(A). Under 4901:1-11(A)(2) a person shall be granted intervention as of right if it has a real and substantial interest in a proceeding and is “so situated that disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.”

As the statutory advocate for residential utility consumers, OCC has a very real and substantial interest in this case where residential consumers who receive submetered electric utility service may be forced to accept service under the inadequate, and unprotective terms and conditions proposed by AEP Ohio. Disposition of this proceeding may, as a practical matter, impair or impede OCC’s ability to protect that interest where the interest is not adequately represented by existing parties - the PUCO Staff, the AEP Ohio, and NEP. OCC should be granted intervention as of right under O.A.C. 4901-1-11(A)(2).

In addition, OCC meets the permissive intervention criteria of O.A.C. 4901-1-11(B)(1)-(4). These criteria mirror the permissive intervention criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

O.A.C. 4901-1-11(B)(5) states that the PUCO shall consider “(t)he extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it has been uniquely designated as the state representative of the interests of Ohio’s residential utility consumers. OCC’s interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.[[14]](#footnote-16)

OCC meets the criteria set forth in R.C. 4903.221, O.A.C. 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ Donald J. Kral*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Intervene has been served electronically upon those persons listed below this 14th day of March 2024.

*/s/ Donald Kral*

Donald Kral

Assistant 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. *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC,* Case No. 21-990-EL-CSS, Opinion and Order (September 6, 2023) (“NEP Order”) at ¶¶ 224-225. [↑](#footnote-ref-3)
2. *Id.* at ¶ 224. [↑](#footnote-ref-4)
3. AEP Ohio Application, at 1. (Emphasis added.) [↑](#footnote-ref-5)
4. *In the Matter of the Application of Ohio Power Company for Authority to Abandon Electric Service Lines, Pursuant to Ohio Revised Code Sections 4905.20 and 4905.21*, Case No. 22-693-EL-ABN, Application (July 11, 2022) at ¶¶ 11-12. [↑](#footnote-ref-6)
5. *Id.* at ¶ 5. [↑](#footnote-ref-7)
6. *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC,* Case No. 21-990-EL-CSS, Opinion and Order (September 6, 2023) at ¶¶ 224-225. [↑](#footnote-ref-8)
7. *Id.* at ¶ 224. [↑](#footnote-ref-9)
8. *In the Matter of the Application of Ohio Power Company for Authority to Abandon Electric Service Lines, Pursuant to Ohio Revised Code Sections 4905.20 and 4905.21*, Case No. 22-693-EL-ABN, Application (July 11, 2022) at ¶¶ 11-12. [↑](#footnote-ref-10)
9. *Id.* at ¶ 5. [↑](#footnote-ref-11)
10. *Id.* [↑](#footnote-ref-12)
11. *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC,* Case No. 21-990-EL-CSS, Opinion and Order (September 6, 2023) at ¶ 224*.* [↑](#footnote-ref-13)
12. AEP Ohio Application, at 1. (Emphasis added.) [↑](#footnote-ref-14)
13. *In the Matter of the Application of Ohio Power Company for Authority to Abandon Electric Service Lines, Pursuant to Ohio Revised Code Sections 4905.20 and 4905.21,* Case No. 22-693-EL-ABN, Motion to Intervene and Memorandum in Support by Office of the Ohio Consumers’ Counsel (September 9, 2022), Consumer Protection Comments by Office of the Ohio Consumers’ Counsel (December 4, 2023), and Consumer Protection Reply Comments by Office of the Ohio Consumers’ Counsel (December 19, 2023). [↑](#footnote-ref-15)
14. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-16)