**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

Ohio Power Company )

 ) Case No. 21-990-EL-CSS

 Complainant, )

 )

 v. )

 )

Nationwide Energy Partners, LLC )

 )

 Respondent. )

**REPLY TO NATIONWIDE ENERGY PARTNERS’**

**MEMORANDUM CONTRA**

**OCC’S MOTION FOR LEAVE TO FILE INSTANTER**

**AN APPLICATION FOR REHEARING**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

1. **INTRODUCTION**

The PUCO’s Order wrongly forces residential utility consumers who live in apartment complexes to take – and pay for – substandard submetered electric utility service from Nationwide Energy Partners (“NEP”).[[1]](#footnote-2) The PUCO’s Order expressly states that consumers served by NEP “***will lose a multitude of rights and protections***\*\*\*.”[[2]](#footnote-3) Residential utility consumers deserve to be heard, despite NEP’s call once again to silence OCC, their statutory representative. OCC’s Motion for Leave to File Instanter an Application for Rehearing[[3]](#footnote-4) should be granted.

OCC, the state residential utility consumer advocate, fought to participate in this case to protect the residential consumers who have now lost their PUCO-regulated electric utility service.[[4]](#footnote-5) The PUCO granted NEP’s requests to silence OCC in this case.[[5]](#footnote-6) NEP now wants to muzzle OCC again, this time by opposing OCC’s Motion for Leave.[[6]](#footnote-7) NEP’s arguments should be rejected.

1. **ARGUMENT**
2. **NEP’s claims that OCC’s Motion for Leave is unlawful should be rejected. The Ohio Supreme Court disfavors piecemeal appeals and an earlier appeal of the PUCO’s denial of OCC’s intervention would have been premature.**

NEP claims that OCC’s Motion for Leave is unlawful because OCC did not previously appeal the PUCO’s denial of OCC’s intervention in this case.[[7]](#footnote-8) NEP’s arguments should be rejected. OCC’s Motion for Leave to seek rehearing of the PUCO’s Order is appropriate under R.C. 4903.10, and it should be granted.

NEP cites no authority directly supporting its position that OCC was *required* to immediately appeal to the Ohio Supreme Court the PUCO’s denial of OCC’s intervention. NEP relies on *Senior Citizens Coalition v. PUC of Ohio*,40 Ohio St. 3d 329, 332, 533 N.E.2d 353 (1988).[[8]](#footnote-9) However, nothing in that case precludes OCC’s Motion for Leave to file an application for rehearing of the Order now. To the contrary, *Senior Citizens* supports OCC’s position that a previous appeal by OCC would have been inappropriate because it affirms the Ohio Supreme Court’s “disfavor of piecemeal appeals.”[[9]](#footnote-10) The Ohio Supreme Court “has consistently dismissed premature appeals”[[10]](#footnote-11) that “would serve only to prolong and confuse litigation.”[[11]](#footnote-12)

In this case, an OCC appeal of the PUCO’s 2022 denial of OCC’s motion to intervene would have been premature and would have prolonged the PUCO’s final decision in this case. OCC’s motion to intervene was denied by the PUCO (after OCC’s interlocutory appeal) on July 27, 2022.[[12]](#footnote-13) OCC timely filed an application for rehearing of the PUCO’s decision on August 26, 2022, which means that an appeal would have had to have been taken on November 25, 2022.[[13]](#footnote-14) The PUCO’s ruling denying OCC’s intervention came long before the final Order in this case, issued on September 6, 2023. Thus, a prior appeal by OCC would have been premature.

NEP claims that OCC was required to previously appeal the PUCO’s denial of intervention because that decision “‘affected a substantial right’ of OCC.”[[14]](#footnote-15) However, the Court in *Senior Citizens* recognized that appeals from PUCO orders affecting substantial rights can still be “untimely” and “premature.”[[15]](#footnote-16) According to the Court “[t]imeliness, as well as an effect on substantial rights, is necessary for a valid appeal.”[[16]](#footnote-17) Accordingly, NEP’s claims that OCC’s Motion for Leave is unlawful should be denied. The PUCO should grant OCC’s Motion for Leave and consider the arguments in OCC’s October 6, 2023 Application for Rehearing.

1. **The PUCO’s Order harms residential utility consumers by denying them rights and protections under Ohio law. The Order also raises new issues regarding AEP Ohio’s electric reseller tariff. Thus, there is good cause for granting OCC’s Motion for Leave.**

NEP argues there is no good cause for OCC’s Motion for Leave because OCC has no “direct and substantial interest” in this case.[[17]](#footnote-18) According to NEP, OCC (the residential consumer advocate) only has “broad policy interests” in the Order.[[18]](#footnote-19) NEP is wrong.

The PUCO’s Order states in no uncertain terms that residential consumers living in apartment complexes will “***lose rights*** related to electric service once a landlord elects to receive master-meter service at its complex” from NEP.[[19]](#footnote-20) The PUCO’s Order is clear that these residential utility consumers previously served by the public utility, AEP Ohio, “will lose a multitude of rights and protections” under Ohio law.[[20]](#footnote-21) Residential consumers’ actual loss of rights and protections under Ohio law are not “broad policy interests” that can be ignored (lawfully) by the PUCO.

The Order also raises entirely new issues regarding the PUCO’s directives to AEP Ohio to file a new electric reseller tariff. [[21]](#footnote-22) Changes to AEP Ohio’s electric reseller tariff will purportedly mitigate the harm to consumers who are losing rights and protections because of the PUCO’s Order. However, the PUCO’s guidelines for AEP Ohio’s electric reseller tariff are woefully inadequate to protect residential consumers who have no choice but to receive NEP submetered service. The residential utility consumers who are losing their legal rights and protections deserve a say in this case, through their state legal advocate, OCC.

The PUCO should grant OCC’s Motion for Leave and consider the arguments in OCC’s October 6, 2023 Application for Rehearing.

1. **CONCLUSION**

The PUCO’s Order harms residential consumers who receive NEP submetered service by denying them important legal rights and protections under Ohio law. These consumers deserve to be heard through OCC, their statutory legal representative. For the reasons explained above, the PUCO should reject NEP’s attempts to deny consumers a voice. The PUCO should grant OCC’s Motion for Leave to File Instanter an Application for Rehearing.

Respectfully submitted,

 Maureen R. Willis (0020847)

 Ohio Consumers’ Counsel

*/s/ Angela D. O’Brien*

Angela D. O’Brien (0097579)

Counsel of Record

Deputy Consumers’ Counsel

William J. Michael (0070921)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215-4213

Telephone: [O’Brien]: (614) 466-9531

Telephone: [Michael]: (614) 466-1291

angela.obrien@occ.ohio.gov

william.michael@occ.ohio.gov

 (willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of this Reply to Nationwide Energy Partners, LLC’s Memorandum Contra was served on the persons stated below via electronic transmission, this 23rd 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:

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1. Opinion and Order (September 6, 2023) (“Order”), at ¶ 224. [↑](#footnote-ref-2)
2. *Id.* [↑](#footnote-ref-3)
3. OCC’s Motion for Leave to File Instanter an Application for Rehearing (October 6, 2023) (“Motion for Leave”). [↑](#footnote-ref-4)
4. Order, at¶ 6; *see also* OCC Application for Rehearing (August 26, 2022); PUCO Entry (July 27, 2022); OCC Interlocutory Appeal (February 7, 2022). [↑](#footnote-ref-5)
5. *See* PUCO Entry (July 27, 2022). [↑](#footnote-ref-6)
6. Nationwide Energy Partners, LLC’s Memorandum Contra the Office of the Ohio Consumers’ Counsel Motion for Leave to File Instanter an Application for Rehearing (October 16, 2023) (“Memo Contra”). [↑](#footnote-ref-7)
7. NEP Memo Contra, at 1-2. [↑](#footnote-ref-8)
8. *Id.* [↑](#footnote-ref-9)
9. *Senior Citizens Coalition v. PUC of Ohio*, 40 Ohio St. 3d 329, 332-333, 533 N.E.2d 353 (1988); *See also Cincinnati v. Public Utilities Comm’n*, 63 Ohio St.3d 366, 369, 588 N.E.2d 775 (1992). [↑](#footnote-ref-10)
10. *Cincinnati Gas and Electric Co. v. PUC*, 2004-Ohio-5466. [↑](#footnote-ref-11)
11. *Cincinnati v. Public Utilities Comm’n*, 63 Ohio St.3d 366, 369, 588 N.E.2d 775 (1992). [↑](#footnote-ref-12)
12. PUCO Entry (July 27, 2022). [↑](#footnote-ref-13)
13. R.C. 4903.11. [↑](#footnote-ref-14)
14. NEP Memo Contra, at 1. [↑](#footnote-ref-15)
15. *Senior Citizens Coalition v. PUC of Ohio*, 40 Ohio St. 3d 329, 332-333, 533 N.E.2d 353 (1988). [↑](#footnote-ref-16)
16. *Id.* [↑](#footnote-ref-17)
17. NEP Memo Contra at 2-3. [↑](#footnote-ref-18)
18. *Id.* at 2. [↑](#footnote-ref-19)
19. Order at ¶ 225 (emphasis added). [↑](#footnote-ref-20)
20. *Id.* at ¶ 224. [↑](#footnote-ref-21)
21. Order, at ¶ 224. [↑](#footnote-ref-22)