**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

Duke Energy Ohio, Inc. )

)

Complainant, )

) Case No. 22-279-EL-CSS

v. )

)

Nationwide Energy Partners, LLC )

)

Respondent. )

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene where Duke Energy Ohio (“Duke”) has filed a complaint against Nationwide Energy Partners, LLC (“NEP”) regarding NEP’s demands to provide electric utility service to Duke’s residential consumers through submetering.[[1]](#footnote-2) Submetering involves an entity (here NEP) that resells or redistributes public utility service to consumers. Today’s non-landlord submetering companies like NEP seek to provide utility service and profit from their sales to consumers, without providing the consumer protections available from their local utility.

Protections against disconnections and the availability of financial assistance are especially important to consumers now as they are emerging from a pandemic, the prices for energy are soaring, inflation is on the rise, and a recession is possible. Indeed, submeterers like NEP seem intent upon avoiding the jurisdiction of the state utility regulator, the PUCO, in providing such services to Ohioans.

Consumers of regulated utilities receive various protections for their utility services, which they lose as consumers of a submeterer. Such protections include but are not limited to protections against unreasonable disconnection, bill-payment assistance, service reliability standards, pricing oversight, access to low-income programs, access to energy efficiency programs, and the right to choose an energy supplier. For consumer protection, the PUCO should end the submeterers’ tactics of the avoidance of its jurisdiction.

OCC is filing on behalf of Duke’s residential utility consumers where NEP is attempting to force these residential consumers to give up Duke’s electric utility service and instead take NEP’s submetering service.[[2]](#footnote-3)

The reasons the Public Utilities Commission of Ohio (“PUCO”) should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Angela D. O’Brien*

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## MEMORANDUM IN SUPPORT

This case will determine whether Duke can be forced to allow NEP to resell and redistribute electric utility service to the residents of Somerset at Deerfield in Mason, Ohio (the “Somerset residential consumers”) through submetering. NEP’s provision of submetering service could harm the Somerset residential consumers by negatively impacting the consumer protections they would normally receive when they take electric utility service from Duke.

Indeed, Duke alleges that NEP has already canceled some residential consumers’ existing electric utility service with Duke and switched them to NEP’s submetering service.[[3]](#footnote-4) NEP can now resell electric utility service at potentially a substantial markup to these residential consumers. And consumers will lose important service protections they would normally receive when taking service from Duke.[[4]](#footnote-5)

Even if NEP does not raise rates above the rates that consumers paid to Duke, it’s still a rate increase to consumers if they receive less service for their payment. OCC has authority under law to represent the interests of residential consumers, pursuant to R.C. Chapter 4911.

R.C. 4903.221 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 the Somerset residential consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding where they are forced to take service from NEP and may lose consumer protections provided by a PUCO-regulated public utility. Thus, this element of the 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 motions to intervene:

(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 residential consumers in this case. Consumers would be switched to NEP from Duke, without making such a choice. And consumers would lose consumer protections that they receive from Duke if they are forced to take NEP’s submetering service. This interest is different than that of any other party and especially different than those of Duke and NEP whose advocacy includes their financial interests.

Second, OCC’s advocacy for residential consumers will include advancing the position that they should not be forced to take NEP’s submetering service or lose service protections they currently receive in the event NEP is permitted to provide submetering. Further, regardless of who ultimately provides service, rates should be no more than what is reasonable and lawful under Ohio law, for service that is safe and adequate under Ohio law. And companies that provide utility service to consumers should be regulated by the PUCO as utilities. OCC’s position is therefore directly related to the merits of this case that 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. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC’s intervention will significantly contribute to the full development and equitable resolution of the factual issues. 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 the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to O.A.C. 4901-1-11(A)(2). As the advocate for residential utility consumers, OCC has a very real and substantial interest in this case where NEP wants to force the Somerset residential consumers served by Duke to take NEP’s substandard submetering services without adequate consumer protections.

In addition, OCC meets the criteria of O.A.C. 4901-1-11(B)(1)-(4). These criteria mirror the statutory 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 “The 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 uniquely has been designated as the state representative of the interests of Ohio’s residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, where OCC has demonstrated that it has satisfied the criteria for intervention (as it has here), 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.[[5]](#footnote-6)

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 the residential consumers who have lost or who stand to lose Duke as the provider of their essential electric utility service, the PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Angela D. O’Brien*

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(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electronic transmission, this 12th day of May 2022.

*/s/ Angela D. O’Brien*

Angela D. O’Brien

Assistant 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. *See* R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11. [↑](#footnote-ref-2)
2. *See e.g.* Duke Complaint (Mar. 30, 2022), at ¶¶ 24-25, 41-55. [↑](#footnote-ref-3)
3. Duke Complaint, at ¶¶ 41-45. [↑](#footnote-ref-4)
4. *Id.* [↑](#footnote-ref-5)
5. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-6)