

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

The Office of the Ohio Consumers' Counsel,)	
)	
Complainant,)	
)	
v.)	
)	Case No. 16-0782-EL-CSS
Ohio Power Company,)	
)	
Respondent.)	

**MEMORANDUM CONTRA MOTION TO HOLD THE CASE IN ABEYANCE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

Every day Ohioans with submetered utility service are being denied the protections of state regulation, and for electric consumers the market that exists for Ohioans whose service is directly billed by utilities. Yet, some movants to intervene want to further delay the protections sought in this Complaint case by having the PUCO hold this case in abeyance. That is wrong and should be denied.

On April 12, 2016, the Office of the Ohio Consumers' Counsel ("OCC") filed a complaint against Ohio Power Company ("AEP Ohio") to protect submetered residential consumers in its service territory. The Complaint would protect Ohioans who have been billed unreasonably high rates and denied the significant consumer protections and market-based pricing that other Ohioans receive.¹ In its Complaint, OCC requested that

¹ See *In the Matter of the Complaint and Request for Relief for Consumers by the Office of the Ohio Consumers' Counsel*, Case No. 16-0782-EL-CSS (Apr. 12, 2016) ("OCC Complaint").

AEP Ohio amend its tariffs to bar the resale and redistribution of electric services to residential customers by submetering entities or third-party agents (other than landlords) that are operating as public utilities.² OCC also asked the Public Utilities Commission of Ohio (“PUCO”) for a moratorium to stop AEP Ohio from providing new service to those who resell service to submetered residential customers.³

On April 27, 2016, AEP Ohio filed an answer to the OCC Complaint, a memorandum contra the OCC’s motion for a moratorium, and its own motion to amend its tariffs.⁴ In its motion to amend, AEP Ohio agreed with OCC that “the practice of ‘submetering’ has proliferated in recent years and has caused substantial harm to customers in AEP Ohio’s territory.”⁵ As a means to prevent further harm to consumers from submeterers, AEP Ohio proposed to revise its tariff “to limit the harm caused by submetering.”⁶ OCC filed a memorandum contra AEP Ohio’s motion to amend on May 12, 2016.⁷ The Industrial Energy Users-Ohio (“IEU”) and Nationwide Energy Partners, LLC (“NEP”) also filed memoranda contra AEP Ohio’s motion to amend.⁸ IEU, NEP,

² OCC Complaint at 2. Alternatively, OCC requested an order directing AEP Ohio to enforce its tariffs to prohibit submetering. *Id.*

³ *Motion for A Moratorium to Stop AEP Ohio from Providing New Service to Those Who Resell Service to Submetered Residential Consumers by the Office of the Ohio Consumers’ Counsel*, Case No. 16-0782-EL-CSS (Apr. 12, 2016)(OCC Motion for Moratorium).

⁴ See *Answer of Ohio Power Company*, Case No. 16-0782-EL CSS (Apr. 27, 2016) (AEP Ohio Answer); *Ohio Power Company’s Memorandum Contra OCC’s Motion for a Moratorium*, Case No. 16-0782-EL-CSS (Apr. 27, 2016) (AEP Ohio Memo Contra Moratorium); *Ohio Power Company’s Motion for Tariff Amendment and Memorandum in Support*, Case No. 16-0782-EL-CSS (Apr. 27, 2016) (AEP Ohio Motion to Amend).

⁵ AEP Ohio Motion to Amend at 1, 3.

⁶ *Id.*

⁷ *Memorandum Contra Ohio Power Company’s Motion for Tariff Amendment by the Office of Ohio Consumers’ Counsel*, Case No. 16-0782-EL-CSS (Apr. 27, 2016) (OCC Memo Contra AEP Ohio Motion to Amend).

⁸ *Memorandum Opposing Ohio Power Company’s Motion for Tariff Amendment by Industrial Energy Users-Ohio*, Case No. 16-0782-EL-CSS (May 10, 2016) (IEU Memo Contra AEP Ohio Motion to Amend); *Memorandum Contra of Nationwide Energy Partners, LLC*, Case No. 16-0782-EL-CSS (May 12, 2016).

and the Ohio Apartment Association and the International Council of Shopping Centers (“OAA/ICSC”) moved to intervene in this proceeding.⁹ OCC filed responses to the various motions pursuant to the PUCO’s rules and hereby incorporates herein its pleadings and the comments set forth therein.

On May 12, 2016, OAA/ICSC also filed a motion to hold the case in abeyance.¹⁰ OCC files its response to OAA/ICSC’s motion to unnecessarily delay a properly filed complaint case submitted on behalf of residential consumers against AEP Ohio.

II. RECOMMENDATIONS

A. **This Complaint and the accompanying consumer protections it requests should move forward without delay.**

OAA/ICSSC’s attempt to unnecessarily stall this case to the detriment of residential customers is meritless and should be rejected. R.C. 4905.26 authorizes a complaint alleging, inter alia, “that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law * * * .” OCC availed itself of the statutory right to protect residential customers.¹¹ OCC initiated this Complaint to

⁹ *Motion to Intervene of Industrial Energy Users-Ohio*, Case No. 16-0782-EL-CSS (May 10, 2016); *Motion for Limited Intervention of Nationwide Energy Partners, LLC*, Case No. 16-0782-EL-CSS (May 12, 2016); *Motion to Intervene of Ohio Apartment Assn and the International Council of Shopping Centers*, Case No. 16-0782-EL-CSS (May 12, 2016). OCC addressed the interventions of IEU, NEP, and OAA/ICSC in a memo contra filed on May 25, 2017.

¹⁰ *Motion to Hold the Case in Abeyance filed by the Ohio Apartment Association and the International Council of Shopping Centers*, Case No. 16-0782-EL-CSS (May 12, 2016) (“Motion to Delay”).

¹¹ Incidentally, OCC was precluded from protecting residential customers through another submetering complaint case. *Whitt v. Nationwide Energy Partners LLC*, Case No. 15-697-EL-CSS, Entry at 5 (November 18, 2015) (denying OCC’s motion to intervene).

protect residential customers in AEP Ohio's service territory from the harm that is occurring and to prevent future submetering situations from being implemented. As detailed in the Complaint, these customers are not afforded the same set of protections afforded to AEP Ohio's distribution customers.¹²

All residential customers, including those who are submetered or subject to reselling of utility service, are deserving of all protections afforded to customers that have direct relationships with public utilities. The practice of reselling, especially in the context of submetering, denies residential customers the ability to shop for competitive generation supply, denies customers critical consumer protections of rate regulation, subjects customers to higher and unknown rates, denies customers other consumer protections embedded in the PUCO's rules and Ohio law, and could raise reliability concerns.¹³

OAA/ICSC requests that the PUCO hold OCC's Complaint filed on behalf of residential consumers against AEP Ohio in abeyance until the PUCO investigates whether it has jurisdiction over submetering entities throughout Ohio in a separate docket ("Submetering COI").¹⁴ The focus of that docket is to determine whether submeterers' activities fall under the PUCO's supervisory jurisdiction. That jurisdictional question is not an issue OCC has requested the PUCO decide in its Complaint case. The issues presented in the Submetering COI docket are far broader than the limited issues OCC presented in its Complaint. As noted by OAA/ICSC,¹⁵ stakeholders representing a broad

¹² OCC Complaint at 1-2, 12-13.

¹³ AEP Ohio Motion to Amend at 4.

¹⁴ *In the Matter of the Commission's Investigation of Submetering in the state of Ohio*, Case No. 15-1594-AU-COI, Entry at 1 (Dec. 16, 2015).

¹⁵ Motion to Delay at 1, 4.

and diverse array of interests participated in the Submetering COI, including OAA/ICSC. OAA/ICSC filed comments in the Submetering COI. The PUCO can take its (and others') interests into account as it decides how best to move forward with that investigation in the Submetering COI.

As OCC explained in its memo contra the motions to intervene,¹⁶ OAA/ICSC presence in this case will unduly delay and prolong this proceeding and open up OCC's Complaint proceeding to reargue the same issues covered in the Submetering COI.¹⁷ OAA/ICSC's motion solidifies OCC's concern. The issues raised in the submetering Complaint, however, exceed the scope of those raised in OCC's Complaint case. OCC's properly filed Complaint to protect residential customers in AEP Ohio's service territory from the harm that is occurring should proceed as filed. Residential customers in submetering communities are not afforded the same set of protections afforded to AEP Ohio's distribution customers.¹⁸ The PUCO should act now to rectify this circumstance and restore consumer protections.

B. Claims of undue burden of parallel proceedings are self-imposed and should be rejected.

As OCC explained in its memo contra the motions to intervene,¹⁹ OAA/ICSC (and others) participation in OCC's Complaint case is unlawful as OAA/ICSC cannot satisfy the controlling statutory and regulatory provisions or the PUCO's longstanding

¹⁶ *Memorandum Contra Motions to Intervene of Industrial Energy Users-Ohio, Nationwide Energy Partners, LLC, the Ohio Apartment Association, and the International Council of Shopping Centers* at 2-3, Case No. 16-0782-EL-CSS (May 12, 2016).

¹⁷ See R.C. 4903.221(B)(3)-(4).

¹⁸ OCC Complaint at 1-2, 12-13.

¹⁹ *Memorandum Contra Motions to Intervene of Industrial Energy Users-Ohio, Nationwide Energy Partners, LLC, the Ohio Apartment Association, and the International Council of Shopping Centers* at 2-3, Case No. 16-0782-EL-CSS (May 12, 2016).

precedent. Given that the OAA/ICSC avers that it represents the interests of residential and commercial landlords,²⁰ it does not have standing to participate in OCC's Complaint case affecting residential consumers. OAA/ICSC does not have a "real and direct interest" in the Complaint's factual allegations and precedent alone is insufficient for allowing a party to participate in the proceeding.²¹ Additionally, an intervenor must refrain from expanding the issues beyond those stated in the Complaint and any attempts to broaden the Complaint's scope, must be rejected.²² Accordingly, any claims of undue burden and the need to conserve resources are without merit as OAA/ICSC does not have a valid interest in the scope of the Complaint and, therefore, cannot participate in the Complaint.

Contrary to OAA/ICSC,²³ the Complaint case is not duplicative of the Submetering COI. As explained previously, OCC's Complaint is narrowly tailored to the allegations raised in the Complaint,²⁴ and OAA/ICSC's (and others) attempts to expand the proceeding to include those issues raised in the Submetering COI should be denied. OAA/ICSC first asks the PUCO to expand the scope of OCC's Complaint to allow it to participate in the case and reargue the issues it raised in the Submetering COI, only to then claim that the proceedings are duplicative and a strain on resources. OAA/ICSC asked to participate in both proceedings only to complain that its participation in parallel

²⁰ OAA/ICSC Motion to Intervene at 3-4.

²¹ *In the Matter of the Complaint of Whitt v. Nationwide Energy Partners, LLC*, Case No. 15-697-EL-CSS, Entry at 5 (Nov. 18, 2015) (*In re Whitt*).

²² *In the Matter of the Complaint of OHIOTELNET.COM, INC. v. Windstream Ohio, Inc.*, Case No. 09-515-TP-CSS, Entry at 9 (Dec. 1, 2010). See also, *Cleveland Electric Illuminating Co. v. Medical Center Co.*, Case No. 95-458-EL-UNC, Entry on Rehearing at 3 (Oct. 5, 1995) ("It would be inappropriate to consider additional allegations not raised in the original complaint.").

²³ Motion to Delay at 5-6.

²⁴ *Id.* at 6 (OAA/ICSC even recognizes that not all of the issues raised by OCC in its Complaint to protect residential customers may be resolved by the Submetering COI).

proceedings is too much and relief is needed. OAA/ICSC should not be allowed to participate in OCC's Complaint, and thus, there will be no undue burden on its resources by participating in two cases that are on parallel paths.

If OAA/ICSC is denied intervention, its request to delay the important Complaint filed to protect Ohioans is moot. Nonetheless, attempts by OAA/ICSC to interfere with the timely resolution of a controversy between OCC, on behalf of residential customers, and AEP Ohio should be rejected.

III. CONCLUSION

For all the reasons stated herein, this Complaint case should move forward without delay. Delaying this case as requested by OAA/ICSC will only perpetuate the harms inflicted on residents subject to reselling of utility service, particularly submetering arrangements, and interfere with an orderly resolution of this controversy. Instead of a delay, the PUCO should protect Ohioans by: (1) immediately imposing a moratorium on new submetering arrangements with residential customers that involve the abusive practices described herein; and (2) using its regulatory authority over public utility tariffs to ban existing and future reselling of residential customers' utility services.

Accordingly, the PUCO should deny OAA/ICSC's request to unreasonably delay OCC's Complaint and allow this case to proceed as filed in order to protect Ohioans.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served by electronic mail to the persons listed below, on this 27th day of May 2016.

/s/ Kimberly W. Bojko

Kimberly W. Bojko
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Summary: Memorandum Memorandum Contra Motion to Hold the Case in Abeyance by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Bojko, Kimberly W.