

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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|---------------------------------|---|------------------------|
| Ohio Power Company |) | |
| |) | Case No. 21-990-EL-CSS |
| Complainant, |) | |
| |) | |
| v. |) | |
| |) | |
| Nationwide Energy Partners, LLC |) | |
| |) | |
| Respondent. |) | |

**MEMORANDUM CONTRA
NATIONWIDE ENERGY PARTNERS' MOTION FOR STAY
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

Nationwide Energy Partners, LLC (“NEP”) has filed a motion for stay asking the Public Utilities Commission of Ohio (“PUCO”) to require AEP to establish a master meter arrangement at five apartment complexes so that NEP can resell or redistribute (submeter) electric utility service to AEP’s customers.¹ NEP claims that requiring AEP to process NEP’s construction requests is necessary to preserve the status quo pending resolution of the issues in this case.² But here, the status quo – allowing NEP to construct facilities and submeter service for consumers – could harm residential consumers and violate Ohio law and policy. The PUCO should deny NEP’s motion.

¹ Nationwide Energy Partners, LLC’s Motion for Stay and Request for Expedited Ruling.

² NEP Motion, at 5, 7, 11.

II. ARGUMENT

NEP's motion should be denied because it does not satisfy the four-part test the PUCO considers when presented with a motion for stay. NEP states in its motion that the PUCO considers whether: 1) the party seeking the stay is likely to prevail on the merits; 2) the party seeking the stay can show irreparable harm without the stay; 3) the stay will cause substantial harm to other parties; and 4) the stay is in the public interest.³ Contrary to NEP's claims, applying these four factors demonstrate that NEP's motion should be denied.

A. **NEP fails to demonstrate that it is likely to succeed on the merits of the issues (including consumer issues) raised in AEP's Complaint.**

The PUCO should reject NEP's claims that it is likely to succeed on the merits in this case. NEP fails to accurately represent the issues raised by AEP's Complaint and thus, NEP's contention that it is likely to succeed on the merits must fail too.

NEP seeks to shape the issue in this case as involving a dispute related solely to AEP's refusal to process NEP's construction requests at the five apartment complexes.⁴ That is a mischaracterization. NEP's position is consistent with its prior claims in a pleading that the apartment complex residents have no interest because "AEP Ohio's complaint is regarding the construction requests submitted by NEP as the authorized representative of the property owner for the five apartment complexes."⁵

However, NEP misses that AEP's Complaint is much about people, being consumers who rely on their public utilities (and PUCO regulation) for the essential service of electricity. The issue the PUCO must consider in this case – plainly set forth in AEP's Complaint – is

³ NEP Motion, Memorandum in Support, at 3.

⁴ See NEP Motion, Memorandum in Support, at 4.

⁵ Nationwide Energy Partners, LLC's Memorandum Contra the Motion to Intervene by the Office of the Ohio Consumers' Counsel, (Nov. 12, 2021), at 6, 8.

whether NEP will act as a public utility in violation of Ohio law by reselling or redistributing electric utility service to the end user apartment complex residents.⁶ This is the issue raised in AEP's Complaint, and the issue the Ohio Supreme Court directed the PUCO to address in another case involving NEP's submetering of utility services, *In re Complaint of Wingo*.⁷ NEP does not demonstrate that it is likely to succeed on the merits of this issue.

The whole purpose of NEP's construction requests to AEP is so NEP can submeter electric utility service to individual apartment complex residents.⁸ NEP itself states that its work orders to AEP are "to change the utility service to a master metered configuration at each of the five apartment complex properties."⁹ This means that, as NEP acknowledges, AEP will provide electric utility service only to the landlord's master meter account.¹⁰ But beyond the master meter, AEP would not separately serve the residential consumers – NEP would.¹¹

NEP attempts to muddy the water by claiming that it cannot be considered a public utility because it is simply a "construction service provider that assists with on-site electric infrastructure and billing management."¹² That creative writing plainly understates what NEP does. Indeed, NEP surely does not intend to construct and reconfigure facilities for the apartment complex property owners only for *some other company* to submeter electric service to the

⁶ AEP Complaint, at ¶¶29-30.

⁷ *In re Complaint of Wingo v. Nationwide Energy Partners, LLC*, 2020-Ohio-5583.

⁸ AEP Complaint, ¶¶31-35.

⁹ NEP Motion, Affidavit of Teresa Ringenbach, ¶10.

¹⁰ NEP Motion, Affidavit of Teresa Ringenbach, ¶¶6-7

¹¹ AEP Complaint, ¶¶31-35.

¹² NEP Motion, Memorandum in Support, 1 (citing Affidavit of Teresa Ringenbach).

residents. NEP opaquely describes what it does as “providing billing and energy management services to multi-family property owners throughout Ohio and several other states.”¹³

But the Ohio Supreme Court brought clarity with its description of NEP in *Wingo* as a “big business” “third-party reseller[]” that submeters utility service for profit.¹⁴

Further, NEP claims that it cannot be considered a public utility because AEP will continue to provide electric service to the property owner’s master meter account.¹⁵ But again, that says nothing about whether NEP acts as a public utility when it distributes electricity and *submeters* electric utility service beyond the property owner’s master meter to the apartment complex residents/consumers.

In short, NEP has not demonstrated that it is likely to succeed on the merits of the issues set forth in AEP’s Complaint. The PUCO should reject NEP’s attempts to confuse the issues in this case. The PUCO should deny NEP’s motion for stay.

B. NEP fails to show that it would be irreparably harmed. Indeed, NEP’s position could harm AEP’s residential consumers.

NEP claims that it will be irreparably harmed if the PUCO does not grant a stay requiring AEP to process the construction requests. The PUCO should reject NEP’s claims.

As an initial matter, it is important to note that NEP has been on notice of the potential for litigation of the precise issues raised in AEP’s Complaint for years. AEP’s Complaint details the history of litigation specifically involving NEP’s submetering practices and the harm it causes consumers.¹⁶ NEP has faced complaints from individual consumers regarding NEP’s

¹³ NEP Motion, Affidavit of Teresa Ringenbach, ¶4.

¹⁴ See *In re Complaint of Wingo v. Nationwide Energy Partners, LLC*, 2020-Ohio-5583, ¶3 (“Today, submetering is big business, with third party resellers such as NEP providing submetering services for multiple properties and landlords.”) (Emphasis added)

¹⁵ NEP Motion, Memorandum in Support, at 4-5.

¹⁶ AEP Complaint, ¶¶20-26.

submetering practices.¹⁷ NEP's submetering practices were also addressed in a PUCO investigation.¹⁸ And most recently, the Ohio Supreme Court reversed the PUCO's decision in the *Wingo* complaint case and remanded with instructions that the PUCO determine whether NEP is a public utility under R.C. 4905.03.¹⁹ However, the PUCO ultimately did not decide the issue because the complainant in *Wingo* filed a notice of voluntary dismissal, which the PUCO granted.²⁰

Given the previous complaints against NEP at the PUCO and the Ohio Supreme Court's decision in *Wingo*, NEP was clearly on notice of the regulatory uncertainty regarding its provision of submetering services. NEP's suggestion – that it was somehow blindsided by AEP's recent decision to decline the construction requests²¹ – should be heard with skepticism.

NEP also claims that its “entire business is in jeopardy” due to the delay in processing the construction requests at the five apartment complexes.²² NEP's claims have little merit. NEP's Vice President of Business Development attested that “NEP engages in the design and construction of on-site infrastructure and provides energy advisory, technology, financing, and billing services for multi-family property owners throughout Ohio *and several other states*.”²³ NEP's website describes NEP as the “fastest growing energy solutions company in the Midwest” with “over \$52 million in capital invested in our partner communities.”²⁴ NEP's website

¹⁷ See *In re Complaint of Whitt v. Nationwide Energy Partners, LLC*, Case No. 15-697-EL-CSS; and *In re Complaint of Wingo v. Nationwide Energy Partners, LLC*, Case No. 17-2002-EL-CSS.

¹⁸ *In re the Commission's Investigation of Submetering in the State of Ohio*, Case No. 15-1594-AU-COI.

¹⁹ *In re Wingo*, 2020-Ohio-5583, ¶26.

²⁰ *In re Complaint of Wingo v. Nationwide Energy Partners, LLC*, Case No. 17-2002-EL-CSS, Entry (July 14, 2021), ¶13.

²¹ NEP Motion, Memorandum in Support, at 7.

²² *Id.* at 6.

²³ NEP Motion, Affidavit of Teresa Ringenbach, ¶4 (emphasis added).

²⁴ <https://www.nationwideenergypartners.com/our-story/>

represents that it operates in eight states and 150 communities.²⁵ Given the wide array of services that NEP provides in and outside of Ohio, it is difficult to see how a delay in processing the construction orders pending the PUCO's resolution of this case would jeopardize NEP's entire business.

NEP states that it will be irreparably harmed because it is "being deprived of the contractual rights to serve the property owners at the five complexes, which it bargained for, and which rights are not by their nature monetarily compensable."²⁶ However, it is axiomatic that the contract rights of NEP and the property owners are "not absolute" and do not override the "public law, general policy, or public justice" that exist to protect utility consumers.²⁷ Here, if AEP processes NEP's construction requests pending the PUCO's decision, the apartment complex residents will be harmed because they will lose service from AEP (the PUCO-regulated utility).

Finally, NEP has provided no evidence to support its claim that any harm it may suffer if the motion is not granted cannot be monetarily compensated. The PUCO should deny NEP's motion for stay.

C. Granting NEP's motion would substantially harm the apartment complex residents/consumers who would lose their AEP service and the regulatory protections that go with it.

The third factor for the PUCO to consider is whether granting the motion for stay would cause substantial harm to other parties. The answer is yes. Granting NEP's motion and allowing it to establish master meter service at the five apartment complexes will harm the apartment

²⁵ *Id.*

²⁶ NEP Motion, Memorandum in Support, at 7.

²⁷ *Cincinnati City School Dist. Bd. of Ed. v. Connors*, 132 Ohio St.3d 468, 2012-Ohio-2447, ¶16 (quoting *Key v. Vattier*, 1 Ohio 132, 147 (1823)).

complex residents whose AEP service will be terminated.²⁸ If this happens, the residents will lose the regulatory protections for electric rates and service that they have with AEP's service.

AEP's Complaint specifically details the numerous harms to the apartment complex residents.²⁹ Harm to the apartment complex residents includes, but is not limited to: higher bills and loss of rate transparency;³⁰ the inability to choose their own competitive retail supplier;³¹ no access to budget and percentage of income payment program ("PIPP") plans to help pay bills;³² and loss of other important consumer protections regarding disconnections and service quality set forth in the Ohio Administrative Code and Ohio law.³³

NEP states that the PUCO should disregard the harm to the apartment complex residents because AEP has allowed master meter arrangements at apartment complexes in the past.³⁴ That argument fails. AEP's allowance of master meter arrangements at multi-family properties in the past is of little relevance now given that the issue regarding the PUCO's jurisdiction over NEP's services is unsettled after the Ohio Supreme Court's *Wingo* decision. In addition, NEP claims that its motion should be granted because submetering is permitted under Ohio law.³⁵

While Ohio law may permit traditional submetering by landlords to tenants (where the master meter bill is divided among tenants according to their usage), that is not what NEP does.

²⁸ AEP Complaint, at ¶¶31-35.

²⁹ AEP Complaint, at ¶¶51-73

³⁰ AEP Complaint, at ¶¶61-64.

³¹ AEP Complaint, at ¶52.

³² AEP Complaint, at ¶¶53-54.

³³ AEP Complaint, at ¶¶55-60.

³⁴ NEP Motion, Memorandum in Support, at 8.

³⁵ *Id.*

As the Court in *Wingo* stated, NEP is a non-landlord “big business” “third-party reseller[]” that resells or redistributes utility service for profit.³⁶ T

Consumers will be harmed if AEP is forced to process NEP’s construction requests pending the PUCO’s decision in this case. The PUCO should deny NEP’s motion for stay.

D. The public interest weighs in favor of denying NEP’s motion.

The fourth factor the PUCO should consider is whether a stay is in the public interest. This factor weighs strongly against granting NEP’s motion.

As explained above, granting NEP’s motion and requiring AEP to establish a master meter arrangement at the five apartment complexes will terminate AEP’s regulated electric utility service to the individual residents/consumers. As a result, those residents will lose many of the consumer protections they receive when they are served by AEP, the PUCO-regulated utility. The public interest demands that consumer access to essential and potentially life-saving electric utility service be protected. As noted above, consumers could lose consumer protections regarding budget payment plans and service disconnections. This is particularly concerning as we move into the Winter months and as many consumers struggle to recover financially from the ongoing coronavirus pandemic.

The public interest also strongly favors not allowing companies like NEP to provide utility services in violation of the law, including but not limited to, R.C. 4905.02, R.C. 4905.03, R.C. 4933.81 *et seq.*, and R.C. 4928.08(B).³⁷ All these laws and more could be violated if NEP’s stay is granted.

³⁶ See *In re Complaint of Wingo v. Nationwide Energy Partners, LLC*, 2020-Ohio-5583, ¶3 (“Today, submetering is big business, with third party resellers such as NEP providing submetering services for multiple properties and landlords.”) (Emphasis added)

³⁷ See AEP Complaint, Counts I, II, and III.

III. CONCLUSION

For the reasons stated above, NEP fails to satisfy the four-part test the PUCO considers for motions for stay. Granting NEP's motion for stay and forcing AEP to establish a master meter account at each apartment complex would harm customers. And it potentially would allow NEP to act unlawfully as a public utility pending the PUCO's determination of the merits of AEP's Complaint. To protect consumers, the PUCO should deny NEP's motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra Motion for Stay was provided electronically to the persons listed below this 17th day of December 2021.

/s/ Angela D. O'Brien
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