

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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

**NATIONWIDE ENERGY PARTNERS, LLC’S MEMORANDUM CONTRA THE
OFFICE OF THE OHIO CONSUMERS’ COUNSEL MOTION FOR LEAVE TO FILE
INSTANTER AN APPLICATION FOR REHEARING**

On October 6, 2023, OCC filed a Motion for Leave to File Instanter an Application for Rehearing (“Motion”) and separately filed the proposed Application for Rehearing (“Application”) seeking rehearing on the Commission’s September 6, 2023 Opinion and Order (“Order”). OCC’s motion for leave is an unlawful attempt to reinsert itself in this proceeding and circumvent the Commission’s July 27, 2022 final and now non-appealable order denying OCC’s intervention request. OCC has failed to show good cause why its motion should be granted and the Commission should deny OCC’s motion for leave and not address any part of the Application.

The issue of OCC’s participation in this proceeding was decided in the Commission’s July 27, 2022 Entry denying OCC’s interlocutory appeal challenging the denial of its motion to intervene. OCC filed an application for rehearing challenging the Entry, which was denied by operation of law in accordance with R.C. 4903.10. This denial “affected a substantial right” of OCC and was required to be appealed within sixty days under R.C. 4903.11. *See Senior Citizens Coalition v. PUC of Ohio*, 40 Ohio St. 3d 329, 332, 533 N.E.2d 353 (1988); *see also State ex rel. Sawicki v. Court of Common Pleas*, 121 Ohio St. 3d 507, 2009-Ohio-1523 at ¶14 (holding that “. . . intervention constitutes a substantial right under R.C. 2505.02(A)(1)”). OCC failed to timely

appeal and thus its participation in this proceeding has already been finally and definitively decided.

OCC's simple reassertion of the same arguments it made when requesting intervention do not provide good cause to grant OCC's motion. The Commission has already heard OCC's arguments about its broad policy interests in this proceeding multiple times and has deemed them insufficient to justify intervention. These arguments are now even less persuasive. In denying OCC's interlocutory appeal, the Commission found that "[s]hould the Commission ultimately determine that NEP is not operating as a public utility, OCC's interests would be moot." Entry (July 27, 2022) at ¶54. Because the Commission has found that NEP is not operating as a public utility, OCC's interests are now moot. OCC cannot use the Application as an excuse to reinsert itself in this proceeding to present the same arguments and advocate for the same interests the Commission already determined are "ancillary" to the determinative issue in this proceeding. Entry (July 27, 2022) at ¶55.¹

Finally, it would be unfairly prejudicial to the parties to allow OCC to use R.C. 4903.10 as an "end-around" to reinsert itself in the proceeding. The denial of OCC's intervention was decided more than a year ago and that decision is final and now non-appealable. Moreover, this case has been fully and extensively litigated. Permitting OCC to participate in this case at this point to raise arguments that have already been deemed irrelevant to the central issues in this case would unduly prolong the case without contributing to the resolution of the actual issues litigated. If leave is granted, OCC will be incentivized to file future motions to intervene in other proceedings when it has no direct and substantial interest knowing that, when its motion to intervene is denied, it can simply seek leave under R.C. 4903.10 if it disagrees with the Commission's final decision in the

¹ The Motion also fails to address how OCC meets the standard for leave set forth in R.C. 4903.10.

proceeding. Such a result would be unfairly prejudicial to the parties in this matter and in all future matters where the Commission determines OCC has no direct and substantial interest.

The Commission already decided OCC's interests do not warrant intervention and that the positions OCC seeks to assert will not significantly contribute to the development and equitable resolution of this case. Entry (July 27, 2022) at ¶55. OCC's desire to assert these same interests and positions again on rehearing do not constitute good cause. The Commission should deny OCC's motion for leave.

For these reasons, NEP respectfully requests that the Commission or Attorney Examiner expeditiously deny OCC's motion for leave prior to any action being taken on the Application by operation of law under R.C. 4903.10. Given such denial is issued, the Commission need not and should not address any part of the Application.

Respectfully submitted,

/s/ Michael J. Settineri

Michael J. Settineri (0073369), Counsel of Record

Anna Sanyal (0089269)

Andrew P. Guran (0090649)

Thomas J. Whaling (0096430)

Vorys, Sater, Seymour and Pease LLP

52 E. Gay Street

Columbus, Ohio 43215

614-464-5462

mjsettineri@vorys.com

aasanyal@vorys.com

apguran@vorys.com

tjwhaling@vorys.com

Drew B. Romig (0088519)

230 West St., Suite 150

Columbus, OH 43215

330-418-6606

dbromig@nationwideenergypartners.com

Attorneys for Nationwide Energy Partners, LLC

CERTIFICATE OF SERVICE

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Steven T. Nourse
American Electric Power Service Corporation
stnourse@aep.com

Michael J. Schuler
American Electric Power Service Corporation
mjschuler@aep.com

Matthew S. McKenzie
M.S. McKenzie Ltd.
matthew@msmckenzieltd.com

Angela D. O'Brien
Angela.obrien@occ.ohio.gov

William J. Michael
William.michael@occ.ohio.gov

/s/ Michael J. Settineri
Michael J. Settineri

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10/16/2023 4:40:16 PM

in

Case No(s). 21-0990-EL-CSS

Summary: Memorandum Contra OCC's Motion for Leave to File an Application for Rehearing Instantly electronically filed by Mr. Michael J. Settineri on behalf of Nationwide Energy Partners, LLC.