

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF  
OHIO POWER COMPANY,

COMPLAINANT,

CASE NO. 21-990-EL-CSS

v.

NATIONWIDE ENERGY PARTNERS, LLC,

RESPONDENT.

## ENTRY ON REHEARING

Entered in the Journal on November 1, 2023

### I. SUMMARY

{¶ 1} The Commission grants, for the limited purpose of further consideration of the matters specified on rehearing, the application for rehearing filed by Ohio Power Company.

### II. DISCUSSION

{¶ 2} On September 24, 2021, the Ohio Power Company (AEP Ohio) filed a complaint against Nationwide Energy Partners, LLC (NEP). As background, AEP Ohio is a “public utility” under R.C. 4905.02, an “electric light company” under R.C. 4905.03 and 4928.01, and an “electric utility” and “electric distribution utility” as those terms are defined in R.C. 4928.01. AEP Ohio explained that it has been granted a service territory under the Certified Territories Act, within which AEP Ohio has the exclusive right to provide electric distribution service and other noncompetitive electric services. *See* R.C. 4933.83(A). In the complaint, AEP Ohio stated that NEP is an entity engaged in the practice of submetering, whereby NEP, acting as the agent of a landlord or building owner engages in the resale or redistribution of public utility services where the owner of an apartment building or multi-residential complex divides up a master bill to individual tenants so that each tenant pays

for their share of utilities used. AEP Ohio explained that the complaint arose from a request from NEP, acting as the agent of five apartment complex owners (Apartment Complexes), that AEP Ohio establish master-metered service at the Apartment Complexes, which AEP Ohio asserted would amount to NEP taking over electric distribution service to the tenants in the Apartment Complexes. AEP Ohio alleged that NEP intends to purchase electric service from AEP Ohio at wholesale-like master-metered rates and then resell electric service to the individual Apartment Complex tenants at a considerable markup. In the complaint, AEP Ohio alleged that allowing NEP to begin submetering at the Apartment Complexes would violate numerous statutes and Commission regulations, including the Certified Territories Act, as NEP would be operating as a public utility. AEP Ohio asserted that while NEP has operated in this capacity for many years, the question of whether third-party submetering companies such as NEP are public utilities is now unsettled following the Supreme Court of Ohio's decision in *In re Complaint of Wingo v. Nationwide Energy Partners, L.L.C.*, 163 Ohio St.3d 208, 2020-Ohio-5583, 169 N.E.3d 617 (*Wingo*).

{¶ 3} On October 18, 2021, NEP filed its answer to the complaint. NEP admitted that AEP Ohio is a public utility subject to the Commission's jurisdiction and that AEP Ohio has been granted an exclusive territory to provide electric distribution service under the Certified Territories Act. NEP further admitted that it provides certain management services to property owners, managers, and developers pursuant to private contractual agreements. NEP conceded that pursuant to its contractual obligations and as the authorized representative of each property owner, manager, and developer, NEP receives and pays invoices from AEP Ohio's master-metered utility charge on behalf of the respective property owner, manager, and developer. NEP denied, however, that it would be "taking over" service from AEP Ohio if the requested master-metered service were set up at the Apartment Complexes. NEP further denied that it is a public utility under R.C. 4905.02 and, therefore, NEP asserted that it is not subject to the Commission's statutes and rules governing public utilities. NEP's answer also asserted a number of affirmative defenses.

{¶ 4} On October 28, 2021, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene and accompanying memorandum in support. NEP filed a memorandum contra this motion to intervene on November 12, 2021; OCC filed a reply in support on November 19, 2021. As part of a January 31, 2022 Entry, the attorney examiner denied OCC's motion to intervene.

{¶ 5} On January 11, 2022, NEP filed a motion for leave to file an amended answer and counterclaim, instant. On January 26, 2022, AEP Ohio filed a memorandum contra NEP's motion. On February 2, 2022, NEP filed a reply in support of its motion.

{¶ 6} On February 7, 2022, OCC filed an interlocutory appeal of the attorney examiner's January 31, 2022 ruling that denied OCC intervention in this proceeding. Because OCC's interlocutory appeal sought reversal of a decision to deny OCC intervention in the case, its interlocutory appeal came before the Commission as an appeal of right pursuant to Ohio Adm.Code 4901-1-15(A)(2).

{¶ 7} On April 4, 2022, the attorney examiner issued an Entry granting NEP's motion for leave to file an amended answer and counterclaim, as well as revised the procedural schedule.

{¶ 8} AEP Ohio filed its answer to NEP's counterclaim on April 22, 2022. On May 2, 2022, AEP Ohio filed an amended answer to the counterclaim. NEP filed correspondence in the case docket on May 5, 2022, indicating that NEP did not object to the filing of AEP Ohio's amended answer.

{¶ 9} By Entry issued July 27, 2022, this Commission denied OCC's interlocutory appeal and affirmed the attorney examiner's denial of OCC's intervention in this proceeding.

{¶ 10} On August 26, 2022, OCC filed an application for rehearing of the Commission's denial of its interlocutory appeal. This application for rehearing was denied by operation of law pursuant to R.C. 4903.10.

{¶ 11} The evidentiary hearing commenced on October 24, 2022, at the offices of the Commission, with the first phase of the hearing continuing through November 1, 2022. On November 4, 2022, the hearing recommenced via Webex to take a witness' testimony. Then on November 8, 2022, the hearing recommenced via Webex to close the record and set a briefing schedule.

{¶ 12} In its September 6, 2023 Opinion and Order, the Commission found that AEP Ohio failed to carry its burden of proving that NEP is (i) engaged in the business of supplying electricity, is an "electric light company" under R.C. 4905.03(C), or a "public utility" under R.C. 4905.02(A); (ii) operating as an "electric supplier" within Ohio Power Company's certified territory in violation of R.C. 4933.83(A); and (iii) violating R.C. 4928.08(B) by supplying or arranging for the supply of a competitive retail electric service without the required certification. With respect to counterclaims filed by NEP, the Commission found that NEP failed to carry its burden of proving that AEP Ohio's actions (i) violated R.C. 4905.26, except to the second alleged violation of Count I of its counterclaims where the Commission found in favor of NEP on a limited basis, and (ii) violated R.C. 4905.35(A). Additionally, the Commission directed AEP Ohio to file an application to modify its electric service resale tariff to include certain provisions related to landlords engaging in the resale of electricity to tenants.

{¶ 13} Pursuant to R.C. 4903.10, any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the Commission's order is journalized.

{¶ 14} On October 6, 2023, AEP Ohio filed an application for rehearing, asserting that the Opinion and Order was unlawful and unreasonable based upon four grounds for rehearing outlined therein. NEP filed a memorandum contra AEP Ohio's application for rehearing on October 16, 2023.

{¶ 15} Also on October 6, 2023, OCC filed a motion for leave to file instant an application for rehearing as well as an application for rehearing. NEP filed a memorandum contra OCC's application for rehearing on October 16, 2023.

{¶ 16} The Commission finds that AEP Ohio's October 6, 2023, application for rehearing sets forth sufficient reason to warrant further consideration of the matters specified therein. Accordingly, AEP Ohio's application for rehearing should be granted for the limited purpose of further consideration of the matters specified within the application for rehearing.

### III. ORDER

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That AEP Ohio's October 6, 2023, application for rehearing be granted for the limited purpose of further consideration of the matters specified therein. It is, further,

{¶ 19} ORDERED, That a copy of this Entry on Rehearing be served upon all interested persons and parties of record.

#### COMMISSIONERS:

##### *Approving:*

Jenifer French, Chair  
Daniel R. Conway  
Lawrence K. Friedeman  
Dennis P. Deters  
John D. Williams

DMH/dmh

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

Summary: Entry on Rehearing granting, for the limited purpose of further consideration of the matters specified on rehearing, the application for rehearing filed by Ohio Power Company electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.