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IN THE SUPREME COURT OF OHIO

Ohio Power Company)	Case No. 2024-_____
)	
Complainant,)	
)	
v.)	Appeal from the Public Utilities
)	Commission of Ohio
)	
Nationwide Energy Partners, LLC)	
)	
Respondent.)	Pub. Util. Comm. No. 21-990-EL-CSS

NOTICE OF APPEAL
BY
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NOTICE OF APPEAL

Appellant, the Office of the Ohio Consumers' Counsel ("OCC"), consistent with R.C. 4903.11 and 4903.13, and S.Ct.Prac.R. 3.11(B)(2), 3.11(D)(2), and 10.02, gives notice to this Court and to the Public Utilities Commission of Ohio ("PUCO") of this appeal.

The decisions being appealed are the PUCO's Opinion and Order entered in its journal on Sept. 6, 2023 (Attachment A) and its Dec. 13, 2023, Second Entry on Rehearing (Attachment B). Those orders denied OCC the right to intervene in a proceeding where the terms and conditions of electricity service to residential consumers living in certain Ohio apartment complexes were decided. And the PUCO Orders unjustly and unreasonably denied consumers protections for electric service under Ohio law and PUCO rules when it determined that a submeterer is not a public utility.

That PUCO proceeding was initiated as a complaint case brought by AEP Ohio against a submeterer, Nationwide Energy Partners (NEP). The complaint sought to resolve whether AEP Ohio must turn over to NEP the electric distribution service that AEP Ohio was providing to residential consumers at certain apartment complexes in AEP Ohio's service territory.¹ NEP had demanded that AEP Ohio terminate utility service to the consumers in the affected apartment complexes so it could resell electric service to the individual consumers at a considerable markup.²

OCC was initially denied intervention in the complaint case through an Attorney Examiner's Entry issued on Jan. 31, 2022. OCC sought an interlocutory appeal of that Entry.³ On

¹ *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC*, Pub. Util. Comm. No. 21-990-EL-CSS, Complaint at ¶ 8 (Sept. 24, 2021).

² *Id.* at ¶ 9.

³ *Id.*, OCC Interlocutory Appeal (Feb. 7, 2022).

July 27, 2022, the PUCO denied OCC's appeal, upholding the Attorney Examiner's ruling denying OCC intervention.⁴ On Aug. 26, 2022, OCC sought rehearing of the PUCO Order denying OCC intervention.⁵ The PUCO did not issue a ruling on OCC's request, and thus by operation of law it was denied.⁶ To avoid a premature, piecemeal appeal, and consistent with the PUCO's ruling that OCC's motion to intervene was "premature,"⁷ OCC waited on a substantive order from the PUCO that would resolve the issues in the complaint and clear the way for a single, consolidated appeal of the PUCO's final order.

Over a year later, on Sept. 6, 2023, the PUCO issued an Opinion and Order resolving the complaint case. That PUCO Order did not disturb its earlier denial of OCC's intervention. And the PUCO order deprived residential consumers of electric service protections under Ohio law and PUCO rules when it determined that NEP was not a public utility.

OCC, having been denied party status, sought leave to file an Application for Rehearing⁸ with the PUCO on Oct. 6, 2023 (Attachment C). The PUCO did not grant or deny OCC's Oct. 6, 2023 Application for Rehearing, causing it to be denied by operation of law on Nov. 6, 2023 under R.C. 4903.10. The PUCO confirmed the denial of OCC's application for rehearing noting that the motion for leave was "moot."⁹ The PUCO's Dec. 13, 2023, Second Entry on Rehearing serves as a final, appealable order in the PUCO proceeding.

⁴ *Id.*, Entry at ¶ 49-56 (July 27, 2022).

⁵ *Id.*, OCC Application for Rehearing (Aug. 26, 2022).

⁶ *See* R.C. 4903.10; Entry on Rehearing at ¶ 10 (Nov. 1, 2023).

⁷ *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC*, Pub. Util. Comm. No. 21-990-EL-CSS, Entry at ¶ 54.

⁸ Under R.C. 4903.10 only parties may apply for rehearing. Since the PUCO denied OCC intervention, OCC was not a party and had no statutory right to seek rehearing.

⁹ *Id.*, Second Entry on Rehearing at footnote 1 (Dec. 13, 2023).

The PUCO’s Sept. 6, 2023, Order and its Dec. 13, 2023, Second Entry on Rehearing upheld its earlier ruling that unlawfully refused to allow residential utility consumers “who may be adversely affected by a public utilities commission proceeding”¹⁰ to participate in the PUCO proceeding through their statutory representative, OCC. The residential consumers that OCC sought to represent were in fact adversely affected when the PUCO found that it had no jurisdiction over NEP when it submeters electric utility service to apartment complex residents previously served by AEP Ohio.¹¹ The PUCO admitted the adverse impacts on the residential consumers of the affected apartment complexes when it concluded that those consumers will “lose rights related to electric service once a landlord elects to receive master-meter service at its complex.”¹²

The PUCO’s denial of OCC’s intervention and its ruling depriving residential consumers of protection for electric service under Ohio law and rules is unlawful and unreasonable in the following respects, all of which were raised in OCC’s Application for Rehearing filed Oct. 6, 2023:

1. The PUCO erred by unlawfully denying residential consumers a voice in the complaint proceeding where the terms and conditions of their electricity service were being decided. The PUCO’s unlawful denial of intervention to OCC, the statutory advocate for Ohio residential consumers, violates R.C. 4903.221, O.A.C. 490-1-1-11, and Ohio Supreme Court precedent that intervention in PUCO proceedings should be liberally allowed. *Ohio Consumers Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940 ¶ 20. The PUCO abused its discretion by refusing to let the Consumers’ Counsel intervene on behalf of the residential consumers who will be forced to take electric service from NEP as a result of the PUCO Order. The PUCO’s Order denied residential consumers’ right to be heard before the PUCO on a utility matter in which they possessed a direct and substantial interest. OCC should have been permitted to

¹⁰ R.C. 4903.221.

¹¹ *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC*, Pub. Util. Comm. No. 21-990-EL-CSS, Opinion and Order at ¶ 224 (Sept. 6, 2023).

¹² *Id.* at ¶ 225.

intervene to advocate for the residential consumers who could have been – and were – adversely affected by the PUCO’s Order.

2. The PUCO erred by issuing an Order that unjustly and unreasonably denies electric service rights under Ohio law and the PUCO’s rules to the residential utility consumers of five apartment complexes where landlords are permitting NEP to resell essential electric utility service. Residential consumers living in the NEP submetered apartments should have the same consumer protections under Ohio law and the PUCO’s rules as residential consumers who receive electric utility service directly from the PUCO-regulated utility, AEP Ohio.

The Court should consider OCC’s appeal of both these issues notwithstanding the PUCO’s denial of OCC’s motion to intervene. The Supreme Court of Ohio has recognized that where the PUCO should have granted OCC intervention, OCC’s issues on appeal may be considered by the Court.¹³ In *Ohio Consumers’ Counsel v. PUC*, 2006-Ohio-5853, ¶ 23, the Court stated:

The Consumers’ Counsel’s status as a nonparty could have affected her ability to pursue an appeal to this court . . . because only a party may appeal from a PUCO decision. This court’s rules of practice likewise permit “a party” to seek review in PUCO matters. Because we find, though, that the Consumers’ Counsel should have been granted party status before the PUCO, the appeals . . . are properly before us, and *all* of the arguments raised here by the Consumers’ Counsel – not simply her challenge to the denial of her motions to intervene – may rightly be considered by this court now.” (Emphasis original)

OCC respectfully requests the Court to reverse and vacate the PUCO’s Sept. 6, 2023, Order, its Second Entry on Rehearing and related earlier orders.¹⁴ The Court should remand the case to the PUCO with instructions to grant OCC’s Motion to Intervene and reopen the record to allow OCC to present additional evidence and argument on behalf of residential consumers directly and substantially affected by the matters raised in AEP complaint case. The PUCO

¹³ *Id.* at ¶ 23.

¹⁴ Earlier Orders that should be vacated include the Attorney Examiner Entry of Jan. 31, 2022, and the PUCO Order of July 27, 2022.

should be instructed to issue an order on remand taking into consideration the evidence and argument presented on behalf of residential consumers by the OCC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Appeal by Office of the Ohio Consumers' Counsel, was served upon the Chairman of the Public Utilities Commission of Ohio by leaving a copy at the Office of the Chairman in Columbus and upon all parties of record via electronic transmission this 5th day of January 2024.

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CERTIFICATE OF FILING

I hereby certify that a Notice of Appeal by Office of the Ohio Consumers' Counsel was filed with the docketing division of the Public Utilities Commission of Ohio as required by O.A.C. 4901-1-02(A) and 4901-1-36.

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