

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Duke Energy Ohio, Inc.,)	
)	
Complainant,)	
)	
v.)	Case No. 22-0279-EL-CSS
)	
Nationwide Energy Partners, LLC)	
)	
Respondent.)	

**REPLY IN SUPPORT OF MOTION FOR LEAVE TO AMEND THE COMPLAINT AND
TO FILE A SEPARATE ABANDONMENT APPLICATION AND MOTION TO
CONSOLIDATE**

Pursuant to Ohio Adm. Code 4901-1-12(B)(2), Duke Energy Ohio, Inc. (Duke Energy Ohio) submits this Reply in Support of the Motion for Leave to Amend the Complaint and to File a Separate Abandonment Application and Motion to Consolidate (Reply).

I. INTRODUCTION

The Commission should grant the Motion for Leave to Amend the Complaint and to File a Separate Abandonment Application and Motion to Consolidate (Motion) because Duke Energy Ohio timely filed the Motion in good faith and in conformance with the Commission's direction in the AEP Ohio/NEP Order.¹

Duke Energy Ohio's request in this case is simple. Nationwide Energy Partners, LLC (NEP) (purportedly on behalf of an unidentified landlord at Somerset) seeks to require Duke Energy Ohio to abandon its existing customers at Somerset. Duke Energy Ohio has an obligation under R.C. 4905.20 not to abandon customers without Commission approval. Duke Energy Ohio

¹ Capitalized terms used or not elsewhere defined in this Reply shall have the meanings ascribed to them in the Motion.

also has no interest in abandoning its longstanding customers at Somerset, which would strip those customers of access to significant consumer protections like PIPP programs, dispute resolution and meter testing rights, and disconnection protections. This leads to two questions that must be resolved by the Commission: (1) who has the ability to “require” an electric distribution utility (EDU) to abandon service to its customers; and (2) is the proposed abandonment at issue “reasonable, having due regard for the welfare of the public.”²

The proposed Amended Complaint (*see* Motion, Attachment A) is narrowly tailored to address the first question. In this case, NEP purports to be an agent of an unidentified landlord at Somerset (Landlord). As referenced in the Motion and as discussed herein, the identity of the Landlord is uncertain because there appear to be different entities who (i) own the real estate (Coastal Ridge Real Estate Partners, LLC) (Coastal Ridge), (ii) execute the lease agreements (Somerset Deerfield Borrower, LLC) (Somerset Deerfield), and (iii) submit the request to abandon (NEP). Even leaving aside this uncertainty, the Commission must determine whether a landlord has the authority to require Duke Energy Ohio to file an abandonment application when Duke Energy Ohio opposes the proposed abandonment. The Commission has never addressed that issue as it is a matter of first impression; therefore, Duke Energy Ohio sought leave to file a simple single-count Amended Complaint to raise this specific issue for the Commission’s determination once the appropriate “landlord” is identified and once NEP establishes that it is acting as an agent of that landlord.

If the Commission determines that a landlord has the ability to require an EDU to abandon, the next question is whether this specific abandonment is reasonable, having due regard for the welfare of the public as required by R.C. 4905.21. Duke Energy Ohio’s proposed Abandonment

² R.C. 4905.21.

Application (*see* Motion, Attachment B) squarely raises this question. The Abandonment Application will enable the parties to develop a full and complete evidentiary record regarding (among other things): (1) the identity of the specific legal entity taking over service to Duke Energy Ohio's customers at Somerset; (2) the terms and conditions of service that will apply to those customers at Somerset; and (3) whether this abandonment is reasonable, having due regard for the welfare of the public.

NEP claims that the Commission has no jurisdiction over entities that are not public utilities. Here, that is incorrect because NEP, purportedly on behalf of the Landlord and/or other parties who have not yet been identified, alleges to have the authority to require Duke Energy Ohio to abandon its customers at Somerset. NEP's request to convert existing Duke Energy Ohio customers at Somerset to submetering customers of Landlord brings these entities within the Commission's jurisdiction because under Ohio law determinations as to whether an abandonment should be granted must be made by the Commission.³ Therefore, by submitting the request to convert Duke Energy Ohio's existing customers at Somerset to submetering customers of Landlord, NEP and Landlord made themselves subject to a Commission determination as to whether they have the requisite authority to require an abandonment.

NEP next claims that Duke Energy Ohio's request to amend the Complaint is intended to somehow delay the proposed conversion of Duke Energy Ohio customers at Somerset. Nothing could be further from the truth. Duke Energy Ohio is not aware of any case addressing the Miller Act that discusses the ability of a landlord to require the abandonment of a current public utility customer over the objections of the public utility. As there is no legal authority to grant NEP's request, Duke Energy Ohio could have simply done nothing in response to NEP's request. Yet, if

³ *See* R.C. 4905.21.

Duke Energy Ohio chose this option, then NEP and/or Landlord would presumably file a complaint against Duke Energy Ohio, claiming that the Miller Act does not apply or, if it does, that they possess the legal authority to require Duke Energy Ohio to abandon its customers at Somerset. By squarely raising this relevant legal question in the Amended Complaint, and by simultaneously allowing the Commission to consider whether abandonment is reasonable, having due regard for the welfare of the public as part of the same proceeding, Duke Energy Ohio actually raises this question for Commission consideration in a more timely and efficient manner.

There is no better forum for adjudicating these important legal questions. Even the Ohio Supreme Court has recognized that “an important purpose of the Miller Act was to place such disputes, affecting the public interest generally, before the Public Utilities Commission as the agency best adapted to resolve them initially.”⁴ Here, the Commission is best suited to settle these lingering Miller Act questions, which the Commission previously was unable to substantively resolve in the AEP Ohio/NEP Case due to procedural and pleading deficiencies that the Motion seeks to cure.

Finally, by granting the Motion, the Commission will allow for the development of a full and complete record necessary to render an informed decision on the scope and application of the Miller Act whenever a landlord (or an agent acting on behalf of the landlord) seeks to convert existing, individually metered EDU customers to submetering through the installation of master-metered service for the landlord. In so doing, all stakeholders, including NEP and Landlord, will benefit from the Commission’s clarity and guidance on a matter of first impression in Ohio. On the other hand, denying the Motion would simply delay the inevitable since the Commission will invariably be forced to resolve these exact same legal issues in an eventual complaint proceeding

⁴ *State ex rel. Klapp v. Dayton Power & Light Co.*, 10 Ohio St.2d 14, 17, 225 N.E.2d 230, 233 (1967).

filed by NEP and/or Landlord against Duke Energy Ohio. Thus, to preserve the resources of the parties and the Commission, the Commission should grant the Motion and resolve these lingering Miller Act questions in the submetering context once-and-for-all.

II. ARGUMENT

A. Duke Energy Ohio Has Acted in Good Faith Contrary to NEP's Unfounded Assertions Otherwise.

1. *It is not bad faith to seek clarity and guidance from the Commission as to how, if at all, the Miller Act applies to submetering requests like those at issue in this case, which is a matter of first impression in Ohio.*

Throughout the Memo Contra, NEP accuses Duke Energy Ohio of acting in bad faith by seeking leave to file a “futile amended complaint”⁵ instead of withdrawing its initial Complaint, which NEP claims “would needlessly delay resolution of this case, increase litigation costs and drain the Commission’s resources to absolutely no productive end.”⁶ NEP is mistaken. On the contrary, Duke Energy Ohio has acted in good faith by seeking clarity and guidance from the Commission as to how, if at all, the Miller Act applies whenever a landlord (or an agent acting on behalf of the landlord) seeks to require the conversion of existing, individually metered EDU customers (many of whom have been longstanding customers of the EDU) to submetering through the installation of master-metered service for the landlord.

This is particularly true, where, as here, the Commission has *never* adjudicated or otherwise substantively addressed this question. Although the Commission answered several important questions in the AEP Ohio/NEP Case regarding whether NEP, as an agent of the landlord, is operating as a public utility or an electric light company subject to the jurisdiction of the Commission, the Commission explicitly declined to address the applicability of the Miller Act

⁵ Memo Contra, p. 12.

⁶ *Id.*

due to deficiencies identified by the Commission: (i) AEP Ohio failed to properly plead an alleged Miller Act violation in its complaint against NEP because AEP Ohio did not set forth a separate count specific to the Miller Act, and (ii) AEP Ohio did not file a separate application for abandonment for the property at issue in that case.⁷ On December 13, 2023, after AEP Ohio sought rehearing on the Miller Act (among other issues), the Commission denied rehearing because “the Miller Act did not play a significant role in the pleadings of this case or at the evidentiary hearing....”⁸

Thus, while the AEP Ohio/NEP Case resolved certain important legal questions as to whether NEP was unlawfully operating as a public utility, the Commission declined to weigh in on the merits of AEP Ohio’s Miller Act arguments. As a result, EDUs across the state of Ohio continue to face significant uncertainty as to how similar submetering requests (i.e., converting existing EDU customers to submetering customers of landlord through master metered configuration) should be handled consistent with Miller Act and the AEP Ohio/NEP Order. This uncertainty is all the more alarming and urgent given the significant statutory penalties for EDUs that violate the Miller Act.⁹

Mindful of its Miller Act obligations (as well as the penalties associated with noncompliance) and in conformance with the AEP Ohio/NEP Order, Duke Energy Ohio sought in good faith to cure the pleading/procedural deficiencies specifically identified by the Commission (i.e., a Miller Act complaint and an abandonment application) that would have once again prevented the Commission from providing the clarity and guidance desperately needed to ensure

⁷ *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC*, Case No. 21-990-EL-CSS (“*AEP Ohio/NEP Case*”), Opinion and Order (Sept. 6, 2023), ¶ 231.

⁸ *AEP Ohio/NEP Case*, Second Entry on Rehearing (Dec. 13, 2023), ¶ 45.

⁹ *See, e.g.*, R.C. 4905.20; R.C. 4905.61.

EDUs do not violate the Miller Act when landlords seek to convert existing EDU customers to submetering customers of the landlord.

Essentially, NEP urges the Commission to find Duke Energy Ohio acted in bad faith by trying to comply with the AEP Ohio/NEP Order. If seeking to file an amended complaint based on an alleged Miller Act violation and a separate abandonment application constitutes bad faith sufficient to deny the Motion as NEP argues, why would both NEP and the Commission identify both filings as being necessary to properly raise the Miller Act for Commission consideration? NEP argued that “AEP Ohio’s Miller Act argument should be dismissed because it was not pled in AEP Ohio’s complaint and AEP Ohio did not file an application with the Commission.”¹⁰ More importantly, the Commission made it abundantly clear that it would not adjudicate the Miller Act claims in light of these deficiencies. As a result, Duke Energy Ohio is simply trying to cure the specific procedural/pleading deficiencies that NEP raised and that the Commission itself identified in the AEP Ohio/NEP Order. No reasonable person can characterize that effort as “strong evidence of undue delay, bad faith, and dilatory motive on the part of Duke and undue prejudice to the opposing parties” as NEP contends.¹¹ In reality, as set forth below, NEP fails to provide *any* evidence – let alone “strong evidence” – of bad faith on the part of Duke Energy Ohio.

2. *NEP has noticeably failed to provide any actual evidence of bad faith by Duke Energy Ohio.*

Tellingly, NEP admits that it is merely *implying* bad faith because Duke Energy Ohio filed the Motion instead of pursuing what NEP describes as two “obvious options at its disposal.”¹² First, NEP insists that “Duke could await answers from other cases,” referring to three

¹⁰ *AEP Ohio/NEP Case*, Nationwide Energy Partners, LLC’s Reply to Ohio Power Company’s Initial Brief (January 20, 2023), p. 66.

¹¹ Memo Contra, p. 2.

¹² *Id.* at 13.

abandonment application dockets filed by AEP Ohio.¹³ Put differently, NEP believes Duke Energy Ohio should simply sit on its hands and hope for a speedy Commission ruling in other cases that do not involve Duke Energy Ohio or its customers. Yet, while NEP urges Duke Energy Ohio to pause while these other cases are adjudicated – cases which NEP seeks to dismiss as “improper” (see below) – NEP continues to implore Duke Energy Ohio to resume completion of its submetering requests at Somerset. NEP seems to think it can have its cake and eat it too.

In offering this “wait-and-see” approach, it is apparent that NEP fails to appreciate the importance Duke Energy Ohio places on complying with Ohio law and Commission orders. This “obvious option” also ignores Duke Energy Ohio’s sincere commitment to maintaining the rights and protections afforded to its customers – rights and protections that will be lost if the abandonment of customers at Somerset is approved over Duke Energy Ohio’s strenuous objections. In light of the significant legal uncertainty surrounding the Miller Act, the potential harm to Duke Energy Ohio customers if abandonment is granted, and the statutory penalties for Miller Act non-compliance, it is unreasonable to accuse Duke Energy of Ohio of acting in bad faith. It is not bad faith to disagree with NEP’s strained and self-serving interpretation of the AEP Ohio/NEP Order.

The NEP “wait-and-see” approach also fails to appreciate that this case and the AEP Ohio abandonment cases have materially different facts and procedural posture. AEP Ohio has not pursued a Miller Act complaint; thus, AEP Ohio’s abandonment cases do not squarely raise the threshold issue of whether a “landlord” has the authority to require an abandonment under the Miller Act. Duke Energy Ohio, on the other hand, seeks leave to file the Amended Complaint to raise this precise issue for Commission resolution in accordance with the AEP Ohio/NEP Order.

¹³ *Id.*

With respect to the factual background, each case will have its own evidentiary record for the Commission to consider. In at least one of the three abandonment cases filed by AEP Ohio (Case No. 22-0693-EL-ABN), which concerned the apartment complex at issue in the AEP Ohio/NEP Case, NEP and AEP Ohio have already developed an extensive evidentiary record, which is likely to be significantly different than the evidentiary record in this case where there are different landlords and different factual circumstances at issue.

The second “obvious option” NEP maintains Duke Energy Ohio could have pursued in lieu of filing the Motion was to “file its own application for abandonment relating to Somerset...”¹⁴ But that is exactly what Duke Energy Ohio did by seeking leave to file an abandonment application (see Motion, Attachment B). Curiously, although NEP posits that Duke Energy Ohio could have filed an abandonment application as an alternative, NEP also asserts that filing an abandonment application would not be “required by – or appropriate under – the Miller Act.”¹⁵ Indeed, after AEP Ohio filed two separate abandonment applications to address similar submetering requests like those at issue in this case, NEP not only moved to intervene in those cases, it also moved to dismiss AEP Ohio’s abandonment applications¹⁶ on the basis that the Miller Act does not apply to these submetering requests as a matter of law and that AEP Ohio’s abandonment applications were “unnecessary and improper.”¹⁷

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ AEP Ohio filed a third abandonment application in Case No. 23-0563-EL-ABN, but motions to intervene and comments regarding that application are not due until February 6, 2024; accordingly, as of the date of filing this Reply (January 10, 2024), NEP has not yet moved to intervene or filed a motion to dismiss in that case. However, based on its litigation strategy in the other two abandonment proceedings filed by AEP Ohio, NEP is almost certain to seek intervention and dismissal in that case too.

¹⁷ See *In the Matter of the Application of Ohio Power Company for Authority to Abandon Electric Service Lines, Pursuant to Ohio Revised Code 4905.20 and 4905.21*, Case No. 22-0693-EL-ABN, Motion to Dismiss of Nationwide Energy Partners, LLC (Dec. 4, 2023), at p. 4; *In the Matter of the Application of Ohio Power Company for Authority to Abandon Electric Service Lines, Pursuant to Ohio Revised Code 4905.20 and 4905.21*, Case No. 23-0118-EL-ABN, Motion to Dismiss of Nationwide Energy Partners, LLC (Jan. 8, 2024), at p. 4.

NEP's arguments are mutually exclusive and inconsistent. On the one hand, NEP claims that "[i]f Duke truly desires clarification of its questions under the Miller Act," Duke Energy Ohio has the "obvious options" to either (i) wait-and-see how other pending Commission proceedings not involving Duke Energy Ohio are resolved, or (ii) file its own application for abandonment. On the other hand, NEP seeks dismissal of those pending Commission proceedings as "unnecessary and improper"¹⁸ while also demanding Duke Energy Ohio commence its submetering conversion requests at Somerset notwithstanding the legal uncertainty surrounding the Miller Act, the potential harm to Duke Energy Ohio customers at Somerset, and the statutory penalties applicable to Duke Energy Ohio for Miller Act non-compliance.

3. *NEP has failed to show any evidence of bad faith on the part of Duke Energy Ohio that would be sufficient to warrant denial of the Motion.*

In the Memo Contra, NEP claims that "[t]he Commission should consider two legal standards when considering and denying Duke's motion to amend its complaint."¹⁹ NEP says the Commission should apply "the standard for amending a complaint" first, and then apply a second "standard for addressing an alleged Miller Act violation...."²⁰ Not surprisingly, NEP fails to cite a single Commission proceeding that would support applying a two-tiered legal standard to the filing of a motion for leave to amend a complaint. That is not surprising given that Ohio Adm. Code 4901-1-06 simply requires a finding of "good cause shown" to amend a complaint at the Commission – no more, no less. As described in the Motion and in this Reply, Duke Energy Ohio clearly has good cause to file the Amended Complaint in light of the legal uncertainty surrounding

¹⁸ *Id.*

¹⁹ Memo Contra, p. 4.

²⁰ *Id.*

the Miller Act. Since Duke Energy Ohio complied with Ohio Adm. Code 4901-1-06 by showing good cause to amend, the Motion should be granted.

NEP also cites to and references a number of civil court cases in Ohio that apply Ohio Civ. R. 15(A), which mandates that courts “freely give leave when justice so requires.” Although NEP acknowledges that Ohio civil courts have “allow[ed] for liberal amendment of a complaint,” NEP identifies a number of cases, including several Ohio Supreme Court cases, that require denying leave to amend a pleading if there is a showing of bad faith, undue delay or undue prejudice to the opposing party.²¹ NEP also notes that the movant must make a prima facie showing that it can marshal support for the new matters pleaded, and that the amendment is not simply a delaying tactic or one which would cause prejudice to the defendant.²² A closer look at the cases cited by NEP underscores the complete absence of any indicia of bad faith or delay tactics by Duke Energy Ohio or any undue prejudice to opposing parties; accordingly, there is no basis in law or fact to deny the Motion on the basis that it was filed in bad faith.

The first case NEP cites is *Turner v. Cent. Local School Dist.*²³ (“*Turner*”). In *Turner*, the party moving to amend its pleading did not do so until nearly three years after the case commenced and after preparations for trial were almost complete.²⁴ Making matters worse, the movant in that case offered *no reason* for the nearly three-year delay.²⁵ Under those circumstances, the Supreme Court of Ohio ruled that the trial court abused its discretion in granting the motion to amend.²⁶ That facts of this case could not be any more different than those in *Turner*. Here, Duke Energy

²¹ *Id.* at 4-5.

²² *Id.* at 5.

²³ 85 Ohio St.3d 95, 99, 706, N.E.2d 1261 (1999).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

Ohio promptly filed its Motion only *six days* after the Commission issued the Second Entry on Rehearing in the AEP Ohio/NEP Case, which definitively confirmed that the Commission would not address the merits of AEP Ohio’s Miller Act claims. Further, as stated in the Motion, the Commission has not even issued a procedural schedule in this case, and the parties have only exchanged one set of discovery.

Next, NEP cites three additional Ohio Supreme Court cases: *Peterson v. Teodosio*,²⁷ *State ex rel. Doe v. Cooper*,²⁸ and *Hoover v. Sumlin*.²⁹ Yet, in all three cases, the Supreme Court of Ohio permitted the moving party to amend prior pleadings, citing the liberal amendment standard in Ohio Civ. Rule 15(A).³⁰

NEP also references and cites to two unreported state appellate court decisions: *Glazer v. Chase Home Fin. L.L.C.*³¹ (“*Glazer*”) and *Richard v. WJW TV-8*³² (“*Richard*”). In *Glazer*, on the last page of plaintiff’s brief in opposition to a motion to dismiss, plaintiff included one paragraph titled “Motion for Leave to Amend.”³³ Two years after the court granted the motion to dismiss, plaintiff renewed his request for leave to amend the complaint, and never explained how an amended complaint would cure the deficiencies in the dismissed complaint, nor did plaintiff even attach a proposed amended complaint for the court to consider.³⁴ Under those circumstances, the court of appeals ruled that the trial court did not abuse its discretion by denying leave to amend.³⁵

²⁷ 34 Ohio St.2d 161, 175, 297 N.E.2d 113 (1973).

²⁸ 132 Ohio St. 3d 365, 2012-Ohio-2686, 972 N.E.2d 553, ¶ 8.

²⁹ 12 Ohio St.3d 1, 6, 465 N.E.2d 377 (1984).

³⁰ See *Peterson*, 34 Ohio St.2d at 175; *Cooper*, 972 N.E.2d 553, ¶ 8; *Hoover*, 12 Ohio St.3d at 6.

³¹ 8th Dist. Cuyahoga Nos. 99875, 99736, 2013-Ohio-5589, ¶ 98.

³² 8th Dist. Cuyahoga No. 84541, 2005-Ohio-1170, ¶ 21.

³³ *Glazer*, 2013-Ohio-5589, ¶ 100.

³⁴ *Id.* at ¶ 101.

³⁵ *Id.* at ¶¶ 101-102.

Similarly, in *Richard*, the court of appeals ruled that it was not an abuse of discretion to deny leave to amend where the movant gave no grounds for why leave should be granted, failed to explain what new matters movant wished to include in an amended pleading, and did not explain how an amendment would cure the deficiencies in the initial complaint.”³⁶ As such, the appellate court in *Richard* found that the movant “failed to make a prima facie showing that he could marshal support for new matters he intended to plead.”³⁷

None of the foregoing cases cited by NEP support denying the Motion on the basis of bad faith, undue prejudice, or that Duke Energy Ohio failed to make prima facie showing that its Amended Complaint would cure deficiencies in its initial Complaint. Indeed, the Motion explains the justification and necessity of filing the Motion to cure the pleading deficiencies identified by the Commission in the AEP Ohio/NEP Order. Unlike the movants in the foregoing cases cited by NEP in its Memo Contra, Duke Energy Ohio described in detail what new matters it wished to include, gave detailed grounds for why leave should be granted under the circumstances, described with specificity how the Amended Complaint would cure deficiencies in the initial Complaint, and attached a copy of the Amended Complaint (*see* Motion, Attachment A) for Commission consideration.

With respect to the timing of Motion, Duke Energy Ohio promptly filed its Motion only *six days* after the Commission issued the Second Entry on Rehearing in the AEP Ohio/NEP Case. Once it became clear that the Commission would not be adjudicating the merits of AEP Ohio’s Miller Act arguments in the AEP Ohio/NEP Case, Duke Energy Ohio promptly acted by filing its Motion less than a week later. To characterize this timing as evidence of bad faith and Duke

³⁶ *Richard*, 2005-Ohio-1170, ¶ 24.

³⁷ *Id.*

Energy Ohio's intent to "prejudice and harm NEP and its relationship with customers" is groundless, contrary to the facts, and unsupported by the precedent NEP cites.

4. *The Commission should grant leave to amend and then address the substantive legal arguments raised by NEP.*

Duke Energy Ohio is seeking leave to amend its Complaint and to pursue a contingent abandonment application specifically to comply with the Commission's AEP Ohio/NEP Order. Duke Energy Ohio has thus shown good cause as required by Ohio Adm. Code 4901-1-06 and leave to amend should be granted.

While NEP urges the Commission to address the substantive legal arguments now, without the benefit of briefing on a motion to dismiss the Amended Complaint or any evidentiary record, it would not be procedurally appropriate to do so, especially here where the Amended Complaint seeks to add the Landlord as a respondent. Importantly, the Ohio Supreme Court has advised trial courts against considering substantive legal defenses *before* granting a motion for leave where the party seeking leave seeks to add new parties and where the pleadings are not "wholly futile":

We acknowledge that a trial court has discretion in ruling upon a motion for leave to add new parties. We believe, however, that, in most cases, the merit of substantive legal defenses that may be asserted by potential parties, as opposed to existing parties, are better resolved after a decision to grant leave to add new parties has been made independently. ***Unless it is apparent on the face of the pleadings that all claims against the proposed defendant are wholly futile, the better practice is for the trial court to rule on a motion to add parties based on traditional grounds, including timeliness and prejudice to existing parties, independent of the merits of substantive legal defenses that a proposed defendant may have.***³⁸

Here, as illustrated throughout this Reply, Duke Energy Ohio's claims against NEP and the proposed respondent, Landlord, are not "wholly futile" by any means, nor are they untimely or

³⁸ *Darby v. A-Best Products Co.*, 102 Ohio St.3d 410, 2004-Ohio-3720, 811 N.E.2d 1117, ¶ 16.

unduly prejudicial. Duke Energy Ohio seeks leave to file the Amended Complaint to cure the deficiencies that prevented the Commission from adjudicating these novel legal issues and to gain the clarity all EDUs in Ohio desperately need. This is all the more important where the Commission is being asked to resolve a matter of first impression in Ohio. It would be impossible for the Commission to resolve a matter of first impression without the benefit of a robust evidentiary record and/or extensive briefing by the parties on the fundamental legal claims/defenses at issue.

As such, the Commission should grant the Motion, allow the parties to engage in discovery and develop an evidentiary record addressing certain fundamental facts like the identity of the “landlord”³⁹ and whether tenants have consented to no longer be Duke Energy Ohio customers, and provide a reasonable opportunity for the parties to thoroughly brief their substantive legal arguments regarding the application and scope of the Miller Act to submetering requests like those at issue in this proceeding.

³⁹ As explained in footnote 9 of the Motion and as referenced above in this Reply, while NEP claims to be the agent of the landlord at Somerset, Duke Energy Ohio does not know the actual identity of the landlord at Somerset. Somerset Deerfield Borrower, LLC is the legal entity that executes the lease agreements for the multi-unit apartment complex at Somerset. Respondent Coastal Ridge Real Estate Partners, LLC is a real estate investment and management firm that owns and manages Somerset. Since the owner of Somerset is not named in the Somerset lease agreement as the counterparty of tenants at Somerset (i.e., the landlord), the identity of the landlord remains unclear, which further underscores the difficulty and confusion facing EDUs who are diligently working in good faith to comply with the Commission’s AEP Ohio/NEP Order without violating their statutory obligations under the Miller Act. Accordingly, Duke Energy Ohio seeks to join both parties as Respondents in the Amended Complaint (describing both entities as “Landlord”), along with their purported agent, NEP.

B. The Commission Must Exercise Jurisdiction over NEP and Landlord to Clarify the Legal Confusion Surrounding the Application of the Miller Act to Submetering Requests Like Those at Issue in this Case.

1. *The Commission has jurisdiction to adjudicate a Miller Act complaint and an abandonment application because NEP and Landlord seek to require Duke Energy Ohio to abandon its customers at Somerset in violation of R.C. 4905.20.*

NEP claims that the Motion should be denied because the Commission does not have jurisdiction over NEP or the Landlord. More specifically, NEP posits that it is “blackletter law” that the Commission only has jurisdiction over railroads and public utilities under the Miller Act.⁴⁰ Without jurisdiction over NEP or the Landlord, NEP insists the Commission must deny the Motion as a matter of law.⁴¹ NEP is mistaken for several reasons.

First, despite NEP’s inaccurate statements to the contrary, R.C. 4905.20 makes clear that “no public utility....furnishing service or facilities within this state, shall abandon ***or be required to abandon***” service that is used for public business “except as provided in Section 4905.21 of the Revised Code.”⁴² Stated differently, unless an application to abandon is filed under R.C. 4905.21, Duke Energy Ohio cannot be required ***by anyone*** (including NEP and/or Landlord) to abandon service to its current customers at Somerset. Yet, that is exactly what NEP (purportedly acting on behalf of Landlord) is trying to do here. NEP seeks to require Duke Energy Ohio to abandon its customers at Somerset even though (i) Duke Energy Ohio opposes the abandonment, and (ii) Duke Energy Ohio did not file an abandonment application under R.C. 4905.21. The only reason Duke Energy Ohio is seeking leave to file the Amended Complaint and the Abandonment Application is to clarify the lingering confusion surrounding the Miller Act, and to do so in a manner consistent with the AEP Ohio/NEP Order.

⁴⁰ Memo Contra, at 5

⁴¹ *Id.* at 8.

⁴² R.C. 4905.20 (emphasis added).

Further, nowhere in R.C. 4905.20 does it preclude the Commission from hearing a Miller Act complaint filed by a public utility where that public utility is being unlawfully required to abandon service. Rather, R.C. 4905.20 merely sets forth the rule that abandonment is prohibited unless an abandonment application is filed and approved in accordance with R.C. 4905.21. Here, however, Duke Energy Ohio does not desire to abandon any services to its existing customers at Somerset, which is why Duke Energy Ohio did not initially file an abandonment application for the Somerset property in the first place.

R.C. 4905.21 only permits three entities to file an abandonment application: (1) railroads, (2) public utilities, or (3) political subdivisions. Although Duke Energy Ohio disagrees with the holding in the AEP Ohio/NEP Case, Duke Energy Ohio followed the Commission's guidance in good faith by seeking leave to file an amended complaint with a separate count devoted to the Miller Act and a separate abandonment application under R.C. 4905.21 – even though R.C. 4905.21 assumes the party filing the application “desires” the abandonment, which is not true here. But, again, Duke Energy Ohio did not have any choice if it sought to comply in good faith with the AEP Ohio/NEP Order.

Duke Energy Ohio agrees that the Commission can only regulate that over which it has statutory authority.⁴³ But R.C. 4905.20 provides the statutory authority necessary to grant the Motion and to resolve the Miller Act questions once-and-for-all. The statutory language is clear. Duke Energy Ohio cannot be required by *anyone* (including NEP and/or Landlord) to abandon service unless an application to abandon is approved by the Commission under R.C. 4905.21.

By requiring Duke Energy Ohio to abandon its customers at Somerset in violation of R.C. 4905.20 – a statute over which the Commission clearly has authority to interpret and enforce as it

⁴³ Memo Contra, at 9.

has routinely done⁴⁴ – the Commission has jurisdiction to grant the Motion and adjudicate Duke Energy Ohio’s Miller Act claims. Even the Ohio Supreme Court has recognized that “an important purpose of the Miller Act was to place such disputes, affecting the public interest generally, before the Public Utilities Commission as the agency best adapted to resolve them initially.”⁴⁵

Under these circumstances, it would be manifestly unfair and contrary to the AEP Ohio/NEP Order to deny the Motion on jurisdictional grounds when Duke Energy Ohio is merely following the Commission’s lead by remediating procedural/pleading deficiencies that prevented the Commission from substantively addressing the Miller Act in AEP Ohio/NEP Case. All stakeholders, including NEP and Landlord, will benefit from this desperately needed Commission direction.

2. *The Commission has jurisdiction under R.C. 4905.26 to adjudicate a Miller Act complaint filed by Duke Energy Ohio.*

R.C. 4905.26 explicitly authorizes Duke Energy Ohio, as a public utility, to file a complaint “as to any matter affecting its own product or service.” Nonetheless, NEP insists that R.C. 4905.26 does not permit a public utility to file a complaint involving non-public utilities such as NEP and/or Landlord.

In support of that proposition, NEP cites to paragraph 24 of the January 31, 2022 Entry in the AEP Ohio/NEP Case.⁴⁶ But paragraph 24 does not support NEP’s contention at all. Instead, in paragraph 24, the Attorney Examiner *rejected* NEP’s argument that it was inappropriate for AEP Ohio to file a complaint against NEP under R.C. 4905.26.⁴⁷ Instead, the Attorney Examiner

⁴⁴ *State ex rel. Klapp v. Dayton Power & Light Co.*, 10 Ohio St.2d 14, 17, 225 N.E.2d 230, 233 (1967).

⁴⁵ *Id.*

⁴⁶ Memo Contra, at 6.

⁴⁷ AEP Ohio/NEP Order, Entry (Jan. 31, 2022), ¶ 24.

correctly observed that “[p]ursuant to R.C. 4905.26, the Commission has authority to consider a complaint filed by a public utility concerning a matter affecting its own product or service, if it appears that reasonable grounds for complaint are stated.”⁴⁸ The Entry never concluded that a public utility was prohibited from filing a complaint under R.C. 4905.26 on the basis that the respondent was not a public utility. Nothing in R.C. 4905.26 prohibits a public utility from filing a complaint where, as here, third parties such as NEP and Landlord seek to require Duke Energy Ohio, a public utility, to violate its obligations under the Miller Act, which has a significant and deleterious impact on the services Duke Energy Ohio currently provides to its customers at Somerset.

In addition to citing the Entry in the AEP Ohio/NEP Case, NEP references two additional Commission complaint cases to support its claim that the Commission lacks jurisdiction over NEP and Landlord under R.C. 4905.26. Both of these cases are inapposite and readily distinguishable from this case. First, NEP cites to *Complaint of the Ohio Consumers’ Counsel et al. v. Interstate Gas Supply, Inc.*⁴⁹ (“IGS Case”) to show that non-public utilities cannot be added to a complaint under R.C. 4905.26. In the *IGS Case*, a number of non-public utilities, including OCC, NOPEC, and Stand Energy, filed a complaint against IGS (then d/b/a Columbia Retail Energy), alleging that it engaged in deceptive and misleading practices by using a misleading d/b/a name.⁵⁰ Two of the non-public utility complainants, Stand Energy and NOPEC, sought leave to amend the complaint to add three additional parties: Columbia Gas of Ohio, Inc. (a public utility), NiSource Corporate Services, Inc. (a non-public utility), and NiSource Retail Services (a non-public

⁴⁸ *Id.*

⁴⁹ Case No. 10-2395-GA-CSS, Entry (Nov. 2, 2011), at ¶ 14.

⁵⁰ *Id.* at ¶¶ 1-4.

utility).⁵¹ Although the Attorney Examiner denied the motion for leave to amend the complaint naming additional respondents as “procedurally defective,” the Attorney Examiner, stated, in dicta, that the non-public utility complainants could not add non-public utility respondents (i.e., NiSource Corporate Services or NiSource Retail Services) to a complaint filed under R.C. 4905.26.⁵² In other words, R.C. 4905.26, by itself, did not provide a statutory basis for the Commission to adjudicate a complaint involving a dispute between non-public utilities. But, here, unlike the *IGS Case*, the complainant (Duke Energy Ohio) is a public utility, and R.C. 4905.26 plainly authorizes a public utility to file a complaint “as to any matter affecting its own product or service.”

Similarly, in the second case cited by NEP, *Complaint of Clark P. Pritchett v. XO, Inc. d/b/a XO Communications*⁵³ (“*Pritchett Case*”), a non-public utility filed a complaint under R.C. 4905.26 against a public utility, XO.⁵⁴ After filing its answer to the complaint, the respondent public utility, XO, moved to join a non-public utility as an additional respondent.⁵⁵ The Attorney Examiner denied the motion on the basis that a public utility respondent could not add a non-public utility respondent to a complaint filed by a non-public utility under R.C. 4905.26. Importantly, however, the Attorney Examiner in the *Pritchett Case* never concluded that a public utility was prohibited from filing a complaint against non-public utility respondents under R.C. 4905.26.

Neither the *IGS Case* nor the *Pritchett Case* involved a public utility filing a complaint “as to any matter affecting its own product or service” against non-public utilities. Instead, unlike this

⁵¹ *Id.* at ¶ 4.

⁵² *Id.* at ¶ 14.

⁵³ Case No. 02-2482-TP-CSS, Entry (Nov. 19, 2002).

⁵⁴ *Id.* at ¶ 1.

⁵⁵ *Id.* at ¶ 3.

case, both the *IGS Case* and the *Pritchett Case* involved *non-public utilities* filing complaints against public utilities and non-public utilities. Thus, contrary to NEP’s assertions otherwise, neither case supports NEP’s proposition that public utilities are prohibited from filing complaints under R.C. 4905.26 against third parties that are not public utilities.

3. *The AEP Ohio/NEP Order never held that the Commission lacks jurisdiction to adjudicate the Miller Act claims against NEP/Landlord.*

Further, NEP alleges that the Commission does not have jurisdiction to hear complaints against NEP or the Landlord, citing the AEP Ohio/NEP Order.⁵⁶ But the AEP Ohio/NEP Order never concluded that NEP or Landlord was completely immune from Commission jurisdiction under *all* circumstances.⁵⁷ Instead, the AEP Ohio/NEP Order merely stated that “under the circumstances of this case, the Commission does not have jurisdiction to regulate NEP and its activities at the Apartment Complexes.”⁵⁸ Importantly, however, the Commission clarified that while it may not have jurisdiction over the properly pleaded legal claims asserted by AEP Ohio against NEP, the Commission *did* have jurisdiction to regulate a public utility and its relationship with its customers.⁵⁹

More specifically, the Commission emphasized that it maintained “authority to set reasonable terms and conditions on jurisdictional utilities providing master meter service so as to ensure that users of that service, such as landlords, are providing it to the ultimate end user [tenants]

⁵⁶ Memo Contra, at 7-8.

⁵⁷ It is worth noting that NEP regularly and voluntarily participates in numerous Commission proceedings, including electric security plan proceedings (Case Nos. 23-301-EL-SSO; 23-23-EL-SSO) and distribution rate cases (Case Nos. 20-585-EL-AIR; 20-1651-EL-AIR; 21-887-EL-AIR). NEP is no stranger to the Commission. When NEP wants to be heard to influence the outcome of Commission proceedings, NEP expects the Commission to grant intervention so that NEP can safeguard its economic interests and enjoy the rights and protections afforded to parties in Commission proceedings. Yet, when a party seeks to hold NEP accountable for its actions as Duke Energy Ohio does here, NEP hides behind an unidentified landlord, disclaims Commission jurisdiction, and insists that it cannot be held accountable on the basis that it is not a public utility.

⁵⁸ *AEP Ohio/NEP Order*, Opinion and Order (Sept. 6, 2023), ¶ 179.

⁵⁹ *Id.* at ¶ 190.

in a manner which is safe and consistent with the public interest.”⁶⁰ Finding there was a “clear need” to ensure the landlord’s terms and conditions on the resale of electric service to tenants were reasonable, the Commission affirmed that it had “the requisite authority to direct the public utility to set reasonable terms and conditions on the resale of public utility service,” which is why the Commission ultimately directed AEP Ohio to file a new tariff placing specific and substantive conditions and protections on the resale of electric service that all landlords in AEP Ohio’s service territory must now follow.⁶¹

For instance, the Commission found it reasonable to require landlords in AEP Ohio service territory to provide notice within the landlord’s lease agreement (using language prescribed by the Commission in a specific font in all capital letters) warning the tenant that upon signing the lease it will lose its rights as a PUCO-jurisdictional customer.⁶² Further, the Commission determined it was reasonable to impose a standard service offer (SSO) pricing ceiling on the landlord’s charges for resale of electricity to the tenant (i.e., the charges paid by tenant must be same or lower than the total bill for similarly situated customer served by the SSO).⁶³ Finally, the Commission required the landlord to comply with the disconnect standards under Ohio Adm. Code 4901:1-18 when disconnecting a tenant for non-payment of charges for electric service.⁶⁴

If the Commission has jurisdiction to impose these kinds of substantive requirements on the landlord’s resale of electric service to its tenants as stated in the AEP Ohio/NEP Order, the Commission must have jurisdiction to determine whether it is reasonable for a landlord to mandate

⁶⁰ *Id.* at ¶ 224.

⁶¹ *Id.* at ¶¶ 224-225.

⁶² *Id.* at ¶ 224.

⁶³ *Id.*

⁶⁴ *Id.*

the conversion of tenants' electric service. If the Commission has no authority to determine whether the landlord can mandate the conversion of its tenants' electric service, then it clearly cannot regulate the terms and conditions associated with the resale of electric service to those same tenants.

4. *The Commission can impose reasonable terms and conditions on the resale of electric service to tenants consistent with the AEP Ohio/NEP Order without violating landlords' rights under Ohio law.*

NEP also argues that the Commission has no jurisdiction to hear Duke Energy Ohio's Miller Act claims because "the Commission has already determined that the services NEP provides to a landlord/property owner on the landlord's side of the utility meter are outside of the Commission's jurisdiction."⁶⁵ In other words, whatever a landlord (or NEP acting on behalf of a landlord) does on its side of the meter is the solely the business of the landlord, not the Commission or the public utility. The Commission should decline to adopt this extreme interpretation of Ohio law just as the Ohio Supreme Court did when municipalities advanced a similar argument, claiming the Miller Act violated a municipality's constitutional rights.

Under Article XVIII, Section 4 of the Ohio Constitution, municipalities have a constitutional right to acquire, own, construct, and operate any public utility service for the benefit of municipal inhabitants. Municipalities argued that the Miller Act infringed on their constitutional rights by requiring prior Commission approval before municipalities could force a public utility to abandon service within municipal limits.⁶⁶ Although the Ohio Supreme Court recognized a municipality's constitutional rights under Article XVIII, the Supreme Court also noted that municipal utility operations remained subject to statewide police power limitations for

⁶⁵ Memo Contra, p. 7.

⁶⁶ *State ex rel. Klapp v. Dayton Power & Light Co.*, 10 Ohio St.2d 14, 17, 225 N.E.2d 230, 232 (1967).

health and safety.⁶⁷ The Ohio Supreme Court affirmed that the Miller Act was enacted under the police power of the state for the benefit of the public, and that it was “well settled that police and similar regulations of a municipality must yield to the general laws of statewide scope and application as represented by the Miller Act.”⁶⁸ The Supreme Court further stated that “statutory enactments representing the general exercise of police power by the state [e.g., Miller Act] prevail over police and similar regulations adopted in the exercise by a municipality of the powers of local government.”⁶⁹ Accordingly, the Supreme Court rejected the municipalities’ arguments and affirmed that municipalities must seek Commission approval under the Miller Act before forcing a utility to stop serving customers or to abandon its electric lines inside of municipal limits.⁷⁰

Here, while Duke Energy Ohio does not dispute the general authority of a landlord to determine how it seeks to take service on its property, this authority is not plenary. Just as the Ohio Supreme Court rejected arguments that the Miller Act infringed on a municipality’s constitutional right to control utilities within municipal boundaries, the Commission should recognize similar restrictions on a landlord given the safety concerns associated with forcing an abandonment of service against the wishes of the EDU and (potentially) its customers.⁷¹ That is especially true here where there is not even a constitutional right at issue. Given that the Miller Act was enacted under the police power of the state for the benefit of the public as a whole⁷² and given that there are significant safety concerns associated with abandonment, the Commission can

⁶⁷ See *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 106, 671 N.E.2d 241, 245 (1996).

⁶⁸ *Klapp*, 225 N.E.2d at 233.

⁶⁹ *Id.*

⁷⁰ See *Grafton*, 671 N.E.2d at 245.

⁷¹ *Id.*

⁷² *Klapp*, 225 N.E.2d at 233.

(and should) adjudicate these Miller Act claims without unduly infringing on the rights of landlords in Ohio.

5. *The Commission must exercise jurisdiction over NEP and Landlord to develop a full and complete record necessary to render an informed decision on the scope and application of the Miller Act to submetering requests like those at issue here.*

Additionally, the Commission needs to exercise jurisdiction in order to develop a full and complete factual record upon which an informed decision can be made regarding the Miller Act. Despite issuing a final order in the AEP Ohio/NEP Case, the Commission has not yet explained how it intends to assert jurisdiction over complaints involving the Miller Act or how abandonment applications should be adjudicated, if at all, when a landlord forces an EDU to convert existing EDU customers to submetering service provided by the landlord through a master metered configuration. The Commission must have jurisdiction to resolve these Miller Act questions given the uncertainty over how EDUs should process similar submeter requests in the future, and to do so without violating their obligations under the Miller Act.

For instance, the Commission may want to consider (i) whether, when, and/or how Duke Energy Ohio's customers at Somerset consented to NEP's submetering conversion requests, (ii) how the Somerset customers will be charged if converted to submetering (i.e., whether there are "reasonable terms and conditions on the resale of public utility service" as the Commission considered in the AEP Ohio/NEP Order⁷³), and (iii) any other factual questions concerning the Commission's authority to ensure the ultimate end-user is provided service "in a manner which is safe and consistent with the public interest."⁷⁴ Without that information in the record, there is no

⁷³ *AEP Ohio/NEP Order*, Opinion and Order (Sept. 6, 2023), ¶ 224.

⁷⁴ *Id.*

way for the Commission to thoroughly assess the “due regard for the welfare of the public” as required by R.C. 4905.21.

Although NEP speculates that Duke Energy Ohio added the Landlord to “send[] a message that doing business with NEP will get you dragged into litigation,” that is incorrect. Duke Energy Ohio added the Landlord because (i) the landlord is the “ultimate consumer” contemplated in R.C. 4905.03(C) as stated in the AEP Ohio/NEP Order,⁷⁵ (ii) all of NEP’s actions at Somerset are being performed purportedly on behalf of the Landlord, and (iii) it would be impossible to adjudicate these legal and factual issues without the involvement of the Landlord. This can be shown through a simple example. If NEP is merely acting as an agent of the Landlord, then the Landlord could choose to remove NEP at any time by hiring a new agent or by directly performing the services NEP currently provides. As such, the Landlord is a necessary party and the party responsible for complying with the Commission’s directives.

To be clear, Duke Energy Ohio did not include NEP and the Landlord to “harass” or “injure” as NEP surmises; rather, they were included as necessary and indispensable parties that would be critical to developing a robust and accurate factual record. The Landlord’s involvement is particularly important in light of the AEP Ohio/NEP Order. After all, NEP is not submitting its submetering requests on its own behalf. NEP has made abundantly clear in this case, as well as the AEP Ohio/NEP Case, that it is merely operating as the agent of the Landlord – nothing more, nothing less. In light of that, it is not only appropriate but necessary to include the principal on whose behalf NEP claims to be acting, which is all the more important where, as here, the identity of the principal remains uncertain.

⁷⁵ *Id.* at ¶ 194.

6. *Development of a full record is particularly important in abandonment proceedings where the Commission must give “due regard for the welfare of the public” as required by R.C. 4905.21.*

When adjudicating an abandonment proceeding under the Miller Act, the Commission is required to hold a hearing on the abandonment application to “ascertain the facts and make its findings thereon” to determine whether the abandonment is “reasonable, having due regard for the welfare of the public and the cost of operating the service or facility.”⁷⁶ Both the Ohio Supreme Court and the Commission have recognized the purpose of the Miller Act is to protect consumers from unreasonable abandonment of service.⁷⁷ Indeed, in the context of abandonment proceedings, the Ohio Supreme Court has affirmed that the Commission’s “broad authority to act in the interest of safety is well-established.”⁷⁸ The Ohio Supreme Court even recently acknowledged the scope of that broad authority when it declined to “endorse a reading of the Miller Act that faults a public utility for taking reasonable steps to protect the safety of its customers.”⁷⁹

The heart of any abandonment proceeding must necessarily involve consideration of how the abandonment will impact the public, especially the customers that will be directly impacted by the abandonment. Here, as stated throughout the proposed Abandonment Application (*see* Motion, Attachment B), Duke Energy Ohio is deeply concerned about its customers at Somerset losing enumerable rights and protections if abandonment is granted, including, without limitation, the ability to participate in the competitive retail market, the PIPP program or other extended payment plans, Duke Energy Ohio’s Budget Billing Plan, and other important rights and protections

⁷⁶ R.C. 4905.21.

⁷⁷ *See, e.g., Lycourt-Donovan v. Columbia Gas of Ohio, Inc.*, 152 Ohio St.3d 73, 2017-Ohio-7566, 93 N.E.3d 902; *In the Matter of the Complaint of Steve Bowman et al. v. Columbia Gas of Ohio et al.*, Case No. 83-1328-GA-CSS, 1988 WL 1623469 (Ohio P.U.C.), Opinion and Order (Feb. 17, 1988), *8 (“The purpose of the Miller Act is to protect consumers from unreasonable abandonment of service.”).

⁷⁸ *Lycourt-Donovan*, 152 Ohio St.3d at ¶ 36.

⁷⁹ *Id.* at ¶ 39.

concerning disputes, disconnection/reconnection procedures, regulated and transparent rates for electric service, right to request meter testing, etc. All of those considerations should be appropriately weighed by the Commission before rendering a final decision in this case.

Finally, as referenced above, before forcing Duke Energy Ohio to abandon its customers at Somerset, the Commission must determine (i) whether, when, and/or how Duke Energy Ohio's customers at Somerset consented to NEP's submetering conversion requests, (ii) how the Somerset customers will be charged if converted to submetering (i.e., whether there are "reasonable terms and conditions on the resale of public utility service" as the Commission considered in the AEP Ohio/NEP Order⁸⁰), and (iii) any other factual questions concerning the Commission's authority to ensure the ultimate end-user is provided service "in a manner which is safe and consistent with the public interest."⁸¹ Although NEP seems desperate to evade this kind of inquiry or scrutiny by the Commission, it is absolutely necessary to develop a comprehensive, complete factual record upon which the Commission can render an informed decision that has due regard for the public welfare as required by R.C. 4905.21. Once again, all stakeholders, including the Commission, will benefit from a thoroughly developed and complete evidentiary record.

III. CONCLUSION

For the foregoing reasons, the Commission should grant the Motion.

⁸⁰ *AEP Ohio/NEP Order*, Opinion and Order (Sept. 6, 2023), ¶ 224.

⁸¹ *Id.*

Respectfully submitted,

/s/ N. Trevor Alexander

Rocco O. D'Ascenzo (0077651) (Counsel of Record)

Deputy General Counsel

Jeanne W. Kingery (0012172)

Associate General Counsel

Elyse H. Akhbari (090701)

Senior Counsel

Duke Energy Business Services, LLC

139 E. Fourth Street, 1303-Main

P.O. Box 961

Cincinnati, Ohio 45201-0960

Tel: (513) 287-4320

Rocco.D'Ascenzo@duke-energy.com

Jeanne.Kingery@duke-energy.com

elyse.akhbari@duke-energy.com

N. Trevor Alexander (0080713)

Mark T. Keaney (0095318)

Kari D. Hehmeyer (0096284)

Benesch Friedland Coplan and Aronoff LLP

41 South High Street

Suite 2600

Columbus, Ohio 43215

Tel: (614) 223-9363

tallexander@beneschlaw.com

mkeaney@beneschlaw.com

khehmeyer@beneschlaw.com

Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities of Ohio on this 10th day of January, 2024. The PUCO's Docketing Information System will electronically serve notice of the filing of this document on counsel for all parties.

Michael Settineri
Anna Sanyal
Andrew Guran
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215
mjsettineri@vorys.com
aasanyal@vorys.com
apguran@vorys.com

Drew Romig
Associate General Counsel
Brian Gibbs
Senior Counsel
Nationwide Energy Partners, LLC
dromig@nationwideenergypartners.com
brian.gibbs@nationwideenergypartners.com

Counsel for Nationwide Energy Partners, LLC

Angela D. O'Brien
Connor D. Semple
Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
angela.obrien@occ.ohio.gov
connor.semples@occ.ohio.gov

Counsel for the Office of the Ohio Consumers' Counsel

/s/ Mark T. Keaney
*One of the Attorneys for Duke Energy Ohio,
Inc.*

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

1/10/2024 1:56:40 PM

in

Case No(s). 22-0279-EL-CSS

Summary: Reply Reply in Support of Motion for Leave to Amend the Complaint and
to File a Separate Abandonment Application and Motion to Consolidate
electronically filed by Mark T. Keaney on behalf of Duke Energy Ohio, Inc..