**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| In the Matter of the Application of Ohio Power Company for Authority to Abandon Electric Service Lines, Pursuant to Ohio Revised Code  Sections 4905.20 and 4905.21. | )  )  )  )  ) | Case No. 22-693-EL-ABN |

**REPLY BRIEF FOR CONSUMER PROTECTION**

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# INTRODUCTION

When a public utility abandons its facilities and terminates service to Ohio residential consumers, Ohio law requires the PUCO to determine that such abandonment is “reasonable, having due regard for the welfare of the public. . .”[[1]](#footnote-2) Here, submetering company Nationwide Energy Partners (“NEP”) demanded that AEP Ohio terminate electric utility service to each of the residents at the Northtowne apartments. NEP’s demand will result in AEP Ohio abandoning the facilities it uses to serve Northtowne residents. The overwhelming evidence shows that abandoning service to the Northtowne residents – so they can be served by NEP instead – is neither reasonable nor in the public welfare. AEP Ohio’s application for abandonment should be denied.

Northtowne residents attended the evidentiary hearing to testify how they would be affected if abandoned by AEP Ohio. One Northtowne resident testified “. . . I have been with AEP ever since I was old enough to pay a utility bill, you know what I mean? And AEP, . . . [t]hey have programs and things that can help people. This place, if this energy place [NEP] gets it, we won’t have that, you know?”[[2]](#footnote-3) Another resident testified: “They are just telling us they are going to put us off AEP which I have been – that’s the only thing I [have] ever been on and give us this new program. . . . [W]e don’t get any information on what this new program is or whatever. It’s just not right.”[[3]](#footnote-4)

NEP does not refute this testimony. NEP instead besmirches OCC. NEP accuses OCC of “fear mongering” and spreading “confusion and discontent” among the Northtowne residents.[[4]](#footnote-5) NEP complains that consumers “have only heard one very distorted side of the story.”[[5]](#footnote-6) But NEP fought to keep residential consumers from participating (through their state advocate OCC) in matters regarding NEP’s submetered service.[[6]](#footnote-7) *And the PUCO denied OCC’s intervention for consumers in AEP Ohio’s complaint against NEP*. Now Northtowne residents have finally had an opportunity to voice their concerns about losing their PUCO-regulated utility service from AEP Ohio. NEP cries foul claiming it “had no opportunity to respond.”[[7]](#footnote-8) NEP’s attempt to play the victim (along with the arguments in its initial brief) should be flatly rejected.

AEP Ohio should not be allowed to abandon service to Northtowne consumers. Forcing Northtowne consumers to give up their rights to PUCO-regulated electric utility service is unreasonable and not in the public welfare. The PUCO should deny AEP Ohio’s application to abandon distribution service to the residents of the Northtowne apartment complex to enable NEP to submeter service.

# ARGUMENT

## The PUCO should reject NEP’s argument that there would be no abandonment and the Miller Act does not apply. The evidence shows that NEP’s demand to submeter results in AEP Ohio abandoning its lines and services to Northtowne residents.

NEP argues that the PUCO should dismiss AEP Ohio’s application. According to NEP, there would be no “abandonment” by AEP Ohio of its facilities serving the Northtowne residents.[[8]](#footnote-9) Evidence presented by AEP Ohio demonstrates the opposite – that an abandonment would occur. Thus, the PUCO must determine under the Miller Act whether the abandonment is “reasonable, having due regard for the welfare of the public.”

AEP Ohio provides service directly to 288 residential consumers at Northtowne.[[9]](#footnote-10) It does so through a complex distribution system that includes transformers, pedestal, various forms of conductor/wire, conduit, riser poles, and light poles.[[10]](#footnote-11) NEP’s demand to submeter the Northtowne complex will result in AEP Ohio establishing a single point of primary service at the Northtowne.[[11]](#footnote-12) AEP Ohio’s PUCO-approved tariff permits it “ to determine the modifications to the Company’s transmission and/or distribution facilities required to provide a basic service plan to serve the customer’s load.”[[12]](#footnote-13) Under NEP’s submetering demand, the landlord will be the end-user customer of AEP Ohio, not the individual residents that AEP Ohio currently serves.[[13]](#footnote-14)

As a result of NEP’s submetering demand, AEP Ohio will abandon its distribution infrastructure used to serve each tenant. AEP Ohio will also terminate its relationship with each Northtowne resident. That means that Northtowne residents will no longer receive service from AEP Ohio, and they will no longer be AEP Ohio consumers.

NEP’s submetering demand requires an abandonment by AEP Ohio. Therefore, the PUCO must determine under the Miller Act whether the proposed abandonment “is reasonable, having due regard for the welfare of the public . . .”[[14]](#footnote-15) AEP Ohio’s abandonment application should not be dismissed, as requested by NEP.

## Abandonment of AEP Ohio service to Northtowne residents is unreasonable and contrary to the public welfare. The PUCO should deny AEP Ohio’s abandonment application.

The PUCO unequivocally held in the complaint case order that residential utility consumers will “***lose a multitude of rights and protections***” under Ohio law when landlords use NEP to submeter electric utility service.[[15]](#footnote-16) That alone should be enough for the PUCO to determine that AEP Ohio’s abandonment of service to Northtowne residents is unreasonable and contrary to the public welfare. Why should residential utility consumers have fewer legal rights just because they live at Northtowne? They shouldn’t.

Moreover, as explained in initial briefs, OCC and AEP Ohio presented ample evidence about how AEP Ohio’s abandonment of service to the Northtowne residents fails the Miller Act test.[[16]](#footnote-17) NEP, on the other hand, failed to produce any evidence about how submetering will benefit Northtowne residents or how it would protect consumers. NEP instead attacks OCC’s and AEP Ohio’s witnesses who testified about the harm to Northtowne residents from NEP’s submetering demand. NEP’s attacks on OCC’s and AEP’s witnesses fall short and they should be rejected.

Having failed to present a consumer protection witness of its own, NEP resorts to the (erroneous) legal argument that Northtowne residents will be protected through a patchwork of various and sundry rules, lease provisions, the Landlord-Tenant Act, and the Consumer Sales Practices Act.[[17]](#footnote-18) NEP’s argument is contrary to the PUCO’s determination in the complaint case that consumers will lose rights under Ohio law when they receive submetered service. NEP’s arguments should be rejected.

### There is little merit to NEP’s claims that lease provisions will fully protect consumers, and those claims should be rejected.

When NEP submeters an apartment complex, it enters into an agreement with property owners to “resell” to the apartment complex residents the utility service the landlord receives from the PUCO-regulated utility.[[18]](#footnote-19) According to NEP, its agreement with the Northtowne property owner/manager (referred to by NEP as “Preserve”) will protect consumers by providing them notice information regarding the submetering arrangement.[[19]](#footnote-20) NEP’s claims should be rejected.

The agreement that will purportedly protect Northtowne residents is between the Northtowne property owner and NEP.[[20]](#footnote-21) The Northtowne residents who will receive submetered service are not parties to that contract. The contract is “binding upon and inure(s) to the benefit of the parties (NEP and the property manager) and their respective successors and permitted assigns.”[[21]](#footnote-22) But it does not inure to the benefit of the Northtowne residents. Any requirement that NEP provide consumer protections could be modified or waived by NEP and the property manager.[[22]](#footnote-23)

This is of particular concern given the large sums of money that NEP provides to property managers/owners who choose NEP to submeter tenants. Here, the property manager of Northtowne is entitled to a “Door Fee” from NEP within thirty days of the Service Commencement Date.[[23]](#footnote-24) NEP will not publicly disclose the “Door Fee” for Northtowne. However, the door fees NEP has provided to other apartment complexes are public information. They include: 1) Arlington Pointe (112 Apartment Units)[[24]](#footnote-25) - $22,400.00 plus any amounts charged by the local utility for its contribution in aid of construction costs (“CIAC”);[[25]](#footnote-26) 2) Gateway Lofts (269 Apartment Units)[[26]](#footnote-27) - $53,800.00 plus CIAC;[[27]](#footnote-28) 3) The Normandy (268 Apartment Units)[[28]](#footnote-29) - $53,600.00 plus CIAC;[[29]](#footnote-30) 4) Norton Crossing Apartments (360 Apartment Units)[[30]](#footnote-31) - $72,000.00 plus CIAC;[[31]](#footnote-32) and 5) The Edge at Arlington (228 Apartment Units)[[32]](#footnote-33) - $45,600.00 plus CIAC.[[33]](#footnote-34)

On top of the “Door Fee,” NEP pays the owner of each apartment complex (including Northtowne) a monthly “Residual Payment.”[[34]](#footnote-35) The Residual Payment is a set fee for every so-called “Qualified Unit” at the Northtowne complex.[[35]](#footnote-36) The lucrative nature of NEP’s contracts with Northtowne could improperly influence how the property manager communicates the submetering arrangement to consumers in the lease.

Moreover, there is no provision within NEP’s contract with the property owner that requires the lease to include notices regarding the disconnection and reconnection of service.[[36]](#footnote-37) Nothing in the contract sets forth any budget billing plan or other payment plan that NEP is required to provide to the Northtowne residents. Simply put, NEP’s contract with the Northtowne property owner is not enough to protect consumers.

### The PUCO should reject NEP’s claims that other Ohio laws will provide sufficient protections to Northtowne consumers.

NEP argues that Ohio’s Landlord-Tenant Act will sufficiently protect the Northtowne residents who will receive submetered service if AEP Ohio abandons. It won’t. In its Initial Brief, OCC detailed the numerous protections that Northtowne residents will lose.[[37]](#footnote-38) These include information required to be in notices of disconnection, the ability to make complaints with and receive assistance from the PUCO, medical certification provisions, information about PIPP and other utility assistance programs, the right to extended payment plans, and reconnection timelines.[[38]](#footnote-39) These specific consumer protections are not in Ohio’s Landlord-Tenant Act. NEP is wrong to suggest otherwise.

Similarly, NEP claims that the Ohio Consumer Sales Practices Act (“CSPA”) is sufficient to protect Northtowne consumers.[[39]](#footnote-40) But again, NEP fails to identify specifically how the CSPA will provide the same protections that AEP Ohio consumers receive. As noted, the PUCO has conclusively determined that consumers *lose rights* under Ohio law by receiving submetered service. Other Ohio laws do not replace the protections that Northtowne residents receive as customers of the PUCO-regulated utility, AEP Ohio.

### There is no evidence to support NEP’s claims that other social service programs will sufficiently protect Northtowne consumers if AEP Ohio abandons service.

NEP argues that Northtowne residents losing their AEP Ohio electric utility service will be sufficiently protected by other social service programs.[[40]](#footnote-41) NEP states that one option available to Northtowne residents is the Columbus Metropolitan Housing Authority’s (“CMHA”) “Housing Choice Voucher Program,” which implements the Department of Housing and Urban Development’s “Section 8” program in Columbus.[[41]](#footnote-42) There is no evidence that Northtowne residents are even eligible for that program. And even if they were, it is unclear how the CMHA Section 8 program would substitute for the legal protections Northtowne residents will lose if AEP Ohio application to abandon is approved.

NEP also claims that the Home Energy Assistance Program funded by the U.S. Dept. of Health and Human Services (“HEAP”) protects Northtowne residents who will lose PIPP and other budget-billing protections.[[42]](#footnote-43) While HEAP does help at-risk Ohioans, it will not replace the rights consumers will lose if AEP Ohio abandons service to Northtowne. As explained on the PUCO’s website, HEAP provides a one-time payment for “high costs of home heating.”[[43]](#footnote-44) HEAP is a seasonal program, not a program with monthly benefits like the PIPP program, and it is no replacement for year-round lost benefits on their electric bills resulting from submetering.

Grasping at straws, NEP also claims that the “American Rescue Plan Act for 2021” can help Northtowne residents.[[44]](#footnote-45) That argument should be rejected too. According to NEP, this program is managed by IMPACT Community Action in central Ohio.[[45]](#footnote-46) However, the web page cited by NEP does not even mention the “American Rescue Plan Act 2021.” NEP also cites 15 U.S.C. § 9058(c), which is a provision for a temporary moratorium on evictions during the pandemic.[[46]](#footnote-47) Again, NEP provides no evidence as to whether that program remains in effect, and if so, what assistance (if any) it provides for residential utility consumers. It is pure speculation by NEP that these programs would apply to Northtowne residents, let alone make up for the legal protections they will lose if AEP Ohio abandons service.

AEP Ohio’s abandonment of service to Northtowne residents would be unreasonable and contrary to the public welfare.

## The overwhelming evidence in this case is that AEP Ohio’s abandonment of the Northtowne residents is unreasonable and contrary to the welfare of the public. AEP Ohio’s electric reseller tariff case (Case No. 24-106-EL-ATA) will not fully address issues regarding Northtowne residents’ loss of consumer protections.

OCC and AEP Ohio have presented ample evidence about how Northtowne residents will be harmed if they lose their PUCO-regulated electric utility service. AEP Ohio’s application to abandon should be denied. NEP wants the PUCO to ignore the overwhelming evidence of harm to the Northtowne residents and instead punt the matter to Case No. 24-106-EL-ATA. That case addresses the electric reseller tariff that AEP Ohio has filed at the PUCO’s direction in the complaint case order.[[47]](#footnote-48) Currently, there are no evidentiary hearings set in that case. It would be patently unfair to Northtowne residents for the PUCO to ignore the evidence presented here and address the issues in a docket that may not allow for evidentiary hearing.

Moreover, OCC has argued in comments in the tariff case that AEP Ohio’s reseller tariff by itself will not fully protect consumers who lose are forced to take submetered electric utility service.[[48]](#footnote-49) OCC has argued for a number of consumer protections to be included in AEP Ohio’s electric reseller tariff. But the tariff will be no substitute for and will not replace all the rights Northtowne residents will lose if AEP Ohio abandons service to those consumers. The PUCO should determine in this casethat AEP Ohio’s abandonment of service is unreasonable and contrary to the public welfare. There is no good reason for the PUCO to dismiss this case and kick the can down the road to AEP Ohio’s reseller tariff case.

# III. CONCLUSION

The evidence plainly demonstrates that NEP’s demands to submeter the Northtowne apartment complex would require AEP Ohio to abandon service to Northtowne residents. AEP Ohio’s abandonment of service would harm Northtowne residents and would be unreasonable and contrary to the public welfare. The PUCO should do what’s right for Northtowne consumers and deny AEP Ohio’s application for abandonment under the Miller Act.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Brief for Consumer Protection was served via electronic transmission upon the parties this 23rd day of August 2024.

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1. R.C. 4905.20 and 4905.21 (the “Miller Act”). [↑](#footnote-ref-2)
2. Hearing Transcript Vol. I (June 24, 2024) at 26. [↑](#footnote-ref-3)
3. *Id*. at 30. [↑](#footnote-ref-4)
4. Initial Brief of NEP (Aug. 2, 2024) at 19-25. [↑](#footnote-ref-5)
5. *Id*. at 28. [↑](#footnote-ref-6)
6. *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC*, Case No. 21-990-EL-CSS, NEP’s Memorandum Contra OCC’s Motion to Intervene (Nov. 12, 2021); NEP’s Memorandum Contra OCC’s Interlocutory Appeal (Feb. 14, 2022); NEP’s Memorandum Contra OCC’s Application for Rehearing of the Denial of Interlocutory Appeal (Sept. 6, 2022); NEP’s Memorandum Contra OCC’s Motion for Leave to File Instanter an Application for Rehearing (Oct. 16, 2023). [↑](#footnote-ref-7)
7. Initial Brief of NEP (Aug. 2, 2024) at 28. [↑](#footnote-ref-8)
8. Initial Brief of AEP Ohio (Aug. 2, 2024) at 1-3. [↑](#footnote-ref-9)
9. Direct Testimony of AEP Ohio Witness Ryan Forbes (June 10, 2024) at 5. [↑](#footnote-ref-10)
10. *Id.* at Ex. RJF-1. [↑](#footnote-ref-11)
11. *Id*. at 10-11, Ex. RJF-2. [↑](#footnote-ref-12)
12. AEP Ohio 1st Revised Sheet No. 103-5. [↑](#footnote-ref-13)
13. Hearing Transcript Vol. I (June 24, 2024) at 215. [↑](#footnote-ref-14)
14. *Id.* [↑](#footnote-ref-15)
15. *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC*, Case No. 21-990-EL-CSS, Opinion and Order (Sept. 6, 2023) at ¶ 224 (“[W]e find the testimony . . . convincing in ***that tenants lose a multitude of rights and protections*** . . . that ensure consumers receive adequate, safe, and reasonable electric service, as required by law”) (emphasis added). [↑](#footnote-ref-16)
16. *See* Initial Brief of OCC (Aug. 2, 2024) at 12-26. [↑](#footnote-ref-17)
17. Initial Brief of NEP (Aug. 2, 2024) at 19-24. [↑](#footnote-ref-18)
18. Updated Ex. AD-5 to Aaron Depinet’s Public Testimony (July 5, 2024), Commodity Coordination Service Agreement (Cover Sheet) at p. 1. [↑](#footnote-ref-19)
19. Initial Brief of NEP (Aug. 2, 2024) at 19-23. [↑](#footnote-ref-20)
20. Updated Ex. AD-5 to Aaron Depinet’s Public Testimony (July 5, 2024), Commodity Coordination Service Agreement at 1. [↑](#footnote-ref-21)
21. *Id.* at 14, ¶ 8. [↑](#footnote-ref-22)
22. *Id.* at ¶ 7 (“No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby.”) [↑](#footnote-ref-23)
23. *Id.* at 2, Section 2 - Installation. [↑](#footnote-ref-24)
24. NEP Ex. G (Aug. 18, 2023) (filed as part of a Public Filing of numerous exhibits) at 5. [↑](#footnote-ref-25)
25. *Id.* at 33. [↑](#footnote-ref-26)
26. *Id.* at 50. [↑](#footnote-ref-27)
27. *Id.* at 76. [↑](#footnote-ref-28)
28. *Id.* at 91. [↑](#footnote-ref-29)
29. *Id.* at 119. [↑](#footnote-ref-30)
30. *Id.* at 136. [↑](#footnote-ref-31)
31. *Id.* at 163. [↑](#footnote-ref-32)
32. *Id.* at 208. [↑](#footnote-ref-33)
33. *Id.* [↑](#footnote-ref-34)
34. *Id.* at p. 4, Section 6 – Residual Payment. [↑](#footnote-ref-35)
35. *Id.* (“A Unit shall be deemed a “Qualified Unit” under this Agreement if: (i) the unit is a residential unit within the Community; (ii) Provider can apply the Base Residential Rate for electric consumption at the Unit; (iii) the Unit is occupied by a Lessee at the time the Residual Payment becomes payable; and (iv) Customer is not in default under this Agreement.”) [↑](#footnote-ref-36)
36. Initial Brief of OCC (Aug. 2, 2024) at 16-21. [↑](#footnote-ref-37)
37. *Id*. [↑](#footnote-ref-38)
38. *Id*. [↑](#footnote-ref-39)
39. *Id.* [↑](#footnote-ref-40)
40. Initial Brief of NEP (Aug. 2, 2024) at 23-24. [↑](#footnote-ref-41)
41. *Id*. [↑](#footnote-ref-42)
42. *Id*. [↑](#footnote-ref-43)
43. PUCO, *Home Energy Assistance Program (HEAP)*, <https://puco.ohio.gov/utilities/gas/resources/home-energy-assistance-program> (last accessed Aug. 22, 2024). [↑](#footnote-ref-44)
44. Initial Brief of NEP (Aug. 2, 2024) at 24. [↑](#footnote-ref-45)
45. *Id*. [↑](#footnote-ref-46)
46. *Id*. at footnote 11 (“*See also* <https://www.impactca.org/housing/crisis>”). [↑](#footnote-ref-47)
47. *In the Matter of the Application of Ohio Power Company for Authority to New or Amended Rate Schedules and Tariffs*, Case No. 24-106-EL-ATA, Application Not for an Increase in Rates (Feb. 5, 2024) at 1 (citing *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC*, Case No. 21-990-EL-CSS, Opinion and Order (Sept. 6, 2023) at ¶ 225). [↑](#footnote-ref-48)
48. *Id.* at 1-2. [↑](#footnote-ref-49)