BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates.	)))	Case No. 20-585-EL-AIR
In the Matter of the Application of Ohio Power Company for Tariff Approval.	))	Case No. 20-586-EL-ATA
In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods.	)))	Case No. 20-587-EL-AAM

REPLY IN SUPPORT OF NATIONWIDE ENERGY PARTNERS, LLC'S MOTION TO REOPEN THE HEARING RECORD

I. INTRODUCTION

Nationwide Energy Partners, LLC's ("NEP") Motion to Reopen the Hearing Record ("Motion") meets the requirements of Ohio Adm.Code 4901-1-34 and should be granted. NEP filed its Motion in order to present previously unavailable and recently disclosed evidence of how Ohio Power Company ("AEP") uses its secretive and byzantine construction request process to make certain requests "expire" after AEP fails to act on them and to discriminate against certain of its customers. This new evidence is directly relevant to the Public Utilities Commission of Ohio's ("Commission") consideration of whether to approve AEP's proposed tariff—which contains language setting forth its construction request process—or to require AEP to amend the tariff in order to do better for its Ohio customers. The parties have previously submitted evidence and briefing on AEP's problematic construction request process and potential solutions; NEP's new evidence identifies additional flaws in AEP's process that require additional changes.

In an attempt to avoid the Commission shining a light upon the black hole of its construction practices, AEP misrepresents NEP's evidence and arguments by claiming NEP is presenting evidence about equipment purchase requests, a separate issue in this proceeding. NEP's

motion, however, makes clear that the new evidence is related to the delay, purging and denial of **customer construction requests** and not equipment purchase requests. AEP also tries to shift this to a complaint case that AEP fabricated and filed after NEP's Motion. AEP's efforts to cloud the waters do not change the fact that NEP's new evidence is relevant in this case, where the Commission is asked to approve AEP's proposed tariff including the terms of AEP's construction request process. The new evidence is also relevant because AEP's previous discovery responses and testimony on its construction request process were entirely silent on AEP allowing requests to expire or AEP discriminating against consumers for working with certain companies like NEP. The Commission should grant the motion and allow NEP to submit the additional evidence subject to cross-examination, so that the Commission can then weigh and consider that evidence when evaluating AEP's proposed stipulation, tariff and testimony.

II. ARGUMENT

Ohio Adm.Code 4901-1-34 provides that the Commission, "for good cause shown," may reopen the proceeding "at any time prior to the issuance of a final order." The rule further provides that "[i]f the purpose is to permit the presentation of additional evidence, the motion shall specifically describe the nature and purpose of such evidence, and shall set forth facts showing why such evidence could not, with reasonable diligence, have been presented earlier in the proceeding." Here, there is no dispute that the motion adequately described the nature and purpose of the evidence (as it attached the proposed direct testimony to the motion, in addition to describing the nature and purpose)[1] and there is no dispute that the evidence could not have been presented earlier in the proceeding as the relevant events occurred after the submission of evidence.

[1] In fact, AEP argues that NEP was *too clear* in identifying the proposed evidence by attaching the proposed testimony to the motion. (AEP Memorandum Contra at 8-9). AEP's unsupported

AEP argues that no good cause to reopen exists because NEP's evidence is not relevant to this case. To the contrary, NEP's evidence is directly relevant to the Commission's review and potential modification of AEP's tariff in this case. The Commission and the parties have already recognized that evidence regarding AEP's construction request process is relevant in this case, as evidence and briefing has been received on that issue. The new evidence to be submitted by NEP reveals new flaws and new solutions, and is not cumulative evidence. Further, undercutting AEP's relevancy argument is that NEP's new evidence contradicts previously submitted evidence from AEP regarding its construction review process.

A. Good cause exists because NEP's evidence is relevant and probative to an issue in this matter, and is not cumulative.

1. <u>NEP's evidence is directly relevant to the tariff that AEP has asked the Commission to review and approve.</u>

The Commission reopens cases in order to obtain additional relevant information that can inform its review of proposed stipulations. *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Entry on Rehearing (May 13, 2010) (Commission reopened case, ordering Staff to present a detailed analysis and testimony of issues implicated by evidence, and scheduling a new day of hearing); *In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR, Entry at ¶ 3 (March 21, 2012) (Commission desired to receive information and other filings regarding a utility's proposed rider energy efficiency/peak demand reduction rider before

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argument has no merit, but does confirm that NEP adequately identified the nature and purpose as required by rule.

issuing a decision); *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case Nos. 10-501-EL-FOR, Entry at ¶ 10 (September 5, 2012) (Commission desired additional information regarding a specific project before the Commission could "reach a decision regarding the stipulation").

Here, NEP's evidence regarding AEP's recent actions related to construction requests[2] is directly relevant to determining whether proposed tariff language related to construction requests is sufficient. Reviewing this new evidence will allow the Commission to better understand the flaws in AEP's tariff language and rule on what changes are needed to correct those flaws.

The evidence is relevant to the construction request process set forth in AEP's proposed tariff. AEP's stipulation asks the Commission to review and bless its proposed tariff, which includes amendments to its "Terms and Conditions of Service" applicable to consumers. (*See* Joint Stipulation and Recommendation, ¶ 6 n.3 and Exhibit C (March 12, 2021)). Starting on Sheet No. 103-5, within the tariff section titled Terms and Conditions, AEP sets forth how it proposes to handle construction requests. Thus, evidence regarding problems with that construction request process is facially relevant in this matter.

The parties have already recognized that the issues surrounding AEP's construction request process are relevant in this case. It is disingenuous for AEP to now argue that new evidence regarding its actions under the construction review process is irrelevant in this case, when the parties have submitted evidence and briefing on this issue already without objection from AEP.

[2] As noted above, AEP's response repeatedly and inaccurately states that NEP's involvement in this case and its Motion are centered around equipment purchase requests. Although AEP's flawed practices surrounding equipment purchases do constitute a portion of NEP's previous evidence and arguments, NEP has also challenged AEP's construction request process and the new evidence relevant to this Motion is directed to AEP's construction request process.

NEP's witness, Teresa Ringenbach, previously testified in this matter that NEP's clients (property owners or condominium associations) authorize NEP to act as their representative with utilities like AEP. (NEP Ex. 33, Direct Testimony of Teresa Ringenbach, A2 (April 20, 2021)). Part III of Ms. Ringenbach's previous testimony, **admitted without objection from AEP (**Hearing Tr. Vol. IV, 899:17–23), addressed how NEP submits construction requests to AEP on behalf of NEP's clients, how AEP's construction request process acts as a black hole that lacks transparency with no uniform, clear procedure for customers, and how the construction request process could be fixed. (NEP Ex. 33 at A12–A13). AEP counsel cross-examined Ms. Ringenbach on the construction request issue and NEP's proposed changes. (Hearing Tr. Vol. IV, 893:23–895:16). The parties then briefed whether the construction request process set forth in AEP's tariff was sufficient or whether changes should be made. (*See* Initial Post-Hearing Brief of NEP, 36–41 (June 14, 2021); Reply Brief of AEP, 60–62 (July 6, 2021)). The previous activity in this case demonstrates that AEP's construction request process is relevant and fair game in this proceeding.

NEP's new evidence demonstrates additional flaws in AEP's relevant construction request process that were unknown at the time of hearing and that the Commission must address in this proceeding. NEP's new evidence reveals additional flaws in AEP's construction request process that were not revealed by AEP until recently. As noted in Ms. Ringenbach's testimony, attached to the Motion:

- In 2020, NEP submitted construction requests on behalf of NEP clients to AEP.
- In June 2021, after the hearing in this matter had concluded, AEP and NEP exchanged information about the 2020 requests and construction dates. NEP understood AEP to be proceeding on these requests, as AEP sent letters to NEP's

clients' tenants informing them of the construction and that their AEP accounts would be closed out.

- In a July 2021 meeting, however, AEP orally informed NEP that the construction requests on behalf of NEP's clients had expired and were purged.
- NEP resubmitted the construction requests on behalf of NEP's clients, but did not hear back from AEP.
- In September 2021, AEP orally informed NEP that all of the pending construction requests that NEP had submitted on behalf of NEP's clients would be rejected and that AEP would reject all further requests by clients working with NEP.

(*See* Motion, Supplemental Direct Testimony of Teresa Ringenbach.) Ms. Ringenbach's testimony proposes tariff language to solve these identified problems and prevent AEP from arbitrarily delaying projects without a valid reason, to require AEP to provide detailed information on timing for construction requests, and to prohibit AEP from unilaterally rejecting requests on the basis of a customer's private arrangements with contractors AEP does not like. (*Id.*)

Based on all of this, NEP's new evidence is clearly relevant in this matter and good cause exists to reopen the case. AEP's cases[3] are distinguishable and do not require a different result. For example, in one case, the Commission denied a motion to reopen because, in part, the movant misunderstood previous testimony and the movant failed to show the information could not have been presented earlier in the proceeding. *See In the Matter of the Commission's Consideration of Matters Related to the Stipulation Approved in Recent Cases Involving The Cleveland Electric Illuminating Co. and The Toledo Edison Co.*, Case No. 89-498-EL-COI, Opinion and Order, 1991

[3] The *Ohio Partners* case cited by AEP does not relate to a relevancy analysis, but instead identifies the standard for reviewing if the Commission erred on deciding the merits of a case. *Ohio Partners for Affordable Energy v. Pub. Util. Comm.*, 144 Ohio St.3d 265, 2015-Ohio-3627, ¶ 32.

Ohio PUC LEXIS 106, at * 19–20. Moreover, unlike here, the evidence in that case did not pertain to document language that the Commission was being asked to approve. *Id.* In the other case relied upon by AEP, the Commission refused to reopen a matter when a party wished to submit a survey but had "failed to demonstrate that the relevant survey is Ohio-specific or includes any Ohio customers." *In the Matter of the Joint Application of SBC Communications, Inc. and AT&T Corporation for Consent and Approval of a Change of Contr*ol, Case No. 05-269-TP-ACO, Entry, 2005 Ohio PUC LEXIS 520, at ¶ 3. There is no dispute here that the evidence regarding AEP's construction request process occurred in Ohio and was controlled by the tariff language currently under review by the Commission. AEP's relevancy arguments miss the mark, its case law does not apply, and its arguments must be rejected.

2. <u>NEP's new evidence is also relevant because it contradicts evidence from AEP already in the record.</u>

Also fatal to AEP's relevancy argument is that NEP's new evidence—demonstrating that construction requests to AEP "expire" and AEP's practice of rejecting work requests because of who the customer is working with—contradicts previously admitted evidence obtained from AEP.

NEP's Interrogatory "NEP-INT-03-006" asked AEP to identify "What is AEP's existing process for responding to construction or line extension requests from customers? If that process is explained in documentation, please also identify such documentation." (NEP Ex. 10 (May 21, 2021); *see also* Hearing Tr. Vol. I, 209:25–213:23 (cross-examination of AEP witness regarding construction requests and NEP Ex. 10); Hearing Tr. Vol. II, 285:6 – 22 (admitting NEP Ex. 10 into evidence without objection).) In addition to a narrative response, AEP attached a document explaining the process to its response. (*See* NEP Ex. 10.) AEP's written response to the interrogatory, AEP's document produced in response to the interrogatory, and AEP's hearing testimony regarding the construction request process **all say nothing about work orders**

"expiring" and **all say nothing about AEP having the ability to arbitrarily reject a customer's construction request simply because of who the customer contracts with on the project**.

Simply put, NEP's new evidence reveals that there is much more to AEP's construction request process than what AEP revealed to NEP and the Commission. The Commission should have the benefit of this new information when it reviews the proposed stipulation and the proposed tariff language regarding the construction request process. The Commission has previously granted motions to reopen when the additional information contradicted a claim made during the case. *See In the Matter of the Application of Ohio Power Company to Update its gridSMART Rider*, Case No. 12-509-EL-RDR, Finding and Order at 9. In that case, the Commission recognized that it should make its "decision based on the latest and best information available." *Id.* Here, granting NEP's request and reopening the case will allow the Commission to accurately and fully understand AEP's construction request process and consider the insufficiency of AEP's proposed tariff language "based on the latest and best information available."

3. <u>NEP's new evidence is not "cumulative" evidence.</u>

NEP's new evidence is not cumulative or redundant evidence as claimed by AEP. Instead, NEP's new evidence will establish in the record aspects of AEP's construction request process that, for the first time, are being brought to the light of day. If NEP is not allowed to offer its evidence, the Commission will not know that AEP can "purge" construction work orders from its system if they "expire" or that AEP can reject a construction request depending on whether its customer has a contractual arrangement with NEP to act on the AEP customer's behalf. The Commission will also not have the benefit of NEP's additional proposed tariff language to address these newly discovered flaws in AEP's construction request process.

B. NEP's new evidence is appropriate in this case.

AEP criticizes NEP's Motion, arguing that NEP should have instead filed it in a case that did not exist at the time NEP filed its Motion. AEP's argument is flawed in multiple ways.

First, NEP seeks to submit the new evidence to educate the Commission on AEP's construction request practices so the Commission can understand why AEP's construction request tariff language is flawed and insufficient. **This is the case** where NEP and any other party have the opportunity to challenge the limits on AEP's construction request process because **this is the case** where the Commission is reviewing and approving the Service Terms and Conditions in the tariff. By moving to reopen, NEP does not ask the Commission to decide whether AEP handled NEP's client's construction requests correctly or pursuant to law; it instead seeks to shine light on how AEP currently handles construction requests so the Commission can determine whether it should add additional requirements in the tariff.

Second, AEP's argument misrepresents the facts. NEP is not demanding that AEP do anything. Instead, NEP's commercial clients have made the decision—as is their right—to submeter their properties and NEP has submitted construction requests on its clients' behalf to AEP in order to make it happen. AEP has revealed that it allowed NEP's client's construction requests to expire and then rejected those customers' new construction requests simply because they were working with NEP on that project. The Commission in this case must decide whether it will include additional language in the tariff to prevent AEP from engaging in such delay-driven, inefficient, and discriminatory tactics. This distinction is important because AEP's response claims that the complaint case is against NEP alone and is about equipment purchase requests (and not construction requests). Any complaint filed by AEP against NEP about equipment purchase requests has nothing to do with NEP's arguments to modify the construction request tariff language proposed by AEP in this proceeding.

Finally, AEP's argument simply does not make sense. **No complaint case existed when NEP filed its motion.** AEP cannot simply file a complaint case as a ploy to retroactively attack NEP submitting relevant new evidence in AEP's rate and tariff case.

This situation is distinguishable from that in the case cited by AEP. *See In the Matter of the Application of Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.43, in the Form of an Electric Security Plan*, Case Nos. 16-1852-EL-SSO, Opinion and Order ¶¶ 34 – 35 (Apr. 25, 2018). In that case, the Ohio Consumers' Counsel moved to reopen a rate case because of tax changes resulting from the enactment of the Tax Cuts and Jobs Act of 2017 (TCJA). The Commission declined to do so, because it decided to separately investigate those tax changes and had already approved riders that would allow it to later retroactively reconcile and adjust rates based on the results of the investigation if appropriate. *See id.* at ¶ 34. Here, there is not currently any open Commission investigation into AEP's construction request process and no open language permitting the Commission to retroactively adjust AEP's tariff based on those non-existent investigations. Thus, NEP appropriately raised the new evidence and moved to bring it into this case to affect the tariff language already being reviewed in this case. AEP's case does not apply and NEP's motion to reopen should be granted.

C. AEP's dismissal of the serious problems raised by NEP's new evidence is troubling and misses the point.

As set forth above, NEP submitted construction requests to AEP on behalf of AEP customers that are clients of NEP. AEP seeks to minimize its poor and problematic treatment of these commercial customers by arguing that this is a problem that NEP alone perceives and advocates for in this case. Not true, as NEP brings this issue to light on behalf of its clients and on behalf of any customer submitting a construction request for new or altered service. While AEP may wish to ignore this type of customer service issue, the construction request issue is

extremely important to NEP's clients and similarly situated commercial and industrial customers across AEP's service territory. The issue is also extremely important to any company that assists AEP customers with construction requests. The Commission should consider the viewpoint of not only large utilities, but of commercial and industrial customers—and the companies those customers hire to assist with construction requests—when it considers the tariff language mandating how AEP should treat those it is supposed to serve. No credence should be given to AEP's attempts to trivialize or minimize the service concerns raised by NEP in this proceeding.

III. CONCLUSION

NEP requests that the Commission grant its Motion to Reopen the Hearing Record to allow additional testimony and evidence in this proceeding for good cause shown. NEP's request meets the requirements of the Commission's rule and the new evidence is relevant, probative, appropriate and not cumulative. NEP further respectfully requests that, upon reopening the record, the Commission schedule a prehearing conference to discuss with all parties the appropriate procedural schedule for the presentation of the supplemental testimony and evidence. By permitting all parties to participate and cross-examine the witness (if they choose), there will be no harm caused by granting NEP's motion.

Respectfully Submitted,
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Summary: Reply Reply in Support of Nationwide Energy Partners, LLC's Motion to Reopen the Hearing Record electronically filed by Mr. Michael J. Settineri on behalf of Nationwide Energy Partners, LLC