

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

COMPLAINT

For its Complaint against Nationwide Energy Partners, LLC (NEP), Duke Energy Ohio, Inc. (Duke Energy Ohio) alleges and avers as follows:

PARTIES AND JURISDICTION

1. Complainant Duke Energy Ohio is an Ohio corporation engaged in the business of supplying electric service to over 700,000 customers in southwestern Ohio. Duke Energy Ohio is a “public utility” as that term is defined in Ohio Revised Code (R.C.) 4905.02, an “electric light company” as that term is defined in R.C. 4905.03 and 4928.01, and an “electric utility” and “electric distribution utility” as those terms are defined in R.C. 4928.01.

2. Respondent Nationwide Energy Partners, LLC (NEP) is a foreign limited liability company organized under the laws of Delaware. NEP is a company engaged in “submetering”, which has been described by the Ohio Supreme Court and the Commission as “a practice in which an entity ‘engage[s] in the resale or redistribution of public utility services.’” *In re Complaint of Wingo v. Nationwide Energy Partners, LLC*, 2020-Ohio-5583, ¶ 3 (quoting *In re the Commission’s*

Investigation of Submetering in the State of Ohio, Case No. 15-1594-AU-COI, Fourth Entry on Rehearing, ¶ 4 (Jan. 9, 2019)).

3. The General Assembly has vested the Public Utilities Commission of Ohio (Commission) with the “power and jurisdiction to supervise and regulate public utilities.” R.C. 4905.04; *see also* R.C. 4905.05; R.C. 4905.06.

4. The Ohio Supreme Court recently affirmed the Commission’s authority to determine whether it has jurisdiction over submetering companies like NEP. *See Wingo*, 2020-Ohio-5583, ¶¶ 25-26.

5. Jurisdiction for this proceeding exists under R.C. 4905.26, which permits the Commission to adjudicate complaints concerning, among other things, “any matter affecting [a public utility’s] own product or service”, because NEP’s actions impact Duke Energy Ohio’s products and services and NEP is operating as a “public utility” in violation of numerous statutes and regulations as set forth in greater detail below.

6. The Commission must grant the relief requested herein to insulate Duke Energy Ohio and its customers from the harms occasioned by NEP’s unlawful and exploitative submetering activities in Duke Energy Ohio’s service territory, which among other things, force abandonment of Duke Energy Ohio’s customers through the installation of master-metering equipment to convert existing and individually metered Duke Energy Ohio customers to submetered customers of NEP.

BACKGROUND

7. Duke Energy Ohio has filed this Complaint in response to NEP’s unlawful demands that Duke Energy Ohio abandon its existing customers and allow NEP to submeter certain multi-unit

residential properties in Duke Energy Ohio’s service territory – leaving existing Duke Energy Ohio customers without any of the residential customer protections enshrined in Ohio law.

8. As a general matter, Ohio law does not prohibit a landlord/property owner from submetering utility services to individual tenants. *Wingo*, 2020-Ohio-5583, ¶ 3.

9. Under the more traditional submetering arrangement, the utility provides services to the landlord/owner at one master meter, after which the landlord/tenant resells those same utility services to individual tenants based on their proportionate share as measured by the landlord’s submeters.

10. Consistent with Ohio law, Duke Energy Ohio has permitted landlords/owners of multi-unit complexes to install one master meter for the purpose of submetering to individual tenants with Duke Energy Ohio’s prior written approval. These installations typically occur at the outset of construction.

11. Indeed, Section II.5. (Use of Service) of Duke Energy Ohio’s Tariff (“Tariff”) states:

Service is supplied directly to the customer through the meter and is to be used by the customer only for the purposes specified in and in accordance with the provisions of the applicable rate schedule and these regulations and any service agreement.

The customer will not build lines across or under a street, alley, lane, court or avenue or other public space in order to obtain service for adjacent property through one meter, even though such adjacent property is owned by customer, without the prior written approval of the Company.

In case of unauthorized sale, extension or other disposition of service, the Company may discontinue the supplying of service to the customer until such unauthorized act is discontinued and full payment is made for all service supplied or used, billed on proper classification and rate schedule, and reimbursement in full made to the Company for all extra expenses incurred, including expenses for clerical work, testing and inspections.

12. However, the current practice of submetering has drastically changed. Indeed, as the Ohio Supreme Court recently observed, submetering is “big business” today. *Wingo*, 2020-Ohio-5583,

¶ 3. Third party submetering companies like NEP, which purport to act as the agent of the property owner/landlord depending on the circumstances, have exploited and distorted the traditional submetering arrangement.

13. NEP is radically different than the traditional submetering landlord/property owner that merely “divid[es] up a common master bill so that each individual resident would pay for their share of the utilities used.” *Id.* NEP exemplifies the new “big business” model of submetering that the Ohio Supreme Court recently recognized. *Id.*

14. Upon information and belief, to lure landlords into allowing NEP to install, operate, and maintain utility meters and other utility-related infrastructure on the landlord’s property, NEP offers landlords incentives (e.g., direct cash payments, monthly residual payments, and/or services in lieu of payment).

15. In exchange for these financial inducements, NEP facilitates the resale of utility services to individual tenants (purportedly as the “agent” of the landlord/property owner), often at a significant and arbitrary mark-up that bears no resemblance to the actual cost of service. Most troublingly, however, submetering companies like NEP facilitate the resale of these utility services to end-use customers without any regulatory oversight and without any of the legal protections or due process mechanisms afforded to customers of public utilities under the Ohio Revised Code or the Ohio Administrative Code.

16. After enticing the landlord/property owner with financial incentives, NEP, through the landlord/property owner, will take service at a single meter at a non-residential rate from a public utility such as Duke Energy Ohio via a master meter arrangement and then resell it to tenants as the purported agent of the landlord/owner. Although NEP will sometimes nominally place the

account in the name of the landlord/owner, NEP instructs Duke Energy Ohio to send the master meter bills directly to NEP, and NEP pays the master meter bills.

17. NEP claims that it is merely acting on behalf of the landlord, but NEP's actions speak louder than its words. NEP designs its bills and customer communications to impersonate a public utility and obscure its relationship with the landlord. For all purposes, NEP is providing electric service to end-use customers in multi-unit buildings/complexes. NEP is not acting on behalf of the landlord; rather, NEP is separately and distinctly providing utility services as an outside third-party to the landlord-tenant relationship.

18. With respect to its interactions with customers/tenants, NEP essentially impersonates and stands in the shoes of a public utility. For instance, NEP designs its bills so they resemble a public utility's bills. NEP's bills prominently display a multicolored doughnut chart (a pie chart with a blank center) resembling the multicolored doughnut chart on certain public utility bills. *See Exhibit C at 2–3 of Affidavit of John Calhoun, NEP Account Manager, Exhibit 2 to NEP Motion to Dismiss, In re Wingo*, Case No. 17-2002-EL-CSS (Nov. 7, 2017), attached hereto as Complaint **Exhibit A**. Nothing on the bill suggests that NEP is passing on the costs of master meter service or that an entity other than NEP is providing electric service to the building/complex. Of course, unlike Duke Energy Ohio's charges, NEP's customers have no recourse to address concerns or question charges – other than to try to terminate their lease.

19. NEP's bills also often include arbitrary and unexplained "community charges" and other such vague and undefined line items. NEP provides little to no information about how these community charges are calculated or how they are reflective of NEP's cost to provide service to submetered customers.

20. NEP is engaged in the business of supplying public utility services, as underscored by the fact that in many buildings in which it operates, NEP not only submeters and resells electric service, it also submeters and resells gas and water services. NEP's core business concerns the provision of utilities for the building, not something else.

21. NEP's public marketing materials further confirm that it is engaged in the business of supplying public utility services. For example, on NEP's public website, NEP seeks to attract building owners and developers with the following pitch: "Unplug from your Utility . . . Plug in with NEP." See Complaint **Exhibit B**. This makes clear that NEP views itself – and holds itself out to the public – as a replacement for public utility service, providing the same utility service that Duke Energy Ohio and other public utilities offer. NEP even promises that it will provide these services better than Duke Energy Ohio or other Ohio public utilities – an unsupported, dubious claim that Duke Energy Ohio strongly denies.

22. NEP admits on its public website that it is operating its own electric distribution system at its submetered buildings, and specifically states the following:

- "We assume the debt risk, conduct rigorous testing and ongoing inspection, support and maintain the minigrid, and handle all resident billing and servicing."
- "NEP assumes all billing and servicing of each resident, takes on the associated debt, and maintains the property's electrical infrastructure (or minigrid)."
- "NEP coordinates the installation of transformers, enclosures, meters, and the primary distribution system with the host utility." *Id.*

23. Operating an electric distribution system to serve thousands of end-use customers is the very essence of operating as a "public utility" and being engaged "in the business of supplying electricity for light, heat, or power purposes to consumers within this state...." R.C. 4905.03(C)). Indeed, on information and belief, NEP serves thousands of customers more than several regulated

gas utilities in Ohio. As such, the Commission should find that NEP is operating as a public utility in violation of Ohio law and Commission regulations.

FACTS

24. The specific facts giving rise to this Complaint concern recent efforts by NEP to implement submetering services at a multi-unit complex called Somerset at Deerfield in Mason, Ohio (Somerset).

25. As of November 12, 2021, Duke Energy Ohio provided electric distribution service to approximately five-hundred and fifteen (515) individual customers at Somerset, which is located within Duke Energy Ohio's certified territory.

26. Duke Energy Ohio owns and operates electric distribution infrastructure on or around the Somerset property, including transformers and individual customer meters affixed to the side of the multi-unit buildings at Somerset.

27. In or around December of 2020, NEP representatives contacted Duke Energy Ohio representatives to discuss the proposed acquisition of certain distribution equipment owned and operated by Duke Energy Ohio at Somerset. At NEP's request, Duke Energy Ohio and NEP representatives met on or around December 4, 2020, to discuss NEP's proposal.

28. On or around January 19, 2021, Duke Energy Ohio informed NEP that Duke Energy Ohio was not interested in selling any of its distribution facilities/equipment at Somerset.

29. On or around January 20, 2021, NEP reengaged Duke Energy Ohio, asking for another meeting with Duke Energy Ohio representatives to further clarify NEP's proposal to acquire distribution plant at Somerset.

30. On or around January 21, 2021, Duke Energy Ohio again reiterated to NEP that it was not interested in selling its distribution equipment at Somerset.

31. Not to be deterred, on or around January 25, 2021, NEP once again contacted Duke Energy Ohio to further discuss the details of NEP's proposal at Somerset.

32. Several months later, on or around April 19, 2021, NEP's legal counsel contacted Duke Energy Ohio's legal counsel to explore whether Duke Energy Ohio would be interested in executing an infrastructure purchase agreement at Somerset, which would involve the owner of Somerset (via its purported agent, NEP) acquiring certain electric distribution infrastructure and equipment owned/operated by Duke Energy Ohio at or around Somerset.

33. On or around April 26, 2021, representatives from NEP and Duke Energy Ohio met to discuss NEP's infrastructure purchase proposal at Somerset.

34. On or around May 28, 2021, Duke Energy Ohio informed NEP via email that "[a]fter internal discussions with management, Duke Energy Ohio is not interested in pursuing a transaction to sell facilities serving its current customers. Nor is it interested in abdicating its right and responsibility to provide distribution service to those existing customers within its certified electric service territory." *See* Complaint **Exhibit C**.

35. Despite the persistent, categorical rejections from Duke Energy Ohio, in a letter dated June 9, 2021, NEP's legal counsel sought to continue negotiations with Duke Energy Ohio regarding the proposed acquisition of distribution infrastructure at Somerset. *See* Complaint **Exhibit D**.

36. Once again, Duke Energy Ohio rebuffed NEP's efforts and made clear to NEP that under no circumstance would Duke Energy Ohio sell its distribution equipment at Somerset nor would Duke Energy Ohio ever abandon any of its customers at Somerset.

37. Meanwhile, unbeknownst to Duke Energy Ohio's legal counsel, NEP was separately pursuing a plan to convert existing Duke Energy Ohio customers at Somerset to submetering customers of NEP one building at a time.

38. To effectuate its conversion plans at Somerset, NEP contacted the Duke Energy Ohio call center. The call center representatives who spoke with NEP were not aware of NEP's prior communications with Duke Energy Ohio or Duke Energy Ohio's repeated refusal to abandon service to its customers at Somerset. Indeed, at no point did NEP mention to the call center that Duke Energy Ohio's management had already repeatedly declined to abandon any customers at Somerset.

39. Throughout the summer and fall of 2021, NEP or its agents contacted the Duke Energy Ohio call center to implement NEP's plan to convert existing Duke Energy Ohio customers at Somerset – building by building – to submetering customers of NEP without any regulatory oversight or basic consumer protections.

40. For instance, on or around September 21, 2021, a representative of NEP contacted the Duke Energy Ohio call center, seeking to coordinate the removal of certain meters owned/operated by Duke Energy Ohio at Somerset with the installation of NEP's submeters and master meter service for individual apartment complexes at Somerset. At no point during the call did the NEP representative mention the prior meeting and discussions between NEP and Duke Energy Ohio representatives in April, May, and June of 2021. During the call, the NEP representative attempted to submit work orders in NEP's name to effectuate NEP's request to coordinate the removal/installation of meters at Somerset. Uncertain of the process to effectuate such an unusual request, the NEP representative apologized to the call center agent, admitting it was "the first time kind of running through this process." Throughout the call, when providing information requested by the Duke Energy Ohio call center representative, the NEP representative never indicated that NEP was submitting these requests on behalf of the property owner at Somerset, nor did the NEP representative ever state that NEP was acting as the authorized agent of the property owner.

41. On or around November 12, 2021, the same representative of NEP contacted the Duke Energy Ohio call center, following up on prior work order removal requests at Somerset and seeking to include additional meter removal/installation work order requests at Somerset. During the phone call, the NEP representative attempted to cancel the accounts of Duke Energy Ohio's existing customers at Somerset in order to effectuate the request to remove more Duke Energy Ohio meters at Somerset. Because NEP was not the customer of record, Duke Energy Ohio's call center employee explained that the customer must request the cancellation of service, not NEP. Since NEP was not listed as the customer of record, the call center employee explained that she could not proceed any further. In response, the NEP representative pushed back, insisting that NEP needed to avoid having individual tenants (i.e., Duke Energy Ohio customers) call Duke Energy Ohio to effectuate NEP's requests. The NEP representative also claimed that the property owner, not the tenant (i.e., customer of Duke Energy Ohio), should be able to submit such requests. Again, the Duke Energy Ohio call center reiterated that she could not process NEP's requests and cancel existing Duke Energy Ohio accounts since NEP was not the customer of record. The NEP representative once more apologized for "all the confusion" and acknowledged the atypical nature of NEP's requests at Somerset.

42. On or around November 17, 2021, November 24, 2021, and December 6, 2021, the same NEP representative contacted Duke Energy Ohio's call center to follow up on the requests at Somerset. During the call on November 24, 2021, the NEP representative again acknowledged that "it is a confusing situation" and that "this is the first time we've [NEP] done this with you guys."

43. On or around January 5, 2022, the same NEP representative contacted the Duke Energy Ohio call center to discuss forty-six (46) work order meter removal requests at Somerset. Given

the highly unusual nature of NEP's requests at Somerset, the Duke Energy Ohio call center representative expressed reservation about processing such an unusually high number of meter removal requests all at once. Accordingly, the call center representative placed the NEP representative on hold in an effort to ask his supervisor if he had the authority to proceed with NEP's extraordinary requests. Once again, the NEP representative acknowledged the "confusing" and atypical nature of NEP's requests at Somerset.

44. NEP's specific meter removal requests at Somerset were indeed unprecedented. Instead of removing/replacing meters to facilitate a standard building rewire or upgrade as is traditionally the case, NEP sought to convert hundreds of existing Duke Energy Ohio customers to NEP submetering customers despite Duke Energy Ohio's prior statements to NEP that it would not abandon its existing customers at Somerset.

45. Without knowledge of the parties' prior correspondence on the subject, the Duke Energy Ohio call center representatives authorized NEP's initial meter removal requests at Somerset, which resulted in some one hundred and forty-four (144) Duke Energy Ohio customers at Somerset being converted to submetering during the fall of 2021.

46. In submitting these meter requests, NEP's intention was to (i) terminate Duke Energy Ohio's service to certain customers at Somerset, and (ii) establish master meter service and NEP's own submetering service to Somerset tenants (i.e., Duke Energy Ohio customers). NEP's actions result in electric distribution service from Duke Energy Ohio to be resold by NEP to the individual Somerset customers at a considerable markup – all without any Commission oversight of NEP's "services" or the terms/conditions under which those services are provided to Somerset customers.

47. On or around January 4, 2022, NEP contacted counsel for Duke Energy Ohio inquiring about why certain Somerset customers were still receiving bills from Duke Energy Ohio after NEP

caused the removal and replacement of those customers' meters to install one master meter and submeters for each individual tenant.

48. Upon being contacted by NEP on or around January 4, 2022, Duke Energy Ohio immediately cancelled pending work orders for meter removals at Somerset and opened an internal investigation into the unprecedented nature of NEP's requests at Somerset.

49. Duke Energy Ohio's investigation discovered that as a result of NEP's actions to convert Somerset tenants to submetering, the authorized individual account holders at Somerset did not contact the Duke Energy Ohio to cancel their accounts, which resulted in customers being billed by both NEP and Duke Energy Ohio. The investigation also confirmed that, during the fall of 2021, some 144 residential customers of Duke Energy Ohio were converted to submetering administered by NEP.

50. On or around January 13, 2022, Duke Energy Ohio notified NEP that until its investigation was completed, Duke Energy Ohio would not move forward with any existing or future requests from NEP or its agents to remove and/or replace additional customer meters at Somerset. *See* Complaint **Exhibit E**.

51. In the January 13, 2022 letter, Duke Energy Ohio also requested documentation from NEP evidencing individual Duke Energy Ohio customers' consent to NEP's meter removal/replacement requests. *Id.*

52. NEP's actions at Somerset have caused (and will continue to cause) substantial harm to those 144 residential customers who were converted to submetering since NEP is immune from regulatory oversight. For the other residential customers of Duke Energy Ohio at Somerset who have not been converted, if NEP is permitted to take over electric service at Somerset, these

customers will also suffer substantial harm without any regulatory agency to protect customers or impartially adjudicate disputes.

53. Duke Energy Ohio customers at Somerset may choose a competitive retail electric supplier (CRES) for their electric supply. However, if NEP takes over service at Somerset, these customers will no longer retain their right to shop for CRES, which explicitly contravenes state policy under R.C. 4928.02 (B), (C), and (G), among other provisions. Any Somerset customers who are currently shopping today will lose that relationship and may be charged an early termination fee under their CRES contract, if applicable.

54. Under its existing Tariff, Duke Energy Ohio has available to its customers, a “Budget Billing Plan”, which minimizes billing amount fluctuations over a twelve-month period. *See* Tariff, Section VI(4). In essence, budget billing is a payment plan where the customer pays the same amount every month, thereby enabling convenient planning and budgeting of utility expenses. If NEP takes over service at Somerset, customers will no longer be eligible for the Budget Billing Plan. Any customers who are currently on a Budget Billing Plan will be abruptly (and potentially without notice) switched to a variable billing system in which their bills will be much higher than they are used to during months of peak usage.

55. Currently, because they are customers of Duke Energy Ohio, the Somerset customers enjoy numerous legal and regulatory protections concerning utility service that are set forth in Ohio Revised Code Chapter 49 and Ohio Administrative Code Chapter 4901:1. NEP is not subject to these statutes/regulations and does not follow them.

56. In addition to harming individual Duke Energy Ohio customers, NEP’s submetering activities at Somerset have harmed and will continue to harm Duke Energy Ohio. NEP has indicated that there are several other developments in Duke Energy Ohio’s service territory where

Duke Energy Ohio is currently serving individual customers, and that NEP intends to terminate their Duke Energy Ohio service and convert them to NEP submetering customers.

57. Among other harms, NEP's actions have created customer confusion and damage to Duke Energy Ohio's reputation at Somerset, especially with respect to those Somerset customers whose individual Duke Energy Ohio meters were removed/replaced by NEP (or its agents) without any regulatory oversight and without any of the most basic customer protections afforded to customers of public utilities under Ohio law. When NEP is free to charge whatever rates it wants, and to deny basic legal and regulatory protections afforded to end-users of utility services, NEP harms the reputation and goodwill of Duke Energy Ohio.

58. Additionally, forcing Duke Energy Ohio to abandon the Somerset customers has caused and will continue to cause Duke Energy Ohio financial harm. Duke Energy Ohio will lose base distribution revenue for each customer converted to NEP submetering service if Duke Energy Ohio is forced to terminate hundreds of individual customer accounts in favor of master meter accounts. The delta between individual customer rates and the master meter rate is one way that NEP profits from submetering. NEP serves individual customers at a higher rate without providing any of the actual benefits and protections that Duke Energy Ohio (as a public utility) is required to provide. If Duke Energy Ohio were forced to abandon service to the Somerset customers, Duke Energy Ohio would also lose an opportunity to invest capital at Somerset.

59. The lost revenue that Duke Energy Ohio would suffer would cause harm to Duke Energy Ohio's other customers as well. In Duke Energy Ohio's rate setting proceedings, Duke Energy Ohio's rates are set in part based on customer usage and the number of customers Duke Energy Ohio serves. Reducing residential customer usage and the number of customers will likely cause

regulated rates for all other Duke Energy Ohio customers to be higher than they otherwise would be.

60. The Commission should determine that NEP is operating as a “public utility” in violation of the Certified Territory Act and numerous other statutes and regulations. Further, by taking over service from Duke Energy Ohio at Somerset, NEP has forced (and continues to force) Duke Energy Ohio to abandon service to its customers in violation of R.C. 4905.20 and 4905.21 (commonly referred to as the Miller Act).

COUNT I: UNLAWFUL PROVISION OF NONCOMPETITIVE ELECTRIC SERVICE

61. Duke Energy Ohio incorporates by reference the allegations of paragraphs 1 through 60 of this Complaint.

62. By engaging in the business of supplying electricity, NEP is an “electric light company” under R.C. 4905.03 and a “public utility” under R.C. 4905.02.

63. The rates that NEP charges have not been approved by the Commission as required by R.C. 4909.18 and 4905.22.

64. NEP has failed to “print and file with the public utilities commission schedules showing all rates, joint rates, rentals, tolls, classifications, and charges for service of every kind furnished by it,” in violation of R.C. 4905.30.

65. NEP has failed to pay assessments owed to the Commission, in violation of R.C. 4905.10.

66. NEP has failed to abide by the Uniform System of Accounts, in violation of R.C. 4905.13.

67. NEP has failed to file annual reports, in violation of R.C. 4905.14.

68. NEP has issued stocks, bonds, and notes without Commission approval, in violation of R.C. 4905.40.

69. NEP has engaged in unapproved transactions with other public utilities, in violation of R.C. 4905.48.

70. NEP has failed to develop or offer net metering, in violation of R.C. 4928.67.

71. NEP has violated Commission rules in Chapter 4901:1-10 of the Ohio Administrative Code concerning minimum service quality, safety, and reliability requirements for noncompetitive electric service.

72. NEP has violated Commission rules in Chapter 4901:1-10 of the Ohio Administrative Code concerning termination of residential utility service.

COUNT II: VIOLATION OF CERTIFIED TERRITORY ACT

73. Duke Energy Ohio incorporates by reference the allegations of paragraphs 1 through 72 of this Complaint.

74. Duke Energy Ohio has the exclusive right and obligation to provide “electric service” to all “electric load centers” within its “certified territory,” pursuant to R.C. 4933.81 et seq.

75. The Somerset development is located within Duke Energy Ohio’s service territory.

76. By supplying or arranging for the supply of retail electric service to customers at Somerset, NEP is an “electric supplier” as defined in R.C. 4933.81(A), providing “electric service” as defined in R.C. 4933.81(F), and is violating Duke Energy Ohio’s certified territory under R.C. 4933.83(A).

COUNT III: UNLAWFUL PROVISION OF COMPETITIVE RETAIL ELECTRIC SERVICE

77. Duke Energy Ohio incorporates by reference the allegations of paragraphs 1 through 76 of this Complaint.

78. R.C. 4928.08(B) prohibits the provision of a competitive component of retail electric service without first obtaining certification from the Commission to provide such service.

79. NEP has neither applied for, nor has the Commission approved, an application for certification to supply a competitive component of retail electric service.

80. By supplying or arranging for the supply of a competitive retail electric service to end-use customers at Somerset without the required certification or complying with the attendant regulations (e.g., all the requirements of Ohio Administrative Code Chapter 4901:1-21), NEP is violating R.C. 4928.08(B).

COUNT IV: VIOLATION OF DUKE ENERGY OHIO TARIFF

81. Duke Energy Ohio incorporates by reference the allegations of paragraphs 1 through 80 of this Complaint.

82. Section II.5 (Use of Service) of the Duke Energy Ohio's Tariff prohibits the resale of any service without the prior written approval of Duke Energy Ohio.

83. Specifically, Section II.5 of the Duke Energy Ohio's Tariff states:

Service is supplied directly to the customer through the meter and is to be used by the customer only for the purposes specified in and in accordance with the provisions of the applicable rate schedule and these regulations and any service agreement.

The customer will not build lines across or under a street, alley, lane, court or avenue or other public space in order to obtain service for adjacent property through one meter, even though such adjacent property is owned by customer, without the prior written approval of the Company.

In case of unauthorized sale, extension or other disposition of service, the Company may discontinue the supplying of service to the customer until such unauthorized act is discontinued and full payment is made for all service supplied or used, billed on proper classification and rate schedule, and reimbursement in full made to the Company for all extra expenses incurred, including expenses for clerical work, testing and inspections.

84. Neither the landlord nor NEP (as the purported agent for the landlord) ever obtained authorization from Duke Energy Ohio to resell utility services to tenants of Somerset.

85. Nonetheless, without authorization from Duke Energy Ohio, NEP proceeded with its plan to remove/replace meters owned by Duke Energy Ohio and install master meter service for the purpose of reselling distribution services to existing Duke Energy Ohio customers at Somerset.

86. NEP's unauthorized actions at Somerset violate Duke Energy Ohio's Tariff.

PRAYER FOR RELIEF

Duke Energy Ohio respectfully requests that the Commission provide the following relief:

- A. A determination that Duke Energy Ohio's allegations herein state "reasonable grounds for complaint" and a prompt hearing and procedural schedule under R.C. 4905.26.
- B. A finding and order determining that if NEP were to take over electric distribution service to the Somerset customers (whether as a purported "agent" of the property owner or otherwise), NEP would be operating as an "electric light company," a "public utility," an "electric supplier," and an uncertified competitive retail electric service provider and therefore violating the Ohio Revised Code and Ohio Administrative Code as alleged herein.
- C. A finding and order that Duke Energy Ohio need not terminate service to Somerset and that Duke Energy Ohio need not reconfigure and establish master meter service to Somerset.
- D. A finding and order ordering NEP to cease and desist from taking over electric distribution service to the Somerset customers (whether as a purported "agent" of the property owner or otherwise).
- E. A finding that NEP has violated numerous statutes as outlined above, triggering application of the treble damages statute, R.C. 4905.61.
- F. Such other and further relief as authorized by law.

Respectfully submitted,

/s/ N. Trevor Alexander

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INSTRUCTIONS FOR SERVICE

TO THE DOCKETING DIVISION:

Please serve the Complaint to the following:

Nationwide Energy Partners, LLC
c/o Corporation Service Company
50 West Broad Street, Suite 1330
Columbus, Ohio 43215

CERTIFICATE OF SERVICE

In addition to service by the docketing division, I hereby certify that a service copy of the foregoing was sent by or on behalf of the undersigned counsel to the following party this 30th day of March, 2022, via email.

Drew Romig, Esq.
Associate General Counsel
Nationwide Energy Partners, LLC
230 West Street, Suite 200
Columbus, Ohio 43215
dromig@nationwideenergypartners.com

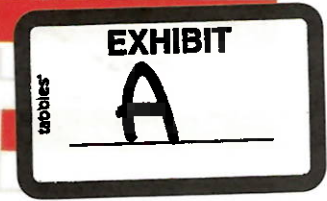
/s/ Mark T. Keaney
One of Attorneys for Duke Energy Ohio, Inc.



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ON BEHALF OF YOUR COMMUNITY,
CREEKSIDE

| Invoice Date | Due Date |
|------------------|--------------|
| Jun 27, 2017 | Jul 13, 2017 |
| Total Amount Due | |
| \$ 40.93 | |



Addressee

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7000000692 00.0003.0278 692/1

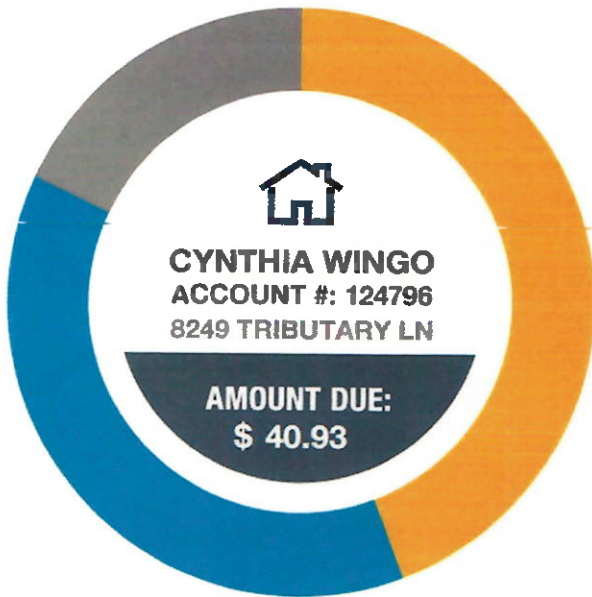


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ELECTRIC

\$ 18.04



WATER

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COMMUNITY CHARGES

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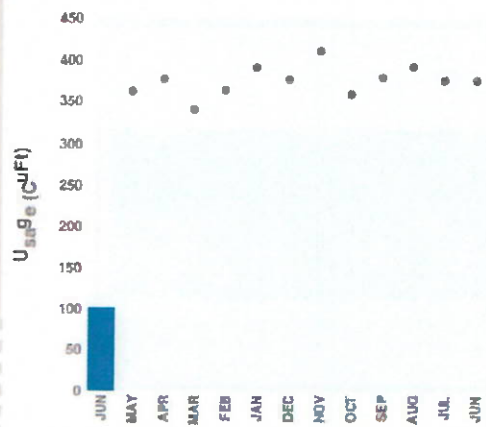
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● COMMUNITY AVERAGE



| current read | previous read | meter conversion | usage (CuFt) |
|--------------|---------------|------------------|--------------|
|--------------|---------------|------------------|--------------|

14466.920 - 14365.510 X 1 = 101.410

| current read date | previous read date |
|-------------------|--------------------|
|-------------------|--------------------|

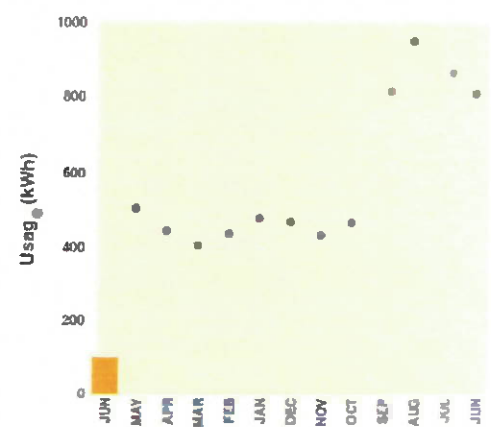
06-25-17

06-04-17



Meter #: 31334805

■ YOUR USAGE
● COMMUNITY AVERAGE



| current read | previous read | meter conversion | usage (kWh) |
|--------------|---------------|------------------|-------------|
|--------------|---------------|------------------|-------------|

26494 - 26395 X 1 = 99

| current read date | previous read date |
|-------------------|--------------------|
|-------------------|--------------------|

06-25-17

06-04-17

PAYMENT METHODS

NEP Autopay

Sign up for autopay to have the payments for your NEP bill automatically withdrawn from your bank account or credit card each month, at no cost to you.

Electronic Bill Pay

Set up directly through your bank online, electronic bill pay allows you to send money from your bank account directly to NEP to pay your bill. You choose the amount you want to pay and the date you want the payment to be applied.

Online Payment

Pay online anytime through NEP's website. Residents can register online or quick pay without having to set up an online account.

In-Store Payment

A number of stores, such as Wal-Mart, accept payments at all locations in the continental US. **Bring your NEP statement with you.** *Service fees may apply.*





Mail

Pay by check by mailing the detachable payment stub along with your check in the return envelope provided with your monthly invoice. **Please include your NEP account number on your check.**

Phone

Residents may pay their bill 24 hours a day, 7 days a week, through NEP's automated phone system. Residents may also call our toll free Resident Support number to pay with a live agent during office hours. *Service fees will apply for payments made with a live agent.*

Billing Summary

| | | |
|---|----------------------------|----------------|
|  | Previous Balance | \$0.00 |
| | Payments | \$0.00 |
| | Balance Forward/Carry Over | \$0.00 |
|  | Customer Charge | \$5.88 |
| | NEP Energy Discount | -\$0.70 |
| | Electric Usage | \$12.86 |
|  | Water Usage | \$6.46 |
| | Sewer Usage | \$6.20 |
| | Stormwater Charges | \$2.80 |
|  | Common Area Electric | \$7.41 |
| | Common Area Water | \$0.02 |
| TOTAL AMOUNT DUE ON JUL 13, 2017 | | \$40.93 |

USEFUL INFO

Never worry about missing a bill and save paper by signing up for paperless billing! You'll receive an email notification the moment your bill is available online when you sign up through "My Account" at NationwideEnergyPartners.com. It's convenient for you and benefits the environment! You can also sign up for Autopay to waive your security deposit and enjoy the ease of paying your bill automatically every month. Have peace of mind knowing you will never miss a payment!

TERMS AND CONDITIONS

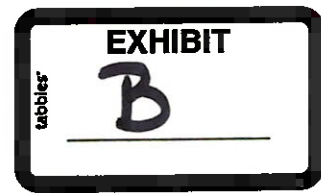
NEP provides metering and billing services on behalf of your community owner or community association. Failure to receive a bill does not change the due date or possibility of disconnection due to non-payment.

A \$30.00 charge may be applied to your account for all payments not honored by the bank for any reason, including, but not limited to: Insufficient funds (NSF), account closed, payment stopped, no signature, and improperly drawn or submitted.

A security deposit is added to the account of any new residents or delinquent accounts. The deposit will be waived if a resident signs up for autopay or presents NEP with a qualifying letter of credit from a previous utility company. All fees are subject to change.

For more information regarding your billing summary and charges, please visit our website at NationwideEnergyPartners.com





OUR SOLUTION

Innovative Advantages for Your Community

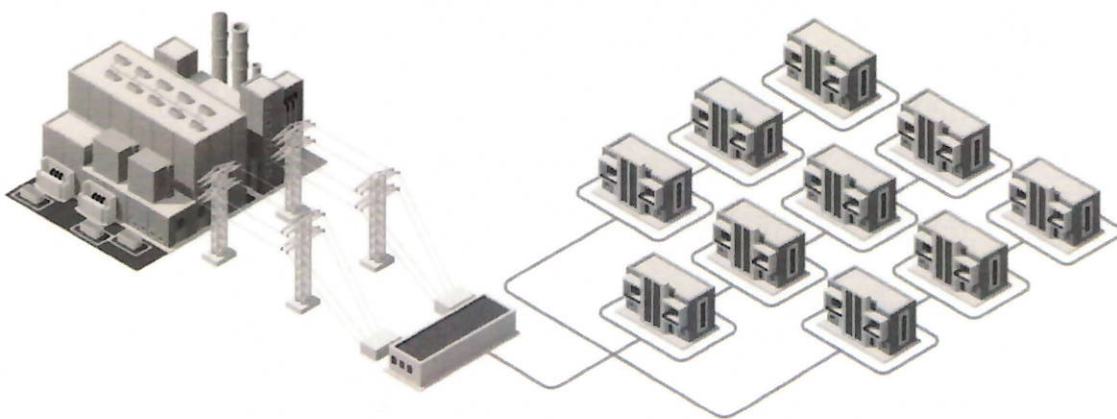
NEP's unique model helps multifamily property owners realize immediate increases in operational value while delivering a better resident experience.

Traditional Utility Models vs The NEP Model

Traditional Model

The NEP Model

The traditional utility model provides very few benefits to the multifamily property owner. The host utility controls the design and placement of the infrastructure, receives all of the resident data, and earns all revenue returns.



Revenue

Traditional Utility Model



All revenue returns to host utility

The NEP Model



Revenue stays in community for reinvestment

Infrastructure Design

Traditional Utility Model



Infrastructure design is out of your hands

The NEP Model



You decide how infrastructure is designed

Clean Energy

Traditional Utility Model



Not always clean energy

The NEP Model



100% carbon free energy

Customer Data

Traditional Utility Model



Host utility holds all customer data

The NEP Model



NEP dashboard provides visibility and analytics into customer data

Common Areas

Traditional Utility Model



Common areas are hard to bill and meter

The NEP Model



Common areas are metered and billed

Cost of Ownership

Traditional Utility Model



You pay for utility infrastructure

The NEP Model

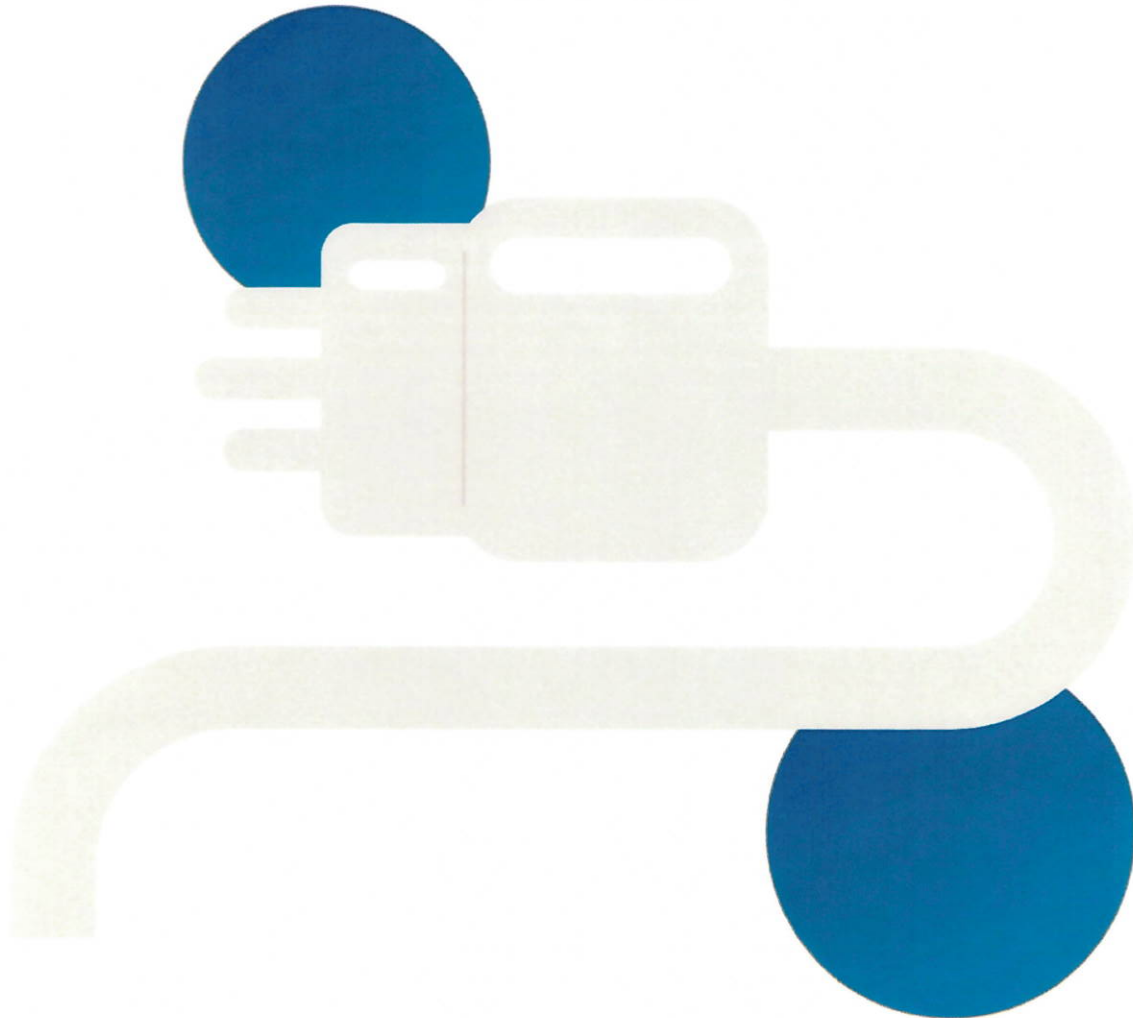


NEP pays for the last mile infrastructure

Get Started Today

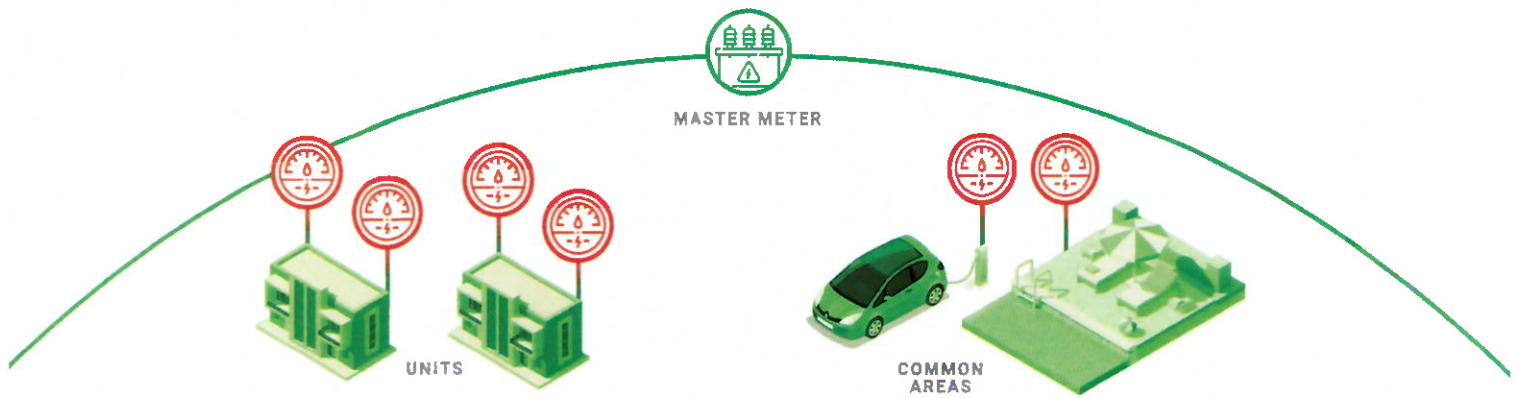
**Unplug from your Utility...Plug
in with NEP**

A partnership with NEP uncovers an extensive array of benefits available when you exercise your ownership right to the last mile of electrical infrastructure at your property. Leverage generous economic, design, technological, and clean energy advantages. NEP's multifamily expertise will help you improve cash flow and NOI while providing a better overall experience for you, your property management team, and your residents.



You Take Control

Submeters at each resident — and your common areas — will be tied into your new master meter, giving you complete control and visibility into energy usage. We utilize best-in-class, two-way AMI remotely readable meters that broadcast usage data in 15-minute intervals.



Total Visibility

NEP analytics and data platforms provide complete visibility into electrical distribution in your community, giving you more control and insight for making decisions.

- Individual unit-usage measurement, data, and analytics
- Building, community and portfolio level usage, and analytics
- Comparative analytics between units of the same type
- Vacant-unit usage analytics
- Ability to detail individual contributors to CAU such as pools, fountains, HVAC, elevators, etc.



OUR PROCESS

Solutions for Both New Build and Existing Multifamily Communities

NEW CONSTRUCTION

NEP From the Ground Up

New construction projects are organized by a custom-created timeline unique to each property that includes the following general steps.

Evaluation and Planning

NEP reviews all relevant plans provided by the property owner and creates a proposal.

Construction

Prior to construction, NEP meets with key stakeholders and develops an implementation schedule.

Installation and Hook Up

NEP coordinates the installation of transformers, enclosures, meters, and the primary distribution system with the host utility.

Training and Resident

NEP conducts training for property managers and all registration, communication, and billing for new residents.



EXISTING COMMUNITIES

Converting to the NEP Model

We make electrical privatization easy by developing a tailored plan that guides you along the way.

Assessment and Review

NEP performs an initial site assessment and creates a proposal.

Design and Permits

All relevant materials are submitted to any appropriate third party, and a design tech is assigned to the project.

Planning

NEP meets with the host utility to discuss scheduling, equipment, and any property management needs.

Construction and Conversion

Any needed construction to the electronic distribution equipment is conducted. The host utility installs the community master meter.

Tenant Communication

NEP handles resident communication, including pre- and post-installation and future billing.



Communities Served by NEP



COASTAL RIDGE
REAL ESTATE



CRAWFORD HOYLE



Edwards Companies





GMH Capital Partners

kaufman
DEVELOPMENT



ONEWALL
PARTNERS



SCHOTTENSTEIN
REAL ESTATE GROUP
Live Your Dream



Four Big Benefits of Privatization

Find out more and remove any "it is too good to be true" doubt by reading our business brief that spells out all the details.

[Download](#)

Get Started with NEP in Three Simple Steps

STEP 1

See The Value

Let us show you how NEP can increase your NOI.

STEP 2

On-site Assessment

Get a free proposal with tailored next steps and detailed ROI.

STEP 3

Implement

We'll cover upfront costs and project manage the entire process.

[Start a Conversation](#)



[Our Solution](#)

[Our Benefits](#)

[Our Story](#)

[Residents](#)

[Careers](#)

[Contact Us](#)

Keep in Touch

sales@nationwideenergypartners.com

Sales Inquiries: 800-272-8337

Resident Support: 877-818-2637

230 West Street, #150

Columbus, OH 43215

in



From: Kingery, Jeanne W. </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=313978D740A74B4D8932403B9769BF96-JWKINGE (28)>
To: Bryce McKenney <BMcKenney@mcneeslaw.com>
CC: D'Ascenzo, Rocco <Rocco.D'Ascenzo@duke-energy.com>
Subject: NEP proposal - Somerset at Deerfield
Sent: 2021/05/28 17:35:35 (UTC +00:00)

Bryce –

Since our recent meeting with you and your client, Nationwide Energy Partners (NEP), we have been considering NEP's proposal. Thank you very much for your patience.

As we understand the proposal, NEP would like to purchase Duke Energy Ohio's distribution infrastructure serving all of the premises included within the neighborhood known as Somerset at Deerfield. The impacted premises include individually metered residential customer apartments/townhomes, as well as the common/community-shared facilities (club house, fitness center, etc). The Duke Energy Ohio assets that would be included in the purchase would consist of all of Duke Energy Ohio's equipment (e.g., poles, transformers, conduit, conductor, meters, etc.,) currently installed in the neighborhood and serving all premises, including the individual residences. NEP's purchase offer would be at the depreciated book value of the assets. After the purchase, the owner of Somerset at Deerfield would be Duke Energy Ohio's sole customer, with primary-level service being taken at a single delivery point. The existing individual residential customers who are currently Duke Energy Ohio customers would then become master-metered by NEP and would be served by NEP behind that single Duke Energy Ohio delivery point. They would, thus, no longer be Duke Energy Ohio distribution customers.

After internal discussions with management, Duke Energy Ohio is not interested in pursuing a transaction to sell facilities serving its current customers. Nor is it interested in abdicating its right and responsibility to provide distribution service to those existing customers within its certified electric service territory. Furthermore, it should be understood that Duke Energy Ohio has not previously participated in a sale of this nature and scope and believes that Commission approval would be required, at least under the abandonment statutes and the certified territory law.

Again, thank you for your patience as we worked through this matter internally.

Jeanne

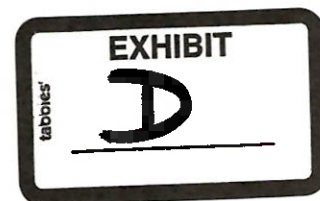
Jeanne W. Kingery
Associate General Counsel
Duke Energy Business Services LLC
155 East Broad Street, 20th Floor
Columbus, Ohio 43215
(614) 222-1334
(614) 593-1401 cell



 please consider the environment before printing this email

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21 East State Street • Columbus, OH 43215-4228
Tel: 614.469.8000 • Fax: 614.469.4653

Bryce McKenney
bmckenney@mcneeslaw.com
Direct Dial: 614-719-2850

June 9, 2021

VIA E-MAIL

Jeanne Kingery
Associate General Counsel
Duke Energy Business Services, Inc.
155 East Broad Street, 20th Floor
Columbus, Ohio 43215

Re: Somerset at Deerfield

Dear Jeanne,

We appreciate Duke Energy Ohio's ("Duke") consideration of the proposal presented by Nationwide Energy Partners ("NEP") on behalf of Coastal Ridge, LLC ("Coastal Ridge") to negotiate an infrastructure purchase agreement regarding Duke's infrastructure located on the Somerset at Deerfield property.

NEP and Coastal Ridge believe that an infrastructure purchase agreement with Duke can be in the best interests of all parties involved. Coastal Ridge owns the Somerset at Deerfield property and intends to exercise its property rights under Ohio law to master meter the property.¹ Coastal Ridge, being the property owner, would remain a Duke customer and pay Duke for electric distribution service at the master meter. Coastal Ridge, with the assistance of NEP, would then submeter the rental facilities located on the Somerset at Deerfield property. If Duke does not negotiate with NEP and Coastal Ridge, then Coastal Ridge will evaluate whether to install its own infrastructure on the property, thus rendering Duke's infrastructure located on the property no longer used and useful for utility service. However, if Duke can agree to an infrastructure purchase agreement whereby the property owner will purchase the infrastructure located on the property, then the parties can avoid a confrontation at the Public Utilities Commission of Ohio regarding whether Duke's property is no longer used and useful for utility service.

Further, in your email indicating that Duke is not interested in a transaction to sell its infrastructure located on the property owned by Coastal Ridge, there are several misstatements

¹ See *FirstEnergy Corp. v. Pub. Util. Comm.*, 96 Ohio St.3d 371, 2002-Ohio-4847, 775 N.E.2d 485, holding that the energy supplier is not allowed to restrict the resale of electric service by a landlord to a tenant if the resale takes place only on the landlord's property.

June 9, 2021
Page 2

or misrepresentations that we would like to address before the parties determine whether there is an opportunity to move forward with further negotiations.

First, although NEP is negotiating with Duke and would be staging the sale, the actual purchaser of the infrastructure would be the account holder and property owner. NEP is not proposing to purchase the infrastructure but is negotiating on behalf of Coastal Ridge which owns the Somerset at Deerfield property and is the account holder. Further, Coastal Ridge would remain a Duke customer and continue to purchase electric distribution service from Duke. Coastal Ridge is simply interested in exercising its right to master meter the rental facilities located on its property.

Second, NEP and Coastal Ridge are not proposing that Duke sell its poles, but only the infrastructure located behind the curb on the property known as Somerset at Deerfield. NEP has submitted an equipment sheet to Duke detailing the infrastructure that Duke should allow the property owner to purchase.

Third, the Somerset at Deerfield property would continue to take electric distribution service from Duke, so Duke would not be abandoning service to the customer. While R.C. 4905.20 prohibits a utility from abandoning service to a customer, in this instance the customer is requesting to purchase the utility's infrastructure located on the customer's property and to remain a customer at a single delivery point. This would not constitute abandonment of service. Further, the property would continue to be located within Duke's certified territory and be served by Duke, so there would be no conflict with Ohio's certified territory law.

We would like to continue to negotiate with Duke regarding purchasing the distribution infrastructure located on the Somerset at Deerfield property. Please let us know your availability between June 28 and July 2, 2021, for another discussion regarding this matter.

Sincerely,

McNEES WALLACE & NURICK LLC

By

Bryce A. McKenney

Cc: Teresa Ringenbach, Vice President of Business Development
Kit Hagen, Senior Vice President of Growth and Business Development
Drew Romig, Corporate Counsel



Mail
139 East F
1303 Main
Cincinnati, Ohio 45202
o: 513-287-4320
f: 513-287-4385

EXHIBIT

tabbles

E

January 13, 2022

Teresa Ringenbach
Nationwide Energy Partners
230 West St. Street
Columbus, Ohio 43215

Re: Submetering Services at Somerset at Deerfield

Dear Teresa:

This correspondence responds to your recent inquiry concerning the requested removal and replacement of certain residential customer meters owned and operated by Duke Energy Ohio, Inc. (Duke Energy Ohio) at an apartment/townhome community in Mason, Ohio known as Somerset at Deerfield (Somerset).

Duke Energy Ohio is currently investigating the specific facts and circumstances surrounding requests by Nationwide Energy Partners, LLC (NEP) to remove and replace certain Duke Energy Ohio customer meters at Somerset. Duke Energy Ohio understands that to date NEP has caused to be replaced and/or removed approximately 82 residential customer meters and has plans to replace and/or remove approximately 433 additional meters. To assist in Duke Energy Ohio's investigation, I am requesting prompt production of all written authorizations from these identified approx. 515 customers, confirming their consent to the change in metering equipment. Further, please accept this correspondence as a request that NEP and its agents retain any and all materials and communications related to its activities at Somerset.

Until this investigation is complete, Duke Energy Ohio will not be moving forward with any existing or future requests from NEP or its agents to remove and/or replace additional customer meters at Somerset. As such, you should consider all such requests to be suspended indefinitely.

Please provide this letter to your counsel and direct any future correspondence or phone calls regarding this matter to me rather than to Duke Energy Ohio business employees or representatives.

Very truly yours,



Rocco D'Ascenzo

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

3/30/2022 8:23:17 AM

in

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

Summary: Text Complaint electronically filed by Mark T. Keaney on behalf of Duke
Energy Ohio, Inc.