

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

Duke Energy Ohio, Inc.	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 22-279-EL-CSS
	)	
Nationwide Energy Partners, LLC	)	
	)	
Respondent.	)	

**NATIONWIDE ENERGY PARTNERS, LLC'S**  
**ANSWER TO COMPLAINT AND COUNTERCLAIM**

For its Answer to the March 30, 2022, Complaint filed by Duke Energy Ohio, Inc. ("Duke Ohio"), Nationwide Energy Partners, LLC ("NEP") asserts the following answers and defenses.

**FIRST DEFENSE**

1. The allegations contained in Paragraph 1 of the Complaint contain conclusions of law to which no response is necessary.
2. NEP admits it is a foreign limited liability company organized under the laws of Delaware. The remaining allegations of Paragraph 2 of the Complaint refer to a writing, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writing, such allegations are denied. NEP denies further allegations contained in Paragraph 2 of the Complaint.
3. The allegations contained in Paragraph 3 of the Complaint contain conclusions of law to which no response is necessary.
4. NEP denies the allegations contained in Paragraph 4 of the Complaint.
5. NEP denies the allegations contained in Paragraph 5 of the Complaint.
6. NEP denies the allegations contained in Paragraph 6 of the Complaint.
7. NEP denies the allegations contained in Paragraph 7 of the Complaint

8. The allegations contained in Paragraph 8 of the Complaint contain conclusions of law to which no response is necessary.

9. The allegations contained in Paragraph 9 of the Complaint contain conclusions of law to which no response is necessary.

10. NEP admits that Duke Ohio allows master-metered configurations at multi-family complexes in its service territory, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 10 of the Complaint and therefore denies same.

11. Paragraph 11 of the Complaint refers to a writing, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writing, such allegations are denied. NEP denies further allegations contained in Paragraph 11 of the Complaint.

12. Paragraph 12 of the Complaint refers to a writing, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writing, such allegations are denied. NEP denies the remaining allegations contained in Paragraph 12 of the Complaint.

13. Paragraph 13 of the Complaint refers to a writing, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writing, such allegations are denied. NEP denies the remaining allegations contained in Paragraph 13 of the Complaint.

14. NEP denies the allegations contained in Paragraph 14 of the Complaint.

15. NEP admits that it is not a public utility under the Ohio Revised Code. NEP denies the remaining allegations contained in Paragraph 15 of the Complaint.

16. NEP admits that pursuant to its contractual obligations and as the authorized representative of each property owner, manager or developer, NEP receives and pays invoices for Duke Ohio's master-meter utility charges on behalf of the respective property owner, manager or developer. NEP denies the remaining allegations contained in Paragraph 16 of the Complaint.

17. NEP denies the allegations contained in Paragraph 17 of the Complaint.

18. Paragraph 18 of the Complaint refers to writings, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writings, such allegations are denied. NEP denies the remaining allegations contained in Paragraph 18 of the Complaint.

19. NEP denies the allegations contained in Paragraph 19 of the Complaint.

20. NEP denies the allegations contained in Paragraph 20 of the Complaint.

21. Paragraph 21 of the Complaint refers to writings, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writings, such allegations are denied. NEP denies the remaining allegations contained in Paragraph 21 of the Complaint.

22. Paragraph 22 of the Complaint refers to writings, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writings, such allegations are denied. NEP denies the remaining allegations contained in Paragraph 22 of the Complaint.

23. Paragraph 23 of the Complaint refers to writings, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writings, such allegations are denied. The remaining allegations contained in Paragraph 23 of the Complaint are denied.

24. NEP admits that Somerset is an apartment complex located at Deerfield in Mason, Ohio and that NEP has a contract with the owner of that complex to provide services, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 24 of the Complaint and therefore denies same.

25. NEP admits, upon information and belief, that Somerset is located in Duke Ohio's service territory, and that Duke Ohio currently provides electric service to some of the individual units at the apartment complex. NEP denies the remaining allegations contained in Paragraph 25 of the Complaint.

26. NEP admits, upon information and belief, that Duke Ohio currently owns and operates electric distribution infrastructure at Somerset. NEP denies the remaining allegations contained in Paragraph 26 of the Complaint.

27. NEP admits, upon information and belief, that NEP contacted Duke Ohio in or around December of 2020 and representatives of Duke Ohio and NEP met on or around December 4, 2020. NEP denies the remaining allegations contained in Paragraph 27 of the Complaint.

28. NEP admits, upon information and belief, that Duke Ohio contacted NEP in or around January 2021 regarding the sale of equipment at Somerset, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 28 of the Complaint and therefore denies same.

29. NEP is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint and therefore denies same.

30. NEP is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 30 of the Complaint and therefore denies same.

31. NEP admits, upon information and belief, that NEP met with Duke Ohio on or around January, 28, 2021 on behalf of the Somerset owner regarding the sale of equipment at Somerset, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 31 of the Complaint and therefore denies same

32. NEP admits, upon information and belief, that NEP's legal counsel contacted Duke Ohio on April 19, 2021, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 32 of the Complaint and therefore denies same.

33. NEP admits, upon information and belief, that NEP and Duke Ohio met on or around April 26, 2021 to discuss the sale of equipment to the owner of Somerset. NEP denies the remaining allegations contained in Paragraph 33 of the Complaint.

34. Paragraph 34 of the Complaint refers to a writing, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writing, such allegations are denied.

35. Paragraph 35 of the Complaint refers to a writing, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writing, such allegations are denied. NEP denies the remaining allegations contained in Paragraph 35 of the Complaint.

36. NEP is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint and therefore denies same.

37. NEP denies the allegations contained in Paragraph 37 of the Complaint.

38. NEP denies the allegations contained in Paragraph 38 of the Complaint.

39. NEP admits, upon information and belief, that NEP contacted Duke Ohio in or around the summer and fall 2021 on behalf of the Somerset owner. NEP denies the remaining allegations contained in Paragraph 39 of the Complaint.

40. NEP is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 41 of the Complaint and therefore denies same.

41. NEP is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 41 of the Complaint and therefore denies same.

42. NEP is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 42 of the Complaint and therefore denies same.

43. NEP is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 43 of the Complaint and therefore denies same.

44. NEP denies the allegations contained in Paragraph 44 of the Complaint.

45. NEP admits that the owner of Somerset has converted 9 of 38 buildings at the Somerset complex to a master-metered configuration and that Duke Ohio is providing distribution to the owner of the Somerset complex through a master-metered configuration at those buildings. NEP denies the remaining allegations contained in Paragraph 45 of the Complaint.

46. NEP denies the allegations contained in Paragraph 46 of the Complaint.

47. NEP admits, upon information and belief, that NEP contacted Duke Ohio on or around January 4, 2022 on behalf of the owner of Somerset because Duke Ohio was sending bills to tenants at Somerset even though Duke Ohio did not have meters placed at the leased units. NEP denies the remaining allegations contained in Paragraph 47 of the Complaint.

48. NEP is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 48 of the Complaint and therefore denies same.

49. NEP is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 49 of the Complaint and therefore denies same.

50. Paragraph 50 of the Complaint refers to a writing, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writing, such allegations are denied.

51. Paragraph 51 of the Complaint refers to a writing, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writing, such allegations are denied.

52. NEP admits that it is not a public utility under the Ohio Revised Code and, therefore, not subject to public utility rules and regulations. NEP denies that it is taking “over electric service” at Somerset and denies the remaining allegations contained in Paragraph 52 of the Complaint.

53. NEP is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 53 of the Complaint and therefore denies same. Answering further, in response to the allegations in the second sentence of Paragraph 53 of the Complaint, NEP denies it is taking “over service” at Somerset and denies the remaining allegations contained in Paragraph 53 of the Complaint.

54. NEP is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the first and second sentences in Paragraph 54 of the Complaint and therefore denies same. Answering further, in response to the allegations contained in the fourth sentence of Paragraph 54 of the Complaint, NEP denies it is taking “over service” at Somerset and denies the remaining allegations contained in Paragraph 54 of the Complaint.

55. NEP admits that it is not a public utility under the Ohio Revised Code and, therefore, not subject to public utility rules and regulations. NEP denies the remaining allegations contained in Paragraph 55 of the Complaint.

56. NEP denies the allegations contained in Paragraph 56 of the Complaint.

57. NEP admits that it is not a public utility under the Ohio Revised Code and, therefore, not subject to public utility rules and regulations. NEP denies the remaining allegations contained in Paragraph 57 of the Complaint.

58. NEP is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the first two sentences and last sentence of Paragraph 58 of the Complaint and therefore denies same. NEP denies the remaining allegations contained in Paragraph 58 of the Complaint.

59. NEP is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint and therefore denies same.

60. The allegations contained in Paragraph 60 of the Complaint contain conclusions of law to which no response is necessary.

61. NEP incorporates by reference its responses to Paragraphs 1 through 60 of the Complaint as if fully restated herein.

62. NEP denies the allegations contained in Paragraph 62 of the Complaint. Further answering, NEP is not an “electric light company” under R.C. 4905.03 or a “public utility” under R.C. 4905.02.

63. NEP denies the allegations contained in Paragraph 63 of the Complaint. Further answering, NEP is not an “electric light company” under R.C. 4905.03 or a “public utility” under R.C. 4905.02.



64. NEP denies the allegations contained in Paragraph 64 of the Complaint. Further answering, NEP is not an “electric light company” under R.C. 4905.03 or a “public utility” under R.C. 4905.02.

65. NEP denies the allegations contained in Paragraph 65 of the Complaint. Further answering, NEP is not an “electric light company” under R.C. 4905.03 or a “public utility” under R.C. 4905.02.

66. NEP denies the allegations contained in Paragraph 66 of the Complaint. Further answering, NEP is not an “electric light company” under R.C. 4905.03 or a “public utility” under R.C. 4905.02.

67. NEP denies the allegations contained in Paragraph 67 of the Complaint. Further answering, NEP is not an “electric light company” under R.C. 4905.03 or a “public utility” under R.C. 4905.02.

68. NEP denies the allegations contained in Paragraph 68 of the Complaint. Further answering, NEP is not an “electric light company” under R.C. 4905.03 or a “public utility” under R.C. 4905.02.

69. NEP denies the allegations contained in Paragraph 69 of the Complaint. Further answering, NEP is not an “electric light company” under R.C. 4905.03 or a “public utility” under R.C. 4905.02.

70. NEP denies the allegations contained in Paragraph 70 of the Complaint. Further answering, NEP is not an “electric light company” under R.C. 4905.03 or a “public utility” under R.C. 4905.02.

71. NEP denies the allegations contained in Paragraph 71 of the Complaint. Further answering, NEP is not an “electric light company” under R.C. 4905.03 or a “public utility” under R.C. 4905.02.

72. NEP denies the allegations contained in Paragraph 72 of the Complaint. Further answering, NEP is not an “electric light company” under R.C. 4905.03 or a “public utility” under R.C. 4905.02.

73. NEP incorporates by reference its responses to Paragraphs 1 through 72 of the Complaint as if fully restated herein.

74. The allegations contained in Paragraph 74 of the Complaint contain conclusions of law to which no response is necessary.

75. Upon information and belief, NEP admits the allegations contained in Paragraph 75 of the Complaint.

76. NEP denies that it “is an ‘electric supplier’” as defined in R.C. 4933.81(A), denies that it is “providing ‘electric service’” as defined in R.C. 4933.81(F), and denies the remaining allegations contained in Paragraph 76 of the Complaint.

77. NEP incorporates by reference its responses to Paragraphs 1 through 76 of the Complaint as if fully restated herein.

78. The allegations contained in Paragraph 78 of the Complaint contain conclusions of law to which no response is necessary.

79. In response to the allegations contained in Paragraph 79 of the Complaint, NEP admits that it is not certified by the Commission to provide competitive retail electric service, but denies that it was required to do so under Ohio law.

80. NEP denies the allegations contained in Paragraph 80 of the Complaint.

81. NEP incorporates by reference its responses to Paragraphs 1 through 80 of the Complaint as if fully restated herein.

82. Paragraph 82 of the Complaint refers to a writing, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writing, such allegations are denied. NEP denies further allegations contained in Paragraph 82 of the Complaint.

83. Paragraph 83 of the Complaint refers to a writing, the contents of which speak for themselves. To the extent these allegations mischaracterize the contents of the writing, such allegations are denied.

84. NEP denies the allegations contained in Paragraph 84 of the Complaint.

85. NEP denies the allegations contained in Paragraph 85 of the Complaint.

86. NEP denies the allegations contained in Paragraph 86 of the Complaint.

87. In response to Duke Ohio's Prayer for Relief, NEP denies that any relief requested is warranted and denies all allegations contained in the Prayer for Relief and all subparts.

88. NEP denies each and every allegation contained in the Complaint not expressly admitted to be true herein.

### **SECOND DEFENSE**

89. The Complaint fails to state a claim upon which relief may be granted.

### **THIRD DEFENSE**

90. The Commission does not have subject matter jurisdiction over Duke Ohio's Complaint.

### **FOURTH DEFENSE**

91. The Commission does not have personal jurisdiction over NEP.

**FIFTH DEFENSE**

92. Duke Ohio's claims in the Complaint fail to state reasonable grounds for complaint.

**FIFTH DEFENSE**

93. Duke Ohio's claims in the Complaint are unripe.

**SIXTH DEFENSE**

94. Duke Ohio has waived the right to assert the claims it raises in the Complaint.

**SEVENTH DEFENSE**

95. Duke Ohio has failed to name necessary and indispensable parties to the Complaint.

**EIGHTH DEFENSE**

96. Duke Ohio's claims in the Complaint are moot.

**NINTH DEFENSE**

97. NEP reserves the right to assert any and all affirmative defenses, counter-claims and other matters as this matter proceeds.

WHEREFORE, NEP respectfully requests that Duke Ohio's Complaint be dismissed.

Respectfully submitted,

/s/ Michael J. Settineri

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## **COUNTERCLAIM AGAINST DUKE ENERGY OHIO, INC. (DUKE OHIO)**

### **JURISDICTION**

1. Nationwide Energy Partners, LLC (“NEP”) is a Delaware corporation with its principal place of business in Columbus, Ohio.

2. NEP was founded in 1999 in Columbus, Ohio and has been operating in Ohio since 1999.

3. NEP engages in the design and construction of on-site infrastructure and provides energy advisory, technology, financing and billing services to only multi-family property owners throughout Ohio and several other states. NEP provides its services to owners of multi-family apartment/condominium complexes with the vast majority of complexes being apartment complexes.

4. Duke Energy Ohio, Inc. (“Duke Ohio”) is a “public utility” as that term is defined in Ohio Revised Code (“R.C.”) 4905.02; a “natural gas company” as that term is defined in R.C. 4905.03; 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.

5. Duke Ohio is subject to the jurisdiction of the Public Utilities Commission of Ohio (“Commission”).

6. Jurisdiction for this counterclaim also exists under R.C. 4905.26 and R.C. 4905.35.

### **GENERAL BACKGROUND**

7. It is well settled under Ohio law that a landlord can resell electricity to tenants. *See First Energy Corp. v. Pub. Util. Comm.*, 96 Ohio St.3d 371, 371-372, 2002-Ohio-4847, 775 N.E.2d 485 (“this court has held that office buildings, apartment houses, and shopping centers are ‘consumers’ of electricity even though these consumers may resell, redistribute, or submeter part

of the electric energy to their tenants.”), citing *Jonas v. Swetland Co.*, 119 Ohio St. 12, 16-17, 162 N.E. 45 (1928); *Shopping Centers Assn. v. Pub. Util. Comm.*, 35 Ohio St.2d 1, 4, 208 N.E.2d 923 (1965).

8. The landlord’s right to resell electric energy to tenants is a protected right. Landlords and tenants have the right to enter into lease agreements that appoint the landlord to secure, resell, and redistribute electric service to its tenants. See *In re the Complaint of Michael E. Brooks, et al. v. The Toledo Edison Company*, Case No. 94-1987-EL-CSS, 1996 Ohio PUC LEXIS 292, \*39, 169 P.U.R.4th 179 (May 8, 1996) (“power to prohibit or restrict electrical service between the landlord and tenants through the company’s tariff must also end at the landlord’s property line”) and see *FirstEnergy Corp. v. PUC*, 96 Ohio St. 3d 371, 373 2002-Ohio-4847, ¶ 10 (“[t]he commission’s decision simply affirmed the right of landlords and tenants to enter into lease agreements that appoint the landlord to secure, resell, and redistribute electric service to its tenants”).

9. For multi-tenant structures/properties (whether a commercial office building, shopping center or an apartment complex), the property owner has the right to choose how to provide internal infrastructure and metering, which may include “submeters” that permit the landlord or property owner to measure usage and bill its tenants accordingly.

10. Regarding apartment complexes more specifically, some apartment complex owners use Duke Ohio provided on-site electrical infrastructure with Duke Ohio metering either at the building level or individual tenant level; others provide their own property-wide infrastructure with Duke Ohio metering the whole property through a single master meter.

11. Unlike an individually-metered configuration, a master-metered configuration involves delivery of electricity for a whole property or for each individual building on the property

at a single point, at which point the utility installs a “master” meter for the property or building. Behind that meter, the landlord or property owner bears responsibility for installing and maintaining infrastructure and managing the billing of individual tenants. This allows the property owner full control of energy decisions for the property but maintains the energy delivery to the property or building at the master meter through the host utility - in this case Duke Ohio.

12. The benefits to a property owner of electing a master-metered configuration include the ability to install upgraded equipment, the freedom to control location, aesthetics and installation timing, and improved opportunities to integrate sustainable power initiatives that impact access to capital and may also help attract tenants. These include the ability to best integrate renewable or carbon free solutions, electric vehicle charging stations, and other power- or demand-savings initiatives across an entire apartment complex.

13. Duke Ohio does not have a right to deprive property owners of their right and opportunity to control on-site infrastructure and tenant metering by refusing to facilitate the conversion from Duke Ohio-provided individual tenant metering to master-metering.

14. That is, property owners have the right to choose, control, maintain, and operate their own on-site infrastructure and tenant metering while establishing and maintaining Duke Ohio utility service available to them under Duke Ohio’s tariff through a master meter or master meters.

15. Behind the property line, property owners – and not Duke Ohio – dictate the type of infrastructure and tenant metering.

16. Similarly, Duke Ohio does not have a right to dictate to property owners who they can contract with to assist with the property owner’s or landlord’s submetering of a multi-family property.

17. Duke Ohio’s tariff allows master-meter configurations at multi-family properties.

18. Property owners and landlords have contracted with companies to assist with managing submetering at master-metered multi-family properties for many years. The services provided by those companies, such as NEP, include receiving and paying electric utility bills on behalf of the property owner or landlord and billing tenants for both their unit electricity consumption and their share of the common area electricity consumption, again on behalf of the property owner or landlord.

19. When the owner of a multi-family complex contracts with NEP, one of the services NEP provides to the owner is monitoring how much electricity is consumed at each unit in the complex. NEP is also able to monitor how much electricity the complex uses for common areas so that the tenants of the complex may share common costs.

20. NEP also provides a service to property owners similar to a general contractor for a project, which includes all aspects of the transition to a master-metered configuration. This includes design, engineering, sourcing and installing equipment and arranging for inspections. As a result, the property owner is able to upgrade existing and outdated electric infrastructure to new infrastructure that is compliant with existing building codes and national electric codes.

21. Design of a master meter configuration requires coordination between Duke Ohio and the property owner or its designated representative to submit and shepherd work orders and engineering plans.

22. As part of that process, upon receipt of work orders submitted by a property owner or its representative, Duke Ohio schedules on-site visits and approval of the engineering plan. This process is an affirmative one, in that it resolves how the requested work will be completed and does not contemplate that any work order for available service may be denied or suspended outright.



23. NEP plays a role in that process, as an agent for property owners that have contracted for its services. Following resolution of any engineering issues, NEP commences on-site work to upgrade infrastructure, installs new transformers and pads, new unit meters, and installs new and upgraded wiring - below grade in trenches and/or above grade.

24. NEP's on-site work for an apartment complex is coordinated with the electric utility (such as Duke Ohio), whose role and obligation is to provide the master meter and remove any unnecessary equipment to make the change.

25. The change from Duke Ohio individual metering to Duke Ohio master metering, particularly where the property owner-controlled infrastructure behind the master meter is being upgraded, requires both Duke Ohio's and the property owner's infrastructure to be in place so that the transition can be achieved quickly, without disrupting complex operations.

26. Following reconfiguration to master-metered service or for a newly constructed facility with master-metered service, Duke Ohio provides utility services to the master-meter(s) on the property, but bills the landlord or property owner for Duke Ohio's services.

27. The landlord or property owner is Duke Ohio's customer; NEP does not become Duke Ohio's customer for the multi-family property, and does not distribute or supply electricity. To the extent the landlord or property owner receive competitive generation supply, that supply is secured through separate contracts with licensed CRES suppliers unaffiliated with NEP and to which contracts NEP is not a party, though which may be executed by NEP in its capacity as authorized agent of the landlord or property owner.

### **THE CONVERSION REQUEST**

28. In August of 2020, NEP entered into a contract with the owner of the Somerset at Deerfield apartment complex in Mason, Ohio ("Somerset") to provide consultation and

construction services for the reconfiguration of a single master meter account with Duke Ohio for each building at Somerset and to install new infrastructure to provide the owner with equipment and technology so the owner can measure tenants' electricity consumption and bill them based on that consumption (the "Somerset Agreement").

29. The Somerset Agreement required NEP to install electric infrastructure on the property.

30. In May of 2021, on behalf of the Somerset owner, NEP submitted work orders to Duke Ohio to perform the work required to change the utility service to Duke Ohio master meter single account service at each building at the Somerset complex.

31. Duke Ohio knew that these work orders were being submitted in connection with and as a result of NEP having entered into a contract with the Somerset complex.

32. Previously and acting on behalf of the respective property owner, NEP had coordinated with Duke Ohio on a similar conversion project at a multi-family complex called University Edge and coordinated on three new build projects called Boulevard at Oakley Station I, Boulevard at Oakley Station II and Mason Grand.

33. Upon receiving confirmation that Duke Ohio would complete the work orders, NEP began work providing the contracted-for services to the Somerset complex.

34. In June of 2021, NEP began working on permits and ordering required materials for the Somerset complex.

35. To prepare for the conversion of the Somerset property to master-metered configuration and pursuant to its contract with the Somerset owner, NEP completed infrastructure work and upgrades at the Somerset property that included design and installation of upgraded cabling from the Duke Ohio service point to each individual building, current transformers and cabinets, and new meters.

36. Duke Ohio coordinated with NEP on converting 9 buildings at the Somerset complex to master-metered configurations but stopped coordinating with NEP on the remaining 38 buildings before or during January 2022.

37. In January 2022, NEP representatives notified Duke Ohio that Duke Ohio was billing tenants in buildings that were master-metered for electric service even though Duke Ohio had removed its meters from those buildings.

38. In response, Duke Ohio stated in correspondence dated January 13, 2022 that it was conducting an investigation and until the investigation was complete, that Duke Ohio would 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.” A copy of that letter is attached to Duke Ohio’s complaint in this proceeding as Exhibit E.

39. On February 8, 2022, Duke Ohio communicated to NEP that “Duke Energy Ohio will not proceed with any further conversions at Somerset or any other similar property in Duke Energy Ohio’s service territory until this matter is resolved.”

40. On February 16, 2022, Duke Ohio communicated to NEP that Duke Energy was not moving forward with the requests to convert “any more of Duke Energy Ohio’s current customers to NEP submetering service.”

41. As of the date of this Counterclaim, Duke Ohio has not performed all of its obligations with regard to Somerset, failing to timely and in good faith process the work orders. Duke Ohio’s failure to perform has resulted in Somerset remaining in an active state of construction, requiring mitigation of ongoing, associated hazards (such as open trenches) that could not be fully resolved without Duke Ohio fulfilling its obligations.

42. As of the filing of this counterclaim, construction and/or installation at the Somerset complex is not complete, waiting for Duke Ohio to fulfill its obligations.

43. Upon information and belief, Duke Ohio willfully and/or intentionally stalled and/or halted its work on the construction requests for the master-metered configuration of the Somerset complex with knowledge that doing so would cause NEP economic harm.

44. Duke Ohio's purported justification for not continuing to process the construction requests – that it believes NEP is a public utility – does not justify its denial of those requests (1) because Duke Ohio is without the authority to enact such a change without Commission order or guidance, and (2) because NEP is not a “public utility” under R.C. 4905.02 or an “electric light company” under R.C. 4905.03.

45. NEP does not take over electric distribution service, which remains the responsibility of Duke Ohio with respect to the property owner, and of the property owner with respect to distributing power to residents on the owner's property.

46. NEP does not supply electricity, and Duke Ohio has not advanced a plausible theory, either in communications with NEP or before the Commission, or produced any evidence as to how NEP would be “supplying electricity” within the meaning of R.C. 4905.03 at the Somerset complex if Duke Ohio completed the construction requests.

47. Duke Ohio took these actions to cause harm to NEP and for Duke Ohio's own commercial benefit, including to preserve its retail delivery to tenants in lieu of delivering electricity at commercial rates through a master meter at each building in the complex.

48. Upon information and belief, Duke Ohio has not denied, failed to act, or otherwise process work order requests submitted by any other company or entity that performs the same or substantially the same services as NEP.

49. NEP's business relies upon its ability to contract with landlords and/or property owners who choose to receive master meter service from their electric distribution utilities, like Duke Ohio.

50. Duke Ohio's actions including its refusal to continue the conversion process at the buildings at Somerset have jeopardized NEP's contract for the Somerset complex.

51. NEP has expended in excess of \$536,000 to perform under its contract with the Somerset counter-party.

52. As a result of Duke Ohio's actions, NEP has and continues to suffer reputational damage among potential customers and contract partners and in the marketplace at large, because NEP has been prevented from performing its obligations under its contract with the Somerset owner and prevented from providing the contracted-for services to the Somerset owner.

53. These continuing harms threaten NEP's ability to conduct business. Duke Ohio's unilateral actions have deprived NEP of revenues on which NEP had planned and new business opportunities, and harmed the general industry goodwill on which NEP relies.

#### **DUKE OHIO'S COMPLAINT AGAINST NEP**

54. On March 30, 2022, Duke Ohio filed a complaint (Case No. 22-279-EL-CSS), in which it raised four counts against NEP.

55. Upon information and belief, as of the date of the filing of this Counterclaim, Duke Ohio has not made any request to the Commission to initiate an investigation related to NEP.

56. Upon information and belief, as of the date of the filing of this Counterclaim, Duke Ohio has not filed a complaint with the Commission challenging the existing use of master-meters and submetering at any multi-family property in its service territory.

57. Upon information and belief, as of the date of the filing of this Counterclaim, Duke Ohio has not sought any authorization from the Commission, including a tariff change, that would allow Duke Ohio to preclude the use of master-meters in conjunction with utility service offered by Duke Ohio in Duke Ohio's service territory

58. Duke Ohio filed its complaint to harass and maliciously injure NEP, including causing NEP to incur needless litigation costs.

59. Duke Ohio's filing of the complaint and the claims in the complaint are not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, and cannot be supported by a good faith argument for the establishment of new law.

**COUNT ONE  
VIOLATION OF R.C. 4905.26**

60. NEP restates and realleges the foregoing paragraphs as though fully restated herein.

61. R.C. 4905.26 confers jurisdiction on the Commission to determine whether "... any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained[.]"

62. Duke Ohio stopped the process of converting buildings at the Somerset complex to master-meter configurations solely because NEP was acting as the owner's representative.

63. Although having stopped the process of converting buildings at the Somerset complex to master-meter configurations, Duke Ohio continues to provide master-meter service to existing buildings at Somerset that are submetered as well as to other multi-family buildings in its service territory.

64. Duke Ohio's on-going refusal to allow the remaining buildings at Somerset to be converted to master-metered configurations is unjust, unreasonable, unlawful, unjustly discriminatory, unjustly preferential, and constitute a denial of service and an inability to obtain a master-meter configuration, all in violation of R.C. 4905.26.

65. Duke Ohio's on-going refusal to allow the remaining buildings at Somerset to be converted to master-metered configurations is contrary to its tariff, which does not prevent a property owner or landlord from reselling electricity to a tenant at a multi-family complex, and therefore such refusal was and is unjust, unreasonable, unlawful, unjustly discriminatory, and unjustly preferential, in violation of R.C. 4905.26.

66. Duke Ohio's on-going refusal to allow the remaining buildings at Somerset to be converted to master-metered configurations while allowing other master-metered configurations to continue within its service territory is unjust, unreasonable, unlawful, unjustly discriminatory, unjustly preferential, and in violation of R.C. 4905.26.

67. Duke Ohio's on-going refusal to allow the remaining buildings at Somerset to be converted to master-metered configurations without any Commission authorization or consultation and which reversed Duke Ohio's practice in allowing apartment complexes to be served under a master-meter configuration was and is unjust, unreasonable, unlawful, unjustly discriminatory, unjustly preferential, and in violation of R.C. 4905.26.

68. Duke Ohio's purported justification for its on-going refusal to allow the remaining buildings at Somerset to be converted to master-metered configurations – that allegedly NEP is operating as a "public utility" and an "electric light company" under R.C. 4905.03 by providing services to the owner of the Somerset complex absent any finding, guidance or directive by the Commission was and is unjust, unreasonable, unlawful, unjustly discriminatory, unjustly preferential, and in violation of R.C. 4905.26.

69. Duke Ohio's on-going refusal to proceed with any further conversions at Somerset or any other similar property in Duke Ohio's service territory that contract with NEP is unjust, unreasonable, unlawful, unjustly discriminatory, and unjustly preferential, all in violation of R.C. 4905.26.

70. Duke Ohio's filing of its complaint against NEP is unjust, unreasonable, unlawful, unjustly discriminatory and in violation of R.C. 4905.26.

71. Duke Ohio's unjust, unreasonable, unlawful, unjustly discriminatory, unjustly preferential actions and behavior in violation of R.C. 4905.26 has damaged NEP financially, damaged NEP's reputation, and damaged NEP's business contracts and relationships.

**COUNT TWO**  
**VIOLATION OF R.C. 4905.35**

72. NEP restates and realleges the foregoing paragraphs as though fully restated herein.

73. R.C. 4905.35(A) prohibits Duke Ohio from making or giving any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subjecting any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage.

74. Duke Ohio is refusing to allow the remaining buildings at Somerset to be converted to master-metered configurations.



75. Duke Ohio is serving 9 master-metered buildings at Somerset as well as other developments in Duke Ohio's service territory that have contracted with NEP.

76. Duke Ohio's on-going refusal to allow the remaining buildings at Somerset to be converted to master-metered configurations has subjected NEP to undue and unreasonable prejudice and disadvantage by stopping construction at the Somerset complex, interfering with NEP's contractual relations with its customers, and harming NEP financially and damaging its reputation.

77. Duke Ohio's on-going refusal to allow master-meter conversions at any other property contracting with NEP in Duke Ohio's territory has subjected NEP to undue and unreasonable prejudice and disadvantage.

78. Rather than filing an unlawful complaint, Duke Ohio could have requested that the Commission reopen its investigation of submetering previously conducted in Case No. 15-1594-AU-COI. Upon information and belief, Duke Ohio did not make any such request to the Commission. Instead, Duke Ohio filed its complaint against NEP.

79. Duke Ohio's filing of the complaint against NEP in this proceeding has subjected NEP to undue and unreasonable prejudice and disadvantage, damaging NEP financially, including forcing NEP to incur legal fees to address Duke Ohio's complaint, and has damaged NEP's reputation.

**WHEREFORE**, Nationwide Energy Partners, LLC respectfully requests that the Commission on an expedited basis:

- (a) Find that reasonable cause exists for this Counterclaim and hold a hearing on the Counterclaim;
- (b) Find that Duke Ohio has unduly, unjustly, unreasonably and unlawfully discriminated against NEP, in violation of R.C. 4905.26;
- (c) Find that Duke Ohio unduly, unjustly, unreasonably and unlawfully refused to allow the remaining buildings at Somerset to be converted to a master-metered configuration as requested by the Somerset owner, in violation of R.C. 4905.26;
- (d) Find that Duke Ohio's refusal to reconfigure the remaining buildings at Somerset to a master-meter configuration as requested by the Somerset owner constitutes an unreasonable, unlawful and discriminatory denial of service, in violation of R.C. 4905.26;
- (e) Find that Duke Ohio's refusal to reconfigure the remaining buildings at Somerset to a master-meter configuration is contrary to its tariff, unreasonable, unlawful, discriminatory and violates R.C. 4905.26;
- (f) Find that Duke Ohio acted unreasonably and unlawfully and in violation of R.C. 4905.26 by implementing a policy to deny requests to reconfigure properties to a master-meter configuration where NEP is a contractor, without Commission authorization;
- (g) Find that Duke Ohio acted unreasonably and unlawfully and in violation of Section 4905.35, Revised Code by its on-going refusal to allow the remaining buildings at

Somerset to be converted to master-metered configurations as requested by the Somerset owner;

- (h) Find that Duke Ohio acted unreasonably and unlawfully and in violation of Section 4905.35, Revised Code by its on-going refusal to allow properties contracting with NEP to be converted to master-metered configurations;
- (i) Find that Duke Ohio acted unreasonably and unlawfully and in violation of Section 4905.35, Revised Code by bringing its complaint against NEP in this proceeding, subjecting NEP to undue and unreasonable prejudice and disadvantage;
- (j) Order Duke Ohio to cease discriminating against NEP and its customers in the application of Duke Ohio's tariff and the processing of construction requests; and
- (k) Provide any other relief necessary on an expedited basis that will ensure that Duke Ohio does not subject NEP, or any Duke Ohio customer using NEP as its contractor, to any further undue and unreasonable prejudice and disadvantage, and does not discriminate against NEP or as to any request for master meter construction services that may be requested by NEP's customers or by NEP acting on behalf of its customers.

Respectfully submitted,

/s/ Michael J. Settineri

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### **CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 20th day of May 2022 upon all persons listed below:

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

Summary: Answer to Complaint and Counterclaim electronically filed by Mr.  
Michael J. Settineri on behalf of Nationwide Energy Partners, LLC