

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Ohio Power Company)	
)	
Complainant,)	
)	
v.)	Case No. 21-990-EL-CSS
)	
Nationwide Energy Partners, LLC)	
)	
Respondent.)	

**NATIONWIDE ENERGY PARTNERS, LLC’S MEMORANDUM CONTRA
OHIO POWER COMPANY’S MOTION TO STAY FILING OF
AMENDED SUBMETERING TARIFF**

Pursuant to Ohio Administrative Code 4901-1-12, Respondent Nationwide Energy Partners, LLC (“NEP”) hereby files this Memorandum Contra Ohio Power Company’s (“AEP Ohio”) Motion to Stay Filing of Amended Submetering Tariff. The Commission should not grant AEP Ohio a special order for a partial stay of the Opinion and Order. AEP Ohio has spent the last two years of litigation insisting that the Commission has the authority and duty to protect consumers. Now that the Commission has offered a solution to the (purely speculative) issues raised by AEP Ohio, AEP Ohio’s attempt to delay that solution is remarkable not only because AEP Ohio ostensibly brought this case for that reason, but also because it lacks legal foundation. NEP and its landlord customers are looking forward to reviewing AEP Ohio’s tariff application implementing the Commission’s Opinion and Order – there is no reason to delay the filing of that application any longer. AEP Ohio’s motion for stay should be denied.

First, and foremost, the motion for stay should be denied because AEP Ohio is not likely to (and will not) prevail on the merits. AEP Ohio raised no credible new arguments or evidence to support that it is likely to prevail—let alone made a strong showing. NEP hereby refers and

incorporates by reference its October 16, 2023 memorandum contra, as well as the well-reasoned Opinion and Order, as the basis by which AEP Ohio cannot meet its burden.

Second, AEP Ohio has not shown it would suffer irreparable harm. Once again, as set forth within NEP's October 16, 2023 memorandum contra to AEP Ohio's application for rehearing, AEP Ohio's enforcement concerns are misplaced—resolved through the simple process of customer certifications and an informal process to work to resolve disputes. Similarly, no substantial harm will come to other parties by requiring AEP Ohio to file an application to modify its electric service resale tariff. The harms AEP Ohio cites are speculative at best and, as stated above, NEP and its landlord customers await AEP Ohio's tariff application. Finally, public interest lies in AEP Ohio filing an application to modify its electric service resale tariff within 90 days. AEP Ohio's concerns are facial and will be resolved through the Commission's tariff application process. Thus, AEP Ohio's motion to stay should be denied.

AEP Ohio's request for a stay pending appeal to the Supreme Court of Ohio is also inconsistent with Title 49 of the Revised Code. R.C. 4903.16 applies in instances of stay of execution.

A proceeding to reverse, vacate, or modify a final order rendered by the public utilities commission does not stay execution of such order unless the supreme court or a judge thereof in vacation, on application and three days' notice to the commission, allows such stay, in which event the appellant shall execute an undertaking, payable to the state in such a sum as the supreme court prescribes, with surety to the satisfaction of the clerk of the supreme court, conditioned for the prompt payment by the appellant of all damages caused by the delay in the enforcement of the order complained of, and for the repayment of all moneys paid by any person, firm, or corporation for transportation, transmission, produce, commodity, or service in excess of the charges fixed by the order complained of, in the event such order is sustained.

AEP Ohio requests a stay until “(if necessary) a ruling on the merits by the Supreme Court of Ohio.” AEP Ohio Mtn. to Stay at 7. If AEP Ohio intends to appeal the Commission's Opinion

and Order, AEP Ohio should follow the affirmative requirements for obtaining a stay of execution in R.C. 4903.16. Therefore, even if the Commission grants a stay pending resolution of AEP Ohio's application for rehearing, that stay should not extend to its appeal and decision of the Supreme Court of Ohio.

The Commission should not grant AEP Ohio's motion to stay the Commission's order that AEP Ohio file an application within 90 days for a new electric resale tariff. The Commission issued a well-reasoned opinion on why NEP is not a public utility. AEP Ohio's arguments on rehearing are simply a repeat of AEP Ohio's initial arguments to the Commission. AEP Ohio's motion for a stay should not be granted.

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 November 2, 2023 upon all persons listed below:

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Summary: Memorandum Nationwide Energy Partners, LLC's Memorandum Contra Ohio Power Company's Motion to Stay Filing of Amended Submetering Tariff electronically filed by Mr. Michael J. Settineri on behalf of Nationwide Energy Partners, LLC.