

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY IN SUPPORT OF OHIO POWER COMPANY’S  
MOTION TO STAY FILING OF AMENDED SUBMETERING TARIFF**

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**I. INTRODUCTION**

On October 18<sup>th</sup>, Ohio Power Company (“AEP Ohio” or the “Company”) moved the Public Utilities Commission of Ohio (“Commission”) to stay its order that “AEP Ohio file within 90 days a new electric resale tariff” (Opinion and Order ¶ 327), pending a ruling on AEP Ohio’s Application for Rehearing and, if necessary, review by the Supreme Court of Ohio.

Nationwide Energy Partners (“NEP”) urges the Commission to require AEP Ohio to move forward with its application and accuses AEP Ohio of stalling. But AEP Ohio is not stalling. The motivation for the motion is straightforward: the Commission is unlikely to proceed with consideration of any application for a revision to AEP Ohio’s tariff while rehearing is pending. Even if AEP Ohio files an application for a tariff revision next month, as the Commission’s order currently requires it to do (*id.*), the Commission will almost certainly not consider the application, or even invite comments on the application, until the Commission issues a second entry on rehearing in this proceeding. And if the Commission substantially modifies or reverses its Opinion and Order on rehearing, then AEP Ohio will need to amend or

withdraw its application. Moreover, once a tariff is approved, there will be activity to implement it including communications with affected landlord customers. Rather than wasting the time and effort of AEP Ohio to prepare a complex tariff application that may never be reviewed – not to mention the time and effort of the submetering industry and affected landlords – it would be more efficient for everyone involved for the Commission to stay the filing and allow the rehearing (and, potentially, appeal) process to play out first.

AEP Ohio's motion also demonstrated that AEP Ohio satisfied the Commission's four-part test for granting a stay. First, AEP Ohio's application for rehearing makes a strong showing that the Commission should reverse its ruling. Second, without the stay, AEP Ohio will be required to administer the new tariff without any mechanism for recovering its added costs, and could be exposed to forfeitures or damages if AEP Ohio is unable to administer the tariff. Third, the stay would not harm other parties, because it would preserve the *status quo*. And fourth, the stay would further the public interest, as it would allow the Commission to either reconsider its order or clarify its intent, and it would prevent third-parties from taking action in reliance on a tariff that could later be cancelled or altered.

NEP disagrees, and argues that AEP Ohio did not satisfy the Commission's four-part test for granting a stay. NEP predicts that the Commission will deny AEP Ohio's application for rehearing. (NEP Memo Contra at 1-2.) NEP insists that AEP Ohio will have no trouble enforcing the electric reseller tariff provisions that the Commission ordered, suggesting that the Commission cannot (or, perhaps, should not) stay the effective date of its order to file an electric reseller tariff pending review of the Commission's order by the Supreme Court of Ohio (if necessary) because R.C. 4903.16 provides a mechanism for the Court to stay a final order of the Commission. (*Id.*) NEP also questions why AEP Ohio would contest the adoption of a tariff that

would provide the consumer protections that were “ostensibly” the reason AEP Ohio filed this complaint case. (*Id.* at 1.)

The answer to that last question is straightforward. Although AEP Ohio supports the Commission’s goals, and appreciates its good intentions, the manner in which the Commission has attempted to extend consumer protections to the tenants of master-metered landlords in AEP Ohio’s territory is unlawful and ill-advised. “The PUCO, as a creature of statute, has no authority to act beyond its statutory powers” (*Disc. Cellular, Inc. v. PUC*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 51), and no Ohio statute permits the Commission to dictate the content of a landlord’s lease agreements or the manner in which it disconnects electric service to its tenants, *unless* the landlord is acting as a public utility. *See, e.g.*, Opinion & Order ¶ 219 (holding that “landlord-tenant disputes are not within the administrative expertise of the Commission” and that “affected tenants [having complains about disconnection] have remedies under landlord/tenant law”). Additionally, the Commission’s decision to prohibit master-metered landlords from charging its tenants more for electricity than they would pay under AEP Ohio’s standard service offer simply cannot be squared with the Supreme Court of Ohio’s opinions in *Pledger v. Pub. Util. Comm.*, 109 Ohio St.3d 463, 2006-Ohio-2989, 849 N.E.2d 14, and *In re Complaint of Wingo v. Nationwide Energy Partners, L.L.C.*, 163 Ohio St.3d 208, 2020-Ohio-5583. Moreover, even if Ohio law empowered the Commission to extend consumer protections to the tenants of master-metered landlords that are not public utilities, which it does not, it would be unjust to withhold those protections from tenants living outside AEP Ohio’s certified territory. And no matter how the Commission chooses to extend those consumer protections, the Commission cannot and should not impose additional obligations on AEP Ohio without also

permitting AEP Ohio to either defer or recover those costs from its customers and clarifying that AEP Ohio will not have liability when enforcing the tariff provisions in good faith.

Legality aside, NEP summarily dismisses AEP Ohio's concerns about its ability to administer and enforce the tariff after it is adopted, describing those concerns as "facial" and "speculative" and opining that any questions "will be resolved through the Commission's tariff application process." (Memo Contra at 2.) AEP Ohio concedes that its concerns are speculative – it has, after all, not yet filed the tariff. But that criticism misses the point. *Now* is the time to think through the practical ramifications of the proposed tariff – what it will require; how it will be enforced; whether AEP Ohio has the means to perform the outreach and recordkeeping that would be necessary to administer the tariff; what AEP Ohio can or should do if it determines that a master-metered landlord is violating the tariff's provisions; and the like. These are not minor details -- they are fundamental to whether the tariff should be adopted as ordered. The harm to NEP's customers has occurred for years without the protection of regulations and keeping the *status quo* for a few more months is reasonable, especially given that the whole regime is reversed on rehearing or appeal.

Indeed, NEP's Memo Contra should give the Commission pause. NEP appears to view the electric reseller tariff as a toothless tiger. According to NEP, AEP Ohio should simply ask its master-metered landlords to certify that they meet the requirements of the tariff (*see* Memo Contra at 2) and then blithely assume the landlords will actually comply with those requirements. And if disputes arise – say, a landlord fails to update its lease agreement, a tenant believes he or she is being overcharged, or a tenant is disconnected unjustly – NEP appears to think AEP Ohio can resolve such disputes through a phone call. (*See id.* (suggesting AEP Ohio adopt "an informal process to work to resolve disputes.")) But many landlord-tenant disputes are not so

easily resolved. AEP Ohio has neither the resources nor the expertise to mediate landlord-tenant disputes. Nor does it have the enforcement options that the Commission has. Once a landlord receives master-metered service, AEP Ohio would have only one remedy to enforce the electric reseller tariff: disconnection. AEP Ohio's concerns should be addressed and resolved in this proceeding before AEP Ohio files its tariff application.

With regard to NEP's final argument, AEP Ohio acknowledges that R.C. 4903.16 provides a mechanism for the Supreme Court of Ohio to "stay execution" of "a final order rendered by the public utilities commission" pending judicial review. R.C. 4903.16. But R.C. 4903.16 becomes a party's exclusive means to obtain a stay only "[o]nce an appeal of a final Commission order is filed with the Supreme Court \* \* \* ." *In re Application of The Dayton Power and Light Co. to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 08-1094-EL-SSO, *et al.*, Entry ¶ 19 (June 14, 2017). Until an appeal is pending before the Ohio Supreme Court, the Commission retains the authority to grant a motion to stay. *See id.* *See also In re Commission-Ordered Investigation of Ameritech Ohio Relative to Its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5, Ohio Administrative Code*, Case No. 99-938-TP-COI, Entry ¶ 11 (July 18, 2002) (granting Ameritech's motion to stay certain provisions of a Commission entry on rehearing "until the completion of Ameritech's appeal or, if no appeal is taken, upon the expiration of the deadline for Ameritech to appeal").

The rehearing statute itself also confirms the Commission's ability to consider requests and grant like the one made by AEP Ohio in its motion:

*Where such application for rehearing has been filed before the effective date of the order as to which a rehearing is sought, the effective date of such order, unless otherwise ordered by the commission, shall be postponed or stayed pending disposition of the matter by the commission or by operation of law. In all other*

cases the making of such an application shall not excuse any person from complying with the order, or operate to stay or postpone the enforcement thereof, without a special order of the commission.

R. C. 4903.10 (emphasis added). Arguably, the italicized sentence could be read to support the conclusion the tariff directive should be suspended, unless otherwise ordered by the Commission, since AEP Ohio filed rehearing before the 90-day tariff deadline. At a minimum, however, the above-quoted provisions in the rehearing statute provides the Commission clear statutory authority to grant AEP Ohio's motion notwithstanding NEP's claim that the requested ruling runs afoul of R.C. 4903.16.

Given the Commission's uncertain authority to regulate lease language and landlords' disconnections of electric service, the Commission should exercise its authority and stay the electric reseller tariff portion of its Opinion and Order pending appeal.

## **II. CONCLUSION**

For the reasons provided above and in its original Motion, AEP Ohio respectfully renews its request that the Commission stay its order that "AEP Ohio file within 90 days a new electric resale tariff" (Opinion and Order ¶ 327), pending a Commission ruling on AEP Ohio's Application for Rehearing and (if necessary) a ruling on the merits by the Ohio Supreme Court.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse (0046705), Counsel of Record

Michael J. Schuler (0082390)

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

Telephone: (614) 716-1608 (Nourse)

Telephone: (614) 716-2928 (Schuler)

Email: [stnourse@aep.com](mailto:stnourse@aep.com)

Email: [mjschuler@aep.com](mailto:mjschuler@aep.com)

Matthew S. McKenzie (0091875)  
M.S. McKenzie Ltd.  
P.O. Box 12075  
Columbus, Ohio 43212  
Telephone: (614) 592-6425  
Email: [matthew@msmckenzieltd.com](mailto:matthew@msmckenzieltd.com)

(willing to accept service by email)

*Counsel for Ohio Power Company*

## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties.

In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 9<sup>th</sup> day of November, 2023, via email.

/s/ Steven T. Nourse

Steven T. Nourse

Email service list:

Michael J. Settineri  
Anna A. Sanyal  
Andrew P. Guran  
Thomas J. Whaling  
Vorys, Sater, Seymour and Pease LLP

[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)

[aasanyal@vorys.com](mailto:aasanyal@vorys.com)

[apguran@vorys.com](mailto:apguran@vorys.com)

[tjwhaling@vorys.com](mailto:tjwhaling@vorys.com)

Drew B. Romig  
Nationwide Energy Partners, LLC  
[dromig@nationwideenergypartners.com](mailto:dromig@nationwideenergypartners.com)



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of Amended Submetering Tariff electronically filed by Mr. Steven T. Nourse on  
behalf of Ohio Power Company.