

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power)
Company for Authority to Abandon Electric) Case No. 22-693-EL-ABN
Service Lines, Pursuant to Ohio Revised Code)
Sections 4905.20 and 4905.21)

INITIAL COMMENTS OF OHIO POWER COMPANY

Pursuant to the November 2, 2023 Entry in this proceeding, Ohio Power Company (“AEP Ohio”) submits the following comments on the abandonment application.

I. INTRODUCTION

The Northtowne Apartments (“Northtowne”), located at 4621 Northtowne Blvd., Columbus, Ohio 43229, were built approximately 50 years ago. Ever since that time, AEP Ohio has provided electric service directly to each individual Northtowne apartment. Currently, AEP Ohio serves 286 residential accounts at Northtowne. As AEP Ohio customers, they enjoy the full panoply of rights and benefits that the Ohio General Assembly and the Commission have established for customers of public utilities in Ohio.

Now, however, Nationwide Energy Partners (“NEP”), purportedly acting as an “agent” of the owner of Northtowne, has requested that AEP Ohio abandon its service to the 286 Northtowne households. NEP wants AEP Ohio to remove its residential meters and so that it can set up 59 points of delivery, with 59 “master meters,” located throughout the multibuilding Northtowne complex.¹ This will necessarily require AEP Ohio to abandon other facilities on the property, including distribution lines and transformers. NEP has requested this change so that

¹ If the Commission forces AEP Ohio to abandon its 286 Northtowne customers, AEP Ohio plans to provide a single delivery point to the Northtowne property, rather than the 59 points requested by NEP.

NEP may purchase electric service from AEP Ohio at the meter meters and then resell it to the Northtowne residents.

As the Commission is aware, AEP Ohio opposes NEP's brand of submetering and believes that NEP is unlawfully operating as a "public utility" within AEP Ohio's exclusive statutory service territory. To raise this issue to the Commission, AEP Ohio brought a complaint against NEP in Case No. 21-990-EL-CSS, which addressed NEP's requests to take over five apartment complexes from AEP Ohio, none of which was the Northtowne. In an August 6, 2023 Opinion and Order in that case, the Commission held, among other things, that NEP is *not* operating as a public utility at the five complexes in that case. At the same time, however, the Commission expressly found "the testimony of Mr. Lesser [AEP Ohio's expert witness] convincing in that tenants [in submetered buildings] lose a multitude of rights and protections . . . that ensure consumers receive adequate, safe, and reasonable electric service, as required by law." Opinion & Order ¶ 224, Case No. 21-990-EL-CSS (Aug. 6, 2023). To address this, the Commission ordered AEP Ohio to submit a "new electric reseller tariff" that purports to impose certain rules on NEP and submetering landlords. *Id.* Among other things, this new tariff would require NEP and the landlord to charge submetered tenants "the same or lower than the total bill for a similarly situated customer served by the applicable utility's standard service offer." *Id.* The new tariff also purports to require NEP and the landlord to "follow the same disconnect standards applicable to landlords under Ohio Adm. Code Chapter 4901:1-18." *Id.*

AEP Ohio has applied for rehearing of the Commission's Opinion and Order in Case No. 21-990-EL-CSS raising numerous legal objections to the Commission's conclusions and, among other things, challenging the validity of the "new electric reseller tariff." *See* Application for Rehearing of Ohio Power Company, Case No. 21-990-EL-CSS (Oct. 6, 2023). The Commission

granted the Company’s application for rehearing for further consideration and it remains pending. AEP Ohio will not repeat the arguments it made those filings here, but AEP Ohio respectfully submits that its rehearing arguments inform this proceeding and should be addressed before or in connection with a decision here.²

The details of NEP’s submetering business – how NEP procures electric service at a “master meter,” measures and bills residents for electric usage, and collects payments and disconnects residents for nonpayment – were explored at length in the evidentiary record and the Commission’s Opinion and Order in Case No. 21-990-EL-CSS. AEP Ohio will not repeat that lengthy examination of NEP’s business practices here, but rather respectfully refers the Commission to the extensive evidentiary record developed in Case No. 21-990-EL-CSS concerning NEP’s form of submetering. AEP Ohio is aware of no reason why NEP’s submetering of the Northtowne complex would be any different from the NEP business practices illuminated in Case No. 21-990-EL-CSS.

Here, completely apart from AEP Ohio’s complaint case and whether NEP is unlawfully operating as a “public utility,” NEP’s request to convert Northtowne to submetering would require AEP Ohio to abandon its service to the 286 Northtowne households that AEP Ohio has served for nearly 50 years. As discussed in detail below, the Miller Act, R.C. 4905.20, 4905.21, provides that AEP Ohio cannot be forced to abandon customers unless the Commission first holds a hearing and concludes that this abandonment is reasonable, “having due regard for the welfare of the public.” R.C. 4905.21. And the requested abandonment here is *not* reasonable and would *not* promote the “welfare of the public.” As the Commission expressly found in Case

² In particular, as AEP Ohio argued in its Application for Rehearing, AEP Ohio raised a Miller Act claim in Case No. 21-990-EL-CSS, and the Commission wrongfully declined to address it. Among other things, on rehearing, the Commission should conduct the same kind of Miller Act analysis in Case No. 21-990-EL-CSS as the Commission is undertaking for the Northtowne complex here.

No. 21-990-EL-CSS, and as explored further below, customers who are converted from AEP Ohio service to submetering “lose a multitude of rights and protections . . . that ensure consumers receive adequate, safe, and reasonable electric service, as required by law.” Opinion & Order ¶ 224, Case No. 21-990-EL-CSS (Aug. 6, 2023). Denying the application and preventing the abandonment would prevent that substantial, harmful loss of rights. In addition to scheduling an evidentiary hearing, the Commission should schedule a public hearing so affected Northtowne residents will have an opportunity to voice their own opinions concerning the fate of their electric service.

II. STANDARD OF REVIEW

The Miller Act provides that no public utility “shall abandon *or be required to abandon*” any “electric light line” without a hearing and an express finding by the Commission that the abandonment is “reasonable.” R.C. 4905.20, 4905.21 (emphasis added). This means that an electric distribution utility such as AEP Ohio cannot be forced to abandon its service to customers without express approval by the Commission. *See, e.g., State ex rel. Toledo Edison Co. v. Clyde*, 76 Ohio St. 3d 508, 516 (1996) (“Thus, the Miller Act protects not only the utility provider’s electric lines, but also the provider’s right to continue ‘furnishing service’ over those lines to its current customers.”); *see also id.* at 511 (clarifying that the Miller Act applies to “the abandonment or closure of all electric lines, regardless of size,” even “single customer service lines”).

When it receives an application for abandonment, the Commission must “cause reasonable notice of the application to be given, stating the time and place fixed by the commission for the hearing of the application.” R.C. 4905.21. At the hearing, the Commission must “ascertain the facts and make its findings thereon,” and it must decide whether the proposed

abandonment is “reasonable, *having due regard for the welfare of the public* and the cost of operating the service or facility.” R.C. 4905.21 (emphasis added).

As the “welfare of the public” standard makes clear, the purpose of the Miller Act is to protect consumers as well as the investment of the utility. According to the Supreme Court, “the Miller Act focuses upon *protecting existing utility customers* from having their service terminated without commission approval.” *Clyde*, 76 Ohio St. 3d at 513 (emphasis added). The Miller Act and its predecessor the Gilmore Act “were specifically enacted and have been used *to protect existing utility facilities, utility consumers, and their utility providers* from the forced termination of utility services or the removal of nonmunicipal utility facilities without commission approval.” *Id.* at 514 (emphasis added).

III. COMMENTS

The Commission should deny the application in this case and *not* force AEP Ohio to abandon the 286 customers at Northtowne because converting these customers to submetering would be unreasonable and harmful to the “welfare of the public” under the Miller Act, R.C. 4905.21. As the Commission recognized in Case No. 21-990-EL-CSS, customers who are converted from AEP Ohio service to submetering “lose a multitude of rights and protections . . . that ensure consumers receive adequate, safe, and reasonable electric service, as required by law.” Opinion & Order ¶ 224, Case No. 21-990-EL-CSS (Aug. 6, 2023). Here, the Commission can prevent that harm – and uphold and reinforce the “multitude of rights and protections” – simply by finding that the proposed abandonment would be unreasonable under the Miller Act. An exhaustive discussion of the “multitude of rights and protections” that the Northtowne customers will lose can be found in the evidentiary record and Opinion and Order in Case No. 21-990-EL-CSS. In these comments, AEP Ohio will highlight some of the most critical of these rights and protections that would be lost if the Northtowne customers were abandoned.

A. If Abandoned, Northtowne Customers Would Lose Access to PIPP.

In contrast to the apartment buildings at issue in Case No. 21-990-EL-CSS, where PIPP participation was limited, many residents of Northtowne live in low-income households who depend on the Percentage of Income Payment Plan (“PIPP”) program to pay their electric bills. Specifically, 76 customer accounts – over a quarter of all households in Northtowne – currently participate in PIPP.

The PIPP program is a vital public service that helps low-income households afford their electric bills and avoid disconnection of service. Recognizing that electric service is a basic need, the Ohio General Assembly has required the Commission and the Director of the Ohio Department of Development to coordinate to administer the PIPP program. *See* R.C. 4928.51 *et seq.* PIPP allows low-income households (defined as those whose income is 175% of the federal poverty level or lower) to pay a discounted electric rate equal to a percentage of their income. *See* OAC 4901:1-18-12. PIPP also provides forgiveness of past arrearages if the households continue to participate in the program and make on-time payments.

If the Commission forces AEP Ohio to abandon the Northtowne customers, all 76 customers who are participating in the PIPP program (as of the date of these comments) will immediately lose access to the percentage-of-income discounted rate. Under the Commission’s recent ruling in Case No. 21-990-EL-CSS, NEP and the landlord may charge low-income families up to AEP Ohio’s SSO rate, plus they may add fees related to common-area charges and the like. This means that households who are used to paying the reduced PIPP rate, which can be as low as \$10 per month, will see a substantial increase in their electricity bills. If they are unable to pay, they will immediately be subject to disconnection.

The 76 customers who will lose access to PIPP will also need to pay any past-due arrearage with AEP Ohio. Although the PIPP program provides a means for arrearages to be

forgiven, this assistance does not apply to customers who terminate service with AEP Ohio. Instead, former customers are eligible for the “Post-PIPP” program, which allows former customers to continue to make reduced payments and, if the payments are made, provides for forgiveness of the arrearages. But these Post-PIPP payments would be *on top of* whatever NEP and the landlord charge for electric service. If the 76 PIPP households are unable to make their Post-PIPP payments, their AEP Ohio arrearages will become bad debt, potentially affecting the household’s credit ratings and adding to the amounts that all other AEP Ohio customers must pay through AEP Ohio’s bad debt rider.

The loss of PIPP would cause substantial harm to the 76 customers currently participating in the program, and it would harm future residents of Northtowne who will never have the opportunity to join the program. These harms are contrary to the “welfare of the public,” R.C. 4905.21, and for this reason the Commission should not force AEP Ohio to abandon its customers in Northtowne.

B. If Abandoned, Northtowne Customers Would Lose the Right to Shop for Generation Supply.

Currently, numerous residents of Northtowne take advantage of their statutory right to shop for competitive electric generation service. As the Commission is aware, the Ohio General Assembly has granted all customers of electric distribution utilities in Ohio the right to choose their generation supplier. Currently, well over half of the households at Northtowne – 143 customers as of the date of these comments – have exercised this right and receive generation supply from a competitive provider.

If the Commission forces AEP Ohio to abandon its customers in Northtowne, all 143 households will immediately lose their statutory shopping rights. Instead, these customers will be billed using the rates set by NEP and the landlord. Whatever special pricing provisions the

shopping customers have chosen will go away, and any special energy characteristics they may have shopped for (e.g., green generation) will evaporate. Although NEP and the landlord may choose a competitive generation provider for service to the master meter, the choice is entirely their own. The Northtowne residents have no say in the matter, and their statutory right to choose will be completely taken away.

Combining PIPP participation and shopping, 219 of 282 residential households (over 77%) at Northtowne exercise special statutory rights related to electric service pricing – rights they will lose if the Commission orders AEP Ohio to abandon its service to them.³ These consequences are plainly contrary to the “welfare of the public,” R.C. 4905.21, and for this reason the Commission should not force AEP Ohio to abandon its customers in Northtowne.

C. If Abandoned, Northtowne Customers Would Face the Prospect of Disconnection Without Statutory Protections.

The General Assembly and the Commission have enacted detailed regulations that AEP Ohio and all other electric distribution companies must follow before disconnecting a customer’s electricity for nonpayment. To take just a few examples, AEP Ohio must provide at least 14 days’ notice as well as in-person notice on the day of disconnection, OAC 4901:1-18-06(A), (A)(2), it must offer medical certification to suspend disconnection where “the disconnection of service would be especially dangerous to the health of” residents, OAC 4901:1-18-06(A)(5)(h), and it must follow special rules when disconnecting during the winter, OAC 4901:1-18-06(B)(1). All these protections are another example of the General Assembly and Commission recognizing that electricity is a basic need and should only be disconnected for nonpayment through special procedures. As a related matter, the Northtowne residents will no longer be able to get remotely

³ The Company’s Application in this case referenced more than 25% of the Northtowne residents participating in the PIPP program and the number has remained steady since then; shopping numbers went down slightly during that period, as one would expect under the current circumstances.

reconnected without charge and will instead be subject to whatever reconnection fees NEP wants to impose.

Although the Commission purported to extend the disconnection regulations of the OAC to customers submetered by NEP in its Opinion and Order in Case No. 21-990-EL-CSS, AEP Ohio has sought rehearing on that decision (which is pending), and there are significant legal and practical concerns that may mean that the residents of Northtowne will not, in fact, be protected by the OAC's disconnection rules if AEP Ohio is forced to abandon service to them. As AEP Ohio pointed out in its application for rehearing, there is no jurisdictional basis to extend the disconnection rules to NEP and submetering landlords, especially where the Commission concluded, in the same order, that NEP is not an "electric distribution company" over which the Commission has regulatory jurisdiction. Even if the application of disconnection rules to NEP were lawful (it is not), there would remain substantial, unanswered practical questions. AEP Ohio cannot be expected to police the conduct of NEP and landlords at submetered buildings where AEP Ohio no longer has any information or connection to customers. Therefore, it is not clear who will enforce the Commission's new disconnection directives or how this will be done. It is not even clear that an individual resident could bring a complaint against NEP or the landlord if the disconnection rules were violated, since the Commission clearly (and wrongly) held in Case No. 21-990-EL-CSS that it lacks jurisdiction over NEP. It is not even clear which disconnection rules the Commission held that NEP must follow. For all these reasons, the Commission's decision in Case No. 21-990-EL-CSS does not alleviate the real threat that Northtowne residents would be disconnected without the rights and protections afforded customers of public utilities.

Furthermore, as discussed above, regardless of what disconnection rules apply, one of the most important protections against disconnection for low-income households – the PIPP program – would be completely unavailable to Northtowne residents. What should the 76 customers who currently participate in PIPP do if they cannot afford their NEP electric bills and receive a notice of disconnection? Even if NEP follows every disconnection procedure perfectly, these families will still be disconnected from a vital service without an opportunity to receive financial assistance. That fact alone is enough for the Commission to conclude that the proposed abandonment would be unreasonable and harmful to the welfare of the public.

D. AEP Ohio’s Other Customers Will be Negatively Impacted by the Abandonment of Northtowne Facilities.

As a regulated entity, AEP Ohio invests in its distribution infrastructure and recovers the costs of capital investment and operation and maintenance expense through its rates regulated by the Commission. Specifically, distribution plant in service, such as the distribution capital that exists to serve Northtowne (including the lines and transformers used to serve Northtowne as well as infrastructure “upstream” to ensure available capacity) is captured through the date certain of a rate case and/or distribution investment rider. The operation and maintenance expenses are then captured through the test year of the most recent rate case. AEP Ohio invests in its system in reliance upon that infrastructure being used to serve the existing customers. It is uncommon for AEP Ohio to build its system only to then have to abandon it. Indeed, the three

pending ABN cases associated with three prospective NEP conversions of existing customers are the only abandonment actions AEP Ohio has filed since the inception of the DIS system.

These concerns will become a growing concern for the Company and its remaining customers as NEP continues to convert existing customers away from AEP Ohio.

E. The Miller Act Requires the Commission to Hold an Evidentiary Hearing.

The Miller Act makes clear that the Commission must hold an evidentiary hearing before ruling on the proposed abandonment in this proceeding. The Miller Act states that when the Commission receives an abandonment application, it must “cause reasonable notice of the application to be given, stating the time and place fixed by the commission *for the hearing of the application.*”⁴ R.C. 4905.21 (emphasis added). The law also states that “[u]pon the hearing of the application, the commission shall ascertain the facts and make its findings thereon.” *Id.* (emphasis added). Moreover, although comments are useful for framing the issues, they are not evidence. The Commission should not permit the abandonment of 286 customers – and the resulting loss of statutory rights and privileges – without first receiving evidence and making its findings based on that evidence. Accordingly, AEP Ohio respectfully requests that the Commission schedule a hearing and set a procedural schedule that provides deadlines for the filing of testimony. In addition to scheduling an evidentiary hearing, the Commission should schedule a public hearing so affected Northtowne residents will have an opportunity to voice their own opinions concerning the fate of their electric service.

⁴ As stated in AEP Ohio’s Application (¶ 19), AEP Ohio proposed to public newspaper notice in the *Columbus Dispatch* once the Commission has established a hearing date.

IV. CONCLUSION

For the foregoing reasons, and for the reasons AEP Ohio expects to develop further in the evidentiary record at hearing, the Commission should deny the proposed abandonment of the customers at Northtowne.

Respectfully submitted,

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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 4th day of December 2023, via electronic transmission.

/s/ Steven T. Nourse

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