

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power)	
Company for Authority to Abandon Electric)	Case No. 22-0693-EL-ABN
Service Lines, Pursuant to Ohio Revised Code)	
Sections 4905.20 and 4905.21)	

COMMENTS OF NATIONWIDE ENERGY PARTNERS, LLC

In this proceeding, Ohio Power Company dba AEP Ohio (“AEP Ohio”) has filed a first-of-its-kind application (the “Application”) for abandonment “to seek the Commission’s ruling under the Miller Act” with respect to whether it must provide master-metered service under its tariff to the Northtowne apartment complex owned by Preserve Partners, LLC (“Preserve”) (Application at ¶17). To be clear, this proceeding is about *how* AEP Ohio must provide service to Northtowne – AEP Ohio will be the only utility providing electric service to Northtowne under any arrangement. Preserve has contracted with Nationwide Energy Partners, LLC (“NEP”) to perform services related to the master-metering of Northtowne in a negotiated and mutually beneficial contract. NEP has filed simultaneously with these Comments a Motion to Dismiss urging the Commission to find that the Miller Act does not apply to changes in tariffed service on private property and to dismiss the Application as improperly filed. In the event that the Commission does not dismiss the Application, NEP submits these Comments urging the Commission to deny the Application only with respect to AEP Ohio’s “service plan” or, alternatively, grant the Application.

BACKGROUND

Preserve is a national real estate investment firm that owns dozens of multifamily communities across the country, including Northtowne, as well as other alternative investments. NEP provides energy management services for property owners, managers and developers of apartment complexes and condominium buildings. On January 20, 2022, NEP and Preserve (through its subsidiary Davenport II, LLC) executed a contract which designates NEP as Preserve's agent to interface with AEP Ohio and manage the conversion of the Northtowne complex to master-metered service.¹ Master-metered service is where the owner of the property chooses to have all utility-provided service billed to the owner through a single commercial account in lieu of each rental unit receiving individual utility bills. AEP Ohio would remain the utility for electricity service to Northtowne but the tariff schedule and billing account would be consolidated. That contract also contemplates NEP's provision of a variety of post-conversion services to Preserve on an ongoing basis. Whether NEP and Preserve are able to perform their obligations under that contract and realize the benefits of that contract depend entirely upon AEP Ohio performing its obligations under its tariff and completing the requested conversion to master-metered service.

As part of the contracting process, NEP (on Preserve's behalf as its agent) initially inquired with AEP Ohio as to whether it would be willing to sell its on-site infrastructure to Preserve in lieu of Preserve purchasing new equipment and undertaking additional construction. A primary metering arrangement with the sale of the equipment would require no removal of equipment and

¹ Preserve has also nominated NEP as its agent through AEP Ohio's own Customer Letter of Authorization to Release Information and Conduct Account Activity, which designates NEP as Preserve's "Account Agent and Billing Agent" authorized to conduct "[a]ll activity and transactions, including receiving bills and remitting payments."

would be more efficient for AEP Ohio while also, as noted in the Application, providing Preserve a lower rate at the master meter. (Application at ¶ 14). Though selling its equipment would obviate the need to remove or “abandon” anything, AEP Ohio categorically declined to sell its equipment.

As a result, on May 18, 2022 NEP (on Preserve’s behalf as its agent) redesigned the project and requested secondary master-metering at 59 locations on the Northtowne property that would **leave all of AEP Ohio’s equipment, except individual apartment unit meters, in place and in service**. On July 8, claiming that the requested service is “not acceptable” to AEP Ohio, AEP Ohio proposed to remedy this problem of its own creation by providing a primary service point and removing its on-site infrastructure at Preserve’s expense, which AEP Ohio called its “service plan.” When AEP Ohio’s discriminatory treatment failed to force Preserve into reversing its decision to master meter, on July 11, AEP Ohio filed this application and communicated to NEP that it would not proceed with the Preserve’s request to receive master-metered service until both this Application and the Complaint Case (described below) were resolved. AEP Ohio has since ceased all discussions with NEP or Preserve regarding the conversion of Northtowne to master-metered service.

As Northtowne’s landlord, Preserve has entered into private lease agreements with every resident at Northtowne. NEP ensures that its landlord clients insert language into their leases providing transparency to, and securing the informed consent of, every resident prior to the initiation of master-metered service. Preserve inserted that language in its leases in anticipation of AEP Ohio performing its obligations under its tariff and, as of August of 2022, Preserve informed NEP that each and every lease agreement appointed Preserve to receive electric service from AEP Ohio and to supply that electricity to tenants. A sample of the terms required to be included in every Northtowne tenant’s lease under NEP’s contract with Preserve is attached hereto as Exhibit

NEP-1. All private parties have consented to the arrangement whereby Preserve has requested and will receive master-metered service from AEP Ohio and provide that service to tenants with NEP's assistance. Only one party – AEP Ohio – objects to this arrangement despite having no interest in Preserve's private property and a clear obligation under its tariff to provide the requested service.

Simultaneously with the events described above, AEP Ohio and NEP have been engaged in a complaint case brought by AEP Ohio against NEP (herein called the "Complaint Case") in which AEP Ohio alleged, as it does in the Application, that NEP's business model renders it an "unlawful public utility." Relevant to this proceeding, in its Entry dated December 28, 2021, the Commission granted NEP's Motion for Stay and ordered AEP Ohio to complete five (5) conversions to master metered service that are substantively identical to the Northtowne conversion and **did not apply the Miller Act to those conversions**. As to AEP Ohio's claims, that case was decided in NEP's favor by the Commission on September 6, 2023. In its Opinion and Order the Commission made the following relevant findings:

- "NEP cannot be an electric light company because the landlord of each of the Apartment Complexes **and not the tenant** is the 'consumer,' as contemplated under R.C. 4905.03(C), of electricity supplied by AEP Ohio." (*In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC*, Commission Case No. 21-0990-EL-CSS, Opinion and Order dated September 6, 2023 at ¶ 184) (emphasis added).
- "[C]ontrary to AEP Ohio's claims otherwise, a landlord who is not operating as a public utility that redistributes or resells electric service through submetering to its tenants is the ultimate consumer contemplated under R.C. 4905.03(C)....[T]he **Commission's jurisdiction ends at this point and does not extend to a**

landlord’s reselling of that electricity to its tenants.” (*Id.* at ¶ 194) (emphasis added).

- “We make the following findings, which establish that NEP is not ‘engaged in the business of supplying electricity’: (1) **the landlords and not NEP supply electricity** to tenants under the terms of the leases on their own property, as already **permitted by law**; (2) foundational to all aspects of NEP’s activities at the Apartment Complexes, the landlords have entered into express agency relationships with NEP through contracts that **authorize NEP to “step into the shoes of the landlords”** in facilitating submetering service at the properties; (3) as the landlords’ agent, NEP is “engaged in the business of” **providing a service to landlords** that helps facilitate submetering service at the Apartment Complexes to the tenants and not to the general public.” (*Id.* at ¶ 207) (emphasis added).
- “NEP, itself, is essentially a service provider a landlord hires to provide services such as energy control, advisory services, energy construction and design solutions, electric vehicle charging, equipment financing, utility rates and tariff monitoring and support, tenant billing, and other energy-related services (NEP Ex. 90 at 4-10).” (*Id.* at ¶ 221).
- “As discussed above, we found that NEP is not an electric light company under R.C. 4905.03(C). Therefore, NEP cannot be an electric supplier under R.C. 4933.81(A), meaning its operations at the Apartment Complexes cannot violate the CTA under R.C. 4905.03(C).” (*Id.* at ¶ 221).
- “[G]iven the Commission’s findings in this case, **continued denial of conversion requests simply because the property owner chooses to utilize the third-party**

submetering services of NEP, as described in this Order, will run contrary to our decision today.” (*Id.* at ¶ 265) (emphasis added).

- “Accordingly, we direct AEP Ohio to file within 90 days a new electric reseller tariff that places the following conditions on the resale of electric service from a landlord to a tenant that a landlord must follow in order to comply with the tariff:

1. Notice must be provided within the landlord’s lease agreement stating that, by signing the lease, the tenant agrees to have the landlord secure and resell electricity to the tenant and that, under current law, the tenant is no longer under the jurisdiction of the Commission and loses the rights under law associated with being under the Commission’s jurisdiction. This language should be printed in the lease in all capital letters and in a minimum font larger than the remainder of the lease language.

2. The landlord’s charges for resale of electricity to each tenant must be the same or lower than the total bill for a similarly situated customer served by the applicable utility’s standard service offer.

3. When engaging in the disconnection of electric service to a tenant for nonpayment of charges related to electric usage, the landlord must follow the same disconnect standards applicable to landlords under Ohio Adm.Code Chapter 4901:1-18. (*Id.* at ¶ 224)

AEP Ohio’s Application, filed prior to the Commission’s decision in the Complaint Case, assumes that many of the issues in that case would be resolved in its favor. For example, AEP Ohio submits that NEP “engages in the resale or redistribution of public utility services” and that

“Ohio law is unsettled in the wake of the Supreme Court of Ohio’s December 2020 *Wingo* [sic].” Application at ¶¶ 6, 13. As the Commission’s thorough, well-reasoned Opinion and Order made clear, NEP does not engage in the resale or redistribution of public utility services. And, to whatever extent Ohio law may have been “unsettled,” the Commission’s Opinion and Order definitively settled that NEP is not a “public utility.” Thus, the Commission’s decision in the Complaint Case undermines the entire foundation of AEP Ohio’s argument that the Miller Act applies or that performing the conversion would be “unreasonable.”

ARGUMENT

As explained in NEP’s Motion to Dismiss, this Application has been improperly filed because (1) changes in *how* service is provided on private property do not cause an “abandonment” that triggers the Miller Act; (2) landlords have an unequivocal right to receive master-metered service under long-standing Ohio Supreme Court precedent and AEP Ohio’s own Commission-approved tariff; (3) the Commission’s recent decision in the Complaint Case confirms that the Commission cannot interfere in the landlord-tenant relationship, and (4) the Application does not address the service actually requested from AEP Ohio. Therefore, the only outcome in these proceedings consistent with the law is a dismissal of the Application. The Application paradoxically requests authority to “abandon” service, but then argues that granting that authority would be unreasonable and that the Commission should deny AEP Ohio’s request. AEP Ohio’s double-talk demonstrates its misapplication of the Miller Act and that its farcical Application has been improperly filed and should be dismissed.

The central thesis of the Application can be easily disposed of. AEP Ohio submits that NEP “engages in the resale or redistribution of public utility services in AEP Ohio’s service territory in

violation of Ohio law” and that NEP “demand[ed]” that AEP Ohio “terminate service to existing Northtowne customers so that NEP can establish so-called ‘master-metered service’ and convert the existing AEP Ohio customers to NEP electric distribution services.” Application at ¶¶ 6, 11. **This is false.** In its September 6, 2023 Opinion and Order in Case No. 21-0990-EL-CSS (the “Complaint Case”), the Commission thoroughly analyzed NEP’s services at five apartment complexes, which are substantially similar to the services that will be provided by NEP to Preserve at Northtowne, and conclusively determined that “the landlords and **not NEP** supply electricity to tenants under the terms of the leases on their own property, as already **permitted by law.**” *Ohio Power Company* at ¶ 207 (emphasis added). Because AEP Ohio has not produced, and cannot produce, any fact or argument that would distinguish Northtowne from the five apartment complexes at issue in the Complaint Case, the Commission’s Opinion and Order in that case is controlling here – the conversion of Northtowne to master-metered service is perfectly legal and neither (a) NEP’s services to Preserve nor (b) Preserve’s services to tenants are within the Commission’s jurisdiction. *Id.* at ¶ 179.

The Application asserts that “AEP Ohio opposes the practice of converting existing customers to master-metered service whereby the existing AEP Ohio customers cease to be AEP Ohio customers and instead become customers of a third-party submetering company offering electric distribution services.” Application at ¶ 7. As above, Northtowne’s tenants will not be “customers” of NEP, but will purchase electricity from their landlord, Preserve. It appears that AEP Ohio has filed this Application to dispute whether tenants can agree to relinquish their AEP Ohio accounts, and that it has tried to hijack the Miller Act to prevent that scenario. But, importantly, that scenario is both possible and beyond the Commission’s jurisdiction to prohibit even if Northtowne remains individually-metered for its units under a residential rate schedule.

Nothing prevents landlords and tenants from arranging for each individual unit's electric utility account to remain in the landlord's name with the landlord paying the bills to the utility because it is the landlord's prerogative to determine through its lease who holds the utility account. In fact, this arrangement is common, particularly in student housing.

Indeed, tenants only have utility accounts with AEP Ohio in the first place because their landlord made that determination, and Preserve could decide at any time to maintain all resident accounts at Northtowne in its name. Once leases or amendments detailing that arrangement were signed, AEP Ohio would only have one customer at Northtowne, albeit with many accounts. If that one customer – Preserve – then chose to consolidate its residential service accounts into one big commercial service account, what could be the argument that any “abandonment” occurred or that one customer's choice of service schedules was “unreasonable?” That scenario is effectively identical to the case at hand – all tenants have agreed to receive service from their landlord, which has a right to receive master-metered commercial service from AEP Ohio. No service will be “abandoned,” Northtowne will simply switch from the AEP Ohio residential tariff schedule for service to the AEP Ohio commercial tariff schedule for service.

The Commission can only do three things with AEP Ohio's Application: dismiss it, grant it, or deny it (or any of those in part or in combination). If Northtowne's change from residential to commercial service would not cause an "abandonment" subject to the Miller Act, then the Commission must dismiss the Application and analyzing whether that service change is "reasonable" would be unnecessary and improper. It simply would not make sense to grant or deny an Application for Abandonment when there is no “abandonment” in the first place. That strictly legal question is the subject of NEP's Motion to Dismiss filed concurrently with these Comments.

One of the reasons that the Application should be dismissed is that, even if the Commission were to engage in an analysis of whether Northtowne's service change is "reasonable," it could not deny the Application in a way that prevents Preserve from receiving master-metered commercial service without creating an irreconcilable conflict with Supreme Court precedent. That is, the "reasonableness" analysis could only result in a rubber stamp of approval for every master-metering conversion request because denying that request - at least based on the Miller Act alone and not some underlying tariff violation - would be patently unlawful. Any reading of the Miller Act that would impose such a pointless administrative burden on the Commission is meritless and should be rejected.

If the Commission does not dismiss the Application by finding that the Miller Act does not apply, it could be forced to mechanically approve Applications for Abandonment not just for master-meter conversions, but other changes in tariffed service on private property. But the Commission has already exercised jurisdiction over those service changes when it approved tariffs governing the terms of service offered by Ohio's public utilities. Despite AEP Ohio's obvious and express objections to landlords' master-metering, its tariff requires it to provide master-metered service to any landlord who chooses it because that tariff must comply with the law. The Commission has spoken and its approved tariffs govern service; why would it need to confirm that those tariffs remain in force every time a customer wanted to switch from one service to another? This is the necessary conclusion to AEP Ohio's argument, and its absurdity illustrates the flaws in AEP Ohio's reasoning.

However, in the event that the Commission finds that the Miller Act applies to changes in *how* service is provided on private property and does not dismiss the Application, it must, under the Miller Act, determine whether the purported "abandonment" is "reasonable." For the reasons

stated herein, the Commission should deny the Application only with respect to AEP Ohio's unreasonable "service plan" and not with respect to the service actually requested by Preserve. Alternatively, the Commission should find that any purported "abandonment" is "reasonable" and grant the Application. Those reasons are summarized below:

1. The Application is a strawman purportedly addressing a problem that AEP Ohio itself has tried desperately to create. Any denial of the Application should be limited only to AEP Ohio's unreasonable "service plan" and not to the service actually requested by Preserve.
2. Without limiting such denial to AEP Ohio's "service plan," denial of the Application would unlawfully interfere with Preserve's well-established legal right to receive master-metered service and resell and redistribute that service to tenants. Adhering to the law is *per-se* reasonable.
3. Without limiting such denial to AEP Ohio's "service plan," denial of the Application would be irreconcilable with AEP Ohio's Commission-approved tariff giving landlords the "choice" to receive master-metered service. Adhering to the tariff is *per-se* reasonable.
4. Without limiting such denial to AEP Ohio's "service plan," denial of the Application would interfere with the Northtowne tenants' leases with Preserve and insert the Commission into the landlord-tenant relationship, where the Commission has repeatedly held it lacks jurisdiction. Respecting the Commission's limited jurisdiction is reasonable.
5. Without limiting such denial to AEP Ohio's "service plan," denial of the Application would nullify Preserve's service contract with NEP, though neither Preserve nor NEP are regulated by the Commission. Refraining from interference in private contracts over which the Commission lacks jurisdiction is reasonable.

6. The Commission has routinely granted Applications for Abandonment upon a showing that customers will continue to receive the type of utility service sought to be abandoned or have agreed to the changes giving rise to the application. The Northtowne tenants have agreed to the arrangement whereby they will receive electric service from AEP Ohio through Preserve with rate, disconnection, and disclosure protections ordered by the Commission.
7. AEP Ohio fundamentally misconstrues Preserve's contract with NEP.

For the above reasons, if the Commission does not dismiss the Application, NEP respectfully requests that the Commission issue an Order either (a) denying the Application only with respect to AEP Ohio's unreasonable "service plan", or (b) granting the Application.

- 1. The Application is a strawman purportedly addressing a problem that AEP Ohio itself has tried desperately to create. Any denial of the Application should be limited only to AEP Ohio's unreasonable "service plan" and not to the service actually requested by Preserve.**

The only component of the conversion at Northtowne that requires AEP Ohio to alter its use of a single inch of wire or conduit, or any equipment other than meters, *at all* is AEP Ohio's own "service plan." As described above, Preserve (through NEP as its agent) initially attempted to negotiate a sale of AEP Ohio's on-site equipment to Preserve to facilitate primary metering. It is fairly common in Ohio for commercial businesses to purchase equipment from the local utility when privatizing their behind-the-meter infrastructure. In fact, AEP Ohio has asserted that it has a "well-established existing process" for selling that equipment.² As the record in the Complaint Case makes clear, AEP Ohio has historically sold infrastructure to facilitate conversions to master

² *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Commission Case No. 20-585-EL-AIR, Reply Br. Of Ohio Power Co. at 58.

metering, and even did so recently at the Oak Creek and Worthington Square properties discussed in that case. AEP Ohio not only permitted those properties to convert to master-metered service without filing an abandonment application, it also sold them its on-site infrastructure to facilitate that conversion. Of course, AEP Ohio did so only upon their owner's execution of a contract whereby the owner agreed, among other things, not to use NEP to provide behind-the-meter services.³

As a result, Preserve requested secondary master-metered service to each of the buildings on the Northtowne premises. If AEP Ohio simply fulfilled this request, it would **leave all of AEP Ohio's wires, conduits, transformers and other equipment in place and in service**. The only equipment AEP Ohio would remove would be its meters attached to individual apartment units. But AEP Ohio has determined to "provide a single point of primary service to the property line" and force Preserve "to pay for removal of AEP Ohio owned equipment including transformers, meter equipment, area lights and any other AEP owned equipment after further evaluation." *Email from Checobia Crawford dated July 8, 2022* attached hereto as Exhibit NEP-2.

AEP Ohio's approach here – likely taken only out of spite for NEP – is wasteful, harmful to ratepayers, and inefficient. AEP Ohio could have sold its equipment to Preserve with some markup, recovering more than the full value of the equipment, and returned that value to ratepayers in its next rate case. Simultaneously, it would have provided Preserve with the most efficient service with the least disruption to the Northtowne tenants. AEP Ohio had every opportunity to

³ A full copy of that Agreement is attached as Exhibit "D" to the Direct Testimony of Teresa Ringenbach in the Complaint Case docket.

sell its equipment or provide secondary service, but doing so would have made its novel “abandonment” argument impossible to make.

That is, AEP Ohio has not been “forced” – or even requested – to “abandon” anything. It has chosen the path that brings it closest to “abandonment,” and applied to the Commission in hopes that *its own* proposal will be rejected, not that of Preserve and NEP. The Application does not argue that either (a) AEP Ohio’s sale of equipment to Preserve to facilitate primary service, or (b) Preserve’s requested secondary service would trigger a Miller Act inquiry. If the Commission determined that AEP Ohio’s “service plan” as presented in the Application would result in “abandonment” subject to the Miller Act and that said “abandonment” was “unreasonable,” AEP Ohio would still be left with the choice to provide primary service by selling its equipment to Preserve or to provide secondary service leaving all of its equipment and service undisturbed. But in no event could the Commission opine on whether the requested secondary service is “reasonable” because **no lines or service rendered thereby will be affected, much less abandoned, by the conversion.** AEP Ohio attempted (and failed) to create a Miller Act issue out of thin air, then applied to the Commission hoping to torpedo its own creation. But even if AEP Ohio succeeds in cutting down its strawman, it remains unable to lawfully interfere with the service requested by Preserve. Therefore, any denial of the Application should be expressly limited to AEP Ohio’s unreasonable “service plan” and should leave Preserve’s right to receive master-metered service intact.

- 2. Without limiting such denial to AEP Ohio’s “service plan,” denial of the Application would unlawfully interfere with Preserve’s well-established legal right to receive master-metered service and resell and redistribute that service to tenants. Adhering to the law is *per-se* reasonable.**

Long-standing Supreme Court of Ohio precedent establishes that Landlords have a right to master-meter their properties and resell and redistribute that service to tenants. (*See Jonas v. Swetland Co.*, 119 Ohio St. 12, 16, 162 N.E. 45, 46 (1928); *Shopping Centers Ass’n v. Public Utilities Com.*, 3 Ohio St. 2d 1, 4 208 N.E. 2d 923, paragraph two of the syllabus (1965); *FirstEnergy Corp. v. PUC*, 96 Ohio St. 3d 371, 373, 2002-Ohio-4847, 775 N.E.2d 485, at ¶ 10.) If the Commission could simply find a landlord’s request to receive master-metered service “unreasonable” and thereby deny that request, landlords would not, in fact, have that right. AEP Ohio’s interpretation of the Miller Act is therefore untenable – to whatever extent an abandonment proceeding is necessary, such a proceeding could not prevent a landlord from choosing master-metered service. Preserve has chosen to exercise a clear lawful right, and the Commission cannot deny it that right by usurping its prerogatives and finding its choice “unreasonable.” The only way for the Commission to avoid an irreconcilable conflict with the law is to deny the Application only with respect to AEP Ohio’s “service plan” or, alternatively, approve the Application. Those results reasonably leave Preserve’s legal rights intact. Complying with the law is self-evidently reasonable.

- 3. Without limiting such denial to AEP Ohio’s “service plan,” denial of the Application would be irreconcilable with AEP Ohio’s Commission-approved tariff giving landlords the “choice” to receive master-metered service. Adhering to the tariff is *per-se* reasonable.**

Similarly, landlords’ right to receive master-metered commercial service is also crystal clear and unqualified under AEP Ohio’s own Commission-approved tariff. Relevant portions of AEP Ohio’s tariff follow:

18. RESALE OF ENERGY

Electric service will not be supplied to any party contracting with the Company for electric service (hereinafter in this Section called "Customer") except for use exclusively by (i) the Customer at the premises specified in the service request on contract between the Company and the Customer under which service is supplied and (ii) the occupants and tenants of such premises.

A customer cannot engage in a resale of electricity if the resale would constitute the activities of an electric light company under Section 4905.03 of the Ohio revised Code. In addition, resale of energy will be permitted for electric service and related billing as they apply to the resale or redistribution of electrical service from a landlord to a tenant where the landlord is not operating as a public utility, and the landlord owns the property upon which such resale or redistribution takes place.

21. RESIDENTIAL SERVICE

The Residential Customer is a customer whose domestic needs for electrical service are limited to their primary single family residence, single occupancy apartment and/or condominium, mobile housing unit, or any other single family residential unit. Individual residences shall be served individually under a residential service schedule. The customer may not take service for two (2) or more separate residences through a single meter under any schedule, irrespective of common ownership of the several residences, except that in the case of an apartment house with a number of individual apartments the landlord shall have the choice of providing separate wiring for each apartment so that the Company may supply each apartment separately under the residential schedule, or of purchasing the entire service through a single meter under the appropriate general service schedule.

No reference is made to abandonment proceedings or case-by-case determinations of whether the landlord's choice is "reasonable." These provisions are clear and unambiguous; Preserve has a right to receive master-metered service if it so chooses, and AEP Ohio has an obligation to provide that service. To whatever extent an abandonment proceeding is necessary, it could not prevent a landlord from choosing master-metered service. Denial of the application without limitation to AEP Ohio's "service plan" would impermissibly rewrite the tariff. Complying with the Commission's rules and tariffs is self-evidently reasonable.

4. **Without limiting such denial to AEP Ohio's "service plan," denial of the Application would interfere with the Northtowne tenants' leases with Preserve and insert the Commission into the landlord-tenant relationship, where the Commission has repeatedly held it lacks jurisdiction. Respecting the Commission's limited jurisdiction is reasonable.**

Further, denial of the Application without limitation to AEP Ohio's "service plan" would interfere with each of the hundreds of lease agreements currently in place at Northtowne. As expressed in their lease agreements, each of Northtowne's tenants have agreed that the requested master-metering arrangement is beneficial. Only AEP Ohio objects to that arrangement, and asks the Commission to substitute its own judgment for that of Northtowne's tenants in preventing Northtowne from receiving master-metered service at all. In addition to being unlawful, such an outcome would be patently unreasonable.

As related above, Northtowne's tenants will not be "customers" of NEP, but will purchase electricity from their landlord, Preserve. And, the same essential arrangement could be achieved by Preserve simply maintaining all residential utility accounts in its name. That is, **whether any resident at Northtowne owns their own AEP Ohio account is already a matter entirely within and controlled by the landlord-tenant relationship, and outside of the Commission's jurisdiction.**

As the Commission confirmed in the Complaint Case, "redistribution or resale of electricity by a landlord to its tenants is a matter of landlord-tenant relations and does not fall within the Commission's jurisdiction." *Ohio Power Company, supra*, at ¶ 208, citing *FirstEnergy* at ¶ 9; S.B. 3 Case at ¶ 3. More broadly, the Commission held that that "issues related to landlord-tenant law extend beyond the Commission's jurisdiction." *Id.* at ¶ 208, citing *Brooks*, Opinion and Order (May 8, 1996) at 15; *FirstEnergy* at ¶¶ 9-10. If the law is settled that issues between landlords and tenants are beyond the Commission's jurisdiction, how could the Commission possibly interfere with their private leases? *Id.* at ¶ 207. AEP Ohio now asks the Commission to substitute its own judgment for that of tenants who have signed leases agreeing to purchase electricity from their landlord, as permitted by law, by denying the Application and preventing the conversion to master-

metered service. But doing so would run contrary to the Supreme Court of Ohio’s decision in *FirstEnergy* and the Commission’s decisions in *Brooks* and the Complaint Case, among others. The only way for the Commission to avoid overstepping its jurisdiction and interfering in the landlord-tenant relationship is to deny the Application only with respect to AEP Ohio’s “service plan” or, alternatively, approve the Application.

- 5. Without limiting such denial to AEP Ohio’s “service plan,” denial of the Application would nullify Preserve’s service contract with NEP, though neither Preserve nor NEP are regulated by the Commission. Refraining from interference in private agreements over which the Commission lacks jurisdiction is reasonable.**

Further, Preserve’s contract with NEP can only be performed if the conversion proceeds. Under the contract, Preserve will receive meaningful economic benefits and infrastructure upgrades that will enhance the competitiveness of Northtowne in the residential market. These benefits to Northtowne and its tenants may permit Preserve to keep rents lower while still making valuable investments in the property.⁴ While neither NEP nor Preserve are regulated by the Commission, AEP Ohio would have the Commission nullify their contract and prohibit both Preserve and NEP from receiving the benefits of that contract. Respectfully, NEP submits that a regulatory agency nullifying its contract with a landlord without jurisdiction over either of them would not be reasonable.

- 6. The Commission has routinely granted Applications for Abandonment upon a showing that customers will continue to receive the type of utility service sought to be abandoned or have agreed to the changes giving rise to the application. The Northtowne tenants have agreed to the arrangement whereby they will receive electric service from AEP Ohio through Preserve with rate, disconnection, and disclosure protections ordered by the Commission.**

⁴ See *Public Comment of Charles Campesano, Partner, Senior Vice President and General Counsel*, Case No. 21-0990-EL-CSS (March 29, 2023) (Landlord’s inability to master-meter using NEP’s services will drive rents higher.)

Even if a new, case-by-case determination is required (it is not) and Commission may insert its judgment into the landlord-tenant relationship (it has repeatedly held otherwise), tenants will continue to receive electric service from AEP Ohio through their landlords with protections ordered by the Commission in the Complaint Case. To the best of NEP's knowledge this proceeding is unique with respect to electric service. But the Commission routinely grants applications to abandon gas service upon a showing that affected customers will receive replacement gas service or a substitute fuel source.⁵ Likewise, where affected customers have agreed to the changes giving rise to the application, the Commission has not seen the Miller Act as a springboard to substitute its judgment for theirs.⁶ Because tenants will continue to receive electric service supplied by AEP Ohio through their landlord, and have agreed to the conversion to master-metered service through their leases, there is no reason for the Commission to do otherwise here.

With only a flawed and incomplete legal argument, the Application's thrust turns to policy and the "enumerable [sic]" harms that would befall tenants if AEP Ohio followed its tariff. Application at ¶ 18. But these "harms" are illusory. As the evidence in the Complaint Case demonstrated, NEP already (1) requires its landlord clients to include language designed to provide transparency and secure tenants' informed consent in every lease, (2) requires landlords to agree that the total bill paid by tenants will never exceed the total bill that they would have paid as

⁵ See, e.g. *In the Matter of the Application of Northeast Ohio Natural Gas Corp. for Authority to Abandon Service to Five Premises in Trumbull County, Ohio*, Case No. 22-789-GA-ABN, Finding and Order (May 18, 2016) at ¶ 8 ("The record demonstrates that the affected premises are now being served by Dominion...Accordingly, the Commission finds that the Company's application for authority to abandon service should be approved and that no hearing is necessary in this matter.")

⁶ See, e.g. *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Abandon Natural Gas Service*, Case No. 15-1272-GA-ABN, Finding and Order (May 18, 2016) at ¶ 6 ("The Commission notes that both Columbia and Staff have demonstrated that the affected customers have agreed to the disconnection and abandonment of service... Accordingly, the Commission finds that Columbia's application for authority to abandon service should be approved and that no hearing is necessary in this matter.")

individually-metered customers of the local utility, and (3) when directed to disconnect by its clients, NEP provides (on behalf of its clients) disconnection protections for tenants that are nearly identical to those provided to residential utility customers. All of the above apply equally to Northtowne.

More importantly, the Commission has already ordered AEP Ohio to put protections for tenants of master-metered properties into place via a revised resale tariff. To the extent that the Commission can address the “harms” AEP Ohio speculates about in its Application, it already has. NEP and Preserve look forward to seeing AEP Ohio’s resale tariff application and intend to comply with that tariff in its final form. Therefore, every tenant at Northtowne will receive electric service from their landlord, which service will originate from AEP Ohio and be subject to both NEP’s contractual obligations and Commission-ordered protections.

Preserve, NEP, and each of Northtowne’s tenants have an interest in seeing their agreements performed, and landlords like Preserve have a right to receive master-metered service and to resell and redistribute that service to tenants. None of these interests are outweighed by AEP Ohio’s misplaced policy arguments.

7. AEP Ohio fundamentally misconstrues Preserve’s contract with NEP.

Under the Miller Act, the mere “whims of a public utility” cannot justify the termination of service. *Grafton v. Ohio Edison Co.*, 77 Ohio St. 3d 102, 109, 1996-Ohio-336, 671 N.E.2d 241 (1996). That is, the Miller Act is a shield for consumers against unilateral action by utilities. It is not, however, a sword for utilities to unilaterally cut apart customers’ private arrangements on their own property. AEP Ohio claims that the “whims of NEP’s desire to expand its ‘big business’ submetering footprint demands the termination of service and abandonment of distribution lines

to the Northtowne customers.” Application at ¶ 16. AEP Ohio has used this desperate attempt to cloak its unprecedented maneuver in the language of *Grafton* to deliver a lie. As explained above NEP, Preserve, and all of the Northtowne tenants have agreed to a master-and-sub-metering arrangement in private, mutually beneficial contracts that are beyond the Commission’s jurisdiction. These mutually beneficial contracts are not “whims,” and NEP could not possibly act unilaterally.

Preserve is a sophisticated national investment firm; to the extent they may be comparable, Preserve is likely “bigger” than NEP. AEP Ohio’s suggestion that NEP has somehow elbowed its way into one of Preserve’s properties without Preserve’s active and affirmative involvement is as absurd as it is offensive. In reality, Preserve has made a rational business decision and its contract with NEP will provide numerous benefits to both Preserve and Northtowne’s tenants. NEP’s assistance will allow Preserve to ensure that all of Northtowne uses carbon-free power (increasingly important in an ESG-driven financial environment), streamline the integration of forward-looking technologies like EV charging and demand response, and create an additional revenue stream, all while ensuring that residents do not pay more for their electricity than they would if they were directly served by AEP Ohio. And yet, AEP Ohio refuses to acknowledge that Preserve is even sentient. It is AEP Ohio, not NEP, that is acting unilaterally by interfering with NEP’s, Preserve’s, and its tenants’ private agreements.

CONCLUSION

Without limiting such denial to AEP Ohio’s unreasonable “service plan,” denial of the Application to prevent conversion of Northtowne to master-metered service would violate landlords’ well-established legal rights, re-write AEP Ohio’s tariff, obstruct private contracts and

leases over which the Commission lacks jurisdiction and insert the Commission into the landlord-tenant relationship. Tenants will continue to receive electric service from AEP Ohio through their landlord as permitted by law and subject to contractual and Commission-ordered protections, and have agreed to this arrangement in their leases. Given these indisputable facts, permitting the master-meter conversion of Northtowne to proceed is the only “reasonable” result.

Therefore, in the event that the Commission does not dismiss the Application, NEP respectfully requests that the Commission deny the Application only with respect to AEP Ohio’s unreasonable “service plan” or, alternatively, approve the Application, in either case permitting the conversion of Northtowne to master-metered service to proceed.

Respectfully submitted,

/s/ Drew B. Romig
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CERTIFICATE OF SERVICE

I hereby certify that the Public Utilities Commission of Ohio's e-filing system will electronically serve a copy of this filing on all parties referenced in the service list of the docket who have electronically subscribed to this case. In addition, a service copy of this filing has been served on the parties of record at the email addresses listed below on December 4, 2023.

/s/ Drew B. Romig

Drew B. Romig (0088519)

Email service list:

Ohio Power Company:

stnourse@aep.com

mjschuler@aep.com

OCC:

thomas.brodbeck@occ.ohio.gov

EXHIBIT NEP-1

Terms required to be inserted into Northtowne tenants' leases by NEP's contract with Preserve

"Lessor reserves the right, at any time during the term of this Lease and in Lessor's sole discretion, to convert the Community to master-metered utility service whereby Lessor shall secure and provide or resell to Lessee, and Lessee shall promptly pay all charges incurred for, any or all of the following: electricity, water/sewer and/or gas (the "Lessor-provided Commodities"). Should Lessor elect to convert the community to sub-metered utility service, Lessor shall provide Lessee notice of such election no less than thirty (30) days prior to such conversion. Following conversion, or if the Community has been converted to sub-metered utility service prior to the execution of this Lease, Lessee agrees with respect to the Lessor-provided Commodities that Lessor shall place all such utilities in Lessee's name. Conversely, Lessee agrees to place all other utilities for which Lessee is responsible in Lessee's name prior to receiving occupancy of the premises. The Lessee agrees to pay all other utilities, related deposits and charges on the Lessee's utility bills. The Lessee shall not allow utilities, other than cable TV, to be disconnected by any means (including non-payment of bill) until the end of the Lease term or renewal period. The Lessee agrees to reimburse the Lessor for any utility bills paid by the Lessor during the Lessee's responsibility under the Lease within two (2) working days of receiving demand for payment from the Lessor. Utilities shall be used only for normal household or commercial purposes and not wasted. Lessee hereby waives and disclaims Lessee's right to shop for and choose providers of the Lessor-provided Commodities and any portion or component thereof. Lessee further agrees to refrain from entering into any contracts for the supply or provision of the Lessor-provided Commodities without Lessor's express written consent, and acknowledges that entering into such a contract without Lessor's express written consent shall constitute a substantial default under this lease. Notwithstanding anything to the contrary contained herein, Lessee agrees that the Lessor may arrange to have a meter or meters installed to measure Lessee's usage of the Lessor-provided Commodities. If metered, Lessor or its agent shall supply Lessee with information of the cost per unit of the Lessor-provided Commodities and the number of units consumed. Rates per unit of the Lessor-provided Commodities consumed shall be consistent with rates per unit billed by regulated utilities including all applicable riders, line extension fees and customer charges. Lessee further agrees to pay for such usage, based upon Lessee's actual metered or ratio-allocated usage plus the apportioned share of common area usage (if applicable) and any other fees incurred by Lessee. Billing for usage of the Lessor-provided Commodities shall be considered part of the rent, though it will be separately invoiced and collected. It is understood and agreed between Lessor and Lessee that, in the event such payments are not made when due, it shall be considered a substantial default under the lease, and Lessee agrees that Lessor may bring summary proceedings for collection and/or eviction. LESSOR IS NOT OPERATING AS A PUBLIC UTILITY BY ARRANGING FOR THE SERVICES SET FORTH HEREIN, AND NOTHING HEREIN SHALL CAUSE LESSOR TO BE, OR BE DEEMED TO BE, A PUBLIC UTILITY."

EXHIBIT NEP-2

From: **Checobia Crawford** <ccrawford@aep.com>
Date: Fri, Jul 8, 2022 at 1:48 PM
Subject: Northtowne Apartments Order Request
To: shan.rodgers@preservepartners.com <shan.rodgers@preservepartners.com>
Cc: Aaron Depinet <adepinet@nationwideenergypartners.com>

After an initial evaluation of your 59 requests for master metered service to Northtowne Apartments, we have determined that these requests are all related to one apartment complex. Our plan of service for all of these requests will be to provide a single point of primary service to the property line in a mutually agreed location. The conversion to master meter service causes AEP Ohio to abandon service to its existing customers and to abandon some facilities on the property. As part of this service plan, Northtowne Apartments will also be required to pay for removal of AEP Ohio owned equipment including transformers, meter equipment, area lights and any other AEP owned equipment after further evaluation. AEP Ohio plans to leave the underground lines currently in place.

Thank you,

Checobia



CHECOBIA CRAWFORD | CUST SVCS ACCT REP

CCRAWFORD@AEP.COM | D:614.883.7007

700 MORRISON ROAD, GAHANNA, OH 43230

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 22-0693-EL-ABN

Summary: Comments of Nationwide Energy Partners electronically filed by Mr.
Drew B. Romig on behalf of Nationwide Energy Partners, LLC.