

limitation, the Certified Territory Act.¹ On September 6, 2023, the Commission rejected AEP Ohio's allegations, explaining (among other things) that NEP merely acted as the agent of the landlord, who has a right under Ohio law to determine how service is delivered on its property, whether that be through a master-metered arrangement with submetering to tenants or individual utility meters for each tenant.² Since NEP's submetering practices were consistent with the rights and protections afforded to landlords under Ohio law, the Commission held that AEP Ohio failed to prove NEP's submetering activities contravened Ohio law.³

Critically, however, the AEP Ohio/NEP Order never addressed how, if at all, electric distribution utilities (EDUs) are supposed to comply with the Miller Act when a landlord seeks to convert existing, individually metered EDU customers with their own existing, and in some instances, long-standing individual accounts to submetering through the installation of master-metered service for the landlord thereby forcing the EDU to reconfigure its existing facilities and remove existing metering infrastructure. The Commission never addressed this question because AEP Ohio did not assert a separate Miller Act count in its complaint against NEP and did not file a separate application for the abandonment at issue in that case.⁴ Therefore, the AEP Ohio/NEP Order held that "any allegations related to the Miller Act will not be considered and should be dismissed."⁵

To comply with the AEP Ohio/NEP Order and to squarely address important questions left unresolved by the AEP Ohio/NEP Order concerning the Miller Act, Duke Energy Ohio files this

¹ *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC*, Case No. 21-990-EL-CSS, Opinion and Order (Sept. 6, 2023), ¶¶ 2-3.

² The Commission rejected AEP Ohio's Application for Rehearing on December 13, 2023.

³ *Id.* at ¶¶ 2, 3, 179-232.

⁴ *Id.* at ¶¶ 230-231.

⁵ *Id.*

Motion seeking (i) leave to file the Amended Complaint (see Attachment A), (ii) leave to file the Abandonment Application (see Attachment B), and (iii) to consolidate the Amended Complaint with the Abandonment Application given the common and interrelated nature of the proceedings and the administrative efficiencies to be gained through consolidation.

For the reasons stated above and described more fully in the Memorandum in Support attached hereto, Duke Energy Ohio respectfully requests that the Commission grant this Motion in all respects.

Respectfully submitted,

/s/ N. Trevor Alexander

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Duke Energy Ohio, Inc.,)	
)	
Complainant,)	
)	
v.)	Case No. 22-0279-EL-CSS
)	
Nationwide Energy Partners, LLC)	
)	
Respondent.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The AEP Ohio/NEP Order⁶ provided much needed clarity regarding the legality of certain submetering practices performed by companies like NEP who are operating on behalf of landlords across the state of Ohio. Importantly, though, the AEP Ohio/NEP Order left important questions unresolved concerning the Miller Act. Specifically, the Commission never directly addressed whether EDUs could be forced to abandon existing and individually metered EDU customers that already have their own individual utility account, rearrange the EDU's existing facilities and remove existing metering infrastructure – without a hearing and without prior Commission authorization as required by the Miller Act – if a landlord (or an agent on its behalf such as NEP) seeks to convert the EDU's current customers (i.e., the tenants of landlord) to submetering customers of the landlord. The Commission declined to address the Miller Act in the AEP

⁶ Capitalized terms used or not elsewhere defined in this Memorandum In Support shall have the meanings ascribed to them in the Motion for Leave to Amend the Complaint and to File a Separate Abandonment Application and Motion to Consolidate.

Ohio/NEP Order because AEP Ohio's complaint against NEP did not assert a specific count alleging a Miller Act violation and AEP Ohio did not file a separate abandonment application.

To squarely raise this precise question for Commission consideration in accordance with the AEP Ohio/NEP Order, Duke Energy Ohio seeks leave to amend its Complaint, file a separate abandonment application to be effective only if the Commission determines that the landlord has the right to force the abandonment of tenants by the utility currently serving them, and consolidate the two cases. By granting this Motion, the Commission will have the opportunity to clarify the import of the AEP Ohio/NEP Order as it relates to the Miller Act, while simultaneously enhancing the efficiency of the proceedings and avoiding redundancy and unnecessary duplication of effort in a future abandonment proceeding. In doing so, granting this Motion will benefit all relevant stakeholders across Ohio (i.e., EDUs, landlords, agents of landlords like NEP, and tenants) by providing a roadmap for future abandonment requests from landlords.

II. MOTION FOR LEAVE TO AMEND THE COMPLAINT

Both the Ohio Administrative Code and the Ohio Rules of Civil Procedure provide a liberal approach to amending complaints. Specifically, Ohio Adm. Code 4901-1-06 authorizes amendments to complaints and other filings "for good cause shown." And, as recognized by the Commission, the Rules of Civil Procedure mandate that courts "freely give leave when justice so requires." Ohio Civ. R. 15(A).⁷ Previously, the Commission has faithfully allowed amendments to complaints consistent with the spirit of the foregoing provisions.⁸

⁷ *In the Matter of the Complaint of Cynthia Wingo v. Nationwide Energy Partners*, Case No. 16-2401-EL-CSS, Entry (Sept. 11, 2017) at ¶ 9; see also *In the Matter of the Complaint of Citizens Against Clear Cutting, et al. v. Duke Energy Ohio, Inc.*, Case No. 17-2344-EL-CSS, Entry (Jan. 25, 2018), at ¶ 11 (granting second motion to amend complaint).

⁸ *Id.*

In light of the AEP Ohio/NEP Order, good cause exists to amend the Complaint to join necessary parties and to provide much needed clarity regarding the Miller Act. Joinder of two new Respondents, Somerset Deerfield Borrower, LLC and Coastal Ridge Real Estate Partners, LLC (collectively, the Landlord⁹), is necessary to comply with the Commission's AEP Ohio/NEP Order. Adding the Landlord as a necessary party will enable the Commission to clarify questions regarding a landlord's right to force EDUs to abandon their customers to comply with landlord (or its agent's) submetering requests. In addition, the Amended Complaint would assert a specific count alleging a Miller Act violation, which will enable the Commission to adjudicate critical questions about the Miller Act that remain unanswered by the AEP Ohio/NEP Order. If the Commission denies this Motion, those critical questions will remain unsettled to the detriment and confusion of all stakeholders (EDUs, landlords, agents of landlords, tenants, etc.). Accordingly, good cause exists to allow Duke Energy Ohio to file the Amended Complaint.

Furthermore, amending the Complaint is appropriate where the central allegations set forth in the Amended Complaint derive from the exact same conduct, transactions, and occurrences set forth in the Complaint. But unlike the Complaint, the Amended Complaint will elaborate on and assert a separate count solely devoted to the Miller Act.¹⁰ As such, amendment is appropriate where, as here, it provides a vital path for the Commission to elucidate how EDUs should comply

⁹ As set forth in the Amended Complaint, Somerset Deerfield Borrower, LLC is the legal entity that executes the lease agreements for the multi-unit apartment complex at issue in this proceeding called Somerset at Deerfield in Mason, Ohio (Somerset). Respondent Coastal Ridge Real Estate Partners, LLC is a real estate investment and management firm that owns and manages Somerset. Since the owner of Somerset is not named in the Somerset lease agreement as the counterparty of tenants (i.e., the landlord), the identity of the landlord of Somerset remains unclear, which only further underscores the difficulty and confusion facing EDUs who are diligently working in good faith to comply with the Commission's AEP Ohio/NEP Order without violating their statutory obligations under the Miller Act. Given the uncertainty, Duke Energy Ohio seeks to join both parties as Respondents in the Amended Complaint.

¹⁰ Although the Complaint specifically alleged that NEP's submetering activities at Somerset violated the Miller Act and inflicted harm on Duke Energy Ohio and its customers, the Complaint did not assert a separate, standalone count for an alleged Miller Act violation as required by the AEP Ohio/NEP Order. *See* Complaint, ¶¶ 6, 7, 37, 38, 44, 58, 60.

with landlord submetering requests without violating their statutory obligations under the Miller Act. In sum, allowing Duke Energy Ohio to file the Amended Complaint attached hereto will enable the Commission to answer the unsettled questions regarding the Miller Act that continue to cause confusion and uncertainty for EDUs and other stakeholders across Ohio.

Granting leave to amend the Complaint is also appropriate to permit Duke Energy Ohio to remove counts which the Commission has previously addressed in the AEP Ohio/NEP Order. All parties will benefit by limiting the issues in dispute to only those which have not been previously addressed by the Commission.

Last, as of the date of this filing, the Commission has not issued a procedural schedule in this case. Indeed, this case has been dormant for the last eighteen (18) months while the Commission adjudicated the AEP Ohio/NEP Case. Furthermore, NEP and Duke Energy Ohio have only exchanged one set of discovery requests since Duke Energy Ohio filed the Complaint in this proceeding over twenty (20) months ago. Therefore, no party will be prejudiced by the acceptance of the Amended Complaint and good cause exists to grant Duke Energy Ohio leave to amend the Complaint consistent with the AEP Ohio/NEP Order.

III. MOTION FOR LEAVE TO FILE AN ABANDONMENT APPLICATION

Similar to its request for leave to file the Amended Complaint, Duke Energy Ohio also seeks leave to file the Abandonment Application (see Attachment B) to comply with the AEP Ohio/NEP Order to the extent the Commission rules in favor of Respondents on the Amended Complaint. As referenced above, the Commission declined to address the Miller Act in the AEP Ohio/NEP Order in relevant part because AEP Ohio did not file a separate abandonment application for the property at issue in the AEP Ohio/NEP Case.

Accordingly, to comply with the AEP Ohio/NEP Order, Duke Energy Ohio seeks leave to file a separate abandonment application for the Somerset property at issue in this proceeding. In so doing, the Commission will be positioned to adjudicate the merits of the alleged Miller Act violation set forth in the Amended Complaint, which will lead to the resolution of unsettled, lingering questions regarding the Miller Act that continue to cause confusion and uncertainty for EDUs, landlords, tenants, and other relevant stakeholders involved in or impacted by submetering practices across Ohio.

IV. MOTION TO CONSOLIDATE

Pursuant to Ohio Adm. Code 4901-1-02(A)(6) and 4901-1-12, Duke Energy Ohio moves the Commission for an order consolidating the above-captioned complaint case with the Abandonment Application docket, which currently remains unopened pending Commission approval of this Motion. As set forth more fully below, consolidating these cases will avoid duplication, conserve the resources of the parties and the Commission, and recognize their interrelated nature and common questions of law and fact.

While the Commission has not established strict guidelines for consolidation, the Commission has historically recognized the benefit of consolidating cases where there are common issues and efficiencies to be gained. For instance, the Commission has favored consolidating cases when the “dockets involve the same matter,” such as separate proceedings involving the same company.¹¹ The Commission also favors consolidation where “consolidation will enhance the efficiency of the proceedings”¹² or “where dockets in multiple cases involve the

¹¹ *In the Matter of Cardinal Asphalt Company, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 19-2240-TR-CVF, et al., Finding and Order (December 2, 2020), ¶¶ 9-10.

¹² *In the Matter of the Inquiry into the 1989 Long-Term Forecast Report of the Ohio Gas Company*, Case No. 89-0874-GA-GCR, et al., 1989 WL 1735442, Opinion and Order (June 26, 1989), ¶¶ 2-4.

same matter.”¹³ Further, the Commission has found consolidation to be warranted in the absence of prejudice and to avoid redundancy.¹⁴ Hence, “[the] Commission considers consolidation as a matter of administrative economy.”¹⁵

Here, consolidation is necessary to properly manage and expedite the orderly flow of the proceedings, avoid undue delay, and eliminate unnecessary duplication of effort.¹⁶ Both cases “involve the same matter” (i.e., the applicability of the Miller Act to Landlord’s request at Somerset to convert existing Duke Energy Ohio customers to submetering customers of Landlord), and pertain to the same stakeholders. Additionally, because the two cases are so intertwined, consolidation will enhance the efficiency of the proceeding. By considering both cases as part of a single proceeding, the Commission will avoid unnecessary duplication of resources (e.g., filing of testimony, hearings, etc.). Consolidation will also increase efficiency by permitting the Commission to address both: (1) whether the landlord may force a utility to seek to abandon current customers; and (2) whether an abandonment is appropriate under this specific factual circumstance.

No party would be prejudiced by the consolidation of two cases that are inextricably linked and share the same common issues of law and fact. Indeed, consolidation will benefit all stakeholders involved in or impacted by submetering practices across Ohio. Accordingly, the Commission should grant consolidation as a matter of administrative economy consistent with its

¹³ *Wessington Springs Wind Energy Center*, Case No. 21-110-EL-REN, Entry (June 3, 2021), ¶¶ 15-16 (denying consolidation because the cases were “factually unique” and involved “different types of facilities” and “different facility owners” that were “located in different states”).

¹⁴ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Rates*, Case No. 08-0709-EL-AIR, et al., Entry (Sept. 12, 2008) (“[N]o party would be prejudiced by this action....[C]onsolidation...would be reasonable, in the interests of efficiency and the elimination of redundancy.”).

¹⁵ *Wessington Springs Wind Energy Center*, Entry (June 3, 2021), ¶¶ 15-16

¹⁶ See *Weiss v. Pub. Util. Comm.*, 90 Ohio St.3d 15, 19, 734 N.E.2d 775, 780 (2000); see also Ohio Adm. Code 4901-1-27(B)(4), (7).

long-recognized, well-established authority “to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort.”¹⁷

V. CONCLUSION

For the foregoing reasons, the Commission should grant this Motion, and allow Duke Energy Ohio to seek (i) leave to file the Amended Complaint (see Attachment A), (ii) leave to file the Abandonment Application (see Attachment B), and (iii) to consolidate the Amended Complaint with the Abandonment Application given the common and interrelated nature of the proceedings and the administrative efficiencies to be gained through consolidation.

¹⁷ *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982); *Sanders Transfer, Inc. v. Pub. Util. Comm.*, 58 Ohio St.2d 21, 23, 387 N.E.2d 1370 (1979) (“The public utilities commission is invested with a discretion as to its order of business, and there is such a wide latitude of that discretion that this court may not lawfully interfere with it, except in extreme cases.”); *In the Matter of the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry (March 16, 2020), ¶ 3.

Respectfully submitted,

/s/ N. Trevor Alexander

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Attachment A

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Duke Energy Ohio, Inc.,)	
)	
Complainant,)	
)	
v.)	Case No. 22-0279-EL-CSS
)	
Nationwide Energy Partners, LLC, <i>et al.</i>)	
)	
Respondents.)	

AMENDED COMPLAINT

For its Amended Complaint against Respondents Nationwide Energy Partners, LLC, Somerset Deerfield Borrower, LLC, and Coastal Ridge Real Estate Partners, LLC (collectively, the Respondents), Duke Energy Ohio, Inc. (Duke Energy Ohio) alleges and avers as follows:

PARTIES AND JURISDICTION

1. Complainant Duke Energy Ohio is an Ohio corporation engaged in the business of supplying electric service to over 700,000 customers in southwestern Ohio. Duke Energy Ohio is a “public utility” as that term is defined in Ohio Revised Code (R.C.) 4905.02, 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.

2. Respondent Somerset Deerfield Borrower, LLC (Somerset Deerfield Borrower) is a foreign limited liability company organized under the laws of Delaware. Upon information and belief, Somerset Deerfield Borrower is the legal entity that executes the lease agreements for the multi-unit apartment complex at issue in this proceeding called Somerset at Deerfield in Mason, Ohio (Somerset).

Attachment A

3. Respondent Coastal Ridge Real Estate Partners, LLC (Coastal Ridge) is a domestic limited liability company organized under the laws of Ohio. Upon information and belief, Coastal Ridge is a real estate investment and management firm that owns and manages Somerset.

4. Respondents Somerset Deerfield Borrower and Coastal Ridge shall be collectively referred to herein as the Landlord.

5. Respondent Nationwide Energy Partners, LLC (NEP) is a foreign limited liability company organized under the laws of Delaware. NEP operates as the Landlord's agent for submetering and billing of tenants at Somerset for electric service pursuant to a private contractual arrangement between NEP and Landlord.

6. Jurisdiction for this proceeding exists under R.C. 4905.20 and 4905.21 (commonly referred to as the Miller Act), which provides that a "public utility" is prohibited from withdrawing or abandoning service on any "electric light line" that is "used for public business" without first seeking approval to abandon by filing a written application with Commission. Upon receiving a written application to abandon, the Commission is required to provide "reasonable notice of the application, stating the time and place to be fixed by the commission for the hearing of the application." R.C. 4905.21. The Miller Act further requires the Commission to "ascertain the facts" to determine whether the abandonment "is reasonable, having due regard for the welfare of the public and the cost of operating the service or facility...." *Id.*

7. Jurisdiction for this proceeding also exists under R.C. 4905.26, which permits the Commission to adjudicate complaints concerning, among other things, "any matter affecting [a

Attachment A

public utility's] own product or service", because Respondents' actions at Somerset impact Duke Energy Ohio's products and services as set forth in greater detail below.

FACTS

8. The specific facts giving rise to this Complaint concern recent efforts by NEP, acting on behalf of the Landlord, to implement and administer submetering services at Somerset, which is located in Duke Energy Ohio's service territory.

9. Duke Energy Ohio owns and operates electric distribution infrastructure on or around the Somerset property, including, but not limited to, transformers and individual customer meters affixed to the side of the multi-unit buildings at Somerset.

10. Duke Energy Ohio has been providing electric service to individually metered tenants at Somerset for nearly two decades, having commenced installing electric distribution infrastructure in March 2000.

11. Beginning in or around December of 2020, NEP representatives contacted Duke Energy Ohio to discuss the proposed acquisition of certain distribution equipment owned and operated by Duke Energy Ohio at Somerset.

12. At NEP's request, Duke Energy Ohio and NEP representatives met on or around December 4, 2020, to discuss NEP's proposal.

13. On or around January 19, 2021, Duke Energy Ohio informed NEP that Duke Energy Ohio was not interested in selling any of its distribution facilities/equipment at Somerset.

14. On or around January 20, 2021, NEP reengaged Duke Energy Ohio, asking for another meeting with Duke Energy Ohio representatives to further clarify NEP's proposal to acquire distribution plant at Somerset.

Attachment A

15. On or around January 21, 2021, Duke Energy Ohio again reiterated to NEP that it was not interested in selling its distribution equipment at Somerset.

16. On or around April 19, 2021, NEP contacted Duke Energy Ohio to explore whether Duke Energy Ohio would be interested in executing an infrastructure purchase agreement at Somerset, which would involve the Landlord (via its agent, NEP) acquiring certain electric distribution infrastructure and equipment owned and operated by Duke Energy Ohio at or around Somerset.

17. On or around April 26, 2021, representatives from NEP and Duke Energy Ohio met to discuss NEP's infrastructure purchase proposal at Somerset.

18. On or around May 28, 2021, Duke Energy Ohio informed NEP via email that "[a]fter internal discussions with management, Duke Energy Ohio is not interested in pursuing a transaction to sell facilities serving its current customers. Nor is it interested in abdicating its right and responsibility to provide distribution service to those existing customers within its certified electric service territory." *See Amended Complaint Exhibit 1.*

19. Despite the persistent, categorical rejections from Duke Energy Ohio, in a letter dated June 9, 2021, NEP sought to continue negotiations with Duke Energy Ohio regarding the proposed acquisition of distribution infrastructure at Somerset. *See Amended Complaint Exhibit 2.*

20. Once again, Duke Energy Ohio rebuffed NEP's efforts and made clear to NEP that under no circumstance would Duke Energy Ohio sell its distribution equipment at Somerset nor would Duke Energy Ohio ever abandon any of its customers at Somerset.

21. Meanwhile, NEP, acting on behalf of Landlord, began implementing plans to convert existing and individually metered Duke Energy Ohio customers at Somerset to submetering through the installation of master-metered service for the Landlord.

Attachment A

22. To effectuate its conversion plans at Somerset, NEP contacted the Duke Energy Ohio call center to submit its conversion requests. The call center representatives who spoke with NEP were not aware of NEP's prior communications with Duke Energy Ohio or Duke Energy Ohio's repeated refusal to abandon service to its customers at Somerset. Indeed, at no point did NEP mention to the call center that Duke Energy Ohio's management had already repeatedly declined to abandon any customers at Somerset.

23. Without knowledge of the parties' prior correspondence on the subject, the Duke Energy Ohio call center representatives authorized NEP's initial meter removal requests at Somerset, which resulted in some one hundred and forty-four (144) Duke Energy Ohio customers at Somerset being converted to submetering.

24. Upon learning of the conversion of existing, individually metered Duke Energy Ohio customers at Somerset, Duke Energy Ohio management advised call center representatives to halt further approvals of any new or existing submetering requests if doing so would effectively compel Duke Energy Ohio to abandon existing, individually metered customers, especially in light of the legal and regulatory uncertainty surrounding submetering that was created by the Ohio Supreme Court's decision in *In re Complaint of Wingo v. Nationwide Energy Partners, L.L.C.*, 163 Ohio St.3d 208, 2020-Ohio-5583, 169 N.E.3d 617 (2020) (*Wingo*).

25. Given the significant uncertainty surrounding the legality of submetering practices in Ohio, Duke Energy Ohio remained concerned that converting existing Duke Energy Ohio customers with individual utility accounts to submetering through the installation of master-metered service, removing and reconfiguring existing utility infrastructure, would be tantamount to abandoning customers without seeking prior Commission approval in violation of the Miller Act.

Attachment A

26. Of particular concern, R.C. 4905.20 provides that any “public utility violating [the Miller Act] shall forfeit and pay into the state treasury not less than one hundred dollars, nor more than one thousand dollars, and shall be subject to all other legal and equitable remedies for the enforcement of this section and section 4905.21 of the Revised Code.”

27. In light of the lingering uncertainty caused by *Wingo* and the potential liability exposure under R.C. 4905.20, Duke Energy Ohio ceased processing new submetering requests that would convert existing, individually metered Duke Energy Ohio customers to submetering through the installation of master-metered service, whether at Somerset or anywhere else in Duke Energy Ohio’s service territory, until the Commission and/or the Ohio Supreme Court could provide the clarity and guidance needed as it relates to submetering practices by companies like NEP and the abandonment of customers with existing utility accounts and existing EDU facilities.

28. Before Duke Energy Ohio could file a complaint against NEP seeking to clarify the confusion created by *Wingo*, Ohio Power Company (AEP Ohio) filed a complaint against NEP on September 24, 2021, in Case No. 21-990-EL-CSS (*AEP Ohio/NEP*). The *AEP Ohio/NEP* complaint alleged that NEP’s submetering practices in AEP Ohio’s service territory violated numerous statutes and Commission regulations.

29. On March 30, 2022, Duke Energy Ohio filed its Complaint against NEP in this proceeding, wherein Duke Energy Ohio asserted similar legal theories as those advanced in the *AEP Ohio/NEP* complaint.

30. On September 6, 2023, the Commission issued an Opinion and Order rejecting AEP Ohio’s arguments that NEP’s submetering activities violated Ohio law. Central to the Commission’s holding in the *AEP Ohio/NEP* case was the finding that NEP merely acted as the agent of the landlord, who has a right under Ohio law to determine how service is delivered on its property,

Attachment A

whether that be through a master-metered arrangement with submetering to tenants or individual utility meters for each tenant.

31. Importantly, however, because AEP Ohio failed to specifically assert a Miller Act violation as one of its three counts in its complaint against NEP and because AEP Ohio did not file a separate abandonment application for the apartment complexes at issue, the *AEP Ohio/NEP* order never substantively considered or otherwise addressed the Miller Act.

32. In response to the *AEP Ohio/NEP* order, Duke Energy Ohio sought Commission approval to file this Amended Complaint, which exclusively focuses on the Miller Act, and sought leave to file a separate abandonment application for its customers at Somerset in conformance with the *AEP Ohio/NEP* order.

COUNT I

33. Duke Energy Ohio incorporates by reference the allegations of paragraphs 1 through 32 of this Amended Complaint.

34. The Miller Act provides that no public utility “shall abandon or be required to abandon” any “electric light line” or any “service rendered thereby” without a hearing and an express finding by the Commission that the abandonment is “reasonable.” R.C. 4905.20, 4905.21.

35. Duke Energy 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, 511 (1996) (“[T]he Miller Act . . . requires municipalities to obtain commission approval before forcing abandonment of nonmunicipal utility facilities or the withdrawal of nonmunicipal utility services.”); *see also id.* (clarifying that the Miller Act applies to “the abandonment or closure of all electric lines, regardless of size,” even “single customer service lines”). According to the

Attachment A

Supreme Court, “the Miller Act focuses upon protecting existing utility customers from having their service terminated without commission approval.” *Id.* at 513.

36. Processing NEP’s requests (on behalf of Landlord) to convert existing residential customers of Duke Energy Ohio with individual utility accounts to master meter service would result in Duke Energy Ohio abandoning service to its existing residential customers at Somerset, as well as numerous distribution lines and removing other distribution assets currently installed on the Somerset property, all without a hearing and an express finding by the Commission that such abandonment is “reasonable” after giving “due regard for the welfare of the public....” R.C. 4905.20 and 4905.21.

37. Respondents have violated R.C. 4905.20 and 4905.21 by forcing Duke Energy Ohio to abandon its existing, individually metered customers at Somerset and its distribution equipment at Somerset without holding a hearing and without a prior Commission determination authorizing the abandonment as required by the Miller Act.

PRAYER FOR RELIEF

Duke Energy Ohio respectfully requests that the Commission provide the following relief:

- A. A determination that Duke Energy Ohio’s allegations herein state “reasonable grounds for complaint” and a prompt hearing and procedural schedule under R.C. 4905.26.
- B. A finding and order that Respondents’ demands to convert existing Duke Energy Ohio customers to submetering through the installation of master-metered service violates R.C. 4905.20 and 4905.21.
- C. A finding and order that Duke Energy Ohio should not abandon service to its existing, individually metered customers at Somerset without holding a hearing and without prior

Attachment A

Commission approval to abandon and that Duke Energy Ohio need not reconfigure and establish master meter service to Somerset as requested by Respondents.

D. Such other and further relief as authorized by law.

Attachment A

Respectfully submitted,

/s/ N. Trevor Alexander

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Attorneys for Duke Energy Ohio, Inc.

Attachment A

INSTRUCTIONS FOR SERVICE

TO THE DOCKETING DIVISION:

Please serve the Amended Complaint on the following Respondents:

Nationwide Energy Partners, LLC
c/o Corporation Service Company
50 West Broad Street, Suite 1330
Columbus, Ohio 43215

Somerset Deerfield Borrower, LLC
c/o Ryan Dolan
2200 West 5th Avenue, Suite 120
Columbus, Ohio 43215

Coastal Ridge Real Estate Partners, LLC
c/o KGM Agent, Inc.
250 East Town Street, Suite 200
Columbus, Ohio 43215

EXHIBIT

1

From: Kingery, Jeanne W. <O-EXCHANGELABS@DUKE-EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)@CN=RECIPIENTS/CN=313978D740A74B4D8832403B9769BF06-JW.KINGE (28)>
To: Bryce McKenney <BMcKenney@mcnccslaw.com>
CC: D'Ascenzo, Rocco <Rocco.D'Ascenzo@duke-energy.com>
Subject: NEP proposal - Somerset at Deerfield
Sent: 2021/05/28 17:35:35 (UTC +00:00)

Bryce -

Since our recent meeting with you and your client, Nationwide Energy Partners (NEP), we have been considering NEP's proposal. Thank you very much for your patience.

As we understand the proposal, NEP would like to purchase Duke Energy Ohio's distribution infrastructure serving all of the premises included within the neighborhood known as Somerset at Deerfield. The impacted premises include individually metered residential customer apartments/townhomes, as well as the common/community-shared facilities (club house, fitness center, etc). The Duke Energy Ohio assets that would be included in the purchase would consist of all of Duke Energy Ohio's equipment (e.g., poles, transformers, conduit, conductor, meters, etc.) currently installed in the neighborhood and serving all premises, including the individual residences. NEP's purchase offer would be at the depreciated book value of the assets. After the purchase, the owner of Somerset at Deerfield would be Duke Energy Ohio's sole customer, with primary-level service being taken at a single delivery point. The existing individual residential customers who are currently Duke Energy Ohio customers would then become master-metered by NEP and would be served by NEP behind that single Duke Energy Ohio delivery point. They would, thus, no longer be Duke Energy Ohio distribution customers.

After internal discussions with management, Duke Energy Ohio is not interested in pursuing a transaction to sell facilities serving its current customers. Nor is it interested in abdicating its right and responsibility to provide distribution service to those existing customers within its certified electric service territory. Furthermore, it should be understood that Duke Energy Ohio has not previously participated in a sale of this nature and scope and believes that Commission approval would be required, at least under the abandonment statutes and the certified territory law.

Again, thank you for your patience as we worked through this matter internally.

Jeanne

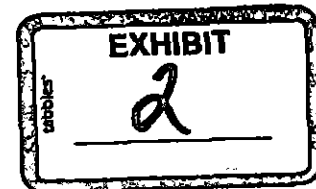
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June 9, 2021

VIA E-MAIL

Jeanne Kingery
Associate General Counsel
Duke Energy Business Services, Inc.
155 East Broad Street, 20th Floor
Columbus, Ohio 43215

Re: Somerset at Deerfield

Dear Jeanne,

We appreciate Duke Energy Ohio's ("Duke") consideration of the proposal presented by Nationwide Energy Partners ("NEP") on behalf of Coastal Ridge, LLC ("Coastal Ridge") to negotiate an infrastructure purchase agreement regarding Duke's infrastructure located on the Somerset at Deerfield property.

NEP and Coastal Ridge believe that an infrastructure purchase agreement with Duke can be in the best interests of all parties involved. Coastal Ridge owns the Somerset at Deerfield property and intends to exercise its property rights under Ohio law to master meter the property.¹ Coastal Ridge, being the property owner, would remain a Duke customer and pay Duke for electric distribution service at the master meter. Coastal Ridge, with the assistance of NEP, would then submeter the rental facilities located on the Somerset at Deerfield property. If Duke does not negotiate with NEP and Coastal Ridge, then Coastal Ridge will evaluate whether to install its own infrastructure on the property, thus rendering Duke's infrastructure located on the property no longer used and useful for utility service. However, if Duke can agree to an infrastructure purchase agreement whereby the property owner will purchase the infrastructure located on the property, then the parties can avoid a confrontation at the Public Utilities Commission of Ohio regarding whether Duke's property is no longer used and useful for utility service.

Further, in your email indicating that Duke is not interested in a transaction to sell its infrastructure located on the property owned by Coastal Ridge, there are several misstatements

¹ See *FirstEnergy Corp. v. Pub. Util. Comm.*, 96 Ohio St.3d 371, 2002-Ohio-4847, 775 N.E.2d 485, holding that the energy supplier is not allowed to restrict the resale of electric service by a landlord to a tenant if the resale takes place only on the landlord's property.

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June 9, 2021

Page 2

or misrepresentations that we would like to address before the parties determine whether there is an opportunity to move forward with further negotiations.

First, although NEP is negotiating with Duke and would be staging the sale, the actual purchaser of the infrastructure would be the account holder and property owner. NEP is not proposing to purchase the infrastructure but is negotiating on behalf of Coastal Ridge which owns the Somerset at Deerfield property and is the account holder. Further, Coastal Ridge would remain a Duke customer and continue to purchase electric distribution service from Duke. Coastal Ridge is simply interested in exercising its right to master meter the rental facilities located on its property.

Second, NEP and Coastal Ridge are not proposing that Duke sell its poles, but only the infrastructure located behind the curb on the property known as Somerset at Deerfield. NEP has submitted an equipment sheet to Duke detailing the infrastructure that Duke should allow the property owner to purchase.

Third, the Somerset at Deerfield property would continue to take electric distribution service from Duke, so Duke would not be abandoning service to the customer. While R.C. 4905.20 prohibits a utility from abandoning service to a customer, in this instance the customer is requesting to purchase the utility's infrastructure located on the customer's property and to remain a customer at a single delivery point. This would not constitute abandonment of service. Further, the property would continue to be located within Duke's certified territory and be served by Duke, so there would be no conflict with Ohio's certified territory law.

We would like to continue to negotiate with Duke regarding purchasing the distribution infrastructure located on the Somerset at Deerfield property. Please let us know your availability between June 28 and July 2, 2021, for another discussion regarding this matter.

Sincerely,

McNEES WALLACE & NURICK LLC

By

Bryce A. McKenney

Cc: Teresa Ringenbach, Vice President of Business Development
Kit Hagen, Senior Vice President of Growth and Business Development
Drew Romig, Corporate Counsel

Attachment B

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy)	
Ohio, Inc. for Authority to Abandon Electric)	Case No. 23-_____ -EL-ABN
Service Lines, Pursuant to Ohio Revised Code)	
Sections 4905.20 and 4905.21.)	

**CONTINGENT APPLICATION FOR ABANDONMENT BY DUKE ENERGY OHIO,
INC.**

Duke Energy Ohio, Inc. (Duke Energy Ohio) files this contingent application, pursuant to Ohio Revised Code (R.C.) Sections 4905.20 and 4905.21, for authority to abandon use of an electric light facilities that currently serves approximately four-hundred and thirty (430) customers of Duke Energy Ohio at a multi-unit apartment complex called Somerset at Deerfield in Mason, Ohio (Somerset). Pursuant to R.C. 4905.20, public utilities desiring to abandon any facilities that have been dedicated to public use, or the service provided therefrom, must first obtain the approval of the Public Utilities Commission of Ohio (Commission). R.C. 4905.21 outlines the approval process, which requires the filing of an application with the Commission. Although Duke Energy opposes abandoning its existing customers at Somerset as explained more fully below, Duke Energy Ohio files this Application for Abandonment (Application) to comply with the September 6, 2023 Opinion and Order of the Commission in Case No. 21-990-EL-CSS (*AEP Ohio/NEP*). In support of this Application, Duke Energy Ohio states:

1. Duke Energy Ohio is a “public utility” as that term is defined in R.C. 4905.02, and is subject to the jurisdiction of the Commission.

Attachment B

2. This Application is made pursuant to R.C. 4905.20 and 4905.21 (commonly referred to as the Miller Act) for authority from the Commission to abandon distribution system infrastructure that is currently serving existing Duke Energy Ohio customers at Somerset.

3. Duke Energy Ohio has exclusively provided electric distribution services to Somerset and has invested significant distribution facilities at Somerset that include meters and related facilities (collectively, the Somerset Distribution Assets).

4. As of the date of this Application, according to Duke Energy Ohio's records, there are approximately 430 individual Duke Energy Ohio customer accounts at Somerset that are currently served by the Somerset Distribution Assets.

5. Coastal Ridge Real Estate Partners, LLC (Coastal Ridge) is a domestic limited liability company organized under the laws of Ohio. Upon information and belief, Coastal Ridge is a real estate investment and management firm that owns and manages Somerset.

6. Somerset Deerfield Borrower, LLC (Somerset Deerfield Borrower) is a foreign limited liability company organized under the laws of Delaware. Upon information and belief, Somerset Deerfield Borrower is the legal entity that executes the lease agreements (either as the landlord or as the agent of the landlord) with tenants at Somerset.

7. Somerset Deerfield Borrower and Coastal Ridge shall be collectively referred to herein as the Landlord.

8. Nationwide Energy Partners, LLC (NEP) is a foreign limited liability company organized under the laws of Delaware. NEP operates as the Landlord's agent for submetering and billing of tenants at Somerset for electric service pursuant to a private contractual arrangement between NEP and Landlord.

Attachment B

9. NEP, on behalf of Landlord, has submitted requests to Duke Energy Ohio seeking to coordinate the removal of certain Somerset Distribution Assets with the installation of master metered service and submetering equipment for individual apartment complexes at Somerset.

10. Processing NEP's requests would be tantamount to abandoning electric service to its Somerset customers insofar as such requests would terminate existing customer accounts and convert existing and individually metered Duke Energy Ohio customers to submetered customers of Landlord.

11. Although Duke Energy Ohio does not desire to abandon its customers at Somerset given the serious harm it would cause to Duke Energy Ohio and its customers (especially its existing customers at Somerset) as explained herein, Duke Energy Ohio files this Application to comply with the Commission's *AEP Ohio/NEP* order.

12. In the *AEP Ohio/NEP* order, the Commission declined to address whether an electric distribution utility must seek prior Commission approval to abandon pursuant to the Miller Act before reconfiguring and removing existing utility infrastructure and terminate existing individual customer accounts so to convert existing utility customers to submetering customers of the landlord because AEP Ohio did not assert a separate Miller Act count in its complaint against NEP and never filed a separate application for abandonment.¹

13. In response to and in compliance with the *AEP Ohio/NEP* order, Duke Energy Ohio sought leave from the Commission to amend its complaint against NEP in Case No. 22-0279-EL-CSS and to separately file this Application.²

¹ *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC*, Case No. 21-990-EL-CSS, Opinion and Order (Sept. 6, 2023), ¶¶ 230-231.

² *See In the Matter of the Complaint of Duke Energy Ohio, Inc. v. Nationwide Energy Partners, LLC*, Case No. 22-0279-EL-CSS, Motion to Amend Complaint and to File Abandonment Application.

Attachment B

14. Although Duke Energy Ohio does not desire to permanently abandon its infrastructure and customers at Somerset, Duke Energy Ohio files this Application to seek the Commission's ruling under the Miller Act in accordance with the *AEP Ohio/NEP* order.

15. Duke Energy Ohio does not agree that abandonment of the Somerset Distribution Assets, which currently serve approximately 430 individual Duke Energy Ohio customers, is "reasonable, having due regard for the welfare of the public" as required by R.C. 4905.21.

16. Indeed, abandonment is contrary to the welfare of the public because Duke Energy Ohio customers at Somerset will lose enumerable rights and protections if abandonment is granted, including but not limited to:

- a. The ability to choose a competitive retail electric service (CRES) provider (any Somerset customers who are currently shopping for generation service today will lose that relationship and may be charged early termination fees under their CRES contract, if applicable);
- b. The ability to participate in the PIPP program and the other extended payment plans that the Commission requires public utilities to offer their customers (as applicable);
- c. The ability to take advantage of Duke Energy Ohio's Budget Billing Plan, which minimizes billing amount fluctuations over a twelve-month period (*see* Duke Energy Ohio Tariff, Section VI(4));
- d. The myriad of statutorily required disconnection and reconnection protections contained on Ohio Adm. Code 4901:1-18;
- e. Regulated and transparent rates for electric distribution services;
- f. Regulated processes for resolving disputes regarding pricing and services; and

Attachment B

- g. The right to request meter tests to ensure compliance with the American National Standards Institute's meter accuracy standards and numerous other customer rights and protections enshrined in Ohio Adm. Code 4901:1-10.

17. Not only will abandonment strip existing Duke Energy Ohio customers at Somerset of critical rights and protections under Ohio law, but abandonment will also harm Duke Energy Ohio. Specifically, Duke Energy Ohio will lose base distribution revenue for each customer converted to submetering service if Duke Energy Ohio is forced to abandon service to individual Duke Energy Ohio customer accounts. In addition, if Duke Energy Ohio were forced to abandon service to its customers at Somerset, Duke Energy Ohio would also lose an opportunity to invest future capital at Somerset.

18. All Duke Energy Ohio customers would be harmed by the abandonment as well, not just its customers at Somerset. In its rate setting proceedings, Duke Energy Ohio's rates are set in part based on customer usage and the number of customers Duke Energy Ohio serves. Reducing residential customer usage and the number of customers will likely cause regulated rates for all other Duke Energy Ohio residential customers to be higher than they otherwise would be.

19. Upon establishment of a hearing date by the Commission, Duke Energy Ohio proposes to publish newspaper notice as required by R.C. 4905.21.

20. Contemporaneous with the filing of this Application, a courtesy copy of this Application will be provided to the registered agents for NEP, Coastal Ridge, and Somerset Deerfield Borrower.

WHEREFORE, Duke Energy Ohio respectfully asks the Commission, to rule on the contested abandonment of the Somerset Distribution Assets, which currently serves approximately 430 Duke Energy Ohio customers at Somerset.

Attachment B

Respectfully submitted,

/s/ N. Trevor Alexander

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities of Ohio on this 19th day of December, 2023. The PUCO's Docketing Information System will electronically serve notice of the filing of this document on counsel for all parties.

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