

**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)	

REPLY COMMENTS OF NATIONWIDE ENERGY PARTNERS, LLC

I. Introduction

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). On December 4, 2023, Nationwide Energy Partners, LLC (“NEP”), Ohio Power Company (“AEP Ohio”) and the Office of the Ohio Consumers’ Counsel (“OCC”) filed their initial comments pursuant to the November 2, 2023 Entry in this proceeding. On that same day, NEP filed a Motion to Dismiss AEP Ohio’s Application as 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 Case No. 21-0990-EL-CSS 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. Especially now that the Commission has issued its

Second Entry on Rehearing in the Complaint Case denying AEP Ohio’s application for rehearing, the Commission should dismiss the Application in this proceeding. *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC*, Commission Case No. 21-0990-EL-CSS, Second Entry on Rehearing (December 13, 2023) at ¶ 1. If it does not, NEP submits these Reply Comments in response to the initial comments of AEP Ohio and OCC to again urge the Commission to either (1) deny the Application only with respect to AEP Ohio’s unreasonable “service plan,” or (2) grant the Application.

II. Reply Comments

Both AEP Ohio and OCC’s comments can be summarized simply. Neither AEP Ohio nor OCC address with any substance whether the Miller Act even applies to the work requested by Preserve at Northtowne, which is curious given the novelty of this Application. Both posit that permitting Northtowne to receive master-metered service would cause Northtowne’s tenants to lose certain rights and protections afforded to customers of regulated utilities. Both submit that permitting the conversion of Northtowne to proceed, therefore, is “unreasonable” under the Miller Act and should be prohibited by the Commission. Put even more simply, they assert that master-metering is bad and the Commission should stop it without regard to whether a legal basis exists for doing so. And, both rely on misstatements of the law and attempts to relitigate issues already resolved by a final order of the Commission in the Complaint Case.¹

¹ See, e.g. AEP Ohio Init. Comments at P. 1-2 (“NEP has requested this change so that NEP may purchase electric service from AEP Ohio at the mater [sic] meters and then resell it to the Northtowne tenants.”) and Page 3 (“NEP procures electric service at a master meter...”). See also OCC Init. Comments at P. 1 (“The PUCO recently ordered that [NEP] may submeter (resell) electric utility service...”). Compare: *Ohio Power Company*, *supra*, Opinion and Order (September 6, 2023) at ¶ 207 (“**the landlords and not NEP supply electricity** to tenants under the terms of the leases on their own property, as already permitted by law) (emphasis added).

Ultimately, AEP Ohio and OCC have reached their conclusions by tossing the law aside and fundamentally misunderstanding the role played by master-metering in the competitive residential multifamily market. If they actually understand what they're talking about, then AEP Ohio and OCC are simply fear mongering. Availability of master metering isn't just the law, it is good. Master-metered apartments have been around since the beginning of electrification and contribute to the diverse and competitive market for apartments. Tenants at Northtowne will continue to receive many of the protections that customers of regulated utilities receive and will retain access to a variety of options for assistance in paying their bills. Landlords using master meters have greater insight into how their communities use electricity and can be more flexible in what rent they must charge and the service level they are able to offer. If there were no upsides to residents of master-metered communities, landlords who choose to master-meter would be at a competitive disadvantage and wouldn't do it. The Commission should allow the competitive market for apartments to continue functioning as it has for a century and dismiss the Application. If it does not, the Commission should permit the conversion of Northtowne to proceed by either (1) denying the Application only with respect to AEP Ohio's unreasonable "service plan," or (2) granting the Application.

First, AEP Ohio and OCC both simply assume that the Application is proper and that the Miller Act applies to the change of service requested by Preserve. For all the reasons stated in NEP's Motion to Dismiss and Initial Comments, this assumption is fatally flawed. Second, both fail to acknowledge that the availability of master-metered service to landlords is required by law, and that tenants have a right to appoint their landlord to receive master-metered service through their leases. As the Ohio Supreme Court explained in *FirstEnergy Corp. v. PUC* (96 Ohio St. 3d 371, 373, 2002-Ohio-4847, 775 N.E.2d 485, at ¶ 10):

“FirstEnergy further argues that S.B. 3 entitles tenants to choose their own service supplier and that the commission's decision enables landlords to prevent tenants from doing so. To the contrary, the commission's decision simply **affirmed the right of landlords and tenants to enter into lease agreements that appoint the landlord to secure, resell, and redistribute electric service to its tenants.** Under such leases, agreed to by tenants, the tenants exercise choice by appointing their landlord to make decisions and arrangements concerning electric utility service.” (emphasis added)

As NEP’s Initial Comments explain, all tenants at Northtowne have executed leases appointing their landlord to resell and redistribute service to them. These tenants have exercised the right explicitly protected by the Court in *FirstEnergy*. And yet, both AEP Ohio and OCC would have the Commission deny tenants that right, ignore their wishes expressed in valid private leases, and substitute the Commission’s judgment for theirs. AEP Ohio and OCC would further have the Commission prohibit a service expressly protected by a century of Supreme Court precedent and offered by AEP Ohio’s Commission-approved tariff. If the Commission were to take the path suggested by AEP Ohio and OCC, it would be unable to avoid (1) creating an irreconcilable conflict with a century of Ohio Supreme Court precedent, (2) impermissibly rewriting AEP Ohio’s tariff, and (3) unlawfully interfering in the landlord-tenant relationship and contracts over which the Commission lacks jurisdiction. However it happens, the conversion of Northtowne to master-metered service must go forward. This is, in part, also why the Application should be dismissed as discussed in NEP’s Motion to Dismiss.

In addition to ignoring the law, AEP Ohio and OCC’s initial comments reveal just how little they understand about competitive markets generally and multifamily communities specifically. It is unsurprising that AEP Ohio – a monopoly – would not understand the basic market principles applicable to competitive businesses like landlords. And, OCC’s experience in representing consumers does not extend to landlord-tenant law or relationships and its Initial Comments highlight its lack of subject matter expertise. Unlike AEP Ohio, Northtowne must

create value to attract residents or it will not have customers and, despite AEP Ohio's and OCC's attempts to spread misinformation here, that is exactly what Northtowne is doing with master metering. Both AEP Ohio and OCC treat residents' utility bills at multifamily communities as though they exist in a vacuum. While utility bills for single family homeowners may be largely independent of other variables and easy to isolate, multifamily communities are much more complicated environments. Every apartment comes as a complex and interdependent package deal with rent, utilities, deposits, and fees on one side balancing against the value, amenities, convenience and quality of life offered by the unit and the community on the other. Adjusting a variable on one side of that equation will have an effect on the other side. This unique interdependence stems from the dual nature of apartments – they are both homes and competitive businesses.

While AEP Ohio and OCC prefer to forget about landlords and their business prerogatives entirely, landlords direct every aspect of the complex package presented by any given apartment. Residents do not own their apartments or control anything about their energy usage other than the setting on their thermostat and which devices are in use. Residents cannot upgrade their insulation or install energy efficient appliances, better windows or doors, heat pumps, or any other permanent fixture that would dramatically impact their energy usage. All of these concerns are within the exclusive control of their landlord. But when each resident pays their own utility bill directly to, say, AEP Ohio, the landlord is blind to how their community is using electricity because the landlord cannot see those bills. If there are problems with insufficient insulation or inefficient appliances, the party having control over the solution (and an incentive to provide that solution to keep residents from moving out) is not even aware of the problem.

Master-metering offers landlords the same level of insight into, and ability to manage, how their property uses electricity as any other commercial customer. In a financial world increasingly driven by environmental, social and governance (ESG) targets, control over how a property uses and manages its energy can dramatically affect the landlord's ability to secure equity investment and the interest rates at which it is able to secure financing. A property using green supply and technologies can expect to save money on interest and attract better offers from investors looking to hit their ESG targets. Master-metering with submetering can also create a revenue stream to landlords *without increasing costs to tenants*. While the regulatory protections AEP Ohio and OCC emphasize may be beneficial in a vacuum, an arrangement without them can still be beneficial overall. One way that landlords may create a more beneficial offering is to keep rent lower by using that additional revenue *that does not increase costs to tenants* to pay for things that would otherwise be paid for by raising rent. Or, they may keep their rent competitive and use that revenue to make upgrades to their own community (e.g. adding EV chargers), increasing its overall value proposition to residents. Many other possibilities exist and all play into the overall value proposition presented by each apartment.

Even if AEP Ohio and OCC reluctantly acknowledge landlords as sentient business operators in their reply comments, they are unlikely to admit that residents benefit from their landlords' business decisions. But this would again fail to understand the complex landlord-tenant dynamic. To be blunt, broke landlords are bad for tenants. No tenant should want their landlord to have to choose between increasing rent or cutting maintenance. A landlord whose property is performing well has a significant financial buffer between the status quo and hard choices that affect tenants. So, even if landlords choose to master meter for primarily financial reasons, increasing that buffer is a good thing for tenants too.

The Commission could not even know whether it was helping or harming residents by interfering with any component of this package without understanding how that component may affect others. It is NEP's understanding that Preserve purchased Northtowne in 2021 with the intent to improve the property. Despite AEP Ohio's delay, NEP has already assisted Preserve in making significant repairs and upgrades to Northtowne's water infrastructure, which had grown leaky and fragile over 50-plus years. While NEP is not privy to its clients' business plans, it is certainly possible that increased costs and higher interest rates over the last few years could force Preserve to raise rents at Northtowne or delay additional upgrades, and that it may be planning on using some of the financial benefits of its master-metered arrangement to mitigate or eliminate those issues. AEP Ohio and OCC, though, ask the Commission to act based on only a fraction of the relevant information.

If it is possible at all, performing this analysis would require at least a thorough understanding of the residential leasing market, the business model of the landlord, the features of the community and condition of its infrastructure, housing regulations and assistance programs like Section 8 and HEAP, the trends in preferences of tenants, and how these and countless other variables may change in the future. The Commission would necessarily need to haul landlords (over which it lacks jurisdiction) into Commission proceedings to investigate all of these matters and engage countless experts (many of whom will likely disagree) in order to make a judgment call on what is best for renters *when those renters have already decided that issue for themselves*. The fact that the Commission would need to interfere so deeply into landlords' business and their relationship with tenants to conduct this inquiry again augurs in favor of dismissing the Application. But, if the Commission does not dismiss the Application, it should respect the

decisions made by landlords and tenants and decline AEP Ohio's and OCC's invitation to disrupt their agreements.

Ultimately, though, the Commission cannot wade into this complex judgment at all. For all the reasons stated in NEP's Motion to Dismiss and Initial Comments, the Miller Act simply does not create an opening for utilities to get out of providing tariffed service they don't want to provide. The law and AEP Ohio's tariff control what service AEP Ohio is obligated to provide to Preserve, and both the law and AEP Ohio's tariff unambiguously require AEP Ohio to provide master-metered service to Preserve. If AEP Ohio wants to stop landlord customers from exercising their right to receive master-metered service it must have a valid legal basis for doing so, and the Miller Act is not that basis.

NEP has responded to the specific concerns raised by AEP Ohio and OCC below:

A. PIPP & CRES

First, NEP must note that PIPP and shopping for CRES are mutually exclusive. PIPP recipients cannot shop for CRES, and CRES shoppers cannot receive PIPP. So, tenants at Northtowne could only really agree to forego one or the other, not both, because they cannot use them simultaneously. NEP does not dispute that PIPP may be useful or that tenants may benefit from shopping for CRES supply notwithstanding AEP Ohio's and OCC's attempts to paper over the pitfalls of each. NEP simply disputes whether the Commission has the statutory jurisdiction, subject matter expertise, or moral right to make this decision for residents of apartment communities. PIPP can be a useful program. That is why NEP has previously inquired with the Department of Development about permitting landlords to participate in and offer PIPP to their residents. While the Department of Development has thus far declined to extend PIPP to landlords

who receive master-metered service and resell that service to tenants, that does not mean that master-metered communities necessarily present a worse overall value proposition to potential residents. To the contrary, landlords are in the business of attracting and retaining residents, and those landlords who choose to master-meter and resell and redistribute that service to residents do so as part of an overall value proposition designed to be competitive in the market. Residents may rationally choose to forego PIPP in favor of lower rent, better amenities or any number of other considerations.

Worth noting, though, is that PIPP is not the panacea for low-income residents that AEP Ohio and OCC pretend it to be. Even OCC has recently and very publicly objected to the fact that PIPP rates are often higher than default residential service rates.² With the Commission's order in the Complaint Case requiring AEP Ohio to file a revised resale tariff that ensures that residents of master-metered communities do not pay more than the local utility's default residential service rate, those low-income tenants will receive *lower rates* behind a master-meter. While the PIPP program does make provision for subsidizing arrearages, tenants who miss a payment may find themselves not only removed from the program but owing substantial lump sum debts (which, as OCC has noted elsewhere, have accrued at higher-than-default-service rates). AEP Ohio notes that "Post-PIPP" will kick in for any balances owed to AEP Ohio, but that these "Post-PIPP" payments will be "on top of" amounts billed to them by NEP on Preserve's behalf. AEP Ohio appears to forget that apartment tenants even now may decide to move to an apartment outside of AEP Ohio's service territory and face this same issue. AEP Ohio once again fails to distinguish between renters and single-family homeowners, ignoring that renters move much more frequently and when they

² See, e.g., *In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 22-556-EL-USF, OCC Reply Br. for Consumer Protection.

do it may or may not be to a location where PIPP, CRES or service from AEP Ohio is available. This decision is the tenant's and the tenant's alone to make, and every tenant at Northtowne has made this decision through their lease with Preserve.

In addition, many other programs help low-income residents pay their utility bills, to which programs Northtowne tenants will retain access. Some of Northtowne's tenants receive Section 8 housing and utility allowance vouchers. The availability of Section 8 utility assistance is not dependent upon tenants retaining their individual AEP Ohio accounts, and tenants receiving Section 8 assistance will not be affected by the conversion. Further, programs like HEAP provide assistance to tenants without the possibility of those tenants falling into debt as a result of a missed payment. NEP retains a contact list of community action groups, churches, charities (e.g. Salvation Army) and other sources of assistance for low-income residents who often submit pledges to help cover bills when tenants are unable to pay, and NEP and Preserve will work together to provide additional assistance to low-income tenants where needed.

AEP Ohio and OCC also ignore that tenants are still making decisions about their electric supply behind a master-meter. The Supreme Court's decision in *FirstEnergy, supra*, directly addressed the issue of tenants' ability to choose suppliers: "Under such leases, agreed to by tenants, the tenants exercise choice by appointing their landlord to make decisions and arrangements concerning electric utility service." *FirstEnergy* at ¶ 10. Landlords that hire NEP ensure that every resident receives 100% carbon-free generation supply at the same rate as the local utility's default service without having to individually shop. To NEP's knowledge, that option is not available to any other residential customer – that is, **master-metering creates more choice in the market, not less**. NEP's customers report that this arrangement is viewed very favorably by increasingly environmentally conscious renters. In addition to improving the overall value proposition to

tenants and prospective tenants, landlords who shop for renewable or carbon-free supply for their whole community can often secure more advantageous financing, further increasing the community's financial buffer and providing additional opportunities to make investments in the community without increasing costs to tenants.

Further, AEP Ohio and OCC fail to understand that electric bills are not tenants' only bills. As a major central-Ohio apartment developer and operator opined in the Complaint Case, **master metering with NEP's assistance permits landlords to keep rents lower.**³ If a resident at a master-metered community were eligible for an average discount of \$10 per month through PIPP, but would pay \$20 more per month in rent at another location to get it, then it seems that resident has made a rational and prudent choice to live in a master-metered apartment and forego PIPP. What AEP Ohio and OCC propose, though, is to guarantee the availability of PIPP and access to CRES to Northtowne tenants without any consideration for whether doing so might increase their rent or reduce their landlord's ability to invest in their community. But, as already established, the Commission could not even know if it was helping or actively harming residents by substituting its judgment for theirs.

In addition, both AEP Ohio and OCC ignore that many Ohioans already receive their electric service from someone other than an investor-owned utility regulated by the Commission. 25 electric cooperatives serve 380,000 residents and small businesses throughout Ohio.⁴ A further 90 municipal utilities serve at least 241,580 residents.⁵ None of those entities are regulated by the

³ Public Comment of Charles Campisano, Partner, Senior Vice President and General Counsel, Case No. 21-0990-EL-CSS (March 29, 2023) (Landlord's inability to master-meter with NEP's assistance would cause increased rents.)

⁴ <https://puco.ohio.gov/utilities/electricity/resources/electric-cooperatives>

⁵ Report: Electric Sales, Revenue and Average Price, U.S. Energy Information Administration (October 5, 2023), Table T6 (https://www.eia.gov/electricity/sales_revenue_price/)

Commission. None of those residents are eligible for PIPP, able to choose a CRES supplier, or are subject to statutory disconnection protections. But AEP Ohio and OCC simply forget about two-thirds of a million people in order to falsely paint the residents of Northtowne as some glaring exception.

In reality, many Ohioans already exist outside of the Commission's jurisdiction, and residents can and do choose to live in apartments in the service territories of cooperatives and municipal utilities. **That is, many people already choose to forego PIPP and access to CRES markets based on what apartment presents the best value proposition for them.** If the Commission could choose to prohibit a landlord from receiving master-metered service on the basis of AEP Ohio and OCC's regulatory protection arguments, would those arguments similarly support preventing co-ops and municipalities from serving customers even where they have a legal right to do so?

Likewise, as noted in NEP's Motion to Dismiss and Initial Comments, tenants only have accounts with AEP Ohio in the first place because their landlord made that determination, and Preserve could decide at any time to maintain each unit's AEP Ohio account in its own name. In fact, this arrangement is common, particularly in student housing where landlords often lease by bedroom, maintaining the utility account in the landlord's name and billing each individual tenant their pro-rata fraction of the unit's electric bill. Despite their community being individually metered under a residential rate schedule, those tenants cannot shop for CRES or access PIPP. Would AEP Ohio's and OCC's arguments support the Commission unilaterally reforming those landlords' business models and requiring that each unit's account be held by a tenant? If Preserve simply decided to maintain all accounts in its name and *then* requested master-metered service,

would any of AEP Ohio's and OCC's arguments hold water? Clearly no, and there is no reason to entertain them here either.

Even if the Commission wanted to guarantee the availability of PIPP and access to CRES markets to Northtowne's tenants, it could not know whether it was helping or harming those residents without accounting for every factor affecting the overall value proposition that Northtowne presents to residents. Ultimately, this complex decision is a component of the competitive residential leasing market and is beyond both the Commission's statutory jurisdiction and subject matter expertise to influence. AEP Ohio's and OCC's failure to understand renters undermines their entire position – renters tend to move frequently and are not captive to landlords, AEP Ohio, or the Commission in their decisions. Renters are in the best position to make their own decisions, retain access to assistance programs beyond PIPP, and are protected by landlord-tenant law under the jurisdiction of state courts, not the Commission.

B. Disconnection

AEP Ohio and OCC insist that Northtowne residents will face the “prospect of disconnection without statutory protections” if the conversion to master-metered service is completed. AEP Ohio Init. Comments at 8; *See* OCC Init. Comments at 4. But this is simply not true. As the evidence in the Complaint Case demonstrated, 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. And, the Commission has ordered AEP Ohio to file a revised resale tariff to include that “[w]hen 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.”

Ohio Power Company, supra, at ¶ 224. To the extent that the Commission can address this issue, it already has. Tenants receiving electric service from their landlord will receive the same disconnection protections as regulated utility customers. AEP Ohio and OCC are flat out wrong.

C. Impact on Other Customers

Both AEP Ohio and OCC raise concerns relating to the impact on other customers of the conversion of Northtowne to master-metered service. First, as the evidentiary record in the Complaint Case makes clear, landlords have been hiring NEP to assist with conversions to master-metered service for over 20 years. And yet, despite a rate case being the proper venue to raise any cost-shifting concerns, neither AEP Ohio nor OCC raised these concerns in either of AEP Ohio's two most recent rate cases. In fact, AEP Ohio's most recent rate case settlement, which OCC joined, included both a redline to AEP Ohio's resale tariff and additional clarification to the AEP Ohio equipment purchase process. *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Joint Stipulation and Recommendation (March 12, 2021), Case No. 20-585-EL-AIR, Section III(E), ¶¶ 6, 12. Still, the "costs" to other customers were not raised by either party or addressed by that settlement. To the extent that any cost or cost-shifting concerns exist, AEP Ohio and OCC have both had ample opportunity to address them in the appropriate rate case proceedings, and will again in AEP Ohio's next rate case. Attempting to address these concerns haphazardly in an improperly-filed abandonment proceeding without the evidentiary record of a rate case would be inappropriate.

In addition, as explained in NEP's Motion to Dismiss and Initial Comments, these concerns could be completely obviated by AEP Ohio either (1) selling its on-site infrastructure to Preserve as it has done with other customers, or (2) providing the secondary service actually requested by

Preserve and leaving all of AEP Ohio's on-site infrastructure in place and in service. NEP does not disagree that AEP Ohio has manufactured the least efficient scenario possible in an effort to support its novel, meritless "abandonment" argument. To the extent that the conversion creates any additional costs to AEP Ohio at all, AEP Ohio will continue to receive full regulated cost recovery and return on investment for its service to Northtowne under a commercial service schedule because, again, AEP Ohio will continue to be the utility provider to Northtowne. Other customers will be no more "harmed" by Northtowne's receipt of master-metered service than they are by any other customer receiving a commercial rate. And, again, the costs of the conversion would be dramatically reduced (or may become profits) if AEP Ohio simply sells its equipment to Preserve to facilitate primary service or provides the requested secondary service.

To the extent that the costs of the conversion are borne by Preserve, OCC may rest easy knowing that the rates billed by Preserve to tenants, in addition to being contractually limited to AEP Ohio's residential default service rate, will be subject to AEP Ohio's revised resale tariff as ordered by the Commission in the Complaint Case. The Commission's Second Entry on Rehearing makes clear that the Commission expects AEP Ohio to file its revised resale tariff application in a separate proceeding wherein interested parties, including OCC, may voice their concerns and contribute to a workable tariff that addresses any valid cost or compliance concerns. *Ohio Power Company, supra*, Second Entry on Rehearing (December 13, 2023) at ¶ 36. In any case, if the Commission does not dismiss the Application, a sure-fire way to alleviate the cost concerns raised by AEP Ohio and OCC is to deny the application only with respect to AEP Ohio's inefficient and wasteful "service plan" and permit Preserve to move forward with a more reasonable service.

D. Necessity to Hold a Hearing

Finally, both AEP Ohio and OCC argue that a hearing should be held in this matter, and OCC argues that a hearing and any further consideration of this matter should be “held in abeyance pending the resolution of any appeals to Supreme Court of Ohio” in the Complaint Case. AEP Ohio Init. Comments at 11; OCC Init. Comments at 4. For all the reasons stated in NEP’s Motion to Dismiss and Initial Comments, a hearing in this matter would be a waste of time. The Miller Act simply does not apply to the requested change in service at Northtowne and, even if it did, these proceedings could have only one lawful result – the conversion must proceed. If the Commission were to schedule a hearing in this matter, it would be tacitly deciding that the Miller Act does, in fact, apply to the Northtowne conversion. At a minimum, the Commission should address NEP’s Motion to Dismiss prior to scheduling any such hearing.

Further, as noted in NEP’s Initial Comments, the Commission routinely grants applications to “abandon” service **without a hearing** where residents will continue to receive the type of utility service sought to be abandoned⁶ or have agreed to the changes giving rise to the application.⁷ Both of these criteria are obviously met here – Northtowne’s tenants will continue to receive electric service from AEP Ohio through their landlord and all tenants at Northtowne have agreed to the master-and-sub-metering arrangement in valid private leases. A hearing will only further delay

⁶ 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.**”) (emphasis added)

⁷ 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.**”) (emphasis added)

Northtowne's receipt of service to which it is entitled by law and which it requested over eighteen months ago.

As to OCC's insistence that this proceeding should be held in abeyance pending any appeal of the Commission's decision in the Complaint Case to the Supreme Court, that argument is nonsense. The Commission's order in the Complaint Case is effective and AEP Ohio's application for rehearing was denied on December 13, 2023. *Ohio Power Company, supra*, Second Entry on Rehearing (December 13, 2023) at ¶ 1. As of the date that these Reply Comments are being submitted, no notice of appeal has been filed. To the extent that AEP Ohio appeals that decision to the Supreme Court of Ohio, the Commission should not ignore or second guess its own final order pending appeal. The Commission has already – twice – thoroughly considered the arguments made by AEP Ohio and determined that NEP is not a public utility. Unless and until the Supreme Court of Ohio finds otherwise (it should not), that is the law and the Commission must dispose of this and other cases in accordance with the law.

CONCLUSION

AEP Ohio's and OCC's Initial Comments do not even pretend to address the overwhelming legal case for permitting the conversion of Northtowne to master-metered commercial service to proceed. If AEP Ohio and OCC would like to stop landlord customers from exercising their right to receive master-metered service they must have a valid legal basis for doing so, and the Miller Act is not that basis.

Both AEP Ohio and OCC rely on policy arguments that fail to understand the basic dynamics of the competitive residential multifamily market. By ignoring the primacy of landlords in directing the complex value proposition inherent in any apartment offered for rent, AEP Ohio

and OCC urge the Commission to follow a path that not only oversteps its statutory jurisdiction and violates landlords' well-established rights, but *threatens to do actual harm to tenants* in the name of good intentions. The Commission and the Ohio Supreme Court have both affirmed landlords' right to receive master-metered service. AEP Ohio's attempt to force Preserve to accept an unreasonable "service plan" designed solely to test its novel, meritless Miller Act theory is the only unreasonable or harmful thing occurring at Northtowne. For these reasons, as well as the reasons stated in NEP's Initial Comments, permitting the conversion of Northtowne to master-metered commercial service is the only "reasonable" outcome in these proceedings.

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,

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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 19, 2023.

/s/ Drew B. Romig

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Commission of Ohio Docketing Information System on
12/19/2023 4:44:40 PM**

in

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

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