BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Duke Energy Ohio, Inc.	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 22-279-EL-CSS
	)	
Nationwide Energy Partners, LLC	)	
	)	
Respondent.	)	

NATIONWIDE ENERGY PARTNERS' MEMORANDUM CONTRA DUKE ENERGY OHIO'S MOTION FOR LEAVE TO AMEND THE COMPLAINT AND TO FILE A SEPARATE ABANDONMENT APPLICATION AND MOTION TO CONSOLIDATE, FILED DECEMBER 19, 2023

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Pursuant to Rule 4901-1-12(B)(1) of the Ohio Administrative Code, Respondent Nationwide Energy Partners, LLC ("NEP") submits this Memorandum Contra the Motion for Leave to Amend the Complaint and to File a Separate Abandonment Application and Motion to Consolidate ("Motion") filed by Duke Energy Ohio, Inc. ("Duke") on December 19, 2023.

I. INTRODUCTION

The Commission has already determined that it does not have jurisdiction over NEP. This issue was thoroughly analyzed and definitively resolved by the Commission in its September 6, 2023 Opinion and Order in Case No. 21-0990-EL-CSS (the "AEP Order").[1] Duke is aware of, relies on, and cites to (over 20 times) the AEP Order throughout its Motion. Nevertheless, Duke now seeks leave to assert a Miller Act violation against NEP *and* two additional private entities (Somerset Deerfield Borrower, LLC and Coastal Ridge Real Estate Partners, LLC), none of which are subject to the Commission's jurisdiction. Duke's only proffered basis for the addition of these new parties is the confounding assertion that joinder of "[Somerset and Coastal Ridge] (collectively, the Landlord), is necessary to comply with the Commission's AEP Ohio/NEP Order." (Motion at 6). The Commission, however, did not suggest or require Duke to file complaints against landlords or their agents for supposed Miller Act violations.

Regardless of Duke's motives (which NEP asserts are being taken in bad faith to further harm NEP and its customers), Duke's Motion should be denied for several independent reasons. First, as explained in NEP's motion to dismiss filed in this case, the Commission does not have

[1] *Ohio Power Company v. Nationwide Energy Partners, LLC*, Case No. 21-990-EL-CSS, Opinion and Order (Sep. 6, 2023)

jurisdiction to hear complaints against NEP and, therefore, **a complaint against NEP is not an appropriate vehicle to raise any issue at all.**[2] Duke's proposed "amended complaint" (which is really a brand new complaint) does not remedy the fatal flaws of its original complaint by seeking to subject NEP, Somerset Deerfield Borrower, LLC, and Coastal Ridge Real Estate Partners, LLC to the jurisdiction of this Commission for an alleged Miller Act violation.

Second, as a matter of law, Duke cannot bring a complaint for a supposed Miller Act violation against private entities when there has been no allegation that any of those entities are railroads, public utilities, or political subdivisions. The Miller Act only obligates railroads , public utilities, and political subdivisions, thus, entities that are not railroads, public utilities, or political subdivisions cannot violate the Miller Act.

Third, Duke's proposed amended complaint fails to state a claim upon which relief can be granted. Because entities that are not railroads, public utilities, or political subdivisions cannot violate the Miller Act, the Commission cannot provide Duke with the relief it seeks rendering Duke's amended complaint futile.

Lastly, the Commission has the authority to deny Duke's motion on the basis that it has been brought in bad faith. Duke has no basis in law or fact to assert that NEP, Somerset Deerfield Borrower, LLC, and Coastal Ridge Real Estate Partners, LLC have violated R.C. 4905.20 and R.C. 4905.21. Here, there is strong evidence of undue delay, bad faith and dilatory motive on the part of Duke and undue prejudice to the opposing parties. That evidence alone warrants denial of the Motion. *See Turner v. Cent. Local School Dist.*, 85 Ohio St.3d 95, 99, 706 N.E.2d 1261 (1999).

Thus, because Duke's proposed amended complaint would be futile for all of the reasons set forth in this brief, the Motion should be denied.

[2] NEP Mtn. to Dismiss at 8-9.

II. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

This case originated on March 30, 2022, when Duke filed a complaint against NEP alleging that NEP is illegally operating as a public utility in Duke's certified territory. Duke mirrored its original allegations on a complaint previously filed by Ohio Power Company ("AEP Ohio") against NEP in Case No. 21-990-EL-CSS. Duke's "me too" original complaint remained largely on hold pending the outcome of the AEP Ohio complaint. Ultimately, the AEP Ohio action was fully adjudicated, and AEP Ohio's claims were denied in the September 6, 2023 AEP Order. On December 13, 2023, the Commission denied AEP Ohio's application for rehearing, and the Commission's decision in that case is now final.[3]

In spite of the AEP Order, Duke did not voluntarily dismiss its complaint in the three months that followed. On December 18, 2023, NEP filed a motion to dismiss Duke's complaint. The very next day, on December 19, 2023, Duke filed the pending Motion asking to "amend" its complaint rather than dismiss it, even though the "amendment" seeks to *remove each and every count* raised in the original complaint, and which Duke concedes "**the Commission has previously addressed in the AEP Ohio/NEP Order**." (Motion at 7 (emphasis added)). The proposed "amendment" neither retains nor amends any of these counts.

Duke also ignores the Commission's determination in the AEP Order that NEP is not a public utility and is not subject to the Commission's jurisdiction. Indeed, Duke's Motion makes no attempt to address jurisdictional issues. Instead, Duke fashions a new complaint alleging one violation (and only one violation), that "Respondents have violated R.C. 4905.20 and R.C. 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

[3] *Ohio Power Company*, *supra*, Second Entry on Rehearing (December 13, 2023)

Commission determination authorizing the abandonment as required by the Miller Act." (Amended Complaint at ¶37). No other violations are alleged in the amended complaint and no allegations are made that NEP or any of the additional named parties are operating as public utilities or railroads (which are the only entities subject to R.C. 4905.20).

III. LAW AND ARGUMENT

A. Legal standard for amending a complaint and for Miller Act proceedings.

The Commission should consider two legal standards when considering and denying Duke's motion to amend its complaint. First, the Commission must apply the standard for amending a complaint to Duke's effort to drop all prior claims and bring a new claim against additional parties. Second, the Commission must consider the standard for addressing an alleged Miller Act violation when determining whether to allow the amended complaint.

1. A complaint can only be amended for good cause and must be done so in good faith.

Ohio Administrative Code 4901-1-06 only authorizes the amendment of a complaint "for good cause shown." While not bound to the Rules of Civil Procedure, the Commission may take note that similarly, Civil Rule 15(A) provides that a party may amend its pleading "only with the opposing party's written consent or the court's leave" and that "[t]he court shall freely give leave when justice so requires." *See also Turner v. Cent. Local School Dist.*, 85 Ohio St.3d 95, 99, 706 N.E.2d 1261 (1999).

While Civil Rule 15(A) generally allows for liberal amendment of a complaint, a motion for leave to amend must be "tendered timely and in good faith." *Peterson v. Teodosio*, 34 Ohio St.2d 161, 175, 297 N.E.2d 113 (1973). Further, the Ohio Supreme Court has reinforced that a motion for leave to amend should be denied if there is a showing of "bad faith, undue delay or undue prejudice to the opposing party." *State ex rel. Doe v. Capper*, 132 Ohio St. 3d 365, 2012-

Ohio-2686, 972 N.E.2d 553, ¶ 8, quoting *Hoover v. Sumlin*, 12 Ohio St.3d 1, 6, 465 N.E.2d 377 (1984). "

Thus, a party seeking leave to amend a pleading is required to do so in good faith, therefore "there must be at least a prima facie showing that the movant can marshal support for the new matters sought to be pleaded, and that the amendment is not simply a delaying tactic or one which would cause prejudice to the defendant." *Glazer v. Chase Home Fin. L.L.C.*, 8th Dist. Cuyahoga Nos. 99875, 99736, 2013-Ohio-5589, ¶ 98, quoting *Richard v. WJW TV-8*, 8th Dist. Cuyahoga No. 84541, 2005-Ohio-1170, ¶ 21. While the rule allows for liberal amendment, motions should be refused if there is a showing of bad faith, undue delay, or undue prejudice to the opposing party. *Turner*, 85 Ohio St.3d 95 at 99.

2. The Commission only has jurisdiction over railroads and public utilities under the Miller Act (R.C. 4905.20 and R.C. 4905.21).

It is black letter law that the Commission only has jurisdiction over railroads and public utilities under the Miller Act. R.C. 4905.20 expressly states that "[n]o railroad as defined in section 4907.02 of the Revised Code, operating any railroad in this state, and no public utility as defined in section 4905.02 of the Revised Code furnishing service or facilities within this state, shall abandon or be required to abandon or withdraw any main track or depot of a railroad, or main pipeline , gas line, electric light line, water line, sewer line, steam pipe line or any portion thereof … ." It is also black letter law that only the Commission may allow or require a public utility or railroad to abandon such facilities and only upon the application of the public utility, railroad or the applicable political subdivision where such facilities are located. R.C. 4905.21. Taken together, R.C. 4905.20 and R.C. 4905.21 are the only statutory method available to address a proposed or forced abandonment of utility facilities dedicated to public service. *New York C. R. Co. v. Public Utilities Com.*, 171 Ohio St. 365 (1960).

B. The Commission does not have jurisdiction under R.C. 4905.26 to hear a "Miller Act violation" through the amended complaint against NEP or the other parties Duke seeks to join.

Duke's amended complaint alleges that jurisdiction exists under R.C. 4905.26 (Amended Complaint at ¶7), but the plain language of R.C. 4905.26 defeats Duke's assertion. That statute gives the Commission jurisdiction over a complaint "*against any **public utility*** by any person, firm, or corporation . . . ." R.C. 4905.26 (emphasis added). **Duke does not allege, nor can it allege, that any of NEP, Somerset, or Coastal Ridge are public utilities**; and Duke cites no support for the joinder of entities that are not public utilities in Commission complaint proceedings. Likewise, a self-complaint by a public utility against a third-party requires allegations that a respondent is operating as a public utility. *See Ohio Power Company v. Nationwide Energy Partners, LLC*, Case No. 21-990-EL-CSS, Entry (Jan. 31, 2022), at ¶ 24. R.C. 4906.26 allows a self complaint "… of a public utility as to any matter affecting its own product or service." R.C. 4905.26, however, does not allow public utilities to file complaints against third-parties that are not alleged to be operating as public utilities under R.C. 4905.26. *See* R.C. 4905.04 (vesting the Commission with jurisdiction to supervise and regulate "public utilities and railroads"); R.C. 4905.03 (defining public utilities and railroads subject to Chapter 49); R.C. 4905.05 (scope of jurisdiction extends to every public utility and railroad); *cf. Complaint of the Ohio Consumers' Counsel, et al. v. Interstate Gas Supply, Inc.*, Case No. 10-2395-GAA-CSS, Entry (Nov. 2, 2011) at 14 (denying motion for leave to amend complaint to add non-public utilities); *Complaint of Clark P. Ptrichett, Jr., v. XO Ohio, Inc. dba Xo Communications*, Case No. 02-2482-TP-CSS, Entry (Nov. 19, 2002) at 6 ("because [Ameritech Publishing] is not a public utility subject to the jurisdiction of the Commission, it cannot be joined as a party respondent in this matter."). Notably, the statute also does not address the abandonment of facilities, a subject that is solely governed by R.C. 4905.20 and R.C. 4905.21. The Commission plainly does not have jurisdiction to hear a complaint against such non-public utilities (NEP,

Somerset, or Coastal Ridge) under R.C. 4905.26 for alleged violations of R.C. 4905.20 and R.C. 4905.21. *See id.*; *see also* AEP Order at ¶179.

Indeed, the Commission has already determined that the services NEP provides to a landlord/property owner on the landlord's side of the utility meter are outside the Commission's jurisdiction. Duke's proposed amended complaint relies on "the exact same conduct, transactions, and occurrences" as its original complaint. (Motion at 6). According to Duke, "[t]he 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." (Amended Complaint at ¶8).

To be clear, NEP's activities at Somerset are the same activities at the properties referred to as "Apartment Complexes" in the AEP Order. In both instances, NEP acted on behalf of the property owner to request to reconfigure the property to master-metered service. Applying the plain language of R.C. 4905.03(C) to NEP's activities, the Commission reached the conclusion that it does not have jurisdiction to regulate NEP's operations. (AEP Order at ¶179). And, Duke does not dispute the AEP Order's conclusion in its Motion or assert in its amended complaint that NEP is a public utility.

In the AEP Order, the Commission determined that it does not have jurisdiction over NEP because NEP is not engaged in the business of supplying electricity under R.C. 4905.03(C) and is not a public utility under R.C. 4905.02(A). (AEP Order at ¶¶ 1, 179, 197, 207, 322). The AEP Order is a final adjudication and is fully effective under R.C. 4903.15. Consequently, the Commission can easily dispose of Duke's Motion given the futility of its request to file an amended complaint against a non-public utility entity. The Commission does not have jurisdiction over NEP.

The same is true for the additional private entities, Somerset and Coastal Ridge, which Duke collectively refers to as "the Landlord." Similar to NEP, the Landlord is not a public utility subject to the jurisdiction of the Commission. Duke makes no allegation that either Somerset or Coastal Ridge are public utilities; nor does Duke present any factual or legal basis to continue its complaint case pursuant to R.C. 4905.26 against entities that it acknowledges are *not public utilities*.

Without jurisdiction over NEP or the Landlord subject of the underlying amended complaint, the Commission should deny Duke's Motion because a complaint against NEP and the Landlord is not an appropriate vehicle to raise any issue at all.

C. The Miller Act does not expand the Commission's jurisdiction to hear complaints under R.C. 4905.26 against non-utility entities for alleged violations of the Miller Act.

There also is no separate basis of jurisdiction that allows a public utility to bring a claim of a Miller Act violation under R.C. 4905.26 against NEP, Somerset, or Coastal Ridge. As discussed previously, it is black letter law that the Miller Act only applies to railroads and public utilities. It is also black letter law that only the Commission can rule on a forced or proposed abandonment through the application of the public utility, railroad or the applicable political subdivision. Yet, Duke seeks to file an amended complaint (really a new complaint) seeking a determination that three non-utility entities have violated the Miller Act. (Amended Complaint at ¶ 37).

The unambiguous statutory language of R.C. 4905.20 and R.C. 4905.21 refute Duke's attempt to weaponize R.C. 4905.26 against its customers. R.C. 4905.20 provides in relevant part (emphasis added):

> **No railroad** as defined in section 4907.02 of the Revised Code, operating any railroad in this state, and **no public utility** as defined in section 4905.02 of the Revised Code furnishing service or facilities within this state, shall abandon or be required to abandon or withdraw any main track or depot of a railroad, or main pipe line, gas line, electric light line, water line, sewer line, steam pipe line, or any

> portion thereof, pumping station, generating plant, power station, sewage treatment plant, or service station of a public utility, or the service rendered thereby that has once been laid, constructed, opened, and used for public business, nor shall any such facility be closed for traffic or service thereon, therein, or thereover **except as provided in section 4905.21 of the Revised Code**.

And R.C. 4905.21 provides in part that (emphasis added):

> Any **railroad** or any **political subdivision** desiring to abandon, close, or have abandoned, withdrawn, or closed for traffic or service all or any part of a main track or depot, and any **public utility** or **political subdivision** desiring to abandon or close, or have abandoned, withdrawn, or closed for traffic or service all or any part of any line, pumping station, generating plant, power station, sewage treatment plant, or service station, referred to in section 4905.20 of the Revised Code, shall make application to the public utilities commission in writing.

Collectively, R.C. 4905.20 and R.C. 4905.21 are the only statutory method available to address a proposed or forced abandonment of utility facilities dedicated to public service. *New York C. R. Co. v. Public Utilities Com.*, 171 Ohio St. 365 (1960).

As Duke must recognize, the Miller Act proscribes railroad, *public utility*, and *political subdivision* conduct, mandating what each must do before there can an abandonment of facilities, whether voluntary or forced. And, what the *railroad, public utility,* or *political subdivision* must do is to file an application pursuant to R.C. 4905.21. Nothing in R.C. 4905.20 or R.C. 4905.21 provides for the filing of a complaint under R.C. 4905.26 against entities that are not *railroads, public utilities, or political subdivisions*. The Miller Act simply does not contain any language relating to complaints or permitting the Commission to hear complaints against non-utility entities.

The Commission can only regulate that over which it has statutory authority. *Lucas County Comm'rs v. PUC*, 80 Ohio St. 3d 344, 347, 686 N.E.2d 501 (1997) ("The commission may exercise only that jurisdiction conferred by statute."), citing *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St. 3d 535, 537, 620 N.E.2d 835 (1993). The Miller Act only applies to railroads, public utilities and political subdivisions, and if a public utility violates the Miller Act, only a public utility can be held to have violated the law under R.C. 4905.26 – not third parties. *See also* R.C.

4905.04; 4905.05. This creates a fatal flaw in Duke's amended complaint making its one count futile. Duke cannot allege and has not alleged that NEP, Somerset, or Coastal Ridge are in any way bound by the Miller Act. Duke has also made no allegation that any of those three entities are operating as public utilities. While the Commission has jurisdiction over Duke, and the Miller Act specifies what Duke "shall" do under certain circumstances, neither R.C. 4905.26 nor the Miller Act provide any support for Duke's complaint against private parties requesting a service change. For this reason alone, Duke's motion for leave should be denied.

D. Duke's proposed amendment fails to state a claim upon which relief could be granted.

According to Duke, the amendment "would assert a specific count alleging a Miller Act violation." (Motion at 6). The complaint would allege: "Respondents have violated RC 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 prior Commission determination authorizing the abandonment as required by the Miller Act." (Amended Complaint at ¶37). And by "force" abandonment, Duke means "NEP's requests" to reconfigure service. (Amended Complaint at ¶3). That is, Duke's assertion is that submitting a service request violates the Miller Act. What relief could the Commission offer Duke to remedy the submission of a request? The answer is none.

Under Ohio Civil Rule 15(A), to obtain leave to amend a complaint, Duke must make at least a *prima facie* showing based on operative facts that it can "marshal support" for its amended claim, and not just a delay tactic nor one which would cause prejudice to the defendant. *Solowitch v. Bennett*, 8 Ohio App. 3d 115, 117, 456 N.E.2d 562 (8th Dist. 1982). Furthermore, the Commission need not allow amendment of a complaint when the amendment would neither support existing claims nor create a viable claim for relief. *Wilmington Steel Products v.*

Cleveland Electric Illuminating Co., 60 Ohio St. 3d 120, 573 N.E.2d 622 (1991), syllabus (""Where a plaintiff fails to make a *prima facie* showing of support for new matters sought to be pleaded, a trial court acts within its discretion to deny a motion to amend the pleading.""); *see also Kinchen v. Mays*, 8th Dist. Cuyahoga No. 100672, 2014-Ohio-3325, P20 (Ohio Ct. App., Cuyahoga County July 31, 2014) (holding that "[a] trial court does not err in denying leave to amend a complaint for which the plaintiff is unable to demonstrate the factual basis for the newly asserted claim.").

Here, the Commission should deny Duke's Motion because its amended complaint will be futile. Even assuming that the Commission has jurisdiction to hear Duke's amended complaint (it plainly does not), the amended complaint fails to present a cognizable claim for relief. Duke reads R.C. 4905.20 and 4905.21 (the Miller Act) to justify a complaint case despite those provisions explicitly calling for an application. R.C. 4905.21 describes "the hearing of the application" and the granting or denial of "the application." Even if NEP and its landlord clients could possibly "violate" the Miller Act when it imposes no obligations on them of any kind, no relief is available to Duke under its amended complaint given the plain wording of the Miller Act.[4] The Commission should deny Duke's Motion to amend the complaint on the additional basis that amendment is futile. *See, e.g., Demmings v. Cuyahoga County*, 8th Dist. Cuyahoga No. 98958, 2013-Ohio-499, ¶ 11 (finding that granting the plaintiffs' motion to amend would have been futile because even assuming the facts alleged in the amended complaint were true, the plaintiffs' amended complaint would not survive the already filed Civ.R. 12(C) motion); *L. E. Sommer Kidron, Inc. v. Kohler*, 9th Dist. Wayne No. 06CA0044, 2007-Ohio-885, ¶ 56 (finding that the motion to amend was futile

[4] No one can reasonably read the Miller Act and surmise that a private party making a service reconfiguration request should be named a party to a *complaint* by a public utility and subject to the Commission's jurisdiction. Duke is free to proceed with whatever obligations it believes that ***it*** has under the Miller Act and can file a separate application for abandonment. Duke does not need "leave" from the Commission to do so.

because it failed to state fraud with particularity); *see also, e.g.*, *Miller v. Calhoun Cty.*, 408 F.3d 803, 817 (6th Cir. 2005) ("A court need not grant leave to amend, however, where amendment would be 'futile.' Amendment of a complaint is futile when the proposed amendment would not permit the complaint to survive a motion to dismiss.")

E. The Commission should deny the Motion on the basis of bad faith.

Duke's Motion for leave to drop its original complaint and replace it with a sole Miller Act claim should be denied for the additional reason that its futility suggests that it has been brought in bad faith. Courts may decline to grant leave to amend if there is strong evidence of undue delay, bad faith or dilatory motive on the part of the movant, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of amendment. *See Turner v. Cent. Local School Dist*., 85 Ohio St.3d 95, 99, 706 N.E.2d 1261 (1999). For all the reasons cited above, the Miller Act cannot cure the obvious flaw that the Commission lacks jurisdiction over NEP and the Landlord.[5]

To be clear, Duke should have withdrawn its complaint. It has already forced NEP to file a motion to dismiss, this memorandum contra, and, shortly, a reply in support of its motion to dismiss. To grant Duke leave to file a futile amended complaint and force NEP to file another answer and another motion to dismiss would needlessly delay resolution of this case, increase litigation costs and drain the Commission's resources to absolutely no productive end. Duke is a sophisticated business represented by experienced counsel and cannot present a good-faith basis for its Motion or its amended complaint. Rather, its Motion appears directed at creating

[5] In its January 2, 2024 Memorandum Contra NEP's Motion to Dismiss, Duke fails to assert any remedy to this fatal problem, but rather argues that NEP must file "a renewed motion to dismiss" to "specifically seek dismissal of the single count asserted in the Amended Complaint." Duke Mem. Contra NEP Motion to Dismiss at 7. If Duke had a good faith basis for asserting that the Commission has jurisdiction to hear a complaint against NEP and the Landlord, that was the time to explain it.

unnecessary delay, needlessly increasing the cost of litigation, and harassing NEP. Duke's maneuver also injures NEP's relationships with its clients, whom Duke has baselessly sought to join in its "amended complaint," sending a message that doing business with NEP will get you dragged into litigation.

If Duke truly desires clarification of its questions under the Miller Act, it has obvious options at its disposal. First, Duke could await answers from other cases; AEP Ohio has filed three applications for abandonment relating to the very same issues. [6] All three cases have procedural schedules set with one (Case No. 22-693-EL-ABN) having already received comments, reply comments, and other motions. Second, Duke could also file its own application for abandonment relating to Somerset as well if it so chooses, though NEP disagrees that such an application is required by – or appropriate under – the Miller Act.[7] But rather than utilize these available options, Duke has instead continued its pursuit of NEP by essentially seeking to file a new complaint alleging Miller Act violations against three private companies – none of which are railroads, public utilities or political subdivisions. That implies a lack of good faith on the part of Duke and an action that is intended to prejudice and harm NEP and its relationships with its customers. Duke cannot file complaints against private non-public utility entities over which the Commission patently lacks jurisdiction. Its Motion must be denied to avoid an unjust result and further harm to private companies.

III. CONCLUSION

For the foregoing reasons, Duke's Motion for Leave should be denied.

[6] *See* Case Nos. 22-693-EL-ABN, 23-118-EL-ABN, and 23-563-EL-ABN.
[7] See Case No. 22-693-EL-ABN, NEP Motion to Dismiss filed December 4, 2023.

Respectfully submitted,

/s/ Brian A. Gibbs

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 3rd day of January, 2024 upon all persons listed below:

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Summary: Memorandum Opposing Duke's Motion for Leave electronically filed by Brian A. Gibbs on behalf of Nationwide Energy Partners.