

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY IN SUPPORT OF DUKE’S MOTION FOR LEAVE TO AMEND THE  
COMPLAINT  
BY  
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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**I. INTRODUCTION**

OCC supports Duke Energy Ohio Inc.’s (“Duke”) Motion for Leave to Amend the Complaint in order to protect Duke’s consumers who risk losing their established PUCO-regulated electric utility service if they are forced to take submetered service from Nationwide Energy Partners (“NEP”). The PUCO should reject NEP’s arguments in its Memorandum Contra and grant Duke’s Motion.

OCC concurs with Duke that the PUCO’s Order in Case No. 21-990-EL-CSS left open important issues regarding NEP’s business arrangements with landlords which force Duke to abandon electric utility service to its residential consumers. Duke’s abandonment of service to consumers at NEP’s request will cause residential consumers to lose important consumer protections provided under Ohio law and the PUCO’s rules. Thus, there is good cause for Duke’s Motion, and it should be granted.

## **II. THERE IS GOOD CAUSE TO GRANT DUKE’S MOTION FOR LEAVE TO AMEND THE COMPLAINT.**

Duke’s Amended Complaint clarifies the scope of this case and properly addresses issues pertaining to whether Duke can be forced to abandon service to its consumers under the Miller Act (R.C. 4905.20, R.C. 4905.21). As Duke notes,<sup>1</sup> the PUCO’s decision in the AEP v. NEP Complaint Case (Case No. 21-990-EL-CSS) did not address the Miller Act. Duke’s Amended Complaint properly addresses whether NEP and apartment complex landlords can force Duke to abandon service lines to existing Duke consumers.<sup>2</sup> To be sure, denying consumers their established PUCO-regulated electric utility service, and the consumer protections that go with it, is not in “the welfare of the public” under R.C. 4905.21.

Duke’s Amended Complaint addresses important questions regarding consumer protection and the application of the Miller Act.<sup>3</sup> The outcome of these questions directly concerns residential consumers at the apartment complexes at issue.

NEP does not seek further clarity in its opposition to Duke’s Motion and insists instead that all issues surrounding submetering and abandonment by PUCO-regulated public utilities were resolved by the PUCO’s decision in AEP v. NEP.<sup>4</sup> NEP is wrong. The PUCO’s Order in AEP v. NEP specifically stated that “any allegations related to the

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<sup>1</sup> Duke Energy Ohio, Inc.’s Motion for Leave to Amend the Complaint and to File a Separate Abandonment Application and Motion to Consolidate, Case No. 22-279-EL-CSS (Dec. 19, 2023) (“Duke Motion”), at 4-5.

<sup>2</sup> *Id.* at 6.

<sup>3</sup> *Id.* at 5-7.

<sup>4</sup> 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, Case No. 22-279-EL-CSS (Jan. 3, 2024) at 3.

Miller Act will not be considered and should be dismissed.”<sup>5</sup> Thus, in order to protect consumers from losing their existing PUCO-regulated electric service, Duke should be permitted to amend its complaint to include allegations of Miller Act violations.

### **III. CONCLUSION**

The PUCO must act to protect apartment complex residents (many of whom may be at-risk consumers) from losing their established PUCO-regulated electric utility service and rights under Ohio law and the PUCO’s rules. Forcing Duke to abandon its service to existing consumers would not be in “the welfare of the public” under R.C. 4905.21. Accordingly, there is good cause to grant Duke’s Motion to amend its complaint, and the Motion should be granted.

Respectfully submitted,

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<sup>5</sup> *In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC*, Case No. 21-990-EL-CSS (Sept. 6, 2023) at ¶ 231.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply in Support of Duke's Motion for Leave to Amend the Complaint was served on the persons stated below via electronic transmission, this 10<sup>th</sup> day of January 2024.

/s/ Angela D. O'Brien  
Angela D. O'Brien  
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Reply Reply in Support of Duke's Motion for Leave to Amend the  
Complaint by Office of the Ohio Consumers' Counsel electronically filed by Alana  
M. Noward on behalf of O'Brien, Angela D..