BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for Authority to Abandon Electric Service Lines, Pursuant to Ohio Revised Code Sections 4905.20 and 4905.21	**)** **)** **)** **)**	**Case No. 23-0563-EL-ABN**

REPLY COMMENTS OF NATIONWIDE ENERGY PARTNERS, LLC

I. Introduction

In this proceeding, Ohio Power Company dba AEP Ohio ("AEP Ohio") has filed the third of three first-of-their-kind applications (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 Fisher Commons apartment complex owned by The Edwards Companies ("Edwards") (Application at ¶17). To be clear, this proceeding is about *how* AEP Ohio must provide service to Fisher Commons – **AEP Ohio will be the only utility providing electric service to Fisher Commons under any arrangement.** Edwards has contracted with Nationwide Energy Partners, LLC ("NEP") to perform services related to the master-metering of Fisher Commons in a negotiated and mutually beneficial contract. NEP filed simultaneously with its Initial Comments a Motion to Dismiss urging the Commission to dismiss the 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 the Complaint Case

confirms that the Commission cannot interfere in the landlord-tenant relationship, and (4) AEP Ohio has forfeited any protections the Miller Act may have offered by agreeing to perform the requested work and inducing NEP and Edwards to rely on its representations. In the event that the Commission does not dismiss the Application, NEP submits these Reply Comments in response to the initial comments of AEP Ohio to again urge the Commission to approve the Application.

II. Reply Comments

AEP Ohio's comments can be summarized simply. AEP Ohio posits that permitting Fisher Commons to receive master-metered service would cause Fisher Commons' tenants to lose certain rights and protections afforded to customers of regulated utilities and submits that permitting the conversion of Fisher Commons to proceed, therefore, is "unreasonable" under the Miller Act and should be prohibited by the Commission. But denying a change in service that is available under the tariff because the Commission does not like the lawful practices of private businesses is not at all what the Miller Act is about. In making its argument, AEP Ohio relies on misstatements of both the facts and the law, misplaced policy arguments, and attempts to relitigate issues already resolved by a final order of the Commission in the Complaint Case.[1]

More noteworthy than anything AEP Ohio says in its initial comments is what it does *not* say. Incredibly, AEP Ohio does not address *at all* the fact that it signed a CIAC agreement specifically agreeing to install a single master meter and remove its equipment behind that meter, or that it has received payment for the performance of that work. It does not acknowledge that it cooperated on this project with NEP, Edwards and OSU under that contract for nearly two years.

[1] *See, e.g.* AEP Ohio Init. Comments at 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 Fisher Commons tenants." and "AEP Ohio opposes NEP's brand of submetering as unlawful…"); at 3 ("NEP procures electric service at a master meter…").

Indeed, AEP Ohio appears to be somehow unaware of the nature of the work it has already performed, asserting that NEP requested "8 points of delivery, with 8 master meters"[2] when the signed CIAC agreement clearly states that only one point of primary service is to be provided by AEP Ohio and *AEP Ohio has already installed its single primary service pole and meter*. Like its confounding insistence in the Northtowne and Sugar Run Cases that it has *lines* serving individual tenants (it does not), AEP Ohio's ignorance of the basic facts at Fisher Commons demonstrates how deeply unserious its efforts in these cases really are. AEP Ohio has a responsibility to put forward accurate statements of fact to the Commission and to correct misstatements once discovered. It has not taken that responsibility seriously throughout these three cases.

AEP Ohio also makes no attempt to address why it continued to perform on-site work for *eight months* after it filed its abandonment application in the Northtowne Case, and *eighteen months* after it filed its Complaint Case against NEP, when this project was submitted to AEP Ohio well before *either* were filed. AEP Ohio likewise does not explain what happened when it cancelled the March 30, 2023 meeting to coordinate final energizing of the already-installed infrastructure, or why it then went dark for 6 weeks before filing the Application. AEP Ohio must be aware that its actions, representations, and the CIAC agreement it signed have led NEP and Edwards to invest enormous amounts of capital in this project, and yet it makes absolutely no attempt to justify its 11th-hour maneuver to shred its own contract and strand NEP and Edwards' investment. It is simply impossible to understand how AEP Ohio can argue with a straight face that its Application should be denied, rather than granted, under the facts presented here. Even if the Miller Act allowed AEP Ohio to "contest" a property owner's election of tariffed service (it does not), **AEP Ohio gave up any right to contest Edwards' decision when it signed a contract agreeing to**

[2] AEP Ohio Init. Comments at 1.

perform the necessary work, received payment for that work, and induced Edwards and NEP to invest significant amounts of capital in reliance on that contract.

In addition to sidestepping the facts and its own contract, AEP Ohio also misrepresents the Miller Act itself. It argues that the Act "provides that AEP Ohio cannot be forced to abandon *customers*" without a hearing despite the fact that the Act does not mention *customers*, and that the Act requires the Commission to schedule a hearing "[w]hen it receives an application for abandonment" even if that application has nothing to do with the Act.[3] Surely, if an abandonment application requested permission to throw away an extension cord, the Commission would not be obliged to schedule a hearing to discuss – the Commission must first determine whether the Application is proper.

AEP Ohio then tips its hand by shamelessly requesting that the Commission apply the Miller Act's "due regard for the public welfare" language, which is obviously impartial in nature, to play favorites. It insists that "the analysis of the public welfare should primarily be focused on the impact to AEP Ohio and the existing customers at Fisher Commons" to the exclusion of Edwards, OSU and NEP.[4] However, no such preference for utilities over private commercial customers can be found in the language of the Miller Act or a century of its jurisprudence, and the single case relied upon by AEP Ohio does not remotely address the situation at Fisher Commons. Indeed, the "public welfare" would be substantially harmed by a Commission decision permitting utilities to lawlessly ignore signed contracts and torpedo customers' projects at the last minute. AEP Ohio's brazen attempt to distort the Miller Act's "public welfare" language to elevate its own interests above those of Ohio's businesses has no basis in law and is absurd on its face.

[3] AEP Ohio Init. Comments at 3, 4.
[4] Id at 16.

AEP Ohio further refuses to acknowledge the Commission's Order in the Complaint Case, and instead continues to urge the Commission to interfere in the landlord-tenant relationship based on AEP Ohio's own uninformed speculation. AEP Ohio's misrepresentations of the facts, the law, and the Commission's Order should give the Commission pause in assigning AEP Ohio's comments any credibility. More importantly, AEP Ohio's hostility toward landlords and failure to understand apartments as Ohio businesses with market-based value propositions reveals that it is simply unqualified to offer any opinion on the "reasonableness" of the Fisher Commons conversion at all. If "landlord-tenant disputes are not within the administrative expertise of the Commission,"[5] why would AEP Ohio have any greater expertise than the Commission? In reality, the General Assembly is the appropriate forum for the debate AEP Ohio sought to have in the Complaint Case and seeks to continue here.

A. To have "due regard for the welfare of the public," the Commission must value landlords' interests too.

AEP Ohio has used its Initial Comments in this proceeding to reply to NEP's reply comments in Case No. 22-0693-EL-ABN (the "Northtowne Case") and Case No. 23-0118-EL-ABN (the "Sugar Run Case"), despite the fact that some of those comments are completely inapplicable to Fisher Commons.[6] First, if AEP Ohio was going to respond to anything, it should have explained why it **made up material facts in both cases**, which NEP's filings highlighted.

[5] *Ohio Power Company*, Opinion and Order (September 6, 2023) at ¶ 219.

[6] *See, e.g.,* AEP Ohio Init. Comments at 11 ("In the Northtowne Case and Sugar Run Case, NEP also suggested that the loss of PIPP would be mitigated by other assistance programs such as Section 8 and HEAP, but that is untrue. Section 8 is a program that helps low-income families pay *rent*, not electric costs, and NEP has not established that Fisher Commons units are qualified for Section 8 assistance.")(emphasis in original). First, **Section 8 does, in fact, provide utility assistance vouchers** in addition to rent assistance. This statement reinforces a concerning trend in AEP Ohio's filings in both this case and the Northtowne and Sugar Run Cases, wherein AEP Ohio has simply made-up facts or made statements of fact without bothering to check whether those statements are true. Second, AEP Ohio's attempts to respond to NEP's arguments before NEP had filed anything in this case are obviously premature. As it turns out, NEP did not mention Section 8 in its Initial Comments in this case or the Sugar Run Case because Fisher Commons is a completely different community and Section 8 does not apply.

To the extent that they are relevant to Fisher Commons, AEP Ohio's specific responses are addressed in detail below, but they follow a consistent theme that is worth addressing independently: that the Commission should only concern itself with tenants and should ignore or actively harm landlords. Indeed, AEP Ohio uses "landlord" in an almost derogatory manner and appears openly hostile to their interests. AEP Ohio repeatedly responds to the benefits of master-metering explained by NEP in the Northtowne and Sugar Run Cases by alleging that each can be disregarded as a benefit to landlords but not tenants.[7] For all of the reasons explained in NEP's initial comments, this is false – as with any competitive business, landlords must create a valuable product to attract customers. Just as a grocery store might use additional revenue to make the store more attractive, undercut competitors' prices, or improve parking, landlords with additional revenue streams can offer a better value to tenants.

Even if it were true, AEP Ohio fails to explain why benefits to landlords are a bad thing, particularly where **the Commission has already protected tenants by ordering the revised resale tariff in the Complaint Case**. Promoting the "public welfare" requires a balancing of multiple interests and looking at complex situations from a variety of angles, not just AEP Ohio's. The Commission's resale tariff order in the Complaint Case ensures that one side of the landlord-tenant relationship is already protected. To strike an appropriate balance, the Commission must consider the other side of that equation – landlords and their value to Ohio's population and economy – too.

In its section entitled "Submetering Brings No Benefits to Customers" AEP Ohio repeatedly admits that master-metering provides numerous benefits to landlords, apparently

[7] *See* AEP Ohio Init. Comments at 12-14.

forgetting that **landlords *are* customers** too.[8] In fact, landlords are just as much a part of the "public" whose "welfare" the Commission should promote as anyone else. Landlords are an integral component of the "Finance, Insurance, Real Estate, Rental and Leasing" sector that makes up *the largest share of Ohio's economy*.[9] About one-third of Ohioans rent their homes.[10] That is, in addition to contributing enormously to Ohio's economy, landlords provide shelter to millions of Ohioans. Yet AEP Ohio blithely urges the Commission to indifference, if not malice, towards this indispensable class of businesses.

Having agreed that master-metering benefits landlords and that requesting master-metered service is a rational business decision, AEP Ohio asserts that "[t]here is no evidence that landlords use their submetering revenue for tenants' benefit."[11] Even ignoring that it is beyond the Commission's authority to dictate how a private business shares benefits with its customers, one of central Ohio's largest developers made very clear in the Complaint Case that it would have to *raise rents without its submetering revenue*.[12] That is more evidence than AEP Ohio advances for its purely speculative opinion. Landlords' and tenants' interests are intertwined, and the Commission cannot consider the "welfare of the public" while ignoring the businesses that provide shelter for one third of Ohioans, support the state's economy, and which fast-growing areas like AEP Ohio's service territory desperately need to attract.[13] **To have "due regard for the welfare of the public," the Commission must look out for landlords too.**

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[8] Id.
[9] Executive Budget for FYs 2024 and 2025, Office of Budget and Management, Book One at P. 15. (https://archives.obm.ohio.gov/Files/Budget_and_Planning/Operating_Budget/Fiscal_Years_2024-2025/ExecutiveBudget/BudgetRecommendations_FY2024-2025.pdf)
[10] https://www.census.gov/quickfacts/fact/table/OH/BZA010221
[11] AEP Ohio Init. Comments at 12.
[12] *See Ohio Power Company, supra,* Public Comment of Charles Campisano, Partner, Senior Vice President and General Counsel (March 29, 2023))
[13] Indeed, AEP Ohio's ignorance of landlord-tenant relationships, competitive markets and housing policy matters may have caused it to take a position against its own best interests. As the record in the Complaint Case makes clear,

AEP Ohio's hostility towards landlords is a symptom of a larger problem in its initial comments. AEP Ohio's initial comments reveal how little it understands about competitive markets generally, multifamily communities specifically, and the underlying mechanisms that drive investment and economic development. AEP Ohio repeats its allegation that there is "no evidence" for NEP's common-sense economic arguments – *while providing no evidence of its own to the contrary* – throughout its comments. But it is beyond the scope of these comments to prove bedrock economic principles, i.e. that making an investment less profitable will result in fewer dollars directed to that investment; that reducing investment in something will reduce the quantity or quality of its supply; that a lower supply will drive prices up; or that a provider with lower costs will be able to undercut competitors' prices. NEP never claimed to be able to lower rents or increase housing quality all by itself; the residential leasing market is complex and involves many other factors. But it undeniably helps to create conditions for increased economic development and better, more affordable housing. These obvious conclusions stand on their own.

As explained in NEP's initial comments, apartments are complex and interdependent package deals 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 – an effect that is not subject to regulatory control. 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.

AEP Ohio believes that it will increase its revenue if it can prevent customers from converting to master metering. But, it has conducted no intensive studies (that it produced to NEP, at least) and its reasoning was based on only a few lines of arithmetic. If, however, stopping submetering would slow development in AEP Ohio's service territory (it very much could) and delay or prevent the addition of new load, AEP Ohio's anti-submetering crusade may be an act of attempted self-harm.

Further, the Commission would need to understand how any action taken with respect to one community may affect the broader multifamily housing market. Even if the Commission could be assured that it was helping those particular residents in the short-term (it could not), if that action reduced the profitability of landlords and developers the Commission could be relatively certain that it would reduce further development and place more pressure on the housing supply, thereby raising rents. If its action further signaled to would-be investors or developers that future investments may be less secure by virtue of being subject to independent regulatory determinations, that action may have a chilling effect on investment and development that would eventually harm all Ohioans. Here, where AEP Ohio **signed a binding contract** to perform the work and installation is 99% complete, a regulatory determination that allowed AEP Ohio to walk away from that contract and vaporize private businesses' investments at the last minute would shout "don't put your money here" to potential investors.

Finally, as noted in NEP's initial comments, the complex interdependence of interests presented by apartments stems from their dual nature. AEP Ohio urges the Commission to completely ignore half of that equation and focus solely on tenants to the exclusion of the landlord's business. Landlords are business customers making rational and lawful business decisions, and the Commission would not interfere in those private businesses in any other scenario. AEP Ohio's position is therefore no less preposterous than if one substituted any other class of business for every mention of the "landlord" in its comments. If AEP Ohio believed that it should be able to deny an advantageous service change to a megastore based on the argument that mom-and-pop stores are better for the "public welfare" and that megastore would not share the benefits of that service with its customers, the Commission would not be empowered – or inclined – to permit AEP Ohio to violate its tariff and a signed contract to advance its policy ideas.

B. The policies actually adopted by the General Assembly favor master-metering.

In addition, AEP Ohio uses its initial comments to put words into the legislature's mouth. AEP Ohio repeatedly insists that the General Assembly has already determined that the tenants at Fisher Commons (and all other apartments) should be subject to the same regulatory framework as customers of public utilities.[14] But that is patently false. As noted in NEP's initial comments, master-metered apartment communities have been around since the beginning of electrification. In fact, the first Ohio Supreme Court case supporting landlords' right to resell electricity to tenants originated in 1924.[15] The law has been clear for a century that tenants receiving utility service from their landlords would not be covered by laws relating to customers of public utilities. NEP has been in business for nearly 25 years, and the General Assembly has been deeply familiar with NEP's business model for at least a decade.

The General Assembly has known for a very long time that landlords commonly receive master-metered service and resell electricity to tenants. And yet, no law extends PIPP to master-metered tenants. The Supreme Court of Ohio held that CRES choice rested with landlords over 20 years ago without response from the General Assembly.[16] And, **utility customers do not benefit from "statutory" disconnections in the first place - the protections AEP Ohio cites originate from the Commission's rules in the OAC and say *nothing* about the intent of the General Assembly**. Because the legislature has enacted laws that *do not* include master-metered tenants within the regulatory framework described by AEP Ohio, the only rational conclusion that can be

[14] *See, e.g.*, AEP Ohio Init. Comments at 12 ("…the General Assembly has determined that where, as here, customers are served by a for-profit entity, those customers should have access to PIPP"); at 7 ("Moreover, the General Assembly has determined that individual customers should have the ability to *choose* the nature of their electric supply, and conversion to submetering takes this choice away in contravention of the General Assembly's intent")(emphasis in original); and ("All these protections are another example of the General Assembly and Commission recognizing that electricity is a basic need and should only be disconnected for nonpayment through special procedures").
[15] *Jonas v. Swetland Co.*, 119 Ohio St. 12 (1928) (claim originated from a letter agreement dated Sept. 15, 1924)
[16] *FirstEnergy Corp. v. PUC*, 96 Ohio St. 3d 371, 373, 2002-Ohio-4847, 775 N.E.2d 485.

drawn is that it *did **not** intend* to include them. AEP Ohio's arguments imply that the legislature simply failed to write laws that enact its intent. That conclusion is refuted by the law and cannot be endorsed by the Commission. AEP Ohio does not speak for the General Assembly; the Commission should look instead to what the legislature has passed into law.

If the Commission were to adopt AEP Ohio's position – i.e. that master metering is bad and that the conversion of Fisher Commons to master-metered service is therefore "unreasonable" – it would usurp the policy-making prerogatives of the General Assembly without any expression of that body's authorization or agreement. Indeed, master-metering, at least with NEP's assistance, supports many of the policy goals that the General Assembly *has* spoken to. In particular, R.C. 4928.02 sets forth the policies of the state with respect to electric service. The relevant portions of that statute, and their application to the conversion of Fisher Commons, follow:

> *"It is the policy of this state to do the following throughout this state:*
>
> *"(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;"*

Service provided to master-metered tenants by their landlord originates from regulated public utilities. Any infrastructure installed or owned by the landlord must meet NEC code requirements, which are more stringent than the NESC code requirements with which utilities comply, and must pass inspection before being placed into service. NEP is contractually obligated to bill at or below the rate AEP Ohio would charge for default service, and the Commission has similarly capped residents' total bills through the revised resale tariff ordered in the Complaint Case.

Therefore, Fisher Commons tenants will receive service that meets the policy goals above at least as well as, if not better than, service directly from AEP Ohio. That service will be at least

as adequate, safe, reliable, efficient and nondiscriminatory, and will be billed at a price approved as reasonable by the Commission itself. Fisher Commons tenants will also receive 100% carbon-free generation supply (either through a CRES or by purchasing RECs) at no additional cost and with no separate long-term contract. To the extent that equipment installed to meet the NEC code may be more reliable, and to the extent that residents value carbon-free energy, master-metered service will advance this policy goal even better than the existing service at Fisher Commons. And, when businesses invest in and manage their own on-site infrastructure, the utility is able to focus on the reliability of the broader grid because the reliability of the on-site infrastructure is no longer its responsibility. Any determination that limited privatization of on-site infrastructure would drain utility resources away from ensuring the reliability of the broader grid.

Further, having an expert like NEP on the community's side can dramatically reduce the amount of time it takes to resolve issues with the utility when problems with the utility's equipment arise. For example, only a few days before the filing of reply comments in the Sugar Run case, in the middle of a winter weather advisory, one of the communities in AEP Ohio's service territory that has hired NEP as a service provider experienced significant voltage surges that damaged many residents' furnaces. With NEP's ability to monitor the community's private infrastructure, the problem was identified and investigated, and NEP was able to determine that the issue originated with AEP Ohio's primary service feed to a particular section of the community. NEP communicated directly with its contacts at AEP Ohio and a solution was in place *that morning*.

Without a centralized ability to monitor its electric service and the expertise of NEP to quickly resolve the problem, the community would have relied on individual complaints from residents whose furnaces stopped working, which likely would have led first to calling an HVAC technician, then an electrician, and perhaps several unnecessary repairs before the problem with

AEP Ohio's equipment was identified and a call placed to AEP Ohio's customer service by a property manager. Those tenants almost certainly would have experienced additional service issues for days, and likely many more tenants' furnaces would have been damaged with outdoor temperatures well below freezing. But, the community's master metered arrangement and retention of an expert on its side resulted in safer, more reliable service at a critical time, even if residents didn't necessarily know it.

AEP Ohio apparently believes that NEP "fabricate[d]" this story and that it has "no supporting evidence or basis in fact."[17] To be clear: this did, in fact, happen, and NEP can prove it upon request from the Commission. AEP Ohio's disturbing habit of failing to look into the facts before making statements to the Commission appears uninhibited despite NEP repeatedly calling attention to it.

> *"(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;"*

Tenants at Fisher Commons will not individually choose their own CRES supplier because the landlord will be the "consumer," but that doesn't mean that tenants aren't making a choice about their electric supply. Tenants have elected through their leases to receive service that meets their needs from their landlord. As the Supreme Court of Ohio explained in *FirstEnergy*, "[u]nder such leases, agreed to by tenants, **tenants exercise choice** by appointing their landlord to make decisions and arrangements concerning electric utility service."[18] The Commission itself cited to *FirstEnergy* and *Brooks* in deciding the Complaint Case, and the question of whether CRES choice belongs to the landlord has been resolved and is an embedded part of the Ohio energy landscape.

[17] AEP Ohio Init. Comments at 15.
[18] *FirstEnergy* at ¶ 10 (emphasis added)

Master metering will allow the landlord to take advantage of CRES supply that meets its business needs as well as the needs of its tenants, including price, terms and conditions that allow it to meet ESG and financing requirements. Landlords that hire NEP ensure that every resident receives 100% carbon-free generation supply (either through a CRES or by purchasing RECs) at the same billed amount as the local utility's default service without having to individually shop for as long as they live at the property. To NEP's knowledge, that option (i.e. to *never* exceed the local utility's rate for 100% carbon-free supply) 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 who don't want to spend more to get more. Behind a master meter, tenants are still exercising choice and receiving supply that meets their needs for a beneficial price, and their right to exercise choice in this way has been explicitly protected by the Supreme Court. What AEP Ohio proposes, though, is for the Commission to override tenants' election of service, which would contravene this policy.

> *"(C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;"*
>
> *"(D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;"*

Master meters unlock apartment communities' access to a variety of innovative energy management options. The consolidation and control of data provided by a master meter enables landlords to use Energy Star's landlord-specific programs, and master-metering is the most efficient – and perhaps only – way for apartment communities to make a valid business case for installing demand management and other advanced technologies. While landlords could install

demand-capable devices without master-metering, there is no incentive for them to do so. Individual units lack sufficient load and specific metered data to qualify for these programs, but a master-metered landlord's commercial account(s) will aggregate these loads and will typically qualify for PJM's programs. Creating a viable business case to pay for these technologies is the only way to incentivize their installation, and master metering achieves this without any utility-based incentive program or increased cost to tenants. Greater deployment of demand-management technologies benefits not only the landlord receiving payback from PJM programs, but also benefits AEP Ohio's grid and, by extension, all other AEP Ohio customers.

In fact, as part of its agreements with landlords, NEP has deployed thousands of demand-capable water heater controllers at apartment communities throughout Ohio, mostly in AEP Ohio's service territory. Each controller is able to shift 1 kW of power consumption, resulting in thousands of kW of controllable load that is actively managed in accordance with PJM calls. PJM settles on the meter data of AEP Ohio, not NEP, but PJM ancillary programs require a large commercial customer load to participate as well as account numbers and specific load data. These devices are already having a beneficial impact on AEP's grid as they reduce peaks from apartment tenants' load which is not otherwise incented to shift, and none of these controllers would have been deployed if not for the landlord choosing to receive master metered service.

> *"(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;"*

As described above, master-metering allows these businesses to unlock access to competitive electricity markets in which apartment communities could not otherwise participate and incentivizes the adoption of new competitive technologies. A regulatory policy or determination that prevented businesses from accessing competitive electricity markets for their

properties would be the opposite of flexible regulatory treatment and would run counter to this policy.

> *"(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;"*

As explained with respect to Subsection (D), master-metering unlocks apartment communities' access to PJM's incentives that already exist for many such technologies. In addition, cities like Columbus are implementing requirements for multifamily communities to install EV chargers[19] and mandating that most multifamily communities use the U.S. EPA's Energy Star Portfolio tool to benchmark and report whole-property electric usage.[20] Master metering allows landlords to adapt successfully by giving them the control and data they need as well as a cost recovery path to achieve compliance.

NEP is a channel partner to one of the nation's leading EV charger manufacturers, and often assists its clients in securing and installing EV chargers both for the benefit of their tenants and for compliance with governmental mandates. In some cases, at the landlord's option, NEP is able to finance landlords' EV chargers up-front and recover the cost through the community's rate arbitrage, resulting in zero cost to the landlord or its tenants for these increasingly critical, yet still very expensive, technologies. And, master meters allow landlords to see their whole property's electric consumption at once. As discussed in NEP's Initial Comments, master-metering gives landlords the data that they need to understand their property's energy usage as a whole and to solve problems of which they may otherwise remain unaware.[21] This data is also critical to

[19] Columbus City Code Chapters 3312.55 through 3312.58
[20] Columbus City Code Chapters 4117.01 through 4117.17
[21] NEP Init. Comments at 24.

benchmarking a community's electric usage in order to comply with mandates like those in Columbus.

AEP Ohio attempts to preempt this important point by suggesting that NEP is "duplicitous" to argue that landlords have the "power to engage in leases with residents (allegedly including 'appointing their landlord to make decisions and arrangements concerning electric utility service'), but somehow cannot make it a contractual commitment to share usage information."[22] AEP Ohio does not offer any insight into how such an arrangement would work because such an arrangement cannot work.

First, without a commercial, demand-read, PJM-settled meter and account, the necessary data simply **does not exist**. AEP Ohio's residential meters do not provide demand reads to PJM, do not provide individual PLC or NSPL data and do not provide commercial insights or data required for both DER installation analysis or PJM ancillary markets. The landlord, even if they received their tenants' data, would have no visibility into demand use on their property and how to incorporate that into ancillary market program requirements with PJM. While the problems with actually providing this data are numerous (as discussed below), that data is essentially useless to landlords and does not help them comply with benchmarking requirements like those in Columbus or participate in PJM ancillary markets. Without a master commercial meter, landlords are locked out of the energy options available to all other commercial customers.

AEP Ohio responds by noting that its smart meters "do have many capabilities including the ability to measure demand."[23] But their "capabilities" are irrelevant – the point is that AEP

[22] AEP Ohio Init. Comments at 14
[23] AEP Ohio Init. Comments at 14.

Ohio's residential meters ***do not*** measure demand and **the demand data that property owners need does not currently exist without a master meter**. AEP Ohio then again resorts to magical thinking in asserting that "surely landlords can find ways to secure currently existing usage data form [sic] its tenants," but AEP Ohio *still can't say how*.[24] For all of the reasons explained by NEP in its initial comments and below, AEP Ohio's flippant speculation is refuted by the facts.

Even if the necessary data existed in – and could be extracted from – residential accounts (it cannot), getting that data into landlords' hands securely without AEP Ohio violating its tariff or the Commission's rules would be impossible. If landlords relied on each tenant manually sharing their usage data from their AEP Ohio bill each month (e.g. by emailing the landlord their bills), landlords would likely only receive information from a fraction of tenants and would therefore only achieve a partial understanding of their property's energy usage. And, because landlords' remedies for breach of the lease contract are limited, landlords may need to resort to eviction to enforce this "contractual commitment," an extreme result that few, if any, landlords would ever pursue, rendering such a requirement all but useless.

If AEP Ohio is suggesting that landlords should actively retrieve the load information from a tenant's account, this cannot be done through a lease. The account's authorized representative **must** sign the AEP Ohio LOA form authorizing AEP Ohio to release data to the landlord. Tenants cannot provide the account information at lease signing because leases are signed *before* the tenant moves in and the account is created, so landlords would need to secure the authorized representative's consent to share account data separately, after the tenant moves in and sets up utilities. This delay could extend several months, as leases are often signed weeks before move-in

[24] Id.

and the account number will not be in the tenant's hands until it receives its first bill. That authorized representative may or may not be the person that signed the lease – in student housing it is very common for a roommate, a spouse or a parent to set up the utilities. And, the landlord will not be able to verify if the person signing the LOA is the authorized representative because, unlike a CRES which will receive the account information back as an enrollment confirmation, a landlord will not get a confirmation from the utility when they submit the forms via email. However, if the authorized representative refuses to sign the AEP Ohio LOA, the landlord is probably out of luck if it does not want to resort to extreme solutions like threatening eviction.

Also unlike CRES providers, landlords do not have integrated systems to pull or webscrape this data. Instead, the landlord would need to email AEP Ohio the customer information for hundreds of accounts along with corresponding LOA's, of which there may be more than one per apartment to cover a 12-month or longer period. AEP Ohio would then need to pull an unwieldly amount of information, particularly if the landlord required interval data, and send to the landlord to be sorted and filtered manually by the landlord. Assuming consent is obtained, 12-months of usage for the unit may be split between accounts of former and current tenants. Leases do not start and stop on a calendar year, and AEP Ohio would need to pull data from closed accounts and current accounts.

The sharing of account and authorized representative information would also pose significant security issues and might subject tenant accounts to fraud or "slamming" by unscrupulous door-to-door marketers. This account information and data is protected and, as the Commission has determined through its rules, not something that should be readily handed out due to the possibility of it being used for the wrong purpose if not properly held. As the Commission is aware, an account number and authorized representative signature are the two key pieces to

enroll someone with a CRES provider. The Commission has rules in place to restrict who can and should be requesting this information. If each tenant's account information lived on a property manager's laptop, it is not difficult to imagine various ways that information could be exchanged or stolen.

Master metering avoids all of these issues, is paid for by the property owner, and provides a real, practical solution by putting all of the necessary data, including data that cannot be extracted from residential meters, right on a bill that the landlord gets every month. While other possibilities may exist in the future, master metering is the only viable and secure solution to landlords' data access requirements that exists today. Limiting master-metering by adopting AEP Ohio's uninformed opinions, including by prohibiting the conversion of Fisher Commons, would both make the data necessary to comply with these mandates much more difficult to obtain, and block landlords' access to wholesale markets and information that they need in full to comply with the law. That is, AEP Ohio's position would again directly contravene state policy, and would arguably require the Commission to order a violation of law in violation of R.C. 4905.37.

> *"(M) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses;*

See comments to subsections (D), (G) and (J) above. Master metering encourages the use of alternative energy resources and provides a path for apartment communities – as a whole – to participate in energy efficiency programs, which path would not otherwise exist. Limiting the availability of master-metering, including by preventing the conversion of Fisher Commons, would therefore discourage the use of energy efficiency programs and alternative energy resources in these critical businesses in direct contravention of state policy.

"(N) Facilitate the state's effectiveness in the global economy."

As explained in NEP's initial comments and further in these reply comments, master metering provides a competitive advantage to property owners, and in turn encourages further development in the state. **Profitable developers are good for development, and more development means more housing at lower cost.** Affordable and available housing has been a critical concern when Ohio is attracting investment and new companies to our state. As Lt. Gov. Husted recently explained:

> "By ensuring all current and future Ohioans have access to affordable housing, we are not only meeting the basic needs of our residents but also laying the foundation for sustainable economic development. As companies continue to invest in Ohio, we will need the housing stock to support that growth and prepare our communities for the opportunities those businesses bring."[25]

Master metering is a tool to bolster investment and development, improve housing stock and relieve supply pressure that pushes rents up, all without increasing costs to tenants. Viewed appropriately through the economic development lens, availability of master-metering is one of many tools that Ohio has in its kit to attract new businesses and investment that bolster the state's competitiveness in the global economy. Limiting master metering, including by preventing the conversion of Fisher Commons, will harm the very businesses that provide housing to 1/3 of Ohioans and give developers pause when contemplating future investments, directly contravening state policy. Further, NEP submits that a state where monopoly utilities can successfully repurpose century-old laws to interfere with private businesses, and where those utilities can walk away from signed contracts and vaporize private businesses' investments with impunity, would be at a disadvantage in attracting investment and competing in the global economy.

[25] https://development.ohio.gov/home/news-and-events/all-news/2023-1212-governor-dewine-announces-details-for-new-150-million-welcome-home-ohio-program

"(O) Encourage cost-effective, timely, and efficient access to and sharing of customer usage data with customers and competitive suppliers to promote customer choice and grid modernization."

As noted under Subsection (B) above, master metering creates more customer choice, not less. And, as noted under Subsections (D) and (J) above, master metering is the most efficient and cost-effective option for the consumer (in this case the landlord) to have access to necessary data, and unlocks apartment communities' access to incentives to install new technologies that promote grid modernization. Following AEP Ohio's most recent rate case, the commercial rate available to master-metered apartment communities is based entirely on demand, further incentivizing master-metered landlords to install grid-beneficial demand reduction technologies.

"(P) Ensure that a customer's data is provided in a standard format and provided to third parties in as close to real time as is economically justifiable in order to spur economic investment and improve the energy options of individual customers."

A single commercial account for the entire property, as opposed to limited twelve-month historic information requiring varying levels of authorization, multiple data pulls to view based on who may or may not be living in hundreds of units, is the most efficient manner to provide information. Importantly, the objective of this policy is to "spur economic investment and improve the energy options of individual customers." As repeated above (hopefully not yet *ad nauseum*), master metering is a tool that promotes economic investment and, at least with NEP, creates more choice in the market. Any decision that limits master-metering, including preventing the conversion of Fisher Commons, would avoid the efficiency gains inherent in sharing fewer data sets, inhibit economic development and take away the energy option that tenants of Fisher Commons have elected, and which does not exist elsewhere on the market.

In addition, R.C. 5321.21 provides that:

> "*The general assembly finds and declares that maintenance of an adequate housing supply, including access to livable, clean, and well-maintained residential rental premises, in the state of Ohio is an urgent statewide priority and necessary to the well-being of Ohioans*."

As explained above, master-metering is a tool that increases the resources available to developers and landlords to meet the challenges of the housing market. Master-metering may not, by itself, solve any of the state's housing problems, but it undoubtedly helps more housing get built faster and creates a larger pool of funds that landlords can use to improve their communities. Any decision that takes a financing tool away from housing developers and landlords will have a negative impact on the "maintenance of an adequate housing supply" in contravention of the policy articulated in R.C. 5321.21.

R.C. 5321.06 provides that:

> "*A landlord and a tenant may include in a rental agreement any terms and conditions, including any term relating to rent, the duration of an agreement, and any other provisions governing the rights and obligations of the parties that are not inconsistent with or prohibited by Chapter 5321. of the Revised Code or any other rule of law*."

And, R.C. 5321.20 provides, in part:

> *"The general assembly finds and declares that Chapter 5321. of the Revised Code is a statewide and comprehensive legislative enactment regulating all aspects of the landlord-tenant relationship…"*

It is a well-established rule of law that parties have a fundamental right to contract freely with the expectation that the terms of the contract will be enforced.[26] The Ohio Landlord-Tenant Act explicitly permits landlords and tenants to freely agree to any term not expressly prohibited by law, and the parties to the rental contract have a legal right to expect that their contract will be enforced. The General Assembly did not need to include this provision, but its intent to ensure that

[26] *Total Quality Logistics, L.L.C. v. JK & R Express, L.L.C.*, 164 Ohio St.3d 495, 2020-Ohio-6816, 173 N.E.3d 1168, ¶ 16, quoting *Nottingdale Homeowners' Assn., Inc. v. Darby*, 33 Ohio St.3d 32, 36, 514 N.E.2d 702 (1987).

landlords and tenants are free to contract where the General Assembly has not otherwise proscribed a particular term is clear. A regulatory determination that nullified a lease provision where that term is perfectly lawful would plainly run contrary to the General Assembly's intent, and would itself be unlawful. AEP Ohio believes that landlord-tenant laws "have no bearing" and do not "in any way address the Commission's consideration of abandonment of utility infrastructure under Title 49."[27] But a "comprehensive legislative enactment regulating all aspects of the landlord-tenant relationship" is, by its own terms, always relevant to issues between landlords and tenants. It is AEP Ohio that pretends to know what the legislature's intent is, and the fact that the legislature has actually expressed intentions that demand a result contrary to the one AEP Ohio desires cannot simply be swept under the rug.

C. AEP Ohio's specific policy arguments are inappropriate for the Commission's consideration.

The absurdity of debating landlord-tenant issues and housing and economic development policy at the Commission is another indicator that AEP Ohio's tortured interpretation of the Miller Act goes much too far and the Application should be dismissed. In the Complaint Case, the Commission entertained all of these same arguments from AEP Ohio and stated clearly that "landlord-tenant disputes are not within the administrative expertise of the Commission." [28] But AEP Ohio has not taken "no" for an answer.

AEP Ohio focuses myopically on the only component of this dispute with which it is familiar – what is available to customers of public utilities. But determining whether conversions to master metering are desirable or "reasonable" (they are) implicates subject matter well beyond

[27] AEP Ohio Init. Comments at 13.
[28] *Ohio Power Company, supra*, Opinion and Order (September 6, 2023) at ¶ 219.

AEP Ohio's limited expertise, including but not limited to landlord-tenant law, economic development, housing policy, building codes, and even tax credits. Certainly, AEP Ohio is not an entity that has any trouble finding an audience in the General Assembly. If it would like to argue to limit master metering, it has every opportunity to do so in a venue more suited to weigh the wide-ranging implications of its position. But the Commission does not make law, and it is simply inappropriate to ask the Commission to make a policy determination on a matter that implicates topics beyond the Commission's jurisdiction and expertise.

D. AEP Ohio's specific policy arguments are wrong.

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

1. PIPP & CRES

Once again, this issue was considered and addressed by the Commission in the Complaint Case, wherein the Commission ordered AEP Ohio to file a resale tariff requiring clear notice in leases to ensure that tenants make an informed decision to forego PIPP and CRES. The Commission has already put this issue to bed to the maximum extent its jurisdiction will permit.

NEP must also 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 Fisher Commons 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 to those who qualify or that tenants may benefit from shopping for CRES supply notwithstanding AEP Ohio's attempts to paper over the pitfalls of each. NEP simply disputes whether the Commission has the statutory jurisdiction make this decision for residents of apartment communities. Importantly, as noted by AEP Ohio, **none of the tenants at Fisher Commons currently avail themselves of PIPP**. Fisher

Commons is primarily occupied by graduate students at OSU's Fisher College of Business. Those tenants have agreed to receive service from their landlords in their lease and will be protected by the Commission's resale tariff order going forward. If those tenants rationally figure that they will not need or qualify for PIPP in the near future, then that program has no value to them. Indeed, any discussion of PIPP is purely hypothetical and irrelevant to the Fisher Commons conversion.

With respect to CRES, AEP Ohio ignores that tenants are still making decisions about their electric supply behind a master-meter, and that master-metering results in more choice in the market, not less. As discussed above (see comments beneath Subsections (B) and (J) of R.C. 4905.02), the Supreme Court's decision in *FirstEnergy* directly addressed the issue of master-metered tenants' ability to choose their electric supply: "Under such leases, agreed to by tenants, the *tenants exercise choice* by appointing their landlord to make decisions and arrangements concerning electric utility service."[29] Tenants whose landlords hire NEP receive a supply option not available anywhere else on the market – 100% carbon-free generation supply at the same rate as the local utility's default service – without having to individually shop. AEP Ohio's skepticism about this arrangement, i.e. that "nothing *requires* NEP to do this, and there are scant details of the extent and quality of NEP's renewable supply" is unfounded.[30] NEP *is required by contract*, as Fisher Commons' agent, to help secure 100% carbon-free supply or the equivalent offsetting RECs, and it does so through licensed brokers and aggregators or by purchasing certified RECs as fully explained in the Complaint Case. 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 bolstering the

[29] *FirstEnergy*, *supra*, at ¶ 10
[30] AEP Ohio Init. Comments at 6-7 (emphasis in original).

community's financial performance. Better performing communities benefit tenants through additional opportunities to make investments in the community without increasing costs to tenants, and benefit the housing market as a whole by creating a larger pool of funds to finance the construction of new housing.

In addition, 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.[31] A further 90 municipal utilities serve at least 241,580 residents.[32] None of those entities are regulated by the Commission. None of those residents are eligible for PIPP, able to choose a CRES supplier, or are subject to regulatory disconnection protections. AEP Ohio attempts to distinguish municipal utilities and co-ops by arguing that landlords "are not accountable to their tenants in the same way." AEP Ohio is wrong – landlords are subject to a lease agreement, landlord tenant law, and market forces, all of which permit tenants to hold them accountable. It also misses the point, which is that many other residents already exist outside of the regulatory framework and can already choose to forego PIPP and CRES based on what apartment makes the most sense for them. AEP Ohio's linchpin argument that "…the General Assembly has determined that where, as here, customers are served by a for-profit entity, those customers should have access to PIPP" is also plainly wrong. [33] If that is what the legislature intended, then that is what it would have done.

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

[31] https://puco.ohio.gov/utilities/electricity/resources/electric-cooperatives
[32] 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/)
[33] AEP Ohio Init. Comments at 12

Edwards 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 arguments support the Commission unilaterally reforming those landlords' business models and requiring that each unit's account be held by a tenant? If Edwards simply decided to maintain all accounts in its name and *then* requested master-metered service, none of AEP Ohio's arguments about PIPP and CRES would even apply because nothing would change for tenants. There is no reason to entertain those arguments here either.

Even if the Commission wanted to guarantee the availability of PIPP and access to CRES markets to Fisher Commons' tenants, it could not know whether it was helping or harming those residents without accounting for every factor affecting the overall value proposition that Fisher Commons 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 failure to understand renters undermines its entire position – renters tend to move frequently and are not captive to landlords, AEP Ohio, or the Commission in their decisions. While renters do not control any of the electric-consuming features of their apartments, they choose what features they want by choosing where to live. 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.

2. Disconnection

AEP Ohio insists that Fisher Commons residents will face the "prospect of disconnection without statutory protections" if the conversion to master-metered service is completed.[34] First, as noted above, *regulated utility customers do not have "statutory" protections from disconnection*, but regulatory ones originating from the Commission's rules. Further, 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.[35] 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."[36] To the extent that the Commission can address this issue, it already has. To the extent possible, tenants receiving electric service from their landlord will receive the same disconnection protections as regulated utility customers. AEP Ohio is flat out wrong.

AEP Ohio continues its attempt to undermine the Commission's Order in the Complaint Case by asserting that "there are significant legal and practical concerns that may mean that the residents of Fisher Commons will not, in fact, be protected by the OAC's disconnection rules."[37] NEP has already proposed numerous solutions to all of the issues raised by AEP Ohio[38] and NEP

[34] AEP Ohio Init. Comments at 7.
[35] AEP Ohio claims that "NEP fails to comply with rules relating to when disconnection notices are sent, in-person notice, and medical certification." AEP Ohio Init. Comments at 8. AEP Ohio is only two-thirds wrong. NEP, as the landlord's agent, voluntarily follows the procedures applicable to regulated entities relating to timing of notices and honors medical certificates in the same way, but does not – as of the date these reply comments are submitted – provide in-person notice. That is why NEP said "nearly" identical.
[36] *Ohio Power Company, supra*, Opinion and Order (September 6, 2023) at ¶ 224.
[37] AEP Ohio Init. Comments at 8.
[38] *See Ohio Power Company, supra*, NEP Mem. Contra AEP Ohio Application for Rehearing at 11-13.

has offered to help AEP Ohio establish a working group to solve these problems, which offer AEP Ohio has thus far declined. AEP Ohio's revised resale tariff application filed on February 5, 2024 further demonstrates that AEP Ohio is far more concerned about aiding its own anti-master-metering crusade than actually protecting consumers.[39] If AEP Ohio were actually concerned about tenants receiving the benefits, including disconnection protections, covered by the Commission's resale tariff order in the Complaint Case, it would not be working exclusively to prevent them from taking effect.[40]

3. Benefits to Customers

NEP has already addressed in its initial comments and elsewhere in these reply comments the numerous benefits master-metering offers to landlords, tenants, and the housing market as a whole. AEP Ohio's initial comments attempt to preempt that discussion, but instead further illustrate how detached AEP Ohio is from the market principles applicable to landlords and tenants. NEP argued in the Northtowne and Sugar Run Cases and in its initial comments in this case that "broke landlords are bad for tenants," a truth to which anyone who has ever been a tenant of a broke landlord can attest. When AEP Ohio objects that "[t]his perverse reasoning wrongly attempts to turn a landlord benefit into a tenant benefit,"[41] it merely demonstrates that it is unable to fathom anything other than zero-sum transactions where a limited number of "benefits" are allocated among parties. But competitive markets are much more complicated and often involve positive-sum exchanges, where both parties are better off. In this case, because master-metering lowers the

[39] *See In the Matter of the Application of Ohio Power Company for Authority to New or Amended Rate Schedules and Tariffs*, Case No. 24-0106-EL-ATA, Application not for an Increase in Rates (February 5, 2024).
[40] See, e.g., *Ohio Power Company, supra*, AEP Ohio Application for Rehearing at 36-53 ("Second Ground for Rehearing: The "Electric Reseller Tariff" Ordered by the Commission Is Unlawful Under the Commission's Own Interpretation of "Electric Light Company" Under R.C. 4905.03(C), Violates the Statutory Rulemaking Procedures in R.C. Chapter 106, and Results in an Unreasonable Tariff Paradigm.")
[41] AEP Ohio Init. Comments at 12.

community's overall electric costs and therefore increases the total resources available in the landlord-tenant transaction, the outcome of that transaction should benefit both parties. Tenants agree to forego Commission jurisdiction and, in exchange, receive benefits that they value more than Commission protection, and their landlord can afford to provide those benefits while still being better off themselves. AEP Ohio may find this discussion "driveling," but correcting AEP Ohio's monopoly-centric worldview in the context of competitive markets is very much necessary to the debate AEP Ohio seeks to have.[42] AEP Ohio's repeated insistence that something can only be a landlord or a tenant benefit, but not both, fails basic economics.

AEP Ohio's speculation that NEP's reasoning "could be used to eliminate the entire panoply of rights the General Assembly has afforded to tenants" is similarly absurd.[43] Chapter 5321 of the Revised Code was promulgated by the General Assembly after consideration of policy issues within its expertise and purview. Certainly, the General Assembly was aware of the need to balance the interests of landlords and tenants when it passed that act (which also places obligations on tenants), and judged that any costs to landlords of, for example, ensuring transparency in their rental agreements and avoiding use of force or intimidation, were justified. Indeed, the specific aspects of the landlord-tenant relationship governed by that section are directed at ensuring transparency and equal bargaining power. That is, the landlord-tenant act exists to ensure that the free market for apartments functions efficiently and fairly. The fact that the landlord-tenant act does not address resale of utility service to tenants is a sign that the General Assembly has left that aspect of the landlord-tenant relationship to the market, where tenants can evaluate a variety of arrangements and choose the one that works best for them.

[42] Id.
[43] Id. at 13.

4. Impact on Other Customers

AEP Ohio raises concerns relating to the impact on other customers of the conversion of Fisher Commons 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, AEP Ohio did not raise these concerns in either of its two most recent rate cases. In fact, AEP Ohio's most recent rate case settlement included both a redline to AEP Ohio's resale tariff and additional clarification to the AEP Ohio equipment purchase process.[44] Still, the "costs" to other customers were not raised by AEP Ohio or addressed by that settlement. AEP Ohio argues that "the impact to AEP Ohio's other customers is now large enough that the Commission must consider it in a Miller Act case such as this"[45] without telling us why a Miller Act case is a remotely appropriate proceeding to address this issue. To the extent that any cost or cost-shifting concerns exist, AEP Ohio has had ample opportunity to address them in the appropriate rate case proceedings, and will again in its 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.

Further, AEP Ohio does not actually explain what those impacts are. For customer-requested work, AEP Ohio's tariff provides that "the customer shall pay to the Company, in advance, the estimated total cost of such work ."[46] So the costs of the conversion will be borne –

[44] *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.
[45] AEP Ohio Init. Comments at 18.
[46] *See* Ohio Power Company Terms and Conditions of Service, Section 12: WORK PERFORMED ON COMPANY'S FACILITIES AT CUSTOMER'S REQUEST ("Whenever, at the request of a customer and solely to suit the convenience of the customer, work is performed on the Company's facilities or the Company's facilities are relocated, the customer shall pay to the Company, in advance, the estimated total cost of such work.")

and, as noted above, *has already been paid for* – by Edwards, not AEP Ohio and its other customers. AEP Ohio's rates are supposed to reflect its cost to serve, and its cost to serve Fisher Commons as a commercial customer is no different than its cost to serve any other commercial customer. Indeed, AEP Ohio will save money by reading fewer meters, processing fewer bills, and avoiding maintenance of on-site infrastructure while receiving a demand-based rate that AEP Ohio itself agrees is a more appropriate reflection of the cost to serve than the kWh-based residential rate.[47] The service to this premise is rated and designed to the load and that load will not change, instead only who receives the bill from AEP Ohio will change. There will be no abandonment, and AEP Ohio requesting this Commission to weigh in on private business earnings rather than utility regulated service shows how far from its statutory authority AEP Ohio is attempting to take the Commission. AEP Ohio's explanation of how rate cases work does nothing to explain what actual harm, if any, its other customers will experience. If "the impact to AEP Ohio's other customers is now large enough that the Commission must consider it in a Miller Act case such as this,"[48] AEP Ohio should have at least explained what that impact is and whether it is negated by the CIAC charge that it has already received and retained.

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 Fisher Commons under a commercial service schedule because, again, AEP Ohio will continue to be the utility provider to Fisher Commons. Other customers will be no more "harmed" by Fisher Commons' receipt of master-metered service than they are by any other customer receiving a commercial rate. More importantly, after the conversion AEP Ohio will no longer incur any bad

[47] See generally, *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR.
[48] AEP Ohio Init. Comments at 18.

debt at all from Fisher Commons. Under OAC 4901:1-10-14, Fisher Commons will be required to post credit, pay a deposit and/or provide a guarantor to ensure its bills get paid, and in practice the commercial bill will always get paid, whereas residential bills are much more likely to go unpaid, particularly when a resident moves. Fisher Commons as a commercial customer will present a much lower credit risk than its tenants in the aggregate. The conversion will reduce bad debt and save AEP Ohio's other customers money by reducing the bad debt rider.

Finally, while it is not relevant to Fisher Commons given that Edwards has already installed its own infrastructure, it is worth noting that AEP Ohio's insistence that it has no legal obligation to sell its equipment misses the point NEP made in the Northtowne and Sugar Run cases.[49] NEP never claimed that AEP Ohio has a legal obligation to sell equipment, just that AEP Ohio has the ability to solve the problems about which it complains in those cases, and yet refuses to solve them out of spite. In those cases, AEP Ohio is yelling fire while holding a bucket of water. The solution is obvious.

5. Necessity to Hold a Hearing

Finally, AEP Ohio insists that a hearing should be held in this matter.[50] 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 Fisher Commons and does not, therefore, require a hearing. Even if it did, these proceedings could have only one lawful result – **AEP Ohio must comply with its tariff and signed CIAC agreement and finish the job**. 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 Fisher Commons conversion, and that AEP

[49] *See*, Id.
[50] AEP Ohio Init. Comments at 18-20.

Ohio's obligations under a signed contract are malleable. 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 abandoned[51] or have agreed to the changes giving rise to the application.[52] Both of these criteria are obviously met here – Fisher Commons' tenants will continue to receive electric service from AEP Ohio through their landlord and all tenants at Fisher Commons have agreed to the master-and-sub-metering arrangement in valid private leases.

AEP Ohio attempts to distinguish the Commission's past practices by muddling two separate issues. AEP Ohio claims that the cases cited by NEP were "uncontested" and that "[t]hat is obviously not the case here."[53] Certainly, NEP contests whether AEP Ohio's application is proper, but these comments are only relevant contingent on a finding by the Commission that the Miller Act applies to the service change at Fisher Commons and that AEP Ohio's Application has been properly filed. In that event, the cases cited by NEP are very much relevant because AEP Ohio is the only party contesting *its own* application. AEP Ohio cites no authority for the proposition that a utility contesting its own application renders the Commission's past practices moot even though the end-users themselves will immediately receive equivalent service and have

[51] *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)

[52] *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)

[53] AEP Ohio Init. Comments at 19.

agreed to the service change. Most importantly, **AEP Ohio has absolutely no right to "contest" the conversion because it signed a contract agreeing to perform the work, received payment under that contract, and induced NEP and Edwards to invest over $196,000 in reliance on that contract.** A hearing will only further delay Fisher Commons' receipt of service to which it is entitled by law and under that contract, and which it requested **2 1/2 years ago**.

CONCLUSION

Even if the Commission were to undertake a determination as to whether the conversion of Fisher Commons to master-metered service is "reasonable," AEP Ohio's misplaced policy arguments and hostility toward an indispensable class of businesses are, at best, unpersuasive. Its myopic approach would hinder economic development, contravene numerous policies of the state, and eventually harm all Ohioans. Finally, any Commission decision permitting utilities to lawlessly ignore signed contracts and torpedo customers' projects at the last minute cannot be squared with the Miller Act's "due regard for the welfare of the public" language.

Therefore, in the event that the Commission does not dismiss the Application, NEP respectfully requests that the Commission approve the Application and permit the Fisher Commons project to be finally energized.

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 February 21, 2024.

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