

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Mark A. Whitt,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 15-697-EL-CSS
	)	
Nationwide Energy Partners, LLC,	)	
	)	
Respondent.	)	

**COMPLAINANT’S MOTION TO LIFT STAY**

In accordance with Rule 4901-1-12, Complainant respectfully requests issuance of an Entry lifting the stay of discovery in this proceeding. The Commission imposed the stay when it announced the investigation docketed under Case No. 15-1594-AU-COI. Entry, ¶ 16 (Nov. 18, 2015). A Finding and Order was issued in the COI docket on December 7, 2016. Because the COI Finding and Order resolves the issues giving rise to the investigation, the grounds for a stay no longer exist. Accordingly, the stay should be lifted.

The November 18, 2015 Entry in this proceeding states, “we find that this case should be held in abeyance while we conduct our investigation. Once we have analyzed the comments and reply comments in Case No. 15-1594-AU-COI, we will determine whether the Complainant has standing and the complaint has merit.” *Id.* at ¶ 13. In addition to holding the case in abeyance, “further discovery in this case is suspended until further notice.” *Id.* at ¶ 16.

In the December 7 Finding and Order in the COI docket, “[t]he Commission expands application of the *Shroyer Test* to condominium associations, submetering companies, and other entities.” Finding and Order, Case No. 15-1594-AU-COI, at ¶1 (Dec. 7, 2016). As both a member of a “condominium association” and a recipient of utility bills from NEP, a self-

described “submetering company,”<sup>1</sup> Complainant unquestionably has standing to pursue this Complaint.

The only issue left unresolved by the December 7 Finding and Order is “the reasonable threshold percentage to establish the rebuttable presumption for which the provision of utility service is not ancillary to the landlord’s or other entity’s primary business.” *Id.* at ¶ 22.

Comments on this issue may be filed by January 13, 2017. *Id.* There is no reason discovery in this complaint case should remain stayed while the Commission addresses the “reasonable threshold percentage” issue in the COI docket. None of the discovery served to NEP before the Commission imposed a stay addresses this issue. Consequently, NEP cannot be heard to complain that it needs further direction from the Commission before responding to this discovery.

Within minutes of announcing the December 7 Finding and Order, the Commission issued a press release bearing the headline, “PUCO order charts path to protect submetering customers.”<sup>2</sup> If the Commission means what it says, then it must lift the stay of discovery in this proceeding so that Complainant may proceed down the path the Commission has offered.

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<sup>1</sup> In its June 26, 2015 motion seeking to stay discovery, NEP states: “OPAE’s and the OCC’s interests rest with having sub-metering service providers *like NEP* regulated as public utilities.” NEP Motion at 3 (filed June 26, 2015) (emphasis added).

<sup>2</sup> See <http://www.puco.ohio.gov/puco/index.cfm/media-room/media-releases/puco-order-charts-path-to-protect-submetering-customers/#sthash.Xc9NPOVJ.dpbs> (visited Dec. 12, 2016).

Dated: December 12, 2016

Respectfully submitted,

*s/ Mark A. Whitt*

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(Complainant is willing to accept  
service by email)

### **CERTIFICATE OF SERVICE**

I hereby certify that a courtesy copy of Complainant's Motion to Lift Stay was served by electronic mail this 12<sup>th</sup> day of December, 2016 to the following:

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Summary: Motion to Lift Stay electronically filed by Ms. Rebekah J. Glover on behalf of Mark A. Whitt