

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Evelyn and John Keller,)	
)	
Complainants,)	
)	
v.)	
)	Case No. 12-2177-EL-CSS
Ohio Power Company,)	
)	
Respondent.)	

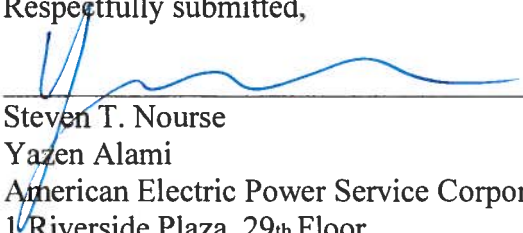
OHIO POWER COMPANY’S MOTION FOR PROTECTIVE ORDER

Respondent Ohio Power Company (“AEP Ohio” or “Company”), pursuant to Rule 4901-1-24(A) of the Ohio Administrative Code (“O.A.C.”), respectfully requests that the Commission issue a protective order providing that no further discovery be had in this matter pending a ruling on AEP Ohio’s August 16, 2012, motion to dismiss. In the alternative, if the Commission determines that discovery should continue, AEP Ohio respectfully requests that the Commission issue a protective order limiting Complainant’s February 25, 2013, notice of deposition¹ to provide for the depositions of only two individuals at this time as further described below.

Pursuant to rule 4901-1-24(B), O.A.C., a copy of Complainants’ February 25, 2013, notice of deposition is attached hereto as Exhibit 1, and an affidavit setting forth the efforts which have been made to resolve any differences with Complainants is attached hereto as Exhibit 2. The reasons supporting this motion are provided in the attached memorandum in support.

¹ Despite being required to do so pursuant to Rule 4901-1-21(B), O.A.C., Complainants failed to provide notice to the Commission of their February 25, 2013, notice of deposition. A copy of Complainants’ February 25, 2013, notice of deposition is attached hereto as Exhibit 1.

Respectfully submitted,



Steven T. Nourse
Yazen Alami
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
(614) 716-2920
(614) 716-2950 *facsimile*
stnourse@aep.com
yalami@aep.com

Counsel for Respondent

MEMORANDUM IN SUPPORT

Rule 4901-1-24(A), O.A.C., provides that the Commission may, upon motion of any party or person from whom discovery is sought, issue any order which is necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such a protective order may provide that discovery not be had or that discovery may be had only on specified terms and conditions. For example, in *In the matter of the Complaint of McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services*, the Commission granted a motion for protective order postponing discovery until after a ruling on the utility's motion to dismiss.² In granting the utility's protective order, the Commission found that a favorable ruling on the utility's motion to dismiss "would obviate the need for [it] to respond to discovery requests."³ Moreover, the Commission found that "if compelled to respond prior to a grant of a motion to dismiss, [the utility] would be put to wasteful and unnecessary effort."⁴

I. The Commission should suspend discovery until the threshold dismissal question is resolved.

AEP Ohio seeks a protective order providing that no further discovery be had in this matter pending a ruling on AEP Ohio's August 16, 2012, motion to dismiss⁵. To date, Complainants have served, and the Company has responded to, three sets of written discovery,

² *In the matter of the Complaint of McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services*, Case No. 11-3407-TP-CSS, Entry (July 13, 2011).

³ *Id.* at ¶5.

⁴ *Id.*

⁵ AEP Ohio has agreed to (or not opposed) multiple extensions of Complainants' deadline for filing a response to the August 16, 2012 motion to dismiss, which response was most recently extended to May 2, 2013--for a total of **258 days to respond** (versus the normal 15 days).

consisting of over a 100 interrogatories (including subparts) and resulting in 244 documents being produced. By contrast, in the *McLeodUSA* case, the Commission granted the utility's motion for a protective order even before it had responded to the complainant's initial discovery requests. By notice of deposition served on February 25, 2013, Complainants now seek to continue discovery by deposing ten individuals. A ruling in favor of AEP Ohio's motion to dismiss would obviate the need for any further discovery in this case, including the need for any depositions. More importantly, because the Commission may grant AEP Ohio's motion to dismiss, compelling AEP Ohio to produce ten witnesses for depositions prior to a ruling may prove wasteful and unduly burdensome.

Granting this motion for a protective order and providing that no further discovery be had in this matter until after a ruling on AEP Ohio's motion to dismiss is also appropriate because Complainants appear to be relying on the Company's responses to discovery to substantiate claims advanced in their Complaint. Indeed, in their first motion for an extension of the deadline for filing a response to the Company's motion to dismiss the Complainants state that "[t]he vast majority of the information necessary to prove (or disprove) negligence is under control of Respondent." Moreover, as reflected in the attached affidavit, counsel for Complainants stated he needed to complete the depositions prior to responding to the Company's motion to dismiss.

Nonetheless, it is axiomatic that a complainant bears the burden of proof.⁶ The threshold issue of the Company's motion to dismiss should not be decided based upon information received through discovery; it should be decided based on the claims raised in the Complaint—which should have a legal and factual basis for the claim at the time the Complaint was filed. For the foregoing reasons, the Commission should follow the *Macleod USA* ruling and grant this

⁶ *Grossman v. Public Util. Comm.* (1996), 5 Ohio St.2d 189.

motion for a protective order and order that no further discovery be had in this matter pending a ruling on AEP Ohio's August 16, 2012, motion to dismiss.

II. Alternatively, the Commission should grant a protective order to limit discovery.

In the alternative, if the Commission determines that discovery should continue, AEP Ohio respectfully requests that the Commission issue a protective order limiting Complainant's February 25, 2013, notice of deposition to provide for the depositions of only two individuals at this time.

The nature of this proceeding does not justify the burden and expense associated with deposing ten individuals. The Company has communicated to Complainants that it does not intend to call as witnesses all ten individuals identified in Complainants' notice of deposition. Furthermore, the Complainants have failed to articulate a specific basis for claiming the need to depose ten individuals even after the Company has offered to present for depositions two individuals who will fairly and thoroughly cover the issues raised in the complaint. In AEP Ohio's recent capacity case (Case No. 10-2929-EL-UNC), a case that involved issues of first impression for the Commission and hundreds of millions of dollars, four AEP Ohio witnesses were deposed. By contrast, in this proceeding Complainants are seeking compensation for lost food products as a result of a power outage that occurred during the unprecedented storms that tore through central Ohio last summer. Without making light of the Complaint, it is obvious that the nature of this proceeding does not rise to the level of requiring ten depositions—especially considering it is the Complainants' intention to conduct all ten depositions before the Commission rules on the Company's motion to dismiss.

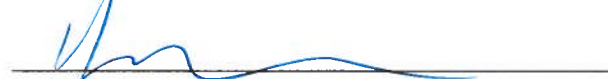
As an alternative to Complainants' notice of deposition and in an effort to resolve this discovery dispute without Commission involvement, AEP Ohio has proposed to schedule the depositions of two individuals who will fairly and thoroughly cover the issues raised in the Complaint. The Company has offered to produce for depositions Selwyn Dias and Steve LaJeunesse, both of whom were identified in Complainants' notice of deposition. Mr. Dias is the Vice President of Distribution Operations for AEP Ohio and served as regulatory and governmental liaison for storm restoration efforts. Mr. LaJeunesse has been a utility forester with the Company for over fourteen years and oversaw the dispatch of tree trimming crews during the Company's storm restoration efforts. AEP Ohio has indicated that it intends to call both of these individuals as witnesses during the hearing. Furthermore, the Company has communicated to Complainants that after the depositions of Messers. Dias and LaJeunesse, Complainants can revisit whether additional depositions will be necessary. Notwithstanding Complainants' initial support of the Company's proposed alternative, Complainants reverted to insisting on deposing the other eight individuals identified in the notice of deposition. Because the Commission may grant AEP Ohio's motion to dismiss, compelling AEP Ohio to produce ten witnesses for depositions prior to a ruling may prove wasteful and unduly burdensome. However, if the Commission determines that discovery should continue, AEP Ohio respectfully requests that the Commission issue a protective order limiting Complainants to deposing only Messers. Dias and LaJeunesse at this time.

CONCLUSION

For the foregoing reasons, AEP Ohio respectfully requests that the Commission issue a protective order providing that no further discovery be had in this matter pending a ruling on the

Company's August 16, 2012, motion to dismiss. In the alternative, if the Commission determines that discovery should continue, AEP Ohio respectfully requests that the Commission issue a protective order limiting Complainant's February 25, 2013 notice of depositions to provide for the depositions of only two individuals as described herein.

Respectfully submitted,



Steven T. Nourse
Yazen Alami
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
(614) 716-2920
(614) 716-2950 *facsimile*
stnourse@aep.com
yalami@aep.com
Counsel for Respondent

EXHIBIT 1

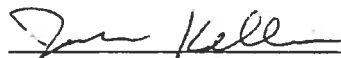
**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

Evelyn and John Keller,)	
)	
Complainants,)	
)	
v.)	
)	Case No. 12-2177-EL-CSS
Ohio Power Company,)	
)	
Respondent.)	

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that Complainants will take the depositions upon oral examination of the following individuals : Ty Carpenter, Steve LaJeunesse, Selwyn Dias, Fred Mottice, Michele Jeunelot, Keith Ater, Cliff Moritz, Tim Flaherty, Tony Dicenzo, and Grady West, beginning at 9 a.m. on March 14, 2013 and continuing one after another until 5:00 p.m. that day, and then commencing at 9:00 a.m. the following day, upon the same schedule, until completed. The depositions will be conducted at the offices of Respondent in Columbus, Ohio. These depositions will be taken before a notary public or other officer duly authorized to administer oaths and will be recorded by stenographic means.

Each deponent is ordered to bring with him or her and produce at the beginning of the deposition any documents within such deponent's possession or control which relate to any issue in this action.



John K. Keller (0019957)
1424 Jewett Road
Powell, OH 43065
(614) 477-2087
jkev@columbus.rr.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Deposition was served by electronic mail upon counsel for Respondents at the address listed below on this 25th day of February, 2013.

Steven T. Nourse
Yazen Alami
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
stnourse@aep.com
yalami@aep.com

/S/

John Keller

EXHIBIT 2

AFFIDAVIT OF STEVEN T. NOURSE

Steven T. Nourse, being first duly sworn, states as follows:

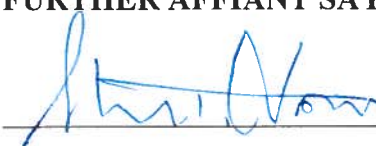
1. I submit this Affidavit in support of AEP Ohio's Motion for Protective Order filed in this proceeding on March 13, 2013.
2. I am currently employed in the Legal Department of American Electric Power Service Corporation ("AEPSC") as Senior Counsel. In this capacity, I am responsible for representing AEP Ohio in proceedings before the Public Utilities Commission of Ohio, including this proceeding.
3. After receiving Complainants' February 25, 2013, notice of deposition, I had a telephone conversation with counsel for Complainants during which I informed him that the Company would not agree to produce for depositions beginning on March 14, 2013, the ten individuals identified in the notice. I proposed instead that the Company would produce for depositions two individuals identified in the notice, Messers. Dias and LaJeunesse, and that those individuals would fairly and thoroughly cover the issues raised in the Complaint. Also during the telephone conversation I informed counsel for Complainants that the Company was willing to revisit the need for additional depositions after the depositions of Messers. Dias and LaJeunesse. It was my understanding that counsel for Complainants was amenable to this approach.
4. I confirmed the Company's alternative proposal in a March 8, 2013, email to counsel for Complainants and proposed April 3rd and 4th as potential dates for the depositions of Messers. Dias and LaJeunesse. In a subsequent email on that same day, Counsel for Complainants inquired into the availability of the other eight individuals identified in the

notice for deposition. I reiterated that the Company would not be producing those individuals for depositions and again offered the April dates for the depositions of Messers. Dias and LaJeunesse. Counsel for Complainants responded that he was happy to reschedule the depositions of Messers. Dias and LaJeunesse until April 3 and 4, but that he was not willing to forego deposing the other eight individuals and that he would proceed as noticed unless the Company obtained a protective order.

5. In a March 11, 2013, email in response to counsel for Complainants' statement that he was unwilling to forego deposing the other eight individuals, I requested that he specify, by close of business on March 13, 2013, what personal knowledge of factual information supporting the Complaint is held by each individual named in the notice of deposition and to explain why each proposed deponent is necessary. As of the filing of this motion, I have not received any response from counsel for Complainants.


6. I attach to this Affidavit the email correspondence between counsel for Complainants and myself concerning Complainants' February 25, 2013 notice of deposition.

FURTHER AFFIANT SAYETH NAUGHT.



STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

Sworn to before me and subscribed in my presence this 13th day of March, 2013.



Notary Public



Ann Dawn Clark
Notary Public-State of Ohio
My Commission Expires
November 16, 2015



RE: PUCO Case No. 12-2177---Keller v. Ohio Power Company

Keller, John K. to: stnourse@aep.com

03/11/2013 10:50 AM

Cc: "yalami@aep.com"

Thank you for your prompt response. I certainly will arrange for a conference room and a court reporter, at my expense. I am willing to do these depositions at your office, for your convenience, if you wish, but I take it you would prefer to hold these someplace else and will proceed accordingly unless you tell me you would prefer your offices.

I appreciate your telling me that you will not produce anyone for depositions on April 14; I am not agreeing to that, but understand what you are saying. I have offered to reschedule these other depositions, and that offer remains open, but if you are unwilling to agree on new dates, then I have no choice but to proceed per our notices, unless and until you obtain a protective order.

The reason for our wanting to depose these persons is that you identified each of these in the answers to discovery requests as having, or potentially having, relevant information.

From: stnourse@aep.com [mailto:stnourse@aep.com]

Sent: Monday, March 11, 2013 9:27 AM

To: Keller, John K.

Cc: yalami@aep.com

Subject: RE: PUCO Case No. 12-2177---Keller v. Ohio Power Company

Good morning, Mr. Keller:

(1) With respect to your original notice of deposition, we have been discussing alternatives since the time you sent out the notice. As you have already been informed, none of our witnesses will be made available on March 14. It is up to you if you want to file a motion to compel regarding your notice of deposition in light of our prior discussions.

(2) With respect to the deposition of our two planned witnesses for this case, you can provide office space in Columbus for the depositions and we will bring the witnesses to your offices. We can start with Mr. Dias on April 3 and Mr. LaJeunesse on April 4, at 9:00 am each day. You are responsible for bearing the cost of the depositions, including the court reporter. Please confirm you have office space available and have secured a reporter for those dates.

(3) Regarding the remaining personnel that you seek to depose, we do intend to file a motion for protection. Before concluding that we are at an impasse and filing a motion, however, I would like to understand your specific basis for claiming the need to depose each of the remaining personnel. By COB Wednesday March 13, please specify what personal knowledge of factual information supporting your claims is held by each individual named in your notice of deposition and explain why each proposed deponent is necessary.

Thanks,
Steven T. Nourse
Senior Counsel
American Electric Power Service Corporation

Legal Department, 29th Floor
1 Riverside Plaza
Columbus, Ohio 43215-2373
Phone: (614) 716-1608 Audinet: 8-200-1608
Fax: (614) 716-2014 Audinet: 8-200-2014
Email: stnourse@aep.com

From: "Keller, John K." <JKKeller@vorys.com>
To: "stnourse@aep.com" <stnourse@aep.com>
Cc: "yalami@aep.com" <yalami@aep.com>, "yalami@aep.com" <yalami@aep.com>
Date: 03/08/2013 08:19 PM
Subject: RE: PUCO Case No. 12-2177---Keller v. Ohio Power Company

I'm happy to reschedule the 2 people until April 3 and 4. Please suggest time and place so I can schedule court reporter. I am not willing to forgo the other 8. While I am happy to discuss rescheduling those, if you are just refusing to agree they can be deposed, I have no choice but to proceed as noticed with those 8, unless you obtain a protective order. As an alternative, if you propose dates for the other 8 during early April, I may find I don't need them when I depose the 2, but I'm not willing to wait if you are refusing to have them deposed.

From: stnourse@aep.com [<mailto:stnourse@aep.com>]
Sent: Friday, March 08, 2013 4:18 PM
To: Keller, John K.
Cc: yalami@aep.com; yalami@aep.com
Subject: RE: PUCO Case No. 12-2177---Keller v. Ohio Power Company

Mr. Keller:

Under OAC 4901-1-12, parties normally respond to motions to dismiss within 15 days of the motion being filed. In many more complex PUCO cases, parties are frequently required to respond to motions in 5 or 7 days. So while I understand you would like more time, I think it fair to say that you will have more time than most -- even after the April depositions -- to respond to our motion to dismiss. Frankly, that is not a factor in the scheduling or scope of the deposition from our perspective.

Second, as we discussed a few weeks ago, AEP is not willing to agree to depositions of any of our folks beyond the two witnesses we plan to present. And we think those two witnesses will fairly and thoroughly cover the issues raised in the complaint. At the time we discussed these matters, you agreed to conduct the two depositions and then reassess whether additional depositions were needed in your opinion and, accordingly, reconsider whether you wanted to formally pursue the dispute about the need for additional depositions.

Given the wide open time frame of this case and in considering the impending Spring vacation schedules in March of the witnesses and attorneys, the early April dates we gave you are reasonable and the best we can do at this time.

Please let us know if you would like to confirm those dates as we cannot place indefinite holds on our schedules if you do not plan to go forward with the two depositions.

Thanks,
Steven T. Nourse
Senior Counsel
American Electric Power Service Corporation
Legal Department, 29th Floor
1 Riverside Plaza
Columbus, Ohio 43215-2373
Phone: (614) 716-1608 Audinet: 8-200-1608
Fax: (614) 716-2014 Audinet: 8-200-2014
Email: stnourse@aep.com

From: "Keller, John K." <JKKeller@vorys.com>
To: "yalami@aep.com" <yalami@aep.com>
Cc: "stnourse@aep.com" <stnourse@aep.com>
Date: 03/08/2013 02:48 PM
Subject: RE: PUCO Case No. 12-2177---Keller v. Ohio Power Company

My concern is with timing. If we do these two in April, and then need to schedule and do others, I'm going to be pushed to comply with deadline to respond to your motion. I feel like I need to move more quickly and would appreciate your thoughts.

From: yalami@aep.com [<mailto:yalami@aep.com>]
Sent: Friday, March 08, 2013 2:37 PM
To: Keller, John K.
Cc: stnourse@aep.com
Subject: Re: PUCO Case No. 12-2177---Keller v. Ohio Power Company

It was our understanding that, as a result of our phone conversation with you a few weeks ago, we would proceed with the depositions of Messrs. Dias and LaJeunesse and then revisit after those depositions whether it was necessary to depose the other individuals. Accordingly, we have not confirmed the availability of the other individuals.

Yazen Alami
AEP Service Corporation
Legal Department
1 Riverside Plaza, 29th Floor
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Office: (614) 716-2920
Cell: (614) 634-8516

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From: "Keller, John K." <JKKeller@vorys.com>
To: "yalami@aep.com" <yalami@aep.com>
Date: 03/08/2013 11:33 AM
Subject: Re: PUCO Case No. 12-2177---Keller v. Ohio Power Company

What about the other people, are they good on the dates I suggested?

From: yalami@aep.com [<mailto:yalami@aep.com>]
Sent: Friday, March 08, 2013 08:38 AM
To: Keller, John K.; jkev@columbus.rr.com <jkev@columbus.rr.com>
Cc: stnourse@aep.com <stnourse@aep.com>
Subject: PUCO Case No. 12-2177---Keller v. Ohio Power Company

Mr. Keller,

Thank you for your willingness to seek alternatives to your proposed depositions dates. At this time, Messrs. Dias and LaJeunesse--both of whom the Company has indicated will be witnesses at the hearing--are available for depositions on April 3 and 4. Concluding these depositions on April 4 will leave nearly a month before the May 2 deadline for Complainants' response to the Company's motion to dismiss. Please let me know if these dates are acceptable to you.

Thank you again for your willingness to seek alternative dates.

Regards,

Yazen Alami
AEP Service Corporation
Legal Department
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
Office: (614) 716-2920
Cell: (614) 634-8516

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From: "Keller, John K." <JKKeller@vorys.com>
To: "yalami@aep.com" <yalami@aep.com>
Date: 02/25/2013 10:00 AM
Subject: FW: Scanned document from sharescan (sharescan@vorys.com)

Attached please find a notice of deposition for the persons identified in your discovery responses. If I receive the requested information about what each of these people knows, perhaps it will not be necessary to depose each of them. Further, if the proposed dates or locations are not satisfactory to you, I'm happy to seek alternatives. Thank you.

-----Original Message-----

From: sharescan
Sent: Monday, February 25, 2013 9:53 AM
To: Keller, John K.
Subject: Scanned document from sharescan (sharescan@vorys.com)

From the law offices of Vorys, Sater, Seymour and Pease LLP.

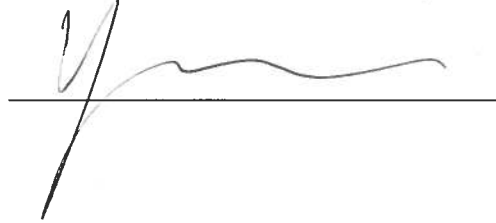
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail upon counsel for Complainant at the address listed below on this 13th day of March, 2013.

A handwritten signature in dark ink, appearing to be 'John Keller', is written over a horizontal line.

John Keller
1424 Jewett Road
Powell, Ohio 43065
jkev@columbus.rr.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/13/2013 4:57:37 PM

in

Case No(s). 12-2177-EL-CSS

Summary: Motion for Protective Order electronically filed by Mr. Yazen Alami on behalf of Ohio Power Company