

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Ohio Power Company,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 21-990-EL-CSS
	)	
Nationwide Energy Partners, LLC	)	
	)	
Respondent.	)	

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**OHIO POWER COMPANY’S MEMORANDUM CONTRA  
NATIONWIDE ENERGY PARTNERS, LLC’S MOTION FOR PROTECTIVE ORDER  
OR, IN THE ALTERNATIVE, FOR A STAY OF DISCOVERY**

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Complainant Ohio Power Company (“AEP Ohio”) submits this Memorandum Contra the November 24, 2021 Motion for Protective Order or, in the Alternative, for a Stay of Discovery of Respondent Nationwide Energy Partners, LLC (“NEP”). AEP Ohio will allow OCC to respond to NEP’s arguments directed at the appropriateness of OCC’s intervention and the scope of its specific discovery requests. However, AEP Ohio strongly opposes NEP’s motion to the extent NEP seeks to preclude *all* discovery (including discovery conducted by AEP Ohio) until after the Commission rules on NEP’s motion to dismiss. *See, e.g.*, NEP Motion at 1 (“In the alternative, NEP seeks a stay on discovery pending a ruling on these motions.”).<sup>1</sup>

In this case, AEP Ohio has raised several questions that the Commission must decide, the most important of which is this: Is NEP an “electric light company” and “public utility” under Ohio law? This is a fact-intensive question, and the parties should be permitted ample

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<sup>1</sup> Although NEP defines the term “Discovery Requests” to encompass OCC’s pending questions for which it seeks protection, NEP also references a broader concept of a “stay on discovery” multiple times in discussing alternative relief its motion.

opportunity for discovery to develop the relevant facts. Discovery is an important element of cases such as this, *see generally* OAC 4901-1-16, and it is critical that the Commission render a fully informed decision that benefits from the pre-hearing discovery process.

NEP believes this case should be dismissed, and therefore NEP believes it should not have to engage in discovery. In its motion to dismiss, however, NEP raises case-specific procedural objections such as ripeness, and these are meritless, as demonstrated in AEP Ohio's memorandum contra NEP's motion to dismiss. Importantly, moreover, the question raised here – is NEP a “public utility” – *must be answered at some point by the Commission*. That has now been confirmed twice by Ohio courts: first, when the Ohio Supreme Court mandated that the Commission reconsider whether NEP is a “public utility,” *see In re Wingo*, 2020-Ohio-5583, ¶ 26; and second, when NEP sought to put this exact same dispute before the Franklin County Court of Common Pleas, and the court dismissed NEP's suit on the ground that the issues “require the expertise of the PUCO and are solely within the PUCO's jurisdiction,” *see* AEP Ohio's Notice of Additional Authority (Dec. 8, 2021) (attaching Decision Granting Motion to Dismiss at 6, *Nationwide Energy Partners, LLC vs. Ohio Power Co.*, Case No. 21CVH07-7186 (Franklin Cty. Court of Common Pleas, Dec. 3, 2021)). Because the Commission must decide whether NEP is a “public utility,” there is no purpose in staying discovery from AEP Ohio further probing that question.

NEP's motion is further flawed because it assumes that the Commission will decide its motion to dismiss prior to hearing. NEP argues that no parties will be harmed by a stay as they have yet to issue discovery and discovery is not necessary to determine the pending motion to dismiss. NEP Motion at p. 4. Sometimes the Commission reserves judgment on a motion to dismiss until after a hearing. If the Commission were to adopt that approach here, it would be

profoundly unfair to stay discovery because AEP Ohio would be denied its right to develop a factual record to present at hearing. Alternatively, in the event the Commission denies the motion to dismiss and then proceeds to hearing, the parties will then need time to conduct discovery, which will result in undue delay of AEP Ohio's complaint.

This proceeding raises valid questions that the Commission (and only the Commission) must decide. There are no grounds to stay discovery from AEP Ohio or otherwise delay the Commission's process. The Commission should adopt a procedural schedule so that the parties can conduct discovery and present their arguments at hearing and the Commission can render a decision on the questions raised here in an orderly and timely manner.

### **CONCLUSION**

For the foregoing reasons, NEP's motion for a protective order or, in the alternative, for a stay of discovery should be denied insofar as it seeks a stay of discovery in this proceeding that would apply to AEP Ohio.

Respectfully submitted,

/s/ Steven T. Nourse

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## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 8th day of December, 2021, via email.

/s/ Steven T. Nourse  
Steven T. Nourse

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**12/8/2021 4:27:58 PM**

**in**

**Case No(s). 21-0990-EL-CSS**

Summary: Notice MEMORANDUM CONTRA NATIONWIDE ENERGY PARTNERS,  
LLC'S MOTION FOR PROTECTIVE ORDER OR, IN THE ALTERNATIVE, FOR A  
STAY OF DISCOVERY electronically filed by Mr. Steven T. Nourse on behalf of  
Ohio Power Company