

**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 TO STRIKE  
OHIO POWER COMPANY’S NOTICE OF ADDITIONAL AUTHORITY OR, IN THE  
ALTERNATIVE, MOTION FOR LEAVE TO FILE A SUR-REPLY INSTANTER**

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Complainant Ohio Power Company (“AEP Ohio”) submits this Memorandum Contra the “Motion to Strike Ohio Power Company’s Unauthorized Notice of Additional Authority or, in the Alternative, Motion for Leave to File a Sur-Reply Instanter” filed by Respondent Nationwide Energy Partners, LLC (“NEP”) on December 22, 2021.

Contrary to NEP’s claims, AEP Ohio’s Notice of Additional Authority was proper and highly relevant to the Commission’s decision on NEP’s motion to dismiss. The additional authority that AEP Ohio provided to the Commission was not merely instructive but rather a case filed by NEP against AEP Ohio over the exact same facts at issue here. NEP accuses AEP Ohio of attempting to “sidestep established procedural rules,”<sup>1</sup> but the only procedural gamesmanship

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<sup>1</sup> NEP cites Supreme Court Rule 17.09(B), but the rules of the Ohio Supreme Court do not apply here. Instead, the Commission’s rules are silent as to the form of a filing that brings additional authority to the Commission’s attention, and in this vacuum parties have adopted a wide variety of practices. *See, e.g.*, Notice of Additional Authority by Duke Energy Ohio, Inc., *In re Application of Duke Energy Ohio, Inc.*, Case No. 16-576-EL-POR (Dec. 16, 2019); Notice of Additional Authority by Ohio Telecom Association, *In re Commission Review of OAC 4901:1-3*, Case No. 19-834-AU-ORD (Aug. 18, 2020); Notice of Additional Authority by Republic Wind, LLC, *In re Application of Republic Wind, LLC*, Case No. 17-

here is on the part of NEP. It was NEP who waited until the day it filed its reply in support of its motion to dismiss before filing its suit against AEP Ohio in the Franklin County Court of Common Pleas. NEP's filing of that suit was directly opposed to NEP's argument to the Commission that this dispute is not ripe for decision.<sup>2</sup> Even then, AEP Ohio did not rush to the Commission to explain what NEP had done. Rather, AEP Ohio appropriately waited until after the Common Pleas case had been dismissed in favor of the Commission's exclusive jurisdiction before bringing this additional authority to the Commission's attention. AEP Ohio's actions were proper and its Notice of Additional Authority should not be stricken.

Respectfully submitted,



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(willing to accept service by email)

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2295-EL-BGN (Mar. 12, 2020); Notion of Supreme Court Authority by Dayton Power & Light Co., *In re Application of the Dayton Power & Light Co.*, Case Nos. 12-426-EL-SSO et seq. (June 3, 2016).

<sup>2</sup> In its "Sur-Reply," NEP's duplicity is laid bare: NEP argues that "AEP Ohio's claims against NEP are not ripe" but that "NEP's claims against AEP Ohio *are* ripe." NEP Sur-Reply at 1 (emphasis added). This does not make sense. Putting aside the fact that NEP has not raised any "claims" in this Complaint proceeding, there is one dispute at issue, and both parties' sides of that dispute (i.e., both parties "claims") are ripe for resolution by the Commission.

Counsel for Ohio Power Company

## 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 28<sup>th</sup> day of December, 2021, via email.



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Commission of Ohio Docketing Information System on  
12/28/2021 3:00:53 PM**

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

Summary: Memorandum Memorandum Contra- Motion to Strike electronically filed  
by Mr. Steven T. Nourse on behalf of Ohio Power Company