

**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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**MOTION OF OHIO POWER COMPANY FOR PROTECTIVE ORDER AND  
REQUEST FOR EXPEDITED RULING**

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Pursuant to Ohio Adm.Code 4901-1-12 and 4901-1-24(A)(2), Complainant Ohio Power Company (“AEP Ohio”) respectfully moves the Public Utilities Commission of Ohio (“Commission”) for an order protecting AEP Ohio from designating a corporate witness to discuss matters outside the scope of this proceeding in response to Respondent Nationwide Energy Partners, LLC (“NEP”)’s Second Amended Notice of Deposition filed on October 5, 2022. Notably, NEP has already asked the Commission to compel AEP Ohio to produce a myriad of documents that are wholly irrelevant to this proceeding and, in a few cases, subject to the attorney-client privilege or work product doctrine. AEP Ohio opposed that motion, which is now fully briefed and pending before the Commission.

Rather than wait for the Commission to rule on the relevancy of its discovery requests, NEP has decided to take matters into its own hands. On October 5, 2022 (two days before it filed its reply brief on its Motion to Compel), NEP noticed AEP Ohio for a corporate deposition concerning 47 topics, including some of the *very same* topics at issue in NEP’s pending motion. But NEP’s attempt to dress its discovery requests in different clothes does not change the irrelevant

nature of the information it seeks. NEP's Second Amended Notice of Deposition expresses a clear intent on covering matters outside the scope of this proceeding – in a deposition scheduled to occur this week on October 13. Therefore, an order from the Commission is necessary to protect AEP Ohio from annoyance, embarrassment, oppression, or undue burden or expense. The reasons supporting this motion are provided in the attached Memorandum in Support and the attached affidavit of Steven T. Nourse. In accordance with Ohio Adm.Code 4901-1-12(C), AEP Ohio requests an expedited ruling in advance of the Rule 21(F) deposition scheduled for October 13, 2022 at 10 am.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse (0046705), Counsel of Record  
Michael J. Schuler (0082390)

American Electric Power Service Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215

Telephone: (614) 716-1608 (Nourse)

Telephone: (614) 716-2928 (Schuler)

Email: [stnourse@aep.com](mailto:stnourse@aep.com)

Email: [mjschuler@aep.com](mailto:mjschuler@aep.com)

Matthew S. McKenzie (0091875)

M.S. McKenzie Ltd.

P.O. Box 12075

Columbus, Ohio 43212

Telephone: (614) 592-6425

Email: [matthew@msmckenzieltld.com](mailto:matthew@msmckenzieltld.com)

(willing to accept service by email)

**Counsel for Ohio Power Company**

### **MEMORANDUM IN SUPPORT**

On September 16, 2022, NEP filed a Motion to Compel Discovery (the “Motion”), seeking an assortment of information regarding matters outside the scope of this proceeding. On October 3, 2022, AEP Ohio filed a Memorandum Contra to NEP’s Motion, explaining that the information sought exceeded the scope of reasonable discovery, as it was neither relevant nor probative to the subject matter at issue. NEP filed its Reply in Support of its Motion on October 7, 2022. Accordingly, the Motion is now fully briefed and pending before the Commission. To date, the Commission has not compelled AEP Ohio to produce the requested information.

Now, NEP is trying a different tactic. On October 5, 2022, NEP filed a Second Amended Notice for Deposition, notifying AEP Ohio that it intends to take a corporate deposition regarding 47 listed topics (including many subtopics). Importantly, three of those topics contain the *same* subject matter at issue in NEP’s Motion. NEP knows these matters are pending before the Commission; after all, it was NEP who asked the Commission to compel discovery on these issues. And NEP is also aware that AEP Ohio specifically objected to these topics as overbroad, irrelevant, and subject to the attorney-client privilege and work product doctrine. Nonetheless, NEP included the topics in its notice anyway. NEP’s incessant desire to expand the scope of this proceeding is not only contrary to Ohio law, but is also a clear attempt to unreasonably annoy, embarrass, or oppress AEP Ohio. Doing a corporate deposition is merely another form of discovery and is distinct from deposing a witness about their testimony. Therefore, an order is necessary to protect AEP Ohio from NEP’s improper use of the discovery process.

In order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, Rule 4901-1-24(A)(4), Ohio Adm.Code, authorizes the Commission to grant a protective order which provides that “certain matters not be inquired into.” The scope of discovery in a Commission proceeding is governed by Rule 4901-1-16(B), Ohio Adm.Code, which permits discovery of “any matter, not privileged, which is relevant to the subject matter of the proceeding” and which “appears to be reasonably calculated to lead to the discovery of admissible evidence.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, ¶83 (finding that this standard is “similar to Civ.R. 26(B)(1), which governs the scope of discovery in civil cases.”); *see also* R.C. 4903.082 (“[T]he Rules of Civil Procedure should be used wherever practicable.”). Additionally, Rule 4901-1-21(A) allows parties to “take the testimony of any other party or person . . . by deposition upon oral examination with respect to any matter within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code.” In response to a party’s motion showing that “the examination is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass, or oppress the deponent or party,” the Commission may “order the person conducting the examination to cease taking the deposition, or may limit the scope and manner of taking the deposition.” Ohio Adm.Code 4901-1-21(J).

For similar reasons set forth in AEP Ohio’s Memorandum Contra to NEP’s Motion, the Commission should order NEP to limit its deposition to matters related to this proceeding, and to refrain from asking questions pertaining to (1) the Northtowne complex, (2) communications regarding AEP Ohio’s legislative positions, and (3) AEP Ohio’s communications regarding its Joint Defense Agreement with Duke Energy Ohio. These three topics, which are listed as Deposition Topic Nos. 30, 34, 37 and 39, respectively, reach far beyond the scope of this case. First, the Northtowne apartment complex is the subject of another proceeding before the

Commission and has no bearing on the claims, counterclaims and defenses presented here. While NEP argues that the facts and circumstances related to its request to convert the Northtowne complex help form the basis of its counterclaim against AEP Ohio, NEP has conveniently failed to mention that NEP did not even make the request to convert Northtowne until *after* it was granted leave to file its counterclaims. (*See* AEP Ohio’s Mem. in Opp. to NEP’s Motion at 6-8.) Accordingly, Northtowne’s connection to this case is not relevant to the claims made in the Complaint or the Counterclaims. Second, NEP requests AEP Ohio designate a corporate representative to discuss “AEP Ohio’s participation and communications in proposed submetering legislation at any level of government.” (Second Amend. Notice of Dep. at 6, Topic No. 34.) AEP Ohio’s legislative positions are wholly separate and apart from this case, and inquiry into such matters would unduly expand the scope of the proceeding and create a chilling effect on AEP Ohio’s exercise of past and future free speech. (*See* AEP Ohio’s Mem. in Opp. at 12-14.) Lastly, NEP seeks to depose an AEP Ohio corporate representative regarding:

AEP Ohio’s communications (including communications by legal counsel) with any other electric distribution utility (including its legal counsel) including, but not limited to, Ohio Edison, the Toledo Edison Company, the Cleveland Electric Illuminating Company, AES Ohio, and Duke Energy of Ohio, between October 1, 2020 and the present date referring to or relating to submetering, master meter service, or NEP.

(Second Amend. Notice of Dep. at 7, Topic No. 37.) Ironically, NEP does not even attempt to hide its intentions to improperly request information subject to the joint defense privilege, as it specifically expands the topic to include “communications by legal counsel.” Indeed, this topic is likely a broad attempt to sweep in irrelevant and privileged information regarding AEP Ohio and Duke Energy Ohio’s communications related to their Joint Defense Agreement, which NEP has sought in its Motion. (*See* AEP Ohio’s Mem. in Opp. at 10-12.) But NEP’s request to depose

AEP Ohio's corporate representatives regarding privileged communications is entirely inappropriate and outside the bounds of Ohio law. (*Id.*)

Therefore, for the reasons provided above and set forth in opposition to NEP's pending Motion to Compel, AEP Ohio respectfully requests that the Commission issue an expedited ruling and grant its motion for protective order. In particular, AEP Ohio requests the Commission issue an order providing that NEP may not inquire into matters outside the scope of this proceeding prior to the Rule 21(F) deposition scheduled for 10am on October 13, 2022.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse (0046705), Counsel of Record  
Michael J. Schuler (0082390)  
American Electric Power Service Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215  
Telephone: (614) 716-1608  
Email: [stnourse@aep.com](mailto:stnourse@aep.com)  
[mjschuler@aep.com](mailto:mjschuler@aep.com)

Matthew S. McKenzie (0091875)  
M.S. McKenzie Ltd.  
P.O. Box 12075  
Columbus, Ohio 43212  
Telephone: (614) 592-6425  
Email: [matthew@msmckenzieltd.com](mailto:matthew@msmckenzieltd.com)

(willing to accept service by email)

Counsel for Ohio Power Company

## CERTIFICATE OF SERVICE

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 11<sup>th</sup> day of October, 2022, via email.

/s/ Steven T. Nourse  
Steven T. Nourse

Email service list:

Michael J. Settineri  
Anna Sanyal  
Andrew Guran  
Vorys, Sater, Seymour and Pease LLP  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
[aasanyal@vorys.com](mailto:aasanyal@vorys.com)  
[apguran@vorys.com](mailto:apguran@vorys.com)

Drew B. Romig  
Nationwide Energy Partners, LLC  
[dromig@nationwideenergypartners.com](mailto:dromig@nationwideenergypartners.com)

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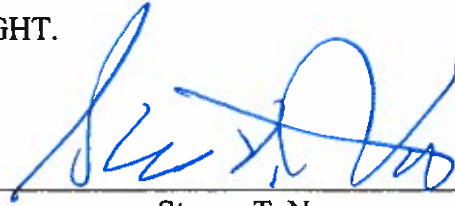
**AFFIDAVIT OF STEVEN T. NOURSE**

I, Steven T. Nourse, being first duly sworn, hereby depose and state as follows based on my personal knowledge and belief:

1. I am employed by Ohio Power Company, a wholly owned subsidiary of American Electric Power Company, Inc. ("AEP Ohio"), as Vice President – Legal. My business address is 1 Riverside Plaza, Columbus, Ohio 43210.
2. I am submitting this Affidavit in support of AEP Ohio's Motion for Protection.
3. With respect to the efforts taken by the parties to resolve the discovery disputes at issue, an impasse was reached after making reasonable efforts as described in the Affidavit of Counsel attached to NEP's September 16, 2022 Motion to Compel that covers these same topics and underlying discovery disputes.

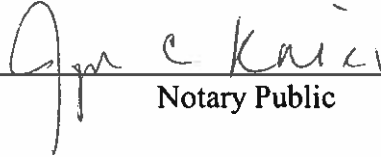


FURTHER AFFIANT SAYETH NAUGHT.



Steven T. Nourse

Sworn to before me and subscribed in my presence this 11<sup>th</sup> day of October, 2022.



Notary Public



JACLYN C KNIES  
Notary Public, State of Ohio  
My Commission Expires 10-12-2022

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**10/11/2022 9:51:36 AM**

**in**

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

Summary: Motion Motion of Ohio Power Company for Protective Order and  
Request for Expedited Ruling electronically filed by Mr. Steven T. Nourse on behalf  
of Ohio Power Company