

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**OHIO POWER COMPANY’S MEMORANDUM CONTRA
NATIONWIDE ENERGY PARTNERS, LLC’S MOTION TO QUASH SUBPOENA**

Under Ohio Administrative Code (“OAC”) 4901-1-12(B)(1), Ohio Power Company (“AEP Ohio”) submits this Memorandum Contra the October 17, 2022, Motion to Quash Ohio Power Company’s Motion for a Subpoena and Request For Expedited Treatment or, in the Alternative, Condition the Allowance of Deposition With Limitation (“Motion to Quash”) filed by Nationwide Energy Partners, LLC (“NEP”) in this proceeding. AEP Ohio’s subpoena of NEP President T.J. Harper is reasonable, and NEP’s Motion to Quash should be denied for several reasons.

First, contrary to NEP’s claim (Motion to Quash at 3), AEP Ohio has not acted in “retaliation” but rather has attempted to de-escalate the conflict between the parties concerning subpoenas. Indeed, in the email from AEP Ohio counsel quoted in NEP’s Motion to Quash (at 3), AEP Ohio’s counsel was seeking an outcome in which both parties refrain from issuing subpoenas. AEP Ohio’s counsel was proposing a productive, efficient resolution on the topic of subpoenas, and was explaining that only a mutual agreement not to issue subpoenas would de-escalate the issue. NEP seems to believe that AEP Ohio should have unilaterally waived its right

to seek subpoenas, while NEP was allowed to subpoena whomever it likes. Obviously, such one-sided discovery is unfair and is not contemplated in the rules.

Second, it is not “retaliation” for AEP Ohio to exercise its rights to discovery under the rules, and there is no question that OAC 4901-1-25 allows AEP Ohio to seek a subpoena of Mr. Harper. Again, NEP did not hesitate to seek its own subpoena but objected when AEP Ohio relied on the same discovery rights. The Commission should reject this plainly hypocritical position.

Third, NEP is wrong to suggest that AEP Ohio’s deposition of Mr. Harper would be duplicative of the deposition of NEP witness Ringenbach. As NEP notes, the deposition of Ms. Ringenbach began on Friday, October 14, 2022, and will continue on Tuesday, October 17, 2022. Although Ms. Ringenbach was designated by NEP as its corporate witness for all topics in AEP Ohio’s corporate deposition notice, already in her deposition, Ms. Ringenbach has shown that she lacks critical knowledge and is unable to fulfill the role of corporate deponent with respect to certain topics. For instance, Ms. Ringenbach was designated as a corporate witness to discuss the meaning of NEP’s contracts, but she was unable to answer basic questions about those contracts, such as why important provisions are included in the contracts for some apartment complexes but “reserved” in others. AEP Ohio needs to depose Mr. Harper, NEP’s President and the signatory for all contracts at issue in this proceeding, to fill the gaps in Ms. Ringenbach’s understanding of the contracts and to make up for NEP’s failure to designate a knowledgeable individual on that issue. In this respect, AEP Ohio’s basis for deposing Mr. Harper parallels NEP’s argument that it needs to subpoena AEP Ohio employee Rybalt because of alleged deficiencies in the knowledge of AEP Ohio’s corporate designee. (AEP Ohio disagrees with NEP’s argument for the reasons set forth in AEP Ohio’s October 13, 2022 motion

to quash the subpoenas of Ms. Rybalt.) Moreover, Ms. Ringenbach has given conflicting answers to other questions about the contracts, such as by claiming that a defined, capitalized contractual term refers to one thing in one provision of the contract and refers to something different in a different version of the contract. AEP Ohio needs to question Mr. Harper to determine if NEP's President, and the contract's signatory, agrees with these inconsistent readings of the contract.

Fourth, AEP Ohio needs to depose Mr. Harper to clear up an important issue about when Mr. Harper signed certain amendments to the contracts. When asked about the apparent irregularity in signature dates, Ms. Ringenbach was not able to provide a definitive explanation. Only Mr. Harper, who actually signed the documents in question, can say when he signed them and can explain the apparent irregularity.

Fifth, the importance of deposing Mr. Harper goes beyond just this signature date issue, and the Commission should not grant NEP's "alternative" request (Motion at 1) that Mr. Harper's deposition be limited to this issue. As the President of NEP, Mr. Harper unquestionably has key information concerning the central issue in this case – namely, the "business" in which NEP is "engaged" under R.C. 4905.03(C). *See* May 6, 2022 Entry ¶ 26, Case No. 21-0990-EL-CSS ("[T]he primary focus of the complaint is on NEP and its business model and whether it is 'engaged in the business of supplying electricity' under R.C. 4905.03(C)."). In its Motion to Quash, NEP does not deny that Mr. Harper is responsible for all aspects of NEP's "business model and practices," and therefore he has knowledge of numerous facts relevant to the Commission's decision in this case. Mr. Harper's testimony, therefore, easily meets the standards for discovery and should be permitted to proceed.

For all these reasons, NEP's Motion to Quash should be denied, and AEP Ohio should be permitted to go forward with the deposition of Mr. Harper.

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

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

(willing to accept service by email)

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 17th day of October, 2022, via email.

/s/ Steven T. Nourse
Steven T. Nourse

Email service list:

Michael J. Settineri
Anna Sanyal
Andrew Guran
Thomas J. Whaling
Vorys, Sater, Seymour and Pease LLP
mjsettineri@vorys.com
aasanyal@vorys.com
apguran@vorys.com
tjwhaling@vorys.com

Drew Romig
Nationwide Energy Partners, LLC
dromig@nationwideenergypartners.com

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

10/17/2022 4:59:36 PM

in

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

Summary: Memorandum Ohio Power Company's Memo Contra Nationwide Energy Partners, LLC's Motion to Quash electronically filed by Mr. Steven T. Nourse on behalf of Ohio Power Company