

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**NATIONWIDE ENERGY PARTNERS, LLC’S MOTION TO QUASH**  
**OHIO POWER COMPANY’S MOTION FOR A SUBPOENA**

Nationwide Energy Partners, LLC (“NEP”) respectfully moves to quash the subpoena for Hearing Testimony served on Timothy J. Harper by Ohio Power Company (“AEP Ohio”). Provided that AEP Ohio does not voluntarily withdraw its motion, AEP Ohio has no valid basis to subpoena the President of NEP to confirm facts that can be equally provided by other NEP witnesses. Attached is a Memorandum in Support.

Respectfully submitted,

/s/ Anna Sanyal

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## MEMORANDUM IN SUPPORT

AEP Ohio issued a subpoena compelling Timothy J. Harper, NEP's President, to testify on October 28, 2022 during the hearing in this proceeding (the "Hearing Subpoena"). NEP understands that AEP Ohio may withdraw the Hearing Subpoena prior to the hearing; however, if AEP Ohio does not withdraw, the Hearing Subpoena should nonetheless be quashed. Specifically, based on AEP Ohio's own admission, the information that AEP Ohio seeks from Mr. Harper is not necessary to the adjudication of the merits of this matter. Rather, AEP Ohio issued that subpoena for the purpose of creating leverage over NEP in an attempt to force NEP to withdraw its subpoena requests. That is, AEP Ohio would retaliate by harassing NEP by issuing an unnecessary subpoena to NEP's President. Thus, the Commission should quash AEP Ohio's Hearing Subpoena to Mr. Harper.

The Commission may quash an "unreasonable or oppressive" subpoena under Ohio Adm.Code 4901-1-25(C). *See, e.g., In re Application of Champaign Wind, LLC*, Case No. 12-160-EL-BGN, Entry at 10-11 (Oct. 22, 2012) (quashing unduly broad and burdensome subpoena). AEP Ohio's subpoena is not only unreasonable and oppressive, it is improper retaliation. In the matter at bar, the Commission should quash the Hearing Subpoena issued by AEP Ohio to Mr. Harper because it is retaliatory and an improper tit-for-tat litigation strategy. Indeed, "[t]he purpose of discovery is to acquire information for trial." *Jackson v. Greger*, 110 Ohio St.3d 488, 2006-Ohio-4968, 854 N.E.2d 487, ¶ 7, fn. 1. However, AEP Ohio is not seeking testimony from Mr. Harper to obtain information; but instead, to retaliate against NEP.

AEP Ohio has made it abundantly clear that its purpose for issuing a subpoena to Mr. Harper is retaliation in response to discovery requests served by NEP. For example, when NEP sought the deposition of Ms. Rybalt, an AEP Ohio Director of Customer Care, AEP Ohio

attempted to force NEP into withdrawing this request by threatening “to subpoena Mr. Harper and go deep into all of the contracts and amendments with him.” (Mtn. to Quash Harper Subpoena for Dep. at Ex. A.) AEP Ohio has even made clear in its filings before the Commission that it seeks the testimony of Mr. Harper for blatantly retaliatory purposes. For example, AEP Ohio stated:

“NEP’s obstinate insistence on subpoenaing AEP Ohio personnel has compelled AEP Ohio to exercise its own rights to subpoena NEP personnel with pertinent information related to this proceeding.”

(AEP Ohio Oct. 12, 2022 Mtn. for deposition subpoena at p. 3.)

“Nevertheless, if the subpoena of Ms. Rybalt is quashed as AEP Ohio requests in this motion, AEP Ohio agrees that it will withdraw its subpoena of Mr. Harper so that the parties remain on the same level playing field.”

(AEP Ohio Oct. 12, 2022 Mtn. for deposition subpoena at p.4, n.1.)

AEP Ohio’s statements show that Mr. Harper’s testimony is not needed to obtain admissible evidence, but rather is being used in retaliation to NEP’s request to depose Ms. Rybalt. This is impermissible. *See In re of James M. Carpenter and Miriam G. Carpenter, Partners, dba Carpenter Radio Company, v., Acme Telephone Answering Service, Duo-Directional Communications, Inc., Procall, Inc., and Tower Communications, Inc.*, Pub. Util. Comm. No. 89-326-RC-CSS 1990 Ohio PUC LEXIS 201 at \*8 (Feb. 6, 1990) (emphasizing the “Commission’s unwillingness to tolerate the abuse or misuse of the adjudicatory process”); *Guerrieri v. Allstate Ins. Co.*, 8th Dist. Cuyahoga Nos. 73869, 73870, 75132, 75133, 1999 Ohio App. LEXIS 4049, at \*8 (Sep. 2, 1999), fn. 3 (“trial courts are not required to accommodate their litigation strategy when it involves an abuse of the discovery process.”). Accordingly, the subpoena should be quashed.

Respectfully submitted,

/s/ Anna Sanyal

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### **CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on October 21, 2022 upon all persons listed below:

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

Summary: Motion Motion to Quash Ohio Power Company's Motion for a Subpoena  
(Harper, Hearing) and Memorandum in Support electronically filed by Ms. Anna  
Sanyal on behalf of Nationwide Energy Partners, LLC