# BEFORE

# THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Application of Ohio Power Company to Initiate its gridSMART Phase 3 Project. | )  )  ) | Case No. 19-1475-EL-RDR |

**JOINT MOTION TO**

**SHORTEN THE PERIOD OF TIME TO RESPOND TO DISCOVERY**

**AND**

**REQUEST FOR EXPEDITED RULING**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

**OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

**OHIO MANUFACTURERS’ ASSOCIATION ENERGY GROUP**

**OHIO TELECOM ASSOCIATION**

**THE KROGER CO.**

The Ohio Manufacturers’ Association Energy Group, Ohio Telecom Association, Ohio Cable Telecommunications Association, The Kroger Co., and the Office of the Ohio Consumers’ Counsel (together “Joint Movants”), jointly file this Motion[[1]](#footnote-2) to shorten the period of time to respond to discovery from twenty (20) days to seven (7) calendar days, as permitted under Ohio Adm. Code 4901-1-17(G). Joint Movants also request an expedited ruling on this Motion, under Ohio Adm. Code 4901-1-12(C).[[2]](#footnote-3)

The reasons supporting this Joint Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

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| Bruce Weston (0016973)  Ohio Consumers’ Counsel  */s/ William J. Michael*  William J. Michael (0070921)  Counsel of Record  Amy Botschner O’Brien (0074423)  Ambrosia E. Wilson (0096598)  Assistant Consumers’ Counsel  **Office of the Ohio Consumers’ Counsel**  65 East State Street, 7th Floor  Columbus, Ohio 43215-4213  Direct: [Michael]: (614) 466-1291  Direct: [Botschner O’Brien]: (614) 466-9575  Direct: [Wilson]: (614) 466-1292  [william.michael@occ.ohio.gov](mailto:bryce.mckenney@occ.ohio.gov)  [amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)  ambrosia.wilson@occ.ohio.gov  (willing to accept service by e-mail) | /s/ *Kimberly W. Bojko*  Kimberly W. Bojko (0069402) (Counsel of Record)  Carpenter Lipps & Leland LLP  280 North High Street, Suite 1300  Columbus, Ohio 43215  Telephone: (614) 365-4100  bojko@carpenterlipps.com  (willing to accept service by email)  *Counsel for the Ohio Manufacturers’*  *Association energy Group*  */s/ Gretchen L. Petrucci*  Gretchen L. Petrucci (0046608)  VORYS, SATER, SEYMOUR AND PEASE LLP  52 East Gay Street  P.O. Box 1008  Columbus, Ohio 43216-1008  Tel. (614) 464-5407  glpetrucci@vorys.com  (willing to accept service by email)  *Counsel for the Ohio Cable Telecommunications Association* |
| */s/ Frank P. Darr*  Frank P. Darr (Reg. No. 0025469)  6800 Linbrook Blvd.  Columbus, Ohio 43235  614-390-6750  Fdarr2019@gmail.com  (willing to accept service via email)  Attorney for the Ohio Telecom Association | */s/* *Angela Paul Whitfield*  Angela Paul Whitfield (0068774) (Counsel of Record)  Carpenter Lipps & Leland LLP  280 North High Street, Suite 1300  Columbus, Ohio 43215  Telephone: (614) 365-4100  paul@carpenterlipps.com  (willing to accept service by email)  *Counsel for The Kroger Co.* |

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**MEMORANDUM IN SUPPORT**

On July 26, 2019, AEP filed an Application seeking approval to charge consumers for its gridSMART Phase 3 program. Consistent with the Attorney Examiners’ August 10, 2020 Entry, comments and reply comments were filed in September 2020.[[3]](#footnote-4) The parties engaged in settlement negotiations during Summer 2021.

Recently, the Attorney Examiners issued an Entry setting a procedural schedule for the case.[[4]](#footnote-5) Under it, AEP’s supplemental testimony is due October 15, 2021; the Public Utilities Commission of Ohio (“PUCO”) Staff’s and intervenors’ testimony is due November 10, 2021; and an evidentiary hearing is set for November 18, 2021.[[5]](#footnote-6) The amount of time between the filing of AEP’s supplemental testimony and when the PUCO Staff’s and intervenors’ testimony is due will leave the opportunity for only one round of written discovery on AEP’s supplemental testimony under the standard twenty (20) day discovery response timeline.[[6]](#footnote-7) Since the scope of that testimony and how it corresponds with the testimony filed more than two years ago is unknowable at this point, it is neither fair nor reasonable to restrict the amount of discovery in this manner. Accordingly, the Attorney Examiners should grant this Joint Motion to shorten the period of time to respond to discovery to seven (7) calendar days, as permitted under Ohio Adm. Code 4901-1-17(G).

The need for this relief is particularly compelling in light of the amount that AEP is seeking authority to collect, the unusual issues identified in the comments and reply comments, and the continued lack of cost/policy/legal justification provided for portions of the Application. Given that it is uncertain what AEP will say in its supplemental testimony to support its Application one round of written discovery does not fit the bill.

Joint Movants will have to engage in significant discovery to fully analyze AEP’s proposals and determine how consumers’ electric rates will be impacted. The Ohio Revised Code mandates that “[a]ll parties and intervenors shall be granted ample rights of discovery.”[[7]](#footnote-8)

Joint Movants represent a wide array of consumers (including residential, commercial, and industrial consumers) and other intervenors who will be impacted by the outcome of this proceeding. The Joint Movants are filing this Motion, as permitted under Ohio Adm. Code 4901-1-12, to request that the Attorney Examiners shorten the period of time to respond to discovery to seven (7) calendar days. Under Ohio Adm. Code 4901-1-17(G), an Attorney Examiner may, for good cause shown, shorten or enlarge the time period for discovery. Joint Movants contend that there is good cause to do so.

A shortened discovery response time will allow the parties a fair opportunity to conduct a full investigation of the important issues involved in this proceeding after AEP files its supplemental testimony. Additionally, a shortened response period should also better prepare the

Joint Movants so that they are able to engage in additional meaningful settlement discussions, if any.

A shortened discovery response period is not a novel concept. The PUCO has frequently shortened discovery response periods in its proceedings. This Motion is consistent with PUCO Entries in similar cases where the time period to respond to discovery was shortened. In those Entries, the PUCO stated:

Due to the abbreviated period for the start of the hearing, response time for discovery should be shortened \* \* \*. Discovery requests and replies shall be made by hand delivery, email or telefax. An attorney serving a discovery request shall attempt to contact the attorney upon whom the discovery request will be served in advance to advise him or her that the request will be forthcoming. To the extent a party has difficulty responding to a discovery request \* \* \*, counsel for the parties can discuss the problem and work out a mutually satisfactory solution. [[8]](#footnote-9)

Joint Movants’ proposal to shorten the discovery response period is necessary to permit Joint Movants time to prepare.

Ohio Adm. Code 4901-1-12(C) allows the PUCO to rule on an expedited basis. The magnitude and complexity of AEP’s Application warrants an expedited ruling. Further, a ruling on the discovery response period is especially needed, otherwise parties will be immediately and adversely impacted. For these reasons, Joint Movants request expedited consideration of their Joint Motion.

The PUCO should grant the Joint Motion and Request for Expedited Ruling for the reasons set forth above.

Respectfully submitted,

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| Bruce Weston (0016973)  Ohio Consumers’ Counsel  */s/ William J. Michael*  William J. Michael (0070921)  Counsel of Record  Amy Botschner O’Brien (0074423)  Ambrosia E. Wilson (0096598)  Assistant Consumers’ Counsel  **Office of the Ohio Consumers’ Counsel**  65 East State Street, 7th Floor  Columbus, Ohio 43215-4213  Direct: [Michael]: (614) 466-1291  Direct: [Botschner O’Brien]: (614) 466-9575  Direct: [Wilson]: (614) 466-1292  [william.michael@occ.ohio.gov](mailto:bryce.mckenney@occ.ohio.gov)  [amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)  ambrosia.wilson@occ.ohio.gov  (willing to accept service by e-mail) | /s/ *Kimberly W. Bojko*  Kimberly W. Bojko (0069402) (Counsel of Record)  Carpenter Lipps & Leland LLP  280 North High Street, Suite 1300  Columbus, Ohio 43215  Telephone: (614) 365-4100  bojko@carpenterlipps.com  (willing to accept service by email)  *Counsel for the Ohio Manufacturers’*  *Association energy Group*  */s/ Gretchen L. Petrucci*  Gretchen L. Petrucci (0046608)  VORYS, SATER, SEYMOUR AND PEASE LLP  52 East Gay Street  P.O. Box 1008  Columbus, Ohio 43216-1008  Tel. (614) 464-5407  glpetrucci@vorys.com  (willing to accept service by email)  *Counsel for the Ohio Cable Telecommunications Association* |
| */s/ Frank P. Darr*  Frank P. Darr (Reg. No. 0025469)  6800 Linbrook Blvd.  Columbus, Ohio 43235  614-390-6750  Fdarr2019@gmail.com  (willing to accept service via email)  Attorney for the Ohio Telecom Association | */s/* *Angela Paul Whitfield*  Angela Paul Whitfield (0068774) (Counsel of Record)  Carpenter Lipps & Leland LLP  280 North High Street, Suite 1300  Columbus, Ohio 43215  Telephone: (614) 365-4100  paul@carpenterlipps.com  (willing to accept service by email)  *Counsel for The Kroger Co.* |

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Joint Motion has been served electronically upon those persons listed below this 29th day of September 2021.

*/s/ William J. Michael*

William J. Michael

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

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1. Under Ohio Adm. Code 4901-1-12(C). [↑](#footnote-ref-2)
2. Joint Movants do not certify that no party objects to this request. [↑](#footnote-ref-3)
3. *See* Entry; Docket. [↑](#footnote-ref-4)
4. Entry (September 22, 2021). [↑](#footnote-ref-5)
5. *Id.* at 4. [↑](#footnote-ref-6)
6. *See, e.g.,* Ohio Adm. Code 4901-1-19 and 4901-1-20. [↑](#footnote-ref-7)
7. R.C. 4903.082. [↑](#footnote-ref-8)
8. *In the Matter of the Applications of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges Including Regulatory Transition Charges Following the Market Development Period,* (“the FirstEnergy Proceeding”) Case No. 03-2144-EL-ATA, et al., Entry at 5 (October 28, 2003).  *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for the Dayton Power and Light Company,* (the DP&L Proceeding”) Case No. 02-2779-EL-ATA, et al., Entry at 2 (April 1, 2003). [↑](#footnote-ref-9)