

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of                    )  
Ohio Power Company to Update Its                ) Case No. 12-509-EL-RDR  
gridSMART Rider.                                    )

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**MEMORANDUM CONTRA AEP OHIO’S MOTION  
TO FILE SUPPLEMENTAL COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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At 4:20 p.m. on September 25, 2012, the Ohio Power Company (“AEP Ohio”) served the Office of the Ohio Consumers’ Counsel (“OCC”) with a motion to file supplemental comments in this proceeding.<sup>1</sup> The motion was accompanied by an affidavit of Karen L. Sloneker, AEP Ohio’s Director of Customer Services and Marketing. AEP Ohio also requested an expedited ruling on its motion because this case is on the agenda for the September 26, 2012 meeting of the Public Utilities Commission of Ohio (“Commission”).<sup>2</sup>

The stated purpose of the motion is to provide the Commission with “comprehensive information” concerning AEP Ohio’s Community Energy Storage Program (“CES”) and to convey supposedly new information regarding progress on the resolution of problems associated with the CES.<sup>3</sup> AEP Ohio, however, does not show that the information could not have been provided earlier in this proceeding. Thus, OCC urges the Commission to reject AEP Ohio’s attempt to file supplemental reply comments.

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<sup>1</sup> According to the Commission’s Docketing Information System, the motion was electronically filed at 4:13 p.m. on September 25, 2012.

<sup>2</sup> Motion at [3]. Under Ohio Adm. Code 4901-1-12(C), AEP Ohio does not have the opportunity to reply to OCC’s memorandum contra.

<sup>3</sup> Id. at [2].

Ohio Adm. Code 4901-1-34(A) provides that “[t]he commission, the legal director, the deputy legal director, or an attorney examiner may, upon their own motion or upon motion of any person for good cause shown, reopen a proceeding at any time prior to the issuance of a final order.” Ohio Adm. Code 4901-1-34(B) provides:

A motion to reopen a proceeding shall specifically set forth the purpose of the requested reopening. If the purpose is to permit the presentation of additional evidence, the motion shall specifically describe the nature and purpose of such evidence, and shall set forth facts showing why such evidence could not, with reasonable diligence, have been presented earlier in the proceeding.

AEP Ohio fails to meet this standard for two reasons.

First, AEP Ohio could have included the “comprehensive information” regarding CES in its reply comments filed in this proceeding on August 17, 2012. The CES issue was raised by both OCC and the PUCO Staff in comments filed on August 10, 2012.<sup>4</sup> AEP Ohio addressed the CES issue in its reply comments.<sup>5</sup> Nothing prevented AEP Ohio from including in its reply comments the CES information found on the second and third pages of the motion and in paragraph 2 of the Sloneker affidavit.

AEP Ohio also does not allege that this information was unavailable at the time the reply comments were filed. Indeed, AEP Ohio only states that “it became apparent to AEP Ohio that its reply comments **may not have included a comprehensive explanation**” of the CES.<sup>6</sup> Thus, AEP Ohio is merely attempting to bolster what it perceives to be inadequate information in its reply comments. This is not good cause for allowing AEP Ohio to supplement its reply comments.

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<sup>4</sup> OCC Comments at 5-7; PUCO Staff Comments at 8-9.

<sup>5</sup> AEP Ohio Reply Comments at 3-5.

<sup>6</sup> Motion at [2] (emphasis added).

The Commission should not allow AEP Ohio to supplement its reply comments for the purpose of including omitted material that could have been included in its reply comments. The Commission should deny AEP Ohio's request to include in the record of this proceeding the "comprehensive information" regarding CES found in the motion and in the Sloneker affidavit.

Second, although AEP Ohio claims that "new developments related to the CES program have emerged,"<sup>7</sup> which are apparently included in paragraphs 3 through 5 of the Sloneker affidavit, nothing in the motion or the affidavit identifies when these "new developments" allegedly occurred. As far as the Commission may know, these developments may have occurred before AEP Ohio filed its August 17 reply comments, and thus information about them could have been included in the reply comments. Given AEP Ohio's attempt to rewrite its reply comments with the "comprehensive information" that could have been included in the reply comments, discussed above, there is reason to doubt AEP Ohio's claim that the developments related in the Sloneker affidavit are "new" developments. Because these developments might not have occurred after AEP Ohio filed its reply comments, the Commission should not allow information about them into the record of this proceeding.

AEP Ohio has not shown good cause for the supplemental information to be part of the record in this case. In addition, AEP Ohio has not shown that the information contained in the motion and the Sloneker affidavit could not, with reasonable diligence, have been presented earlier in the proceeding. The Commission should deny AEP Ohio's motion.

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<sup>7</sup> Id.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record  
Assistant Consumers' Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum Contra was electronically served upon the persons listed below and the Attorney Examiners for this proceeding on this 26<sup>th</sup> day of September 2012.

*/s/ Terry L. Etter*  
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Summary: Memorandum Memorandum Contra AEP Ohio's Motion to File Supplemental Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.