

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MEMORANDUM IN OPPOSITION TO
MOTION TO SHORTEN DISCOVERY RESPONSE TIME**

On July 26, 2019, Ohio Power Company (“AEP Ohio” or the “Company”) initiated this proceeding to continue and build upon its successful implementation of Phases 1 and 2 of its gridSMART deployment through a suite of gridSMART Phase 3 technologies and programs. After a comment process was conducted last year and after over two years passed since the Application was filed, the Commission recently established a procedural schedule for this case including an evidentiary hearing. The Office of the Ohio Consumers’ Counsel, the Ohio Cable Telecommunications Association, the Ohio Telecom Association, The Kroger Company and the Ohio Manufacturers’ Association Energy Group (collectively, Movants) now request that the Commission establish an abbreviated discovery response time of 7 calendar days because the schedule leaves time “for only one round of written discovery” regarding the Company’s supplemental testimony. (Memorandum in Support at 1.) Movants further contend good cause exists for their request because of an alleged failure by the Company to justify the proposals in its Application. (*Id.* at 2.) The Company submits that Movants have failed to establish good cause for their request and submit that it should be denied.

Movants fail to acknowledge that they have had over two years to conduct discovery regarding the Company’s Application and supporting testimony. Indeed, the Company has

answered more than 200 discovery requests from the intervenors so far in this case. And Movant's premise that they are entitled to multiple, sequential rounds of discovery after the Company's supplemental testimony is filed is a flawed premise and unreasonable. Of course, Movants also fail to recognize that the existing procedural schedule leaves the Company with *no* opportunity to conduct discovery regarding the intervenor testimony, since the hearing starts 8 days after they file their testimony.

If the Commission does modify the response time for discovery, therefore, it should only do so in the context of recalibrating the discovery deadlines for all parties by establishing appropriate discovery cutoff deadlines for intervenors and the Company. Of course, such a modification should apply to all parties and only be made prospectively for discovery requests received after the entry ruling on the motion. Because the default discovery cutoff deadline for this case is that discovery must be completed prior to the commencement of the hearing, OAC 4901-1-17(A), the general deadline for serving discovery requests is October 29 – in order to leave 20 days response for completion prior to November 18. Movants should not be permitted to shorten the discovery response time *and* extend that discovery cutoff deadline; the deadline for discovery requests from intervenors to the Company should remain October 29 if the response time is shortened to 7 calendar days. But to the extent the Commission does recalibrate the discovery deadlines in light of the procedural schedule, it should permit the Company at least one round of discovery by establishing a deadline of November 11 for service of discovery requests from the Company to intervenors (the day after intervenor testimony is due).

CONCLUSION

The Movant's request for expedited discovery should be denied or modified, as set forth above.

Respectfully submitted,

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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 *Memo in Opposition* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 4th day of October, 2021, via electronic transmission.

/s/ Steven T. Nourse
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Summary: Memorandum Memorandum In Opposition To Motion To Shorten Discovery Response Time electronically filed by Mr. Steven T. Nourse on behalf of Ohio Power Company