BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company to Revise Reliability Performance Standards Pursuant to O.A.C. 4901:1-10-10(B)(7).	))))	Case No. 20-1111-EL-ESS

REPLY IN SUPPORT OF CONSUMER PROTECTION MOTIONS INVOLVING AEP'S MID-JUNE OUTAGES BY OFFICE OF THE OHIO CONSUMERS' COUNSEL, OHIO POVERTY LAW CENTER AND PRO SENIORS, INC.

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I. INTRODUCTION

Reliability for consumers means the lights come on when they flip the switch. During the week of June 12, 2022, AEP's consumers didn't get the reliability they deserve and pay for. AEP has charged or is in the process of charging consumers approximately *$8 billion* for programs to purportedly increase reliability.[1]

We note that many thousands of consumers in the Columbus area who lost power were forced offline by AEP, so as to shed load. Unlike some consumers who obtain the benefit of discounted rates for so-called interruptible electric service (meaning the discount essentially compensates them for being forced offline), the residential consumers that AEP shut-off to shed load were not compensated.

In response to the Consumer Advocates'[2] motions, AEP doesn't think that an "intensive audit"[3] of the recent outages by an independent auditor is needed. Hundreds of

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[1] *See* Consumer Advocates' Memorandum in Support at 3.

[2] Office of the Ohio Consumers' Counsel ("OCC"), Ohio Poverty Law Center ("OLPC"), and Pro Seniors, Inc. ("Pro Seniors").

[3] *See* AEP's Memorandum Contra at 6.

thousands of AEP consumers deserve better. They deserve an audit by an independent auditor. That is what Consumer Advocates have asked for. That is what should happen. Consumer Advocates' motions should be granted.

II. RECOMMENDATIONS

A. Contrary to AEP's assertions, this reliability case is the appropriate case, for consumer protection, in which to investigate AEP's outages that occurred during the week of June 12, 2022.

AEP asserts that this reliability case is not the appropriate case to investigate the lack of reliability (outages) that occurred during the week of June 12, 2022.[4] It says Consumer Advocates are "seeking to extend and expand a two-year-old request to update reliability metrics into a full-blown investigation of the June 2022 Power Outages; potentially holding AEP Ohio's reliability metrics hostage in the meantime . . . ."[5] AEP is wrong.

This is a service reliability case. To consumers, service reliability means the lights come on when they flip the switch. During the week of June 12, 2022, AEP's consumers didn't get the service reliability they deserve. The outages that occurred during the week of June 12, 2022, are reliability issues. This open service reliability case is an appropriate case to investigate the reliability issues associated with the AEP outages.[6] Outages, to consumers, evidence a lack of reliability.

Further, the investigation Consumer Advocates request need not "hold hostage" updating AEP's reliability metrics. The PUCO is perfectly capable of bifurcating issues

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[4] *See* AEP's Memorandum Contra at 4.

[5] *Id.* (internal citations omitted).

[6] Alternatively, as Consumer Advocates have suggested, the PUCO could initiate an investigation and hold a hearing per R.C. 4905.26. *See* Consumer Advocates' Memorandum in Support at 8-12.

in cases.[7] Accordingly, there is a simple solution to AEP's concern – bifurcate the investigation and yet continue the course for updating the reliability metrics.

This case is appropriate for investigating the AEP outages that occurred during the week of June 12, 2022. Such an investigation need not hold up updating AEP's reliability metrics. The investigation can be bifurcated from updating the reliability metrics. Consumer Advocates' motions should be granted.

B. Contrary to AEP's assertions, the PUCO should adopt Consumer Advocates' recommendation for an investigation to be conducted by an independent third-party auditor because the PUCO's "review" is not sufficient for consumer protection.

AEP asserts that Consumer Advocates' recommendation for an independent auditor to investigate the outages is unnecessary because the PUCO is already reviewing the outages.[8] AEP says that the PUCO has "held a public meeting where representatives from PJM and AEP were present to provide explanations and answer Commissioner questions regarding the June outages."[9] It references PUCO Chair French's statement calling for a written report from PUCO Staff, and the "numerous data requests" that PUCO Staff has issued to AEP.[10] In short, according to AEP, "[t]here is no reason to believe that the [PUCO's] Staff is incapable of conducting a meaningful and thorough review of the events and actions that took place during the week of June 13."[11] AEP misses the boat.

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[7] *See, e.g., In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 20-1629-EL-RDR, Entry (December 15, 2021).

[8] *See* AEP's Memorandum Contra at 5-7.

[9] *Id.* at 5.

[10] *Id.* at 5-6.

[11] *Id.* at 6.

First, the PUCO's July 13th event lacks the significance that AEP claims for it. PJM and AEP representatives were invited to speak. Others, such as representatives of those who lost service or who were shut off by AEP, were not invited. The PUCO did not even place AEP under oath. The event was far removed from the rigors of a hearing with cross-examination.

As differentiated from the July 13th event, a real hearing would occur with participation by all interests and after case preparation. Preparation is imperative, in part, because of the highly technical issues of transmission.

It was interesting that the PUCO Commissioners did not even question AEP in detail about a reported email exchange between the PUCO Staff and AEP prior to the outages. WBNS reported that "Internal email shows AEP Ohio didn't pre-position crews ahead of June storms."[12]

At local hearings in rate cases, the PUCO has long held that public testimony by Ohioans that is not sworn will not be considered by the PUCO as part of an evidentiary record. But the July 13th presentations were even farther removed from a case process and from what thousands of harmed consumers deserve from their government regulator. That presenters were not under oath is just one flaw. The process has no evidentiary record. There is no case number. There is no intervention allowed by consumer representatives like OCC. There is no discovery. In short, the July 13th event may be some kind of process, but it is not the legal due process that injured Ohioans should have.

[12] https://www.10tv.com/article/news/investigations/10-investigates/internal-email-shows-aep-ohio-didnt-pre-position-crews-ahead-june-storms/530-c4079742-d75c-423b-95e0-663a176f1ee5 (last visited August 2, 2022).

Indeed, the PUCO has previously found concerns about a process of unsworn statements. It found that testimony from witnesses in the form of unsworn statements—narrative in form and not subject to cross-examination—violates the applicable case law and standards of basic fairness to all parties that require that the PUCO base its decisions solely on the record before it.[13]

1. The PUCO's July 13, 2022 meeting was not sufficient for investigation or consumer protection because the presenters were not subject to cross-examination.

The "primary purpose of cross-examination is to test the accuracy, truthfulness, soundness and thereby the credibility (*i.e.*, its worthiness of belief) of the testimony given by the witness on direct examination."[14] Additionally, the purpose of cross-examination is "to challenge whether the declarant was sincerely telling what he believed to be the truth whether the declarant accurately perceived and remembered the matter he related, and whether the declarant's intended meaning is adequately conveyed by the language he employed."[15] The presenters at the July 13 event were not subject to cross-examination. Their presentations were therefore of little import.

2. The PUCO's July 13, 2022 meeting was not sufficient for investigation or consumer protection because the presenters were not under oath.

Sworn testimony, made under oath or affirmation, is fundamental to determining the truth. "The purpose of swearing or affirming a witness is two-fold: to impress upon

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[13] *See Werlin Corp. v. Public Util. Comm.*, 53 Ohio State 2d 76 (1978); *Ideal Transportation Co. v. Public Util. Comm.*, 42 Ohio St.2d 195 (1975); *see also, Schwerman Trucking Co. v. Public Util. Comm.*, 10 Ohio St.2d 253 (1967); *see also* PUCO Case No. 88-633-RR-CSS, Opinion and Order (February 7, 1989).

[14] *See Martin* v. *Eldon*, 32 Ohio St., 282, 287; *see also Legg* v. *Drake*, 1 Ohio St., 286, 291, 292; *see also Fox v. Indus. Com. of Ohio*, 162 Ohio St. 569, 585, 125 N.E.2d 1 (1955).

[15] *See State v. Young*, 5 Ohio St.3d 221, 224, 450 N.E.2d 1143 (1983).

the witness the solemnity of the event and the need to testify truthfully and to subject the witness to the penalties for perjury if the testimony is proved to be false."[16] Witnesses testifying at the PUCO may be examined under oath.[17] Attorney examiners and PUCO Commissioners are authorized to administer oaths.[18]

"An 'oath or affirmation' is a formal assertion of, or attestation to, the truth of what has been, or is to be, said."[19] An oath "is an important indicia of reliability."[20] "It is designed to ensure that the truth will be told by ensuring that the witness or affiant will be impressed with the solemnity and importance of [their] words."[21]

The PUCO has previously found that testimony from witnesses in the form of unsworn statements—narrative in form and not subject to cross-examination—violates the applicable case law and standards of basic fairness to all parties that require that the PUCO base its decisions solely on the record before it.[22] The usefulness of the statements from the PJM and AEP officials at the July 13, 2022 hearing is uncertain at best given that they were neither subject to cross-examination nor sworn.[23]

If, as the PUCO has said, it is interested in "why and where the outages occurred, the impact on vulnerable populations, communication efforts, the decision-making

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[16] *In re Harris*, 2001 Ohio App. LEXIS 1246, at *8 (Franklin 2001).

[17] R.C. 4903.02.

[18] R.C. 4901.18 (attorney examiners); 4901.22 (PUCO Commissioners); *see also* O.A.C. 4901-1-27.

[19] *United States v. Turner*, 558 F.2d 46, 50 (2d Cir.1977).

[20] *United States v. Trainor*, 376 F.3d 1325, 1332 (11th Cir.2004).

[21] *Turner* 558 F.2d 46 at 50; *see also Grybosky v. Ohio Civ. Rights Comm'n*, 2017-Ohio-7125 (Ashtabula 2017) (explaining oaths and affirmations and consequences thereof).

[22] *See Werlin Corp. v. Public Util. Comm.*, 53 Ohio State 2d 76 (1978); *Ideal Transportation Co. v. Public Util. Comm.*, 42 Ohio St.2d 195 (1975); *see also, Schwerman Trucking Co. v. Public Util. Comm.*, 10 Ohio St.2d 253 (1967); *see also* PUCO Case No. 88-633-RR-CSS, Opinion and Order (February 7, 1989).

[23] In fact, the statements would not even qualify as "evidence" within the meaning of Ohio Rule of Evidence 603. Rule 603 requires an "oath or affirmation."

surrounding the forced outages, the timeline of events, and what can be done to better protect or assist consumers in the future [,]"[24] that interest would certainly be furthered by the investigation recommended by Consumer Advocates and stakeholder participation.[25] Contrary to AEP's assertions regarding Consumer Advocates attempt to "micromanage[]" and "bull[y]" the PUCO into "opening an unnecessarily expensive, time-consuming, and litigious process[,]" Consumer Advocates are recommending a process to protect consumers and assist the PUCO in getting at the truth.[26]

In this regard, it is important to recognize that the AEP outages were more than a public inconvenience. Public safety was jeopardized during the outages and the health and safety of hundreds of thousands of Ohioans were placed at risk. OCC reviewed outage reports covering the week of the outages that were submitted by AEP to the PUCO outage coordinator under Ohio Adm. Code 4901:1-10-07.[27] These reports detail substantial impacts on public safety that were reported due to the outages, including impacts on police and fire responses, hospitals, 9-1-1 systems, natural gas, water, and sewage facilities in many locations across Ohio.[28]

Consumer Advocates' motions should be granted.

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[24] PUCO Press Release (June 29, 2022), https://puco.ohio.gov/news/puco-schedules-poweroutage-review-for-071322.

[25] And as Consumer Advocates pointed out in their motions, it would also come with process protections (and more) for consumers. *See* Consumer Advocates' Motions at 4.

[26] AEP's Memorandum Contra at 4.

[27] *See* PUCO response to Public Records Request 118-22 (July 7, 2022) (attached).

[28] *See id.*

C. Contrary to AEP's assertions, consumer protection requires local public hearings, virtual access, and additional opportunity for public participation and transparency.

AEP asserts that it is "unnecessary [to hold] local public hearings with virtual access and new programming to select timeslots for customers to express their perspectives to the PUCO about the outages . . . ."[29] Referring to the PUCO's website and phone number, AEP says that facilitating public input "is precisely what the Commission has done and is continuing to do."[30]

However, the method that the PUCO has chosen for consumers to submit their comments to the PUCO – a private online form – is not transparent. The consumer comments do not appear on a docket for all to see.

In the modern era of social media, the PUCO is using older technology that removes the "social" from social media regarding the outages. That lack of transparency seems to work for AEP and its purposes with government. But it doesn't work for the public. Why hide the public's commentary from the public?

The PUCO's website and phone number to which AEP refers are options that should be available to consumers. But AEP is fine with cutting off the modern option of public postings of consumer comments, that would otherwise be part of the PUCO's docket page for issues heard in cases. That lack of transparency is not fine for consumers.

Tens of thousands of AEP-Ohio residential consumers and their families and businesses lost power during the week of June 12, 2022 in dangerously high heat and humidity. The outages reportedly occurred through a combination of grid/transmission

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[29] AEP's Memorandum Contra at 7 (internal quotations omitted).

[30] *Id.* at 7-8.

failures, vegetation management issues, storms, and AEP's own use of shut offs (load shedding) to avoid a greater system failure.[31]

The lives of AEP consumers and their families in central Ohio were especially disrupted and at risk. People understandably are upset. The Governor,[32] members of the Ohio General Assembly,[33] and consumers have sought answers.[34] They deserve answers that are tested in actual legal proceedings with American due process. As those answers are sought, the public deserves a meaningful and transparent opportunity to provide input and see the input of others.

AEP tries to distinguish the numerous cases cited by Consumer Advocates where local public hearings were ordered, saying "[a]ll of those cases involve financial recovery components; there are no such financial recovery issues in this case."[35] AEP's efforts to distinguish the numerous cases cited by Consumer Advocates where local public hearings were ordered are without merit.

First, the cases cited by Consumer Advocates don't stand for the proposition (as AEP would apparently have the PUCO believe) that those are the *only* circumstances where local public hearings are appropriate. Instead, as Consumer Advocates pointed out specifically, the cases "illustrate the value and importance of consumer input. In particular, the AEP self-complaint case demonstrates the importance of consumer input

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[31] *See, e.g.*, AEP Ohio The Wire, "Columbus Area Power Outages + FAQs;" https://www.aepohiowire.com/columbus-area-power-outages-faqs/.

[32] *Governor Backs State Review of AEP Outages*, Gongwer (June 21, 2022), https://www.gongwer-oh.com/news/index.cfm?a=911190205 (*see attached*).

[33] June 16, 2022 Letter from Ohio House Minority Caucus to AEP.

[34] *See, e.g.,* Motions of Office of the Ohio Consumers Counsel, Ohio Poverty Law Center, and Pro Seniors, Inc., Case No. 20-1111 (July 11, 2022).

[35] *Id.* at 8.

where service reliability is at issue."[36] The cases' rationale (and illustration of the PUCO's authority to schedule local public hearings) is equally applicable here.

Further, AEP's assertion that this case (unlike the ones Consumer Advocates cited in their motions) does not involve "financial recovery" is wrong (nor, as just explained, is potential "financial recovery" a condition precedent to holding local public hearings). Were Consumer Advocates recommendations adopted, it may very well.[37]

The public suffered as a result of AEP's outages. The public should be able to share its experience with the PUCO in meaningful, convenient ways.

D. Contrary to AEP's assertions, to protect consumers the PUCO should determine if AEP-Ohio was negligent and is liable to consumers for perishable food and other damages regarding its service outages under O.A.C. 4901:1-10-02(g), AEP's Tariff No. 21 (Original Sheet No. 103-16) and other authority. The PUCO should waive the 30-day limit in AEP's tariffs for consumers to notify AEP of a damages claim.

AEP asserts that Consumer Advocates "improperly appear to seek an *en masse* determination that AEP Ohio negligently provided service to over 200,000 customers of as a result of the June 2022 Storm Event and subsequent load shedding outages."[38] AEP characterizes Consumer Advocates efforts to get justice for consumers as trying to turn this case into a "class action."[39] Further, AEP says that the thirty-day requirement in its tariff should not be waived, as Consumer Advocates have recommended, because it has been a part of AEP's tariff for at least a decade.[40] And all consumers have to do is give

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[36] Consumer Advocates' Memorandum in Support at 13-14.

[37] *See, e.g.,* Consumer Advocates' Memorandum in Support at 15-17 (calling for a determination of AEP's liability for negligence and damages); *id.* at 3-4 (noting that with the investigation recommended by Consumer Advocates, "[t]he PUCO can address remedies and consequences, per R.C. 4909.154, and R.C. 4905.26, among other statutes.").

[38] AEP's Memorandum Contra at 9.

[39] *See id.*

[40] *See id.* at 10.

notice of their claim, not prove it.[41] Lastly, AEP asserts that Consumer Advocates do not have the authority to provide AEP the notice required under the tariff.[42]

Consumer Advocates are not trying to turn this case into a class action. OCC is residential consumers' statutorily appointed advocate.[43] As such, it represents the interests of, and advocates on behalf of, residential consumers. AEP is attempting to interfere with OCC's representation of residential consumers. Consumer Advocates are requesting (as stated specifically in their motions) that "the PUCO independent auditor (that we recommend be hired) and the PUCO Commissioners should make findings in an investigation about whether AEP has been negligent with regard to its outages."[44] Such findings in an investigation are contemplated by AEP's tariff (over which the PUCO clearly has jurisdiction).[45]

Consumer Advocates' recommendation that the PUCO waive the thirty-day requirement in AEP's tariff (whether it has been in place for ten years or ten days) is based on fundamental fairness and is supported by the tariff itself. Specifically, AEP's

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[41] *See id.*

[42] *See id.* at 11.

[43] R.C. 4911.02.

[44] Consumer Advocates' Memorandum in Support at 17.

[45] *Complaint of City of Reynoldsburg v. Columbus S. Power Co*., 134 Ohio St.3d 29, 2012-Ohio-5270, 979 N.E.2d 1229, ¶ 40 (The General Assembly has given the commission statutory authority to review and approve tariffs. "Public utility tariffs are books or compilations of printed materials filed by public utilities with, and approved by, the commission that contain schedules of rates and charges, rules and regulations, and standards for service"); *Id.* ("Every public utility in Ohio is required to file, for commission review and approval, tariff schedules that detail rates, charges and classifications for every service offered. R.C. 4905.30. And a utility must charge rates that are in accordance with tariffs approved by, and on file with, the commission. R.C. 4905.22"); *see generally* R.C. 4905.22, R.C. 4905.30, and R.C. 4905.32; *see also DiFranco v. FirstEnergy Corp*., 134 Ohio St.3d 144, 2012-Ohio-5445, 980 N.E.2d 996, ¶ 32 ("given the PUCO's authority to set rates and approve tariff schedules, any review will also require analysis of various orders entered by the commission").

tariff provides that "[t]he customer must notify the Company of any claim based on such negligence within thirty days after the interruption, irregularity, delay or failure begins."[46]

The outages are no ordinary occurrence, where AEP is (for example) dealing with a power surge to an individual consumer that caused damages. The outages occurred over the course of a week and affected hundreds of thousands of Ohioans. Reports on the outages will not be available for weeks or perhaps months (the "review" with AEP and PJM officials just occurred on July 13, 2022).

It is unreasonable to expect consumers within a month to somehow determine if they have a claim related to the outages based on negligence and notify AEP, especially when no one (not AEP, the PUCO, PJM, or anyone else) even knows if AEP *was* negligent. In this regard, the PUCO should take note that the statute of limitations for a negligence claim in Ohio is *two years*.[47]

Finally, on behalf of AEP's residential consumers, OCC clearly has the authority to make a filing constituting notice to AEP for any consumer claims based on negligence related to the outages that occurred during the week of June 12, 2022. OCC is residential consumers' statutorily appointed advocate.[48] As such, it represents the interests of, and advocates on behalf of, residential consumers. Among other authority, OCC may "take appropriate action with respect to residential consumer complaints concerning quality of service, service charges, and the operation of the public utilities commission[.]"[49] Though AEP claims that "informal customer complaints . . . have been very low as most

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[46] AEP Tariff No. 21 (Original Sheet 103- 16).

[47] R.C. 2305.10(A).

[48] R.C. 4911.02.

[49] *Id.* at (B)(2)(b).

customers seem to already recognize the extreme circumstances faced by AEP Ohio and the appropriate efforts made to remedy the situation [,]"[50] the facts tell a different story.

OCC reviewed all of the approximately 210 consumer complaints that were registered with the PUCO call center during the week of the AEP outages. Many of the PUCO complaints involved consumers who incurred significant out of pocket expense in lost food, lodging, meals, and other expenses. [51] Consumers contacted the PUCO to complain about their neighborhood being targeted by AEP over more affluent neighborhoods for enduring the multi-day outages during a heat wave.[52] Consumers contacted the PUCO complaining that AEP sacrificed their health, and the health of their pets, because they were unable to use medical equipment such as oxygen machines, nebulizers, CPAP machines, and refrigerated medicine.[53] Consumers lost wages because they were unable to work from home or to fulfill school assignments.[54] Consumers contacted the PUCO call center complaining that they should have been notified by AEP before electricity was shut-off and elderly citizens were forced to suffer.[55] Consumers questioned why AEP's electric grid was unable to handle the challenges that lead to the outages.[56] And numerous consumers asked the PUCO to open an investigation into the

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[50] AEP's Memorandum Contra at 10.

[51] *See* PUCO Call Center Complaint 763717 and 763851 (attached). The complaints are provided to OCC under R.C. 4905.261. We have put the information we receive in readable format.

[52] *See* PUCO Call Center Complaint 763695 and 764453 (attached).

[53] *See* PUCO Call Center Complaint 763692 and 763812 (attached).

[54] *See* PUCO Call Center Complaint 763742 (attached).

[55] *See* PUCO Call Center Complaint 763806 and 763855 (attached).

[56] *See* PUCO Call Center Complaint 763706 and 763770 (attached).

forced power outages and hold AEP accountable.[57] Consumers want to know when public hearings will be held so that AEP can respond.[58]

OCC's statutory authority is more than sufficient for it to provide notice to AEP, especially in light of the heart-wrenching consumer complaints submitted to AEP.

III. CONCLUSION

People need utility services to live. To protect Ohioans, the PUCO should grant the motions of the Ohio Consumers' Counsel, Ohio Poverty Law Center, and Pro Seniors to order an investigation of the AEP outages (as contrasted with its current "review"), hire an independent auditor, order local hearings and other opportunities for the public to be heard. There should be due process and transparency for the public, including tens of thousands of harmed consumers. Issues should include whether AEP was negligent and thereby owes consumers compensation for perishable food and other damages.

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[57] *See* PUCO Call Center Complaint 764214 and 763737 (attached).

[58] *See* PUCO Call Center Complaint 764453 (attached).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply was served on the persons stated below via electronic transmission, this 2nd day of August 2022.

/s/ William J. Michael
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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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July 7, 2022

Matthew Aumann
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RE: Public Records Request 118-22

Dear Mr. Aumann:

Thank you for contacting the Public Utilities Commission of Ohio (PUCO). I am writing in response to your public records. We have included your original request language and our response following that request.

> *(a) Records containing outage reports provided by AEP-Ohio to the PUCO as required under O.A.C. 4901:1-10-07, et seq. The records sought are those related to AEP Ohio's electric service outages during the week beginning June 12, 2022 to the present. O.A.C. 4901:1-10-07(B) provides that: "Each electric utility shall immediately report each outage to the commission's outage coordinator in a format prescribed by the outage coordinator."*

Please see the records responsive to your request (a) attached.

> *(b) Records containing all communications (including but not limited to emails and text messages), from June 12, 2022 to the present, between persons acting on behalf of AEP-Ohio and persons acting on behalf of the PUCO regarding AEP-Ohio's electric service outages (including AEP's restoration of service) since June 12, 2022.*
>
> *(c) Records containing all communications (including but not limited to emails and text messages), from June 12, 2022 to the present, between persons acting on behalf of the PUCO and any and all other persons (including persons serving in government outside the PUCO) regarding AEP-Ohio's outages (including AEP's restoration of service) since June 12, 2022.*
>
> *(d) Records containing all communications (including but not limited to emails and text messages) from June 12, 2022 to the present, between persons acting on behalf of AEP-Ohio and persons acting on behalf of the PUCO regarding AEP's electric service outages in Franklin County, including but not limited to communications regarding options to relieve stress on AEP-Ohio's electricity transmission and/or distribution system.*
>
> *(e) Records containing all communications (including but not limited to emails and text messages) between persons acting on behalf of PJM and persons acting on*

behalf of the PUCO from June 12, 2022 to the present, regarding AEP-Ohio (including any entity affiliated with AEP-Ohio).

In accordance with Ohio Revised Code (R.C.) 149.43(B)(2), we find your requests (b)-(e) to be overly broad because they are so inclusive that the PUCO is unable to identify the records sought based on the manner in which the office routinely organizes and accesses records. Accordingly, your request must be denied pursuant to R.C. 149.43(B)(2).

Ohio public records law requires a requester to identify the records he or she is seeking with "'reasonable clarity,' so that the public office can identify responsive records based on the manner in which it ordinarily maintains and accesses the public records it keeps." *Ohio Sunshine Law: An Open Government Resource Manual* 2021, pg 12. *See also,* State ex rel. Morgan v. Strickland, 121 Ohio St.3d 600, 2009-Ohio-1901, 906 N.E.2d 1105; State ex rel. Zauderer v. Joseph, 62 Ohio App.3d 752, 577 N.E.2d 444 (10th Dist. 1989). State ex rel. Glasgow v. Jones, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 17, quoting State ex rel. Morgan v. City of New Lexington, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 29; State ex rel. *Dillery v Iscman* (2001), 92 Ohio St.3d 312, 314.

Further, a governmental office has no duty to "seek out and retrieve those records which would contain the information of interest to the requester." *State ex rel. Fant v. Tober,* 68th Dist. Cuyahoga No. 63737, 1993 WL 173743, *1, aff'd, 68 Ohio St.3d 117, 1993-Ohio-154, 623 N.E.2d 1202 (1993). A public office is under no obligation to search for records containing selected information. *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 30 (2006), citing *State ex rel. Lanham v. Ohio Adult Parole Auth.*, 80 Ohio St.3d 425, 1997-Ohio-104, 687 N.E.2d 283 (1997). Public agencies are not required to perform research or create new files in responding to requests for records. *State ex rel. Daugherty v. Mohr*, 10th Dist. Franklin No. 11AP-5, 2011-Ohio-6453, ¶ 8; see also (Paramount Advantage v. Ohio Dept. of Medicaid, Ct. of Cl. No. 2021-00262PQ, 2021-Ohio-4180, ¶ 19, 21-22 (finding request for documents "reflecting . . . internal communications" between individuals an overly broad discovery-style request).

While your request provides a timeframe, there is a lack of specificity as to which individuals' communications you are seeking. Our communications may be retrieved with information such as the individuals "to" and "from", as well as a timeframe and subject matter of a specific existing record. As noted in Ohio Public records law R.C. 149.43(B)(2), we are explaining how our communications are ordinarily maintained and accessed, so you can successfully revise and clarify your request for us to be able to respond.

However, as a courtesy to you, in response to your requests b and e respectively, we have identified the communications of two PUCO employees: 1) Robert Wolfe, the Field Staff Manager & Outage Coordinator in the Service Monitoring & Enforcement Department who communicated with AEP; and, 2) Sarah Parrot, the Federal Energy Advocate, who communicated with PJM on the subject matter and during the timeframe you referenced that may be responsive to your request.

As all or portions of your request have been denied, Ohio law affords you with the opportunity to revise your request. In order to assist you, please see the following link to the PUCO records retention

schedule: https://apps.das.ohio.gov/RIMS/Schedule. If you require any further assistance or have additional questions, please feel free to contact me at your earliest convenience

Sincerely,

Donald Leming

Don Leming
Deputy Legal Director

Public Utilities Commission of Ohio Outage Report Form
[Electric]

Ohio Administrative Code 4901:1-10-07

(A) As used in this rule, "outage" means an interruption of service to:

1 Two thousand five hundred (2,500) or more customers in an area for a projected or actual period of four hours or more.

2 One hundred or more customers in an area for a projected or actual period of twenty-four hours

3 A facility of any telephone company, electric light company, natural gas company, water-works company, or a sewage disposal system company, as defined in section 4905.03 of the Revised Code and including a company that is operated not-for-profit, or owned or operated by a municipal corporation, when an interruption to that facility for a projected period of four hours or more, affects or will affect public safety.

4 Any police department, fire department, hospital, or countywide 9-1-1 system, for a projected period of four hours or more.

* * * *

As used in this paragraph, "area" means the electric utility's certified territory within a county or all adjoining municipalities and townships in an electric utility's certified territory.

* * * *

(B) Each electric utility shall immediately report each outage to the commission's outage coordinator in a format prescribed by the outage coordinator.

Initial Report Date: 06/14/2022 Time: 9:15 AM

Follow-up Report Revision Number: 3 Date: 6/15/22 Time: 8:45 AM

Company: AEP Ohio

City(ies): Columbus

County(ies): Franklin

Location(s): Columbus District Area

Number of Customers Affected: 51000

Reporter's Name: Veronica Haertling Phone Number: 614-417-7100

Estimated Restoration: Date: N/A Time: N/A

Please check any of the following that may be affected by the reported interruption for 4 or more hours or that may affect or will affect public safety:

[x] Police Dept. [X] Fire Dept. [X] Hospital [ ] Countywide 9-1-1 System

[x] Telephone Company * [X] Natural Gas Company * [x] Water Company *

[x] Sewage Disposal System Company * [ ] Other

* including a company that is operated not-for-profit, or owned or operated by a municipal corporation

Cause/Comments: 6/14/2022 @ 01:00am, Columbus District outages due to storms. Crew asessment and restoration efforts in progress.// 6/14/2022 @ 0730pm, crews are continuing their restoration efforts. Estimated restoration for Delaware is 6/15.// 6/15 @ 08:45am, crews continue to restore customers. 70,000 customers have been restored.//

Email report to: outagereport@puc.state.oh.us

Public Utilities Commission of Ohio Outage Report Form
[Electric]

Ohio Administrative Code 4901:1-10-07

(A) As used in this rule, "outage" means an interruption of service to:

1 Two thousand five hundred (2,500) or more customers in an area for a projected or actual period of four hours or more.

2 One hundred or more customers in an area for a projected or actual period of twenty-four hours

3 A facility of any telephone company, electric light company, natural gas company, water-works company, or a sewage disposal system company, as defined in section 4905.03 of the Revised Code and including a company that is operated not-for-profit, or owned or operated by a municipal corporation, when an interruption to that facility for a projected period of four hours or more, affects or will affect public safety.

4 Any police department, fire department, hospital, or countywide 9-1-1 system, for a projected period of four hours or more.

* * * *

As used in this paragraph, "area" means the electric utility's certified territory within a county or all adjoining municipalities and townships in an electric utility's certified territory.

* * * *

(B) Each electric utility shall immediately report each outage to the commission's outage coordinator in a format prescribed by the outage coordinator.

Initial Report Date: 06/14/2022 Time: 9:15 AM

Follow-up Report Revision Number: 4 Date: 6/15/22 Time: 6:50 PM

Company: AEP Ohio

City(ies): Columbus

County(ies): Franklin

Location(s): Columbus District Area

Number of Customers Affected: 81000

Reporter's Name: Veronica Haertling Phone Number: 614-417-7100

Estimated Restoration: Date: 6/16/22 Time: 11:59 PM

Please check any of the following that may be affected by the reported interruption for 4 or more hours or that may affect or will affect public safety:

[x] Police Dept. [X] Fire Dept. [X] Hospital [ ] Countywide 9-1-1 System

[x] Telephone Company * [X] Natural Gas Company * [x] Water Company *

[x] Sewage Disposal System Company * [ ] Other

* including a company that is operated not-for-profit, or owned or operated by a municipal corporation

Cause/Comments: 6/14/2022 @ 01:00am, Columbus District outages due to storms. Crew asessment and restoration efforts in progress.// 6/14/2022 @ 0730pm, crews are continuing their restoration efforts. Estimated restoration for Delaware is 6/15.// 6/15 @ 08:45am, crews continue to restore customers. 70,000 customers have been restored.// 6/15/2022 @ 6:50pm, crews continue restoration efforts. Outages related to Transmission load contingency//

Email report to: outagereport@puc.state.oh.us

Public Utilities Commission of Ohio Outage Report Form
[Electric]

Ohio Administrative Code 4901:1-10-07

(A) As used in this rule, "outage" means an interruption of service to:

1 Two thousand five hundred (2,500) or more customers in an area for a projected or actual period of four hours or more.

2 One hundred or more customers in an area for a projected or actual period of twenty-four hours

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4 Any police department, fire department, hospital, or countywide 9-1-1 system, for a projected period of four hours or more.

* * * *

As used in this paragraph, "area" means the electric utility's certified territory within a county or all adjoining municipalities and townships in an electric utility's certified territory.

* * * *

(B) Each electric utility shall immediately report each outage to the commission's outage coordinator in a format prescribed by the outage coordinator.

Initial Report Date: 06/14/2022 Time: 9:15 AM

Follow-up Report Revision Number: 5 Date: 6/16/22 Time: 6:50 AM

Company: AEP Ohio

City(ies): Columbus

County(ies): Franklin

Location(s): Columbus District Area

Number of Customers Affected: 2900

Reporter's Name: Veronica Haertling Phone Number: 614-417-7100

Estimated Restoration: Date: 6/16/22 Time: 11:59 PM

Please check any of the following that may be affected by the reported interruption for 4 or more hours or that may affect or will affect public safety:

[x] Police Dept. [X] Fire Dept. [X] Hospital [ ] Countywide 9-1-1 System

[x] Telephone Company * [X] Natural Gas Company * [x] Water Company *

[x] Sewage Disposal System Company * [ ] Other

* including a company that is operated not-for-profit, or owned or operated by a municipal corporation

Cause/Comments: 6/14/2022 @ 01:00am, Columbus District outages due to storms. Crew asessment and restoration efforts in progress.// 6/14/2022 @ 0730pm, crews are continuing their restoration efforts. Estimated restoration for Delaware is 6/15.// 6/15 @ 08:45am, crews continue to restore customers. 70,000 customers have been restored.// 6/15/2022 @ 6:50pm, crews continue restoration efforts. Outages related to Transmission load contingency// 6/16/22 @ 7:50am, Transmission and Distribution crews assisted in restoration of major station outages, restoring over 78000 customers.//

Email report to: outagereport@puc.state.oh.us

Public Utilities Commission of Ohio Outage Report Form
[Electric]

Ohio Administrative Code 4901:1-10-07

(A) As used in this rule, "outage" means an interruption of service to:

1 Two thousand five hundred (2,500) or more customers in an area for a projected or actual period of four hours or more.

2 One hundred or more customers in an area for a projected or actual period of twenty-four hours

3 A facility of any telephone company, electric light company, natural gas company, water-works company, or a sewage disposal system company, as defined in section 4905.03 of the Revised Code and including a company that is operated not-for-profit, or owned or operated by a municipal corporation, when an interruption to that facility for a projected period of four hours or more, affects or will affect public safety.

4 Any police department, fire department, hospital, or countywide 9-1-1 system, for a projected period of four hours or more.

* * * *

As used in this paragraph, "area" means the electric utility's certified territory within a county or all adjoining municipalities and townships in an electric utility's certified territory.

* * * *

(B) Each electric utility shall immediately report each outage to the commission's outage coordinator in a format prescribed by the outage coordinator.

Initial Report Date: 06/14/2022 Time: 9:15 AM

Follow-up Report Revision Number: 6 Date: 6/16/22 Time: 5:30 PM

Company: AEP Ohio

City(ies): Columbus

County(ies): Franklin

Location(s): Columbus District Area

Number of Customers Affected: 470

Reporter's Name: Veronica Haertling Phone Number: 614-417-7100

Estimated Restoration: Date: 6/16/22 Time: 11:59 PM

Please check any of the following that may be affected by the reported interruption for 4 or more hours or that may affect or will affect public safety:

[x] Police Dept. [X] Fire Dept. [X] Hospital [ ] Countywide 9-1-1 System

[x] Telephone Company * [X] Natural Gas Company * [x] Water Company *

[x] Sewage Disposal System Company * [ ] Other

* including a company that is operated not-for-profit, or owned or operated by a municipal corporation

Cause/Comments: 6/14/2022 @ 01:00am, Columbus District outages due to storms. Crew asessment and restoration efforts in progress.// 6/14/2022 @ 0730pm, crews are continuing their restoration efforts. Estimated restoration for Delaware is 6/15.// 6/15 @ 08:45am, crews continue to restore customers. 70,000 customers have been restored.// 6/15/2022 @ 6:50pm, crews continue restoration efforts. Outages related to Transmission load contingency// 6/16/22 @ 7:50am, Transmission and Distribution crews assisted in restoration of major station outages, restoring over 78000 customers.// 6/16/22 @

Email report to: outagereport@puc.state.oh.us

GONGWER
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OHIO'S HOME FOR POLICY & POLITICS

Tuesday, June 21, 2022

Governor Backs State Review Of AEP Outages

Gov. Mike DeWine has thrown his support behind an expected review of recent forced power outages in AEP Ohio's service territory.

The governor issued a statement Tuesday welcoming assurances from Public Utilities Commission of Ohio Chair Jenifer French that the agency would examine the recent events.

At its peak, the outages impacted 250,000 AEP customers as the utility sought to reduce load to accommodate a days-long heat wave that set in shortly after a storm damaged more than 350 poles and 2,100 spans of wire.

Ms. French last week issued a statement that the PUCO "will be communicating with Ohio's utilities to do an after action review and determine what steps can be taken to avoid future reoccurrences." (See Gongwer Ohio Report, June 16, 2022)

That came after the Ohio Consumers' Counsel and the Ohio Manufacturers' Association pushed for an investigation into the outages, noting the impact on both residential and commercial customers.

In his statement, Gov. DeWine pointed to Chair French's remarks, saying the regulator will "conduct a review of all Ohio's electric utilities related to electric power outages following storms that occurred on June 13th and actions that those utilities may or may not have taken."

"I support this review and note than many of the questions Ohioans are asking in the light of these power failures should be reviewed as part of the PUCO process," he added.

Among the questions the governor said he is hoping to see answered are:

- What steps Ohio utilities are taking to avoid a reoccurrence.
- Why certain central Ohio neighborhoods lost power and others did not.
- Why some northeast Ohio communities took nearly a week to see service restored.
- Whether utilities did enough to communicate with their customers, especially if electric communication did not work during the outage.

"I look forward to the findings of the PUCO," the governor said.

Power to central Ohio residents largely has been restored, and the company on Monday highlighted $2.7 million in assistance funding available for impacted customers.

"We recognize the impacts of the recent severe weather were extremely difficult for many families and individuals, and some continue to face significant economic challenges," said Jon Williams, managing director of customer experience and distribution technology. "We're committed to supporting our customers who are struggling to make ends meet through this expanded program."

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A Few of the Consumer Perspectives that were made to the PUCO on the AEP Ohio Power Outages.

Case No. 763692 (6/14/2022) - They turned off our electric when our area was fine. This caused myself to overheat as I was without my AC and had no way to cool down. This allowed my medicine that I have to take go bad as the fridge loss power so my health was put into jeopardy for no good reason. I need reimbursed for my electric bill as I am paying for a service that was not provided, for the cost of medication replacement, over all depletion of my health to the company decided to turn off my electric for no good reason.

Case No 763695 (6/14/22) - Power outage in heat wave. AEP intentionally turns off the power to my home and blamed it on the heat. It's very convenient that it looks like the richer sides of town had power while the poorer sides were chosen for the intentional power outage. This needs to be looked into. It was blamed on the storm the previous night but my outage did not occur until 2 pm the following day. Doesn't seem to be the storm.

Case No. 763706 (6/15/2022) - AEP consistently fails to maintain its power grid and causes blackouts for low income areas of Columbus. They should be shut down and absorbed into a public works project.

Case No. 763717 (6/15/2022) - At approximately 3:00 pm on Tuesday, June 14th, AEP electively shut off service to (at least) the neighborhoods between Corr Rd to Obetz Rd. The power was shut off to save other customers from losing power. I understand if rolling blackouts are needed, however, our power should not have remained off for longer than three hours, in order to prevent food spoilage. Due to rising food prices, my family has built a stockpile of meat which is valued in excess of $1,000.00. We have a generator to use in emergencies. However, it failed yesterday, so we have lost basically all of our stockpile. This is expressly AEP?s fault for choosing to turn off power to save other customers from losing their power. From my perspective, it appears that our power was shut off to ensure suburbs of Columbus did not lose power. That is ridiculous! Of course, you cannot get in touch with anyone from AEP. To make matters worse, we are on a well, so we do not even have water in this extreme heat while our power is shut off at AEP?s whim. This is unacceptable, and should not be allowed.

Case No. 763737 (6/15/2022) - Customer called irate about AEP's outage. She stated they should have given customer's notification that the outage was going to take place. She stated she just bought groceries that will go bad and she had to go to the ER last night because of heat exhaustion. She is extremely upset and stated it is unacceptable and she feels AEP is lying about why they shut service off. She stated she is going to have to go get a hotel room and AEP will not reimburse her. She feels AEP is only doing it to the inner-city residence. I advised I would make sure her complaint is on file. She stated AEP needs investigated.

Case No. 763742 (6/15/2022) - Customer called about AEP outage. She stated AEP should have given notice they were shutting off power. She stated she is concerned about her food and works from home so she will lose wages. I advised I would note her complaint.

Case No. 763770 (6/15/2022) - My understanding is that the latest outage in my neighborhood was because of the heat--not the storm. What is the PUCO doing to make sure that AEP is investing in their equipment and our grid to keep these kinds of outages from happening? The increase in summer temperatures has been a known risk. Why isn't AEP ready to handle this? What are you doing to protect

our interests? It's really outrageous. I'm also a small business owner, and my business is directly impacted by these kinds of outages, which seem to me are avoidable.

Case No. 763806 (6/15/2022) - I realize that storms are causing our electricity issues. Can you explain why it's allowable for AEP to intentionally shut off service to entire neighborhoods with absolutely NO ADVANCE NOTICE?? I'm old and hot but more so worried about my 87 year old mother!!

Case No. 763812 (6/15/2022) - AEP has chosen to turn power off to lower income neighborhoods, without regards to people health. My wife is on oxygen 24 7 without power for unit or air conditioning it is a struggle to breath. They will not accept calls for people to voice the health concerns. Just another large corporation putting it to the little man

Case No. 763851 (6/15/2022) - AEP had PLANNED shut offs which they gave ZERO notice to residents where they shut off electricity during EXTREME Heat warnings. My power was off from 4pm until the next day approx 11am. I have two babies who are sick and my house was over 99 degrees inside, I have two dogs, my daughters medication has to be refrigerated, all the food in the fridge and freezer and formula I had made are now bad. I want reimbursed for the cost of food that is now spoiled, at a minimum!! This is NOT ok to do to people especially in this heat!! It is so dangerous!

Case No. 763855 (6/15/2022) - To bypass the political postering and scripted responses, I'm writing about all the recent outages. It's very clear that AEP hasn't been investing enough in their equipment infrastructure, otherwise their grids should be capable of handling the extra load when there are higher than normal usages. I'm certain all customers pay for upgraded equipment and technology and question their investment in customers. To make matters worse, they admitted to taking customers offline, but sent no advance notices to said customers. I don't need to tell you how irresponsible and arrogant this is, let alone a very reckless business practice. Traffic signals out, elderly suffering, refrigeration of food and medicines like insulin, pets, people with serious medical conditions, security, etc. AEP primary excuse were the storms, but consumers are smarter than that. AEP needs first to apologize, pass along inconvenience credits and most of, don't pull this stuff again and get their infrastructure updated to handle the added stress on their systems.

Case No. 764214 (6/16/2022) - I think AEP should be Investigated for wrong doings. They are picking who has power and who dont like poorer areas compared to homes that are worth money. I could loose my food not right and not fair.

Case No. 764453 (6/19/2022) - Dear Sirs/Ma?am I?m a very upset consumer/community activist with regards AEP?s selective power outages My power was off over 24 hours last week My 80 year old mothers power was off over 14-16 hours and hers off again today this truly unacceptable how is it that we never ever hear of Upper Arlington Grandview, Dublin and New Albany etc. getting cut off? The majority of the people that were cut off live in the inner where most of the consumers are people of color this feels like targeted racism. I would like to know when your holding hearings for AEP to respond to the targeted racist selective power outages.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/2/2022 4:59:47 PM

in

Case No(s). 20-1111-EL-ESS

Summary: Reply Reply in Support of Consumer Protection Motions Involving AEP's Mid-June Outages by Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center and Pro Seniors, Inc. electronically filed by Ms. Alana M. Noward on behalf of Michael, William J.