

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY TO AEP’S MEMO CONTRA OCC’S MOTION TO COMPEL  
DISCOVERY  
BY  
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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**I. INTRODUCTION**

Tens of thousands of AEP 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 failures, storms, and AEP’s own use of shut offs to avoid a greater system failure.<sup>1</sup> But nearly four months later, *Ohioans still do not have a public investigation of the reasons for the outages, if anything could have been done to prevent them, or how they can be prevented in the future.* What we *do* know is that the lives of AEP consumers and their families in central Ohio were especially disrupted and placed at risk. People understandably are upset and deserve answers to important questions surrounding these events.

On August 10, 2022, OCC served its fifth set of discovery requests to AEP.<sup>2</sup> AEP’s responses were due on August 30, 2022.<sup>3</sup> AEP unlawfully refuses to answer

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<sup>1</sup> See, e.g., AEP Ohio The Wire, “Columbus Area Power Outages + FAQs;” <https://www.aepohiowire.com/columbus-area-power-outages-faqs/>.

<sup>2</sup> See Attachment to Motion to Compel.

<sup>3</sup> O.A.C. 4901-1-19(A); 4091-01-20(C).

OCC's discovery requests. The PUCO should promptly order AEP to comply with discovery law and respond.

## **II. ARGUMENT**

### **A. OCC's motion to compel is timely made and does not represent a collateral attack, despite AEP's claims to the contrary.**

AEP argues that OCC's only opportunity to assert its discovery rights was in its memo contra AEP's motion for protective order. Per AEP, OCC's additional motion to compel should be disregarded as a "collateral attack."<sup>4</sup> AEP misunderstands this concept. Its argument should be rejected.

A collateral attack is "[a]n attack on a judgment in a proceeding other than a direct appeal; esp., an attempt to undermine a judgment through a judicial proceeding in which the ground of the proceeding (or a defense in the proceeding) is that the judgment is ineffective."<sup>5</sup> OCC's motion to compel cannot be a collateral attack because it does not seek to undermine a prior judgment. The PUCO has not even ruled on AEP's previous motion for protective order. AEP is not entitled to the last word on this discovery dispute. OCC's motion to compel is not a collateral attack and was, in fact, timely filed.

OCC's motion to compel should be granted.

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<sup>4</sup> AEP's Memo Contra OCC's Motion to Compel ("AEP Memo Contra") (October 17, 2022) at 3.

<sup>5</sup> *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 17.

**B. OCC's discovery requests are relevant and reasonably calculated to lead to discovery of admissible evidence.**

AEP asserts that OCC's discovery is irrelevant and not reasonably calculated to discover admissible evidence.<sup>6</sup> This is false. The June outages are directly relevant to this proceeding. AEP's assertions to the contrary should be rejected.

This case is about determining AEP's reliability standards for 2022 and beyond. The outages occurred in 2022, the year the proposed standards will be implemented. To determine whether the standards are reasonable, the PUCO must assess the impact of the outages. OCC's discovery requests are also relevant and reasonably calculated to lead to the discovery of admissible evidence. All requests relate to the June outages and the July presentation AEP gave the PUCO about them.<sup>7</sup>

OCC's requests are relevant and reasonably calculated to discover admissible evidence. The PUCO should reject AEP's arguments to the contrary. It should grant OCC's motion to compel.

**C. OCC's discovery requests are not overly broad or unduly burdensome.**

AEP argues that producing the information OCC seeks requires inordinate time and expense.<sup>8</sup> In consumers' interest, AEP's argument should be rejected.

The outages impacted tens of thousands of consumers. Further, AEP has charged and is in the process of charging over \$3 billion dollars to consumers, with PUCO approval, for programs it claimed would increase reliability.<sup>9</sup> Any additional work OCC's

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<sup>6</sup> AEP Memo Contra at 3.

<sup>7</sup> See Attachment to Motion to Compel.

<sup>8</sup> AEP Memo Contra at 4.

<sup>9</sup> OCC's Motion for the PUCO to Order an Investigation of the AEP-Ohio Service Outages (July 11, 2022) at 4.

discovery requests require of AEP's counsel pales in comparison to the impact that the outages had on consumers. Also, AEP already compiled outage information to present to the PUCO in July. All of the discovery OCC seeks relates to the June outages and AEP's own presentation on them.<sup>10</sup> AEP will not suffer undue burden and expense in reproducing to OCC information it most likely already gave the PUCO.

OCC's motion to compel should be granted.

### **III. CONCLUSION**

OCC has a right to fully participate in the discovery process. Its discovery requests were relevant, reasonably calculated to lead to discovery of admissible evidence, and not unduly broad or overly burdensome. Still, AEP refuses to answer. This delays OCC's preparation to represent consumers.

The PUCO should grant this motion to compel and order AEP to respond.

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<sup>10</sup> See Attachment to Motion to Compel.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply to AEP's Memo Contra OCC's Motion to Compel Discovery was served on the persons stated below via electronic transmission, this 24<sup>th</sup> day of October 2022.

/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:

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by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M.  
Noward on behalf of Michael, William J.