

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company for Authority to Establish a)	
Standard Service Offer Pursuant to R.C.)	
4928.143 in the Form of an Electric Security)	Case No. 23-0023-EL-SSO
Plan.)	
In the Matter of the Application of Ohio)	
Power Company for Approval of Certain)	
Accounting Authority.)	Case No. 23-0024-EL-AAM
)	

**ONE ENERGY ENTERPRISES INC.’S REPLY IN SUPPORT OF MOTION TO
ESTABLISH A REASONABLE PROTECTIVE AGREEMENT**

Ohio Power Company’s (AEP-Ohio) August 9, 2023, memorandum contra acknowledges that AEP-Ohio has refused to respond to One Energy Enterprises Inc. (“One Energy”) timely-filed discovery requests and did so despite One Energy’s offer to be bound by a reasonable protective agreement. AEP-Ohio’s memorandum contra also acknowledges that AEP-Ohio continues to refuse to respond to One Energy’s discovery requests unless One Energy agrees to restrict access to the responses in ways that prevent One Energy from conducting an efficient and meaningful review of such responses.

When One Energy submitted its discovery requests, AEP-Ohio did not seek a protective order from the Public Utilities Commission or Ohio (“Commission”).¹ It just refused to respond and, when pressed by One Energy, then refused to respond unless One Energy agreed to unreasonable demands under AEP-Ohio’s proposed protective agreement.

¹ O.A.C. 4901-1-24.

The purpose of the Commission's discovery rules "...is to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings". Subject to very narrow exceptions, "... any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter proceeding".²

The substance of One Energy's Motion boils down to a single issue – the ability of its expert witness (Jereme Kent, an employee of One Energy) to access certain information and documents unilaterally deemed to be confidential, competitively-sensitive, and/or restricted access confidential by AEP-Ohio. AEP-Ohio refuses to provide such access based on unusual arguments and jabs at Mr. Kent and his motives. As explained in detail below, failure to modify the protective agreement and allow Mr. Kent access to all materials in this proceeding not only prejudices One Energy but creates a dangerous precedent in future Commission proceedings.

AEP-Ohio's memorandum contra confusingly jumbles a number of arguments together; however, AEP-Ohio seems to present five unconvincing arguments to support its position that its insisted-upon protective agreement terms and conditions must be agreed to by One Energy.

First, AEP-Ohio, an electric distribution utility ("EDU") providing noncompetitive retail electric services, ironically seeks to be the white knight for the competitive electric market. It does so even though AEP-Ohio cannot lawfully engage in providing competitive retail electric services and such services are provided by its affiliates that are not party to this case. It then self-servingly and irrelevantly argues that employees of CRES-providers should not be able to see information unilaterally labeled by AEP-Ohio (or its affiliates) as restricted access confidential ("RAC"). AEP-Ohio points out in footnote 1 that One Energy subsidiaries are "registered power brokers and

² O.A.C. 4901-1-16.

aggregators in Ohio,” and on page 4 that “CRES providers are, by nature, competitive entities who can capitalize on confidential information to gain an advantage in the marketplace. AEP-Ohio further notes that CRES providers act through their employees, so giving a CRES employee highly confidential information is the same as giving that information to the competitive entity itself.” As the public record shows and AEP-Ohio knows, One Energy’s subsidiaries are not parties to this case and One Energy (the intervening party and employer of Mr. Kent) is not a CRES, which makes AEP-Ohio’s argument on this point moot.

Second, AEP-Ohio appears to take a personal shot at Mr. Kent on page 4 of its memorandum contra, arguing that the proceedings might “... become a back door through which CRES employees can gain access to non-public information that they can use to gain a competitive advantage.” But, again, the protective agreement submitted by One Energy precludes it from engaging in the behavior the AEP-Ohio has stated as a concern. One Energy is an active participant in Commission proceedings (formal and informal) and understands the obligations created by its proposed protective agreement and will fulfill such obligations.

Third, on page 6 of its Memorandum Contra, AEP-Ohio states “[b]y asking for detailed information regarding certain new types of customers of AEP Ohio, One Energy is essentially seeking sales leads.” In doing so, AEP-Ohio appears to have forgotten that its application and direct testimony in this proceeding regarding the scope of proposed riders make repeated references to the financial demands created by new customers as impinging upon AEP-Ohio’s distribution service reliability capital investment. AEP-Ohio’s application put the number and size of new service requests in play, so it is pertinent matter for discovery. Not to mention, One Energy is confident in its own ability to find and close sales leads and it does not need AEP-Ohio’s help to do so.

Fourth, AEP-Ohio argues that One Energy (and presumably all intervening parties in a Commission proceeding) should be forced to hire outside expert witnesses to get access to

information unilaterally restricted by AEP-Ohio. Memorandum Contra at p. 5. In other words, AEP-Ohio seeks to anoint itself as a discovery response gatekeeper and dictate how One Energy must allocate resources to protect its interests in this proceeding. In doing so, it invites the Commission to disregard the General Assembly's directive that "[a]ll parties and intervenors shall be granted ample rights of discovery..."³ The practical effect of AEP-Ohio playing gatekeeper means that it is free to gain the advantage of internal subject matter experts employed by it and affiliates such as American Electric Power Services Corporation ("AEPSC")⁴ while One Energy is precluded from benefiting from its own in-house expertise. It also has the concerning impact of giving AEP-Ohio the arbitrary power to dictate that it is more expensive for other parties to be involved in ESP cases which will deter parties from being involved in ESP cases. AEP-Ohio has a vested, conflicted interest in blocking other parties from the technical resources they need to meaningfully participate in cases and making such cases more expensive to be involved in. It would be a concerning Commission precedent to enable AEP-Ohio to assert this conflicted-ridden control over other parties.

Finally, AEP-Ohio suggests that One Energy's motion should be rejected because it claims that One Energy is the only intervening party to formally challenge the protective agreement. This is nonsensical. The fact that other parties chose not to modify the terms of the protective agreement is entirely irrelevant to the resolution of this Motion. The reality is that One Energy asked for certain modifications to a commonly negotiated document, and AEP-Ohio said no. That is all that matters for purposes of this dispute.

For the reasons set forth in its July 31, 2023 Motion and this Reply, One Energy respectfully requests that that AEP-Ohio be ordered to promptly sign the alternative protective agreement

³ R.C. 4903.082.

⁴ For example, AEP-Ohio witness Reid Newman is, according to his pre-filed testimony, employed by AEPSC (testimony at page 1).

(attached as Exhibit D to One Energy's Motion) and provide One Energy with responses to its timely discovery requests subject to that protective agreement.

Respectfully submitted on behalf of
ONE ENERGY ENTERPRISES INC.

/s/ Marion H. Little, Jr.

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing Reply in Support of Motion was served upon the parties of record listed below this 16th day of August 2023 *via* electronic mail.

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Case No(s). 23-0023-EL-SSO, 23-0024-EL-AAM

Summary: Reply One Energy Enterprises Inc.'s Reply In Support Of Motion To
Establish A Reasonable Protective Agreement electronically filed by Mr. Marion H.
Little on behalf of One Energy Enterprises Inc..