

THE OHIO POWER SITING BOARD

ENTRY

- (1) On December 5, 2006, American Municipal Power-Ohio, Inc. (AMP-Ohio), filed a motion to waive certain requirements applicable to an application it intends to file for a certificate of environmental compatibility and public need. AMP-Ohio stated that it is proposing to construct an electric power transmission line and related facilities to be used by AMP-Ohio to deliver the electric energy and capacity to be generated by a proposed electric power generating station and related facilities. AMP-Ohio sought a waiver of Rule 4906-5-04(A), Ohio Administrative Code (O.A.C.), which requires that all certificate applications for electric power transmission facilities include fully developed information on two alternative routes. Specifically, AMP-Ohio requests that it be permitted to provide fully developed information only for its preferred route although AMP-Ohio will identify the alternative route.
- (2) On March 20, 2007, the Staff of the Ohio Power Siting Board (Staff) filed a letter recommending that the request for a waiver be denied. AMP-Ohio did not file a response to the Staff's recommendation.
- (3) By entry dated May 9, 2007, the administrative law judge found that AMP-Ohio's motion for a waiver of Rule 4906-5-04(A), O.A.C., should be denied.
- (4) On June 1, 2007, AMP-Ohio filed a motion for reconsideration of the entry denying the waiver. AMP-Ohio also attached to its motion a reply to Staff's letter. In its motion, AMP-Ohio states that Staff failed to serve AMP-Ohio with a copy of the letter as required by Rule 4906-7-06, O.A.C. Therefore, AMP-Ohio requests that the administrative law judge reconsider the entry

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denying the motion for a waiver and grant, in whole or in part, the requested waiver.

- (5) The administrative law judge finds that AMP-Ohio's motion should have been filed as an interlocutory appeal. The motion asks for reconsideration of the substance of an entry that was issued 23 days before the motion was filed. AMP-Ohio cannot avoid the requirements of Rule 4906-7-15, O.A.C., by calling its filing a motion rather than an interlocutory appeal. *See, In re Cincinnati Gas & Electric Company*, Case No. 05-59-EL-AIR, Entry (November 3, 2005) at 2. Therefore, the administrative law judge finds that AMP-Ohio's motion should be denied.
- (6) The administrative law judge further notes that AMP-Ohio's motion would have been denied, notwithstanding AMP-Ohio's failure to comply with the requirements of Rule 4906-7-15, O.A.C. AMP-Ohio has not demonstrated that it was prejudiced by the fact that it was not served with a copy of the Staff's letter recommending that the waiver be denied. In fact, AMP-Ohio's motion for a waiver filed on December 5, 2006, contained all of the information necessary for its waiver request and was fully considered by the administrative law judge.
- (7) Moreover, in its letter dated March 20, 2007, the Staff made it clear that it considers the information required by Rule 4906-5-04(A), O.A.C., to be essential for the Staff's investigation of the routes proposed by AMP-Ohio. Although AMP-Ohio is correct that the Staff has supported waivers of the requirements of Rule 4906-7-15, O.A.C., in other cases, those recommendations were based upon the specific facts and circumstances of those cases. In this proceeding, based upon the specific facts and circumstances regarding the proposed routes, the Staff has recommended that the waiver be denied, and the administrative law judge did not disagree with that recommendation.

It is, therefore,

ORDERED, That the motion for reconsideration filed by American Municipal Power-Ohio, Inc., be denied. It is, further,

ORDERED, That a copy of this entry should be served upon all interested persons of record in this proceeding.

OHIO POWER SITING BOARD




By: Gregory A. Price
Administrative Law Judge

JPJ/ct

Entered in the Journal

JUL 19 2007



Renee J. Jenkins
Secretary