

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	
Columbus Southern Power Company)	
and Ohio Power Company for Authority)	
to Recover Costs Associated with the)	Case No. 05-376-EL-UNC
Construction and Ultimate Operation)	
of an Integrated Gasification Combined)	
Cycle Electric Generation Facility)	

**MEMORANDUM CONTRA OF OHIO POWER COMPANY TO THE OHIO
MANUFACTURERS' ASSOCIATION ENERGY GROUP'S MOTION
FOR LEAVE TO INTERVENE OUT OF TIME**

On September 2, 2014, the Ohio Manufacturers' Association Energy Group ("OMAEG") filed a motion to intervene out of time in this proceeding. OMAEG's motion fails to demonstrate extraordinary circumstances that justify late intervention. Accordingly, Ohio Power Company ("AEP Ohio" or the "Company") opposes late intervention by OMAEG.

Pursuant to O.A.C. 4901-1-11(D), a motion to intervene "will not be considered timely if it is filed later than five days prior to the scheduled date of hearing or any specific deadline established by order of the commission * * *." Division (F) of that rule provides that "[a] motion to intervene which is not timely will be granted only under extraordinary circumstances." The Commission's August 11, 2014 Entry established a procedural schedule for this case on remand, setting August 18, 2014 as the deadline to move for intervention. OMAEG failed to meet that deadline, filing its motion for leave to intervene out of time more than two weeks late.

OMAEG advances two arguments in support of its untimely intervention request. First, it contends that OMAEG could not previously participate in the case, which has been pending now for almost ten years, because OMAEG was not formed until 2011. (OMAEG Mot. at 5.)

Second, OMAEG argues that it was not aware that this case became active again because it had not previously been involved in this matter. (*Id.* at 6.) Neither argument, however, demonstrates that any extraordinary circumstance merits late intervention here.

As an initial matter, it is disingenuous for OMAEG to advance its lack of existence prior to 2011 as a basis for its untimely motion. Although OMAEG may not have existed when this case began in 2005, the Ohio Manufacturers' Association (OMA) – which created OMAEG – did. OMAEG's members are all members of the OMA. (*See id.* at 5.) Thus, OMAEG's constituency had the opportunity to timely intervene in this case in 2005 – through OMA. But they did not do so. Moreover, OMAEG *certainly* existed last month, when it had the opportunity to itself intervene, but it failed to meet the applicable deadline. OMAEG's lack of existence prior to 2011 simply does not constitute an extraordinary circumstance that justifies its untimely intervention here.

OMAEG's failure to monitor the Commission's dockets or review the Commission's daily activity reports to determine when this case became active again also is not an extraordinary circumstance justifying intervention under O.A.C. 4901-1-11(F). *See In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan*, Case No. 08-917-EL-SSO, *et al.*, Entry at 5-6 (June 16, 2011) (denying untimely motions to intervene and finding that a remand from the Ohio Supreme Court does not constitute extraordinary circumstances); *In the Matter of the Muskingum River Plant for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 10-911-EL-REN, Entry at 2 (Aug. 26, 2010) (denying untimely motions to intervene filed three and eight days late); *In the Matter of the Application of Duke Energy Ohio, Inc. to Establish and Adjust the Initial Level of its Distribution Reliability Rider*, Case No. 09-1946-EL-RDR, Entry at 5-6 (Apr. 14, 2010)

(denying untimely motions to intervene filed seven and eight days late). It is routine that a case that is remanded back to the Commission from the Ohio Supreme Court eventually becomes active again. OMAEG is surely aware of this as, by its own account, OMAEG “has been regularly and actively involved in Commission proceedings” since its inception in 2011. (OMAEG Mot. at 5.) OMAEG could have monitored this case’s docket to ensure that it timely sought intervention. Its apparent failure to do so does not justify granting it untimely intervention now.

Moreover, OMAEG has failed to demonstrate that it satisfies the requirements for intervention set forth in O.A.C. 4901-1-11(B). Among other things, OMAEG has failed to articulate the legal position it advances and its probable relation to the merits of this case. It has also failed to demonstrate how it will “significantly contribute to full development and equitable resolution of the factual issues.” And, it has not demonstrated – and, indeed, cannot demonstrate – that its interests are not adequately represented by other parties. Although OMAEG states that its members “paid Phase I costs and charges” (OMAEG Mot. at 5), so have other parties’ constituents. Moreover, the interests of OMAEG’s constituency are similar to and adequately represented by a number of parties that timely intervened in the case, including, for example, Industrial Energy Users – Ohio and the Ohio Energy Group. These parties have the experience and expertise necessary to develop the record and assist the Commission in resolving the limited issues on remand here. Finally, OMAEG’s late intervention in this proceeding will prejudice AEP Ohio by requiring it to spend additional time and resources preparing for and conducting the hearing of this case. For these reasons too, OMAEG’s untimely intervention request should be denied.

CONCLUSION

For each of the foregoing reasons, the Commission should deny OMAEG's untimely, unsubstantiated request for intervention in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon the following counsel of record by e-mail on September 17, 2014:

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Summary: Memorandum Contra of Ohio Power Company to the Ohio Manufacturers' Association Energy Group's Motion for Leave to Intervene Out of Time electronically filed by Ms. Christen M. Blend on behalf of Ohio Power Company