

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 Ultimate) Case No. 05-376-EL-UNC
Construction and Operation of an)
Integrated Gasification Combined Cycle)
Electric Generation Facility.)

ENTRY

The attorney examiner finds:

- (1) On March 18, 2005, Columbus Southern Power Company and Ohio Power Company (jointly AEP-Ohio)¹ filed an application with the Commission for authority to recover \$23.7 million associated with the cost to design, construct, and operate an integrated gasification combined cycle (IGCC) electric generation facility to be built in Meigs County, Ohio (Great Bend Facility). The Commission issued its Opinion and Order approving AEP-Ohio's application to establish a mechanism to recover Phase I costs related to the design and construction of the Great Bend Facility on the premise that the IGCC facility was necessary for AEP-Ohio to fulfill its obligation as the provider of last resort. *In re AEP-Ohio*, Case No. 05-376-EL-UNC (*Great Bend Case*), Opinion and Order (Apr. 10, 2006); Entry on Rehearing (June 28, 2006).
- (2) Several intervenors appealed the Commission's decision in the *Great Bend Case* to the Ohio Supreme Court. By decision issued March 13, 2008, the Court affirmed, in part, reversed, in part, and remanded the *Great Bend Case* to the Commission.
- (3) On July 30, 2012, the Ohio Power Siting Board issued an Entry invalidating AEP Ohio's certificate to construct the Great Bend

¹ By Entry issued March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company into Ohio Power Company, effective December 31, 2011. *In re Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, Entry (March 7, 2012) at 3, 12.

Facility. See *In re AEP Ohio*, Case Nos. 06-30-EL-BGN and 06-309-EL-BTX, Entry (July 30, 2012).

- (4) By Entry issued August 11, 2014, the remand procedural schedule was established and motions to intervene were due by August 18, 2014.
- (5) On September 2, 2014, Ohio Manufacturers' Association Energy Group (OMAEG) filed a motion to intervene out of time. OMAEG states that it was created by the Ohio Manufacturers' Association (OMA) and formed in 2011. Accordingly, OMAEG states that it did not exist when this case was initiated and the majority of the time during the prior phases of this case. However, OMAEG states that some of its members were customers of AEP Ohio during the previous phases of this proceeding, paid Phase I costs, and will be affected by the Commission's decision in this matter. For those reasons, OMAEG states that it has a direct, real, and substantial interest in the issues implicated in this matter and is so situated that the disposition of the proceeding may, as a practical matter, impair or impede its ability to protect that interest. OMAEG submits that the unusual procedural history of this case, the 7-day notice to intervene, and OMAEG's lack of existence during a significant portion of the previous phases of this proceeding qualify as extraordinary circumstances under Ohio Adm.Code 4901-1-11(F).
- (6) On September 17, 2014, AEP Ohio filed a memorandum contra OMAEG's motion to intervene out of time. AEP Ohio avers that the motion fails to demonstrate extraordinary circumstances to justify granting the request for intervention. AEP Ohio notes that while OMAEG did not exist when the case began, OMA did and, as OMAEG admits, all OMAEG members are also members of OMA. For that reason, AEP Ohio argues the OMAEG's constituency had the opportunity to timely intervene in 2005 and OMAEG could have intervened before the intervention deadline. Further, AEP Ohio notes that OMAEG's failure to monitor the Commission's dockets is not an extraordinary circumstance justifying intervention under Ohio Adm.Code 4901-1-11(F). Finally, AEP Ohio asserts that OMAEG failed to state its legal position and probable relation to the merits of this case, how OMAEG will contribute to the development and equitable resolution of the case, or to state

that its interest is not adequately represented by other parties. Therefore, AEP Ohio submits that OMAEG did not satisfy the requirements of Ohio Adm.Code 4901-1-11(B) to be granted intervention.

- (7) On September 24, 2014, OMAEG filed a reply. In the reply, OMAEG reiterates that it did not exist until 2011 and emphasizes that OMAEG is the party seeking intervention not OMA. OMAEG submits that its interest are different from the interest of the other commercial and industrial representatives that have intervened in this matter and notes that the Commission has previously recognized and granted intervention to all three parties in prior Commission proceedings. Further, OMAEG agrees to take the record as it stands and, therefore, asserts its intervention will not prejudice AEP Ohio but will contribute to the full development of the issues.
- (8) OMAEG's late-filed motion to intervene asserts a real and substantial interest in this proceeding and asserts that the disposition of this case may impair or impede OMAEG's ability to protect that interest. In accordance with Ohio Adm.Code 4901-1-11, the Commission will consider untimely motions to intervene only under extraordinary circumstances. It is not the Commission's practice to allow intervention merely on the basis that the case has been remanded to the Commission. See *In re AEP Ohio*, Case No. 08-917-EL-SSO et al., Entry (June 16, 2011) at 5-6. However, in this instance, given the years that have passed since the Commission's decision in this case and the changes in the electric industry and interested stakeholders during that time, the attorney examiner granted interested persons one week to file motions to intervene. OMAEG, formed in 2011, did not exist when this proceeding was initiated. While late, OMAEG's motion was filed two weeks after the intervention due date but well in advance of the scheduled hearing date. Further, OMAEG agrees to take the record in this case as it stands and, on that basis, OMAEG's intervention will not unduly delay this proceeding. OMAEG's motion to intervene otherwise meets the intervention criteria set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11. Accordingly, under such circumstances, the attorney examiner finds OMAEG's motion to intervene is reasonable and should be granted.

It is, therefore,

ORDERED, That OMAEG's motion to intervene is granted. It is, further,

ORDERED, That a copy of this Entry be served upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Greta See

By: Greta See
Attorney Examiner

JRJ/dah

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in

Case No(s). 05-0376-EL-UNC

Summary: Attorney Examiner Entry that OMAEG's motion to intervene is granted; electronically filed by Debra Hight on behalf of Greta See, Attorney Examiner.