

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Ohio Power Company and)
Columbus Southern Power Company)
for Authority to Merge and Related)
Approvals)

Case No. 10-2376-EL-UNC

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OHIO POWER COMPANY'S AND COLUMBUS SOUTHERN POWER COMPANY'S
MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE BY
CONSTELLATION NEWENERGY, INC.

Under Rule 4901-1-11(A)(2), O.A.C., the Commission will only grant intervention where the movant shows a real and substantial interest in the proceeding. This standard is consistent with Section 4903.221, Revised Code. The motion to intervene submitted by Constellation NewEnergy, Inc. ("Constellation") does not demonstrate any interest, substantial or otherwise, in the limited scope of this merger proceeding. The motion should be denied.

The only interest Constellation asserts in this proceeding is a "business interest" as a competitor of AEP in Ohio. Constellation Motion at 5. Constellation claims that the timing of Applicants next Standard Service Offer and distribution rate case, which will be filed subsequent to the resolution of the merger application, means that it has an interest not only in those future rate cases, but in this narrow merger application. On the contrary, Applicants have not requested that the Commission address any rate-related matters in the merger application. The only reference in the application to future rate proceedings is in the context of Applicants' request for expedited consideration. (Application at para 13.) Rate matters, and Constellation's business interest therein, have no bearing on the merits of Applicants' proposed merger.

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As has been established previously, “it is the Commission’s policy not to grant intervention to entities whose only real interest in the proceedings is that legal precedent may be established which may affect that entity’s interest in a subsequent case.” *In Re Complaint of WorldCom, Inc. et al. v. City of Toledo*; and *In Re Complaint of The Toledo Edison Co. and American Transmission Systems, Inc. v. City of Toledo*, PUCO Case Nos. 02-3207-AU-PWC and 02-3210-EL-PWC, Entry, at page 3 (March 4, 2003). “Although [an entity] has an interest in the proceeding and the precedent that might be set in [the] case, [it] has long held that interest is not a sufficient basis for intervention.” *In Re Complaint of Dominion Retail, Inc. v. Ohio Edison Co. et al.*, PUCO Case No. 00-2526-EL-CSS, Entry, at page 2 (April 19, 2001). The Commission affirmed its Attorney Examiner’s ruling in *Dominion Retail* when the entity whose motion to intervene was denied took an interlocutory appeal of the denial. Entry, at page 2 (May 15, 2001).

The Commission has further explained why allowing intervention on the basis of an interest in the precedent that might be set in a particular case is not appropriate as follows: “To grant intervention on this basis would render the Commission’s rule on intervention meaningless and allow almost any person intervention in any case based on the proposition that the precedent established may affect them in some future case.” *In Re FirstEnergy Corp. on Behalf of Ohio Edison Co. et al.*, PUCO Case Nos. 99-1212-EL-ETP, 99-1213-EL-ATA, 99-1214-EL-AAM, Entry, at pages 2-3 (March 23, 2000).

Further, in *Ohio Domestic Violence Network v. Pub. Util. Comm.* (1994), 70 Ohio St. 3d 311, 315, 1994 Ohio 165, 638 N.E.2d 1012, the Supreme Court of Ohio held that R.C. 4903.221 -- the statute governing intervention in PUCO proceedings -- “clearly contemplates intervention in quasi-judicial proceedings, characterized by notice, hearing, and the making of an

evidentiary record,” and when no hearing is held before the PUCO, “there is no right to intervene.”

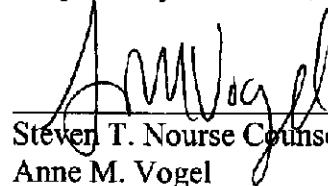
Constellation concedes that its only interest in this proceeding is a competitive interest in the potential affect of the Commission’s decision on future cases involving Applicants’ retail rates. In the event the merger application is granted, Constellaion will have the opportunity to assert any interest it may have in the consolidated entity’s rate structure and pricing in future rate cases. The merger application, however, is a straightforward, stand-alone request for authority to merge two affiliates, applicants Ohio Power Company and Columbus Southern Power Company.

Applicants respectfully submit that the case presents no issues that require the “unique expertise” of Constellation to resolve. The merger application narrowly affects the internal operations of two affiliates, with no direct impact on existing customers, customer base or external operations of the companies. (Application at paras 8-9.) Accordingly, Constellation cannot “significantly contribute to full development and equitable resolution of the factual issues” as required by Section 4903.221, Revised Code. Particularly in light of the fact that no hearing is necessary or anticipated in connection with Applicants’ merger application, intervention is not warranted. Rather, Constellation’s intervention in the proceeding can only serve to needlessly delay and prolong its resolution.

Conclusion

For the foregoing reasons, the Commission should deny Constellation's motion to intervene.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anne M. Vogel", is written over a horizontal line.

Steven T. Nourse Counsel of Record

Anne M. Vogel

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

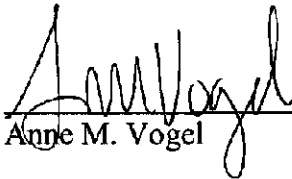
Fax: (614) 716-2950

Tele: (614) 716-1606

**Counsel for Ohio Power Company and Columbus
Southern Power Company**

CERTIFICATE OF SERVICE

I hereby certify that a copy of Ohio Power Company's and Columbus Southern Power Company's Memorandum in Opposition to Constellation NewEnergy, Inc.'s Motion to Intervene was served by e-mail and regular mail on counsel for all parties of record in this case, on this 12th day of November, 2010.


Anne M. Vogel

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour & Pease LLP
52 East Gay Street
PO Box 1008
Columbus, Ohio 43216-1008
mhpeticoff@vssp.com
smhoward@vssp.com

Samuel C. Randazzo
Joseph M. Clark
McNees Wallace & Nurick LLC
21 E. State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
jclark@mwncmh.com

David Rinebolt
Colleen Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45839-8860
drinebolt@ohiopartners.com
cmooney2@columbus.rr.com

Mark A. Hayden
First Energy Service Company
76 South Main Street
Akron, Ohio 44308
haydenm@firstenergycorp.com

Matthew White
Chester Wilcox & Saxbe LLP
65 East State Street, Ste. 1000
Columbus, Ohio 43215
mwhite@cwslaw.com

Maureen Grady
Office of Consumers' Counsel
10 West Broad Street, Ste. 1800
Columbus, Ohio 432153485
grady@occ.state.oh.us