

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of       )  
the Timken Company and the Ohio       )  
Power Company for Approval of a       ) Case No. 10-3066-EL-AEC  
Unique Arrangement for the Timken       )  
Company's Canton, Ohio Facilities.       )

ENTRY

The attorney examiner finds:

- (1) Pursuant to Section 4905.31, Revised Code, and Rule 4901:1-38-05, Ohio Administrative Code (O.A.C.), the Commission has authority to approve schedules for electric service upon application of a public utility or establish reasonable arrangements for electric service upon application of a public utility and/or mercantile customers.
- (2) On December 20, 2010, the Timken Company (Timken), a mercantile customer as defined by Section 4928.01, Revised Code, and the Ohio Power Company (Ohio Power) (collectively, Joint Applicants) filed a joint application (application) seeking approval of a unique arrangement for Timken's Canton, Ohio facilities.
- (3) By entry issued February 24, 2011, Industrial Energy Users-Ohio (IEU-Ohio), Ohio Energy Group (OEG), and the Ohio Consumers' Counsel (OCC) were granted intervention in the matter.
- (4) Pursuant to an entry issued February 24, 2011, a prehearing conference was held in this matter on March 14, 2011. During the prehearing conference, OCC made several motions to compel Ohio Power to respond to requests for production of documents provided to Ohio Power by Timken. In both requests, the attorney examiners denied OCC's motion as to any documents produced after a joint defense agreement was executed between Ohio Power and Timken in April 2010. However, the attorney examiners directed Ohio Power to produce a privilege log to identify any documents, produced prior to the execution of the joint defense agreement, which were otherwise discoverable but for a privilege claim by Ohio

Power. The attorney examiner's orders were reflected in an entry issued March 16, 2011.

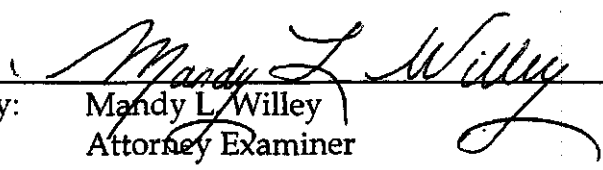
- (5) On March 18, 2011, OCC notified the attorney examiners that it had reviewed the privilege log provided pursuant to the attorney examiners' direction and renews its oral motion to compel Ohio Power to produce the documents identified on the privilege log. OCC contends that Ohio Power has failed to meet its burden of proving a valid claim of privilege for each document that Ohio Power seeks to withhold from discovery. Additionally, OCC asserts that neither the Commission nor OCC can determine from the discovery log what privileges may or may not apply to the documents listed.
- (6) The attorney examiner finds that, in order to resolve OCC's renewed motion to compel Ohio Power to produce the documents identified on the privilege log, a prehearing conference should be held in this matter so that the attorney examiners may conduct an *in camera* review of the documents identified on the privilege log. The prehearing conference shall be held in this matter on March 23, 2011, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11<sup>th</sup> Floor, Hearing Room 11-D, Columbus, Ohio 43215-3793. The attorney for Ohio Power shall bring all documents identified on the privilege log for purposes of the *in camera* review.

It is, therefore,

ORDERED, That the prehearing conference be held in this matter on March 23, 2011, in accordance with finding (6). It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

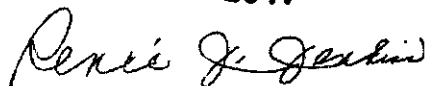
THE PUBLIC UTILITIES COMMISSION OF OHIO

By:   
Mandy L. Willey  
Attorney Examiner

grg  
MLW/sc

Entered in the Journal

**MAR 22 2011**

  
Renee J. Jenkins  
Secretary