

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company, Individually and, if) Case No. 11-351-EL-AIR
Their Proposed Merger is Approved, as a) Case No. 11-352-EL-AIR
Merged Company (collectively, AEP Ohio))
for an Increase in Electric Distribution)
Rates.)

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company, Individually and, if) Case No. 11-353-EL-ATA
Their Proposed Merger is Approved, as a) Case No. 11-354-EL-ATA
Merged Company (collectively, AEP Ohio))
for Tariff Approval.)

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company, Individually and, if) Case No. 11-356-EL-AAM
Their Proposed Merger is Approved, as a) Case No. 11-358-EL-AAM
Merged Company (collectively, AEP Ohio))
for Approval to Change Accounting)
Methods.)

ENTRY

The attorney examiner finds:

- (1) Columbus Southern Power Company (CSP) and Ohio Power Company (OPCo) (collectively, Applicants or AEP-Ohio) are electric light companies as defined by Section 4905.03(A)(3), Revised Code, and public utilities as defined by Section 4905.02, Revised Code. Applicants are, therefore, subject to the jurisdiction of this Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.
- (2) On February 28, 2011, AEP-Ohio filed applications seeking an increase in electric distribution rates, for approval of tariff modifications, and for approval of changes to certain accounting methods.

- (3) The Commission has caused an investigation to be made of the facts set forth in the rate increase application by the company, the exhibits attached thereto, and the matters connected with the application.
- (4) Timely motions to intervene were filed by the following parties:
- Industrial Energy Users-Ohio
 - Ohio Energy Group
 - Ohio Hospital Association
 - Ohio Partners for Affordable Energy
 - Ohio Consumers' Counsel
 - Natural Resources Defense Council
 - Ormet Primary Aluminum Corporation
 - Appalachian Peace and Justice Network
 - The Kroger Company
 - Ohio Manufacturers' Association Energy Group
 - Ohio Cable Telecommunications Association
 - The Sierra Club
 - Ohio Department of Development
- (5) All of the above-listed parties' motions to intervene assert a real and substantial interest that is not represented by another party to these matters. Further, each motion asserts that the disposition of these proceedings may impair or impede the party's ability to protect that interest. No party filed a memorandum contra any of the above-listed motions to intervene. Consequently, the attorney examiner finds that the motions to intervene filed by the above-listed parties are reasonable and should be granted.
- (6) Motions for admission *pro hac vice* were filed by Douglas G. Bonner and Emma F. Hand on behalf of Ormet Primary Aluminum Corporation in Case Nos. 11-351-EL-AIR and 11-352-EL-AIR, respectively, and a motion for admission *pro hac vice* was filed by John Davidson Thomas on behalf of the Ohio Cable Telecommunications Association in Case Nos. 11-351-EL-AIR and 11-352-EL-AIR. The attorney examiner finds that these motions are reasonable and should be granted.

- (7) On February 17, 2011, FirstEnergy Solutions Corp. (FES) filed a timely motion to intervene and memorandum in support. In its motion to intervene, FES asserts that it has a number of real and substantial interests in these proceedings and its interests, which may be prejudiced by the results of these proceedings, are not adequately represented by existing parties. Specifically, FES argues that the components and pricing of AEP-Ohio's distribution rates will directly impact FES' and other competitive retail electric service (CRES) providers' abilities to provide competitive service in AEP-Ohio's service territories. FES further specifies that AEP-Ohio's electric security plan (ESP) application filed in Case Nos. 11-346-EL-SSO and 11-348-EL-SSO reveals that AEP-Ohio proposes to include significant and future generation-related costs in its distribution charges. Finally, FES asserts that its intervention will not unduly prolong or delay the proceeding.
- (8) Thereafter, on March 4, 2011, AEP-Ohio filed a memorandum contra FES' motion to intervene. AEP-Ohio argues that FES' motion to intervene does not demonstrate any interest in the scope of this distribution proceeding but that FES' interest only relates to AEP-Ohio's pending ESP cases concerning generation. In support, AEP-Ohio contends that FES' own motion to intervene relies on issues related to the ESP application as a basis for demonstrating FES' interest in the distribution proceeding. Additionally, AEP-Ohio contends that FES' motion lacks any example or citation in support of its claim that AEP-Ohio is proposing a generation-related distribution charge in this proceeding and asserts that no such charge exists. AEP-Ohio concludes that FES has no interest in the distribution rate cases in this proceeding and requests that FES' motion to intervene be denied.
- (9) Subsequently, on March 11, 2011, FES filed a reply in support of its motion to intervene. In its reply, FES reasserts that AEP-Ohio's application in these proceedings will have an impact on the competitive marketplace. FES specifies that there is a substantial overlap between AEP-Ohio's application for approval of an ESP and this proceeding, as both seek approval for some of the same riders and the same or similar rate design, and that

AEP-Ohio did not dispute FES' interests in the approval of the ESP. FES further argues that AEP-Ohio's application is not limited to distribution-related riders but also concerns the provider of last resort rider, the transmission cost recovery rider, the fuel adjustment clause, the environmental investment carrying cost rider, and the proposed standard offer generation service rider. Consequently, FES contends that it has an interest in ensuring the treatment of the generation-related riders is consistent between the two proceedings. FES additionally argues that AEP-Ohio's application appears to implement different distribution-related charges for shopping and non-shopping customers, which FES contends will impact the competitive marketplace. Finally, FES argues that the Commission has previously recognized that CRES providers may have an interest in distribution proceedings in *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices, and for Tariff Approvals*, Case No. 07-551-EL-AIR, Opinion and Order (January 21, 2009) at 3-4.

- (10) Rule 4901-1-11(A)(1) and (2), Ohio Administrative Code (O.A.C.), provides that, upon the filing of a timely motion, a person shall be permitted to intervene in a proceeding upon a showing that either (a) a statute confers a right to intervene; or (b) the person has a real and substantial interest in the proceeding and the person is so situated that the disposition of the proceeding may impair or impede the person's ability to protect that interest, unless the person's interest is adequately represented by existing parties.
- (11) In deciding whether to permit intervention under Rule 4901-1-11(A)(2), O.A.C., paragraph (B) of that same rule states that the Commission shall consider the following:
 - (a) The nature and extent of the movant's interest.
 - (b) The legal position advanced by the movant and its probable relation to the merits of the case.

- (c) Whether granting intervention will unduly prolong or delay the proceedings.
 - (d) Whether the movant will significantly contribute to full development and equitable resolution of the factual issues.
 - (e) The extent to which the person's interest is represented by existing parties.
- (12) Upon consideration of FES' motion to intervene, the attorney examiner finds that FES has demonstrated a real and substantial interest in these cases. In so finding, the attorney examiner notes that the Supreme Court of Ohio has held that "intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 388, 2006-Ohio-5853, ¶20. Although AEP-Ohio argues that FES' motion does not demonstrate any interest in the scope of this distribution proceeding, but only relates to AEP-Ohio's pending ESP cases concerning generation, the attorney examiner finds that, as FES argues, there is substantial overlap between the proceedings and that FES has demonstrated a real and substantial interest. Additionally, as FES argues, the Commission has previously recognized that CRES providers may have an interest in distribution proceedings. Accordingly, the attorney examiner finds that FES has demonstrated the requirements of Rule 4901-1-11(A), O.A.C., and that FES' motion to intervene should be granted.
- (13) On April 19, 2011, Ormet filed a motion to formally consolidate the above-captioned six cases. In support, Ormet argues that formal consolidation under one case number would permit Ormet's *pro hac vice* counsel to represent Ormet in all six proceedings without contravening Gov. Bar R. XII of the Ohio Supreme Court, which provides that each *pro hac vice* attorney may appear in no more than three cases in Ohio per calendar year.
- (14) On April 29, 2011, AEP-Ohio filed a memorandum contra Ormet's motion to consolidate the six cases. AEP-Ohio cites Civ. R. 42(A) in support of its argument that

consolidation is warranted only where four factors are demonstrated. AEP-Ohio contends that Ormet has not attempted to establish that consolidation is appropriate under those factors but rather that Ormet merely seeks consolidation to circumvent the Ohio Supreme Court's limitation on *pro hac vice* admission. AEP-Ohio argues that the six cases consist of three individual applications, properly filed by two different legal entities, which do not share common questions of fact or law. Further, AEP-Ohio asserts that it followed the Commission's well-established docketing procedures and case purpose codes to identify and file separate applications seeking approval of changes to its distribution rates, tariffs, and accounting methods.

- (15) On May 6, 2011, Ormet filed a reply memorandum arguing that AEP-Ohio filed only one application in the six dockets and not three separate applications. Ormet points out that AEP-Ohio repeatedly characterizes its filing as only one application. Further, Ormet contends that, as the parties are substantially the same in all six dockets, and because all of the pleadings in this case have been filed under all six case dockets, no delay or prejudice will result from consolidation of the cases.
- (16) The attorney examiner finds that Ormet's request to consolidate the six cases into a single docket before the Commission should be denied. As AEP-Ohio notes, Ormet has not demonstrated that the four factors for consolidation, as set forth in the civil rules, have been met.

It is, therefore,

ORDERED, That the motions to intervene filed by various parties be granted in accordance with finding (5). It is, further,

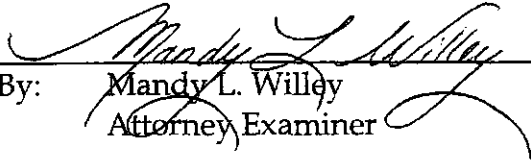
ORDERED, That the motions for admission *pro hac vice* filed by various individuals be granted in accordance with finding (6). It is, further,

ORDERED, That the motion to intervene filed by FES be granted for the reasons stated in Finding (12). It is, further,

ORDERED, That Ormet's motion to consolidate the above-listed cases is denied in accordance with Finding (16). 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

GR/sc

Entered in the Journal

NOV 01 2011

Betty McCauley

Betty McCauley
Secretary