

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio )  
Power Company and Columbus Southern ) Case No. 10-2376-EL-UNC  
Power Company for Authority to Merge )  
and Related Approvals. )

ENTRY

The Attorney Examiner finds:

- (1) On October 18, 2010, Ohio Power Company (OP) and Columbus Southern Power Company (CSP) (jointly, AEP-Ohio or Applicants) filed an application with the Commission for approval to merge pursuant to an Agreement and Plan of Merger (Merger Agreement).
- (2) OP and CSP are electric light companies and public utilities as defined in Sections 4905.02 and 4905.03(A), Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (3) By entry issued February 9, 2011, interested persons were directed to file comments by no later than February 25, 2011 and reply comments by March 11, 2011.
- (4) Motions to intervene were filed by Industrial Energy Users-Ohio (IEU-Ohio), Ohio Partners for Affordable Energy (OPAE)<sup>1</sup>, the Office of Ohio Consumers' Counsel (OCC)<sup>2</sup>, The Kroger Company (Kroger), Ohio Energy Group (OEG), Ormet Primary Aluminum Corporation (Ormet), Ohio Manufacturers' Association (OMA), Ohio Hospital Association (OHA). Each motion asserts a real and substantial interest in this case that is not represented by another party. Further, each motion asserts that the disposition of this case may adversely affect the movant's ability to protect their interest. No memorandum contra these motions to intervene was filed.

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<sup>1</sup> On November 17, 2011, OPAE filed a notice requesting to withdraw from this case and several other AEP-Ohio proceedings pending before the Commission.

<sup>2</sup> Although AEP-Ohio filed a memorandum in response to OCC's motion to intervene, addressing certain procedural and substantive arguments made by OCC, the Companies specifically stated that they do not oppose OCC's intervention.

- (5) The motions for intervention by IEU-Ohio, OCC, Kroger, OEG, Ormet, OMA and OHA are reasonable and should be granted. Each of the aforementioned requests for intervention demonstrates a real and substantial interest in the case and the merger may affect their ability to protect their respective interest.
- (6) In addition, Constellation NewEnergy Inc. (Constellation), Direct Energy Services, LLC and Direct Energy Business, LLC (jointly Direct), First Energy Solutions (FirstSolutions) and Duke Energy Retail Sales, LLC (Duke Retail) also filed motions to intervene in this case. Constellation, Direct, FirstSolutions and Duke Retail are certified competitive retail electric services (CRES) providers that offer electricity and energy-related services to retail customers in the AEP-Ohio service territory. Movants assert that as CRES providers each has a real and substantial interest in the merger proceedings which interest is not adequately represented by any other party and claims that their interest may be impaired or impeded by the disposition of this case.
- (7) AEP-Ohio opposed each CRES providers' motion to intervene. In the memoranda contra, AEP-Ohio states the CRES providers express an interest in the merger proceeding only to the extent that the proceeding may have an affect on the rates approved in AEP-Ohio's next electric security plan proceeding and/or distribution rate case.<sup>3</sup> AEP-Ohio emphasizes that the Applicants have not requested that the Commission address any rate-related matters in the merger case and approval of the merger application will not have a direct effect on CSP's or OP's customers, rates or service area. Further, the Applicants argue that it is the Commission's policy not to grant intervention where the movant's only real interest in the proceeding is the legal precedent that may be established in the case or a subsequent proceeding. Applicants state that the merger application will only affect the internal operations of the two affiliates, with no direct impact on existing customers,

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<sup>3</sup> On January 27, 2011, in Case Nos. 11-346-EL-SSO, et al., AEP-Ohio filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. The application is for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code. On that same day, AEP-Ohio also filed its pre-notification for an increase in rates, in Case Nos. 11-351-EL-AIR, et al.

customer base or external operations of the companies. Thus, AEP-Ohio asserts the CRES providers lack any unique expertise to significantly contribute to the resolution of the factual issues presented and their respective intervention is not warranted.

- (8) Constellation, Direct, FirstSolutions and Duke Retail each filed a reply in support of their motion to intervene. The movant CRES providers argue that AEP-Ohio has misinterpreted the case cited in support of its claims regarding intervention to affect legal precedent. Further, the movant CRES providers reiterate the impact on their respective business interest in light of the proposed merger including rates and other various contracts and agreements to operate in AEP-Ohio's territory, consolidated billing, and the posting of financial security, and note that absent a merger there will not be blended rates, new terms and/or conditions of service in any subsequent standard service offer and distribution rate case proceedings. For that reason, the movant CRES providers argue that they must be permitted to intervene in this case.
- (9) The CRES providers have demonstrated a real and substantial interest in the merger proceeding, and a merger may affect their ability to do business in AEP-Ohio territory. Therefore, the respective request of Constellation, Direct, FirstSolutions and Duke Retail for intervention in this case should be granted.
- (10) Motions for admission *pro hac vice* were filed on behalf of Clinton Vince, Douglass Bonner, Daniel Barnowski, Emma Hand, to represent Ormet and Cynthia Fonner Brady, to represent Constellation. Pursuant to the Ohio Supreme Court rules in effect prior to January 1, 2011, in each motion, an attorney in good standing and licensed to practice law in the state of Ohio, represented that the above listed individuals are attorneys in good standing who are licensed to practice law in other jurisdictions.
- (11) The motions for admission *pro hac vice* in this matter are reasonable and should be granted. Accordingly, Clinton Vince, Douglass Bonner, Daniel Barnowski, Emma Hand, and Cynthia Fonner Brady should be permitted to practice law before the Commission in this matter.

- (12) Long after comments and reply comments were submitted, on June 13, 2011, the Ohio Cable Telecommunications Association (OCTA) filed a motion to intervene. OCTA is a trade association of various Ohio cable operators which offer a variety of electronic communications services, including video services, internet access and data services, and interconnected voice over internet protocol-enabled services which require pole attachments to electric utility facilities. OCTA states that the blended assets and rates of the merged entity may be unjust and unreasonable. Thus, OCTA asserts a real and substantial interest in the merger proceeding.
- (13) On June 15, 2011, AEP-Ohio filed a memorandum contra OCTA's motion for intervention. AEP-Ohio reasons that the motion should be rejected because it is untimely as comments were filed almost four months ago and OCTA has not offered any extraordinary circumstances to justify its untimely request for intervention. Further, AEP-Ohio argues that OCTA has not established that it has any unique knowledge, experience or expertise to contribute to this proceeding which is not already adequately represented.
- (14) On September 7, 2011, the Companies, the Staff and numerous other intervenors filed a Stipulation and Recommendation (Consolidated Stipulation) in AEP-Ohio's pending ESP cases<sup>4</sup> and several other associated AEP-Ohio cases pending before the Commission, including this case, to resolve all the issues raised in the cases. By entry issued September 16, 2011, this case was consolidated with several other AEP-Ohio proceedings and a hearing held on the Stipulation.
- (15) OCTA's motion for intervention should be granted although the request was after the established deadline for the filing of comments and reply comments. No intervention deadline was stated for this proceeding and OCTA filed its motion for intervention prior to the filing of the Consolidated Stipulation and the commencement of the hearing on the Consolidated Stipulation.

It is, therefore,

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<sup>4</sup> In re AEP-Ohio, Case Nos. 11-346-EL-SSO, et al.

ORDERED, That the motions to intervene in this case are granted as discussed in Findings (5), (9) and (15). It is, further,

ORDERED, That the motions for admission *pro hac vice* in this matter on behalf of Clinton Vince, Douglass Bonner, Daniel Barnowski, Emma Hand, Cynthia Fonner Brady and Dave Rinebolt shall be granted. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

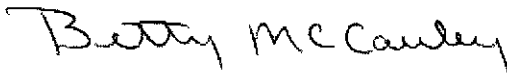


By: Greta See  
Attorney Examiner

  
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Entered in the Journal

**DEC 13 2011**



Betty McCauley  
Secretary