

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

**REPLY TO OHIO POWER COMPANY’S MEMORANDUM CONTRA THE MOTION
FOR LEAVE TO INTERVENE OUT OF TIME OF
THE OHIO MANUFACTURERS’ ASSOCIATION ENERGY GROUP**

I. INTRODUCTION AND FACTS

On August 11, 2014, almost three years after the last activity in the above-captioned docket, an entry was issued establishing a procedural schedule in the above-captioned matter.¹ Inter alia, the Entry established an intervention deadline.² On September 2, 2014, the Ohio Manufacturers’ Association Energy Group (OMAEG or Movant) filed a Motion for Leave to Intervene Out of Time in the matter (Motion to Leave to Intervene), explaining that its members, like other parties in the case, have a real and substantial interest in the matter, as they previously paid to Ohio Power Company or Columbus Southern Power Company (collectively, AEP) costs associated with Phase I. Further, OMAEG explained that the unusual procedural history of this proceeding, the minimal period of time provided in the entry in which parties could intervene, and OMAEG’s lack of existence during a significant portion of the previous phases of the

¹ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Ultimate Construction and Operation of an Integrated Gasification Combined Cycle Electric Generation Facility*, Case No. 05-376-EL-UNC, Entry at 4 (August 11, 2014) (Entry).

² Id.

proceeding qualify as extraordinary circumstances under which the Commission may grant its motion to intervene out of time.

On September 17, 2014, AEP filed a memorandum contra OMAEG's Motion for Leave to Intervene (Memorandum Contra), arguing that OMAEG did not demonstrate extraordinary circumstances justifying late intervention. Contrary to AEP's assertions, however, OMAEG satisfies the standard set forth in the Commission's rules and by statute for intervention, and has explained and established the extraordinary circumstances surrounding its motion to intervene out of time. OMAEG respectfully requests, in accordance with the arguments contained in its Motion for Leave to Intervene and Memorandum in Support, for the Commission to grant its Motion for Leave to Intervene and permit OMAEG to participate as a full party of record in this proceeding on a going-forward basis.

II. ARGUMENT

In its memorandum contra, AEP casts OMAEG's statement that it did not exist as an organization at the time this case was initiated as "disingenuous."³ AEP's characterization of OMAEG's statement is inapposite, as OMAEG, the party seeking intervention in this matter, did not exist until 2011. The Commission granted late intervention to a party on similar grounds to those asserted by OMAEG in the recent past.⁴ As noted in the Motion for Leave to Intervene, at the time of the occurrence of most of the operative facts in this proceeding and for a significant amount of time thereafter, OMAEG did not exist, and thus did not seek intervention. AEP

³ Memorandum Contra at 2.

⁴ See *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Entry at 2-3 (May 21, 2014) (granting late intervention to Ohio Energy Professionals Association, even in light of the fact that the organization had been established prior to the intervention deadline). The grounds presented in OMAEG's Motion for Leave to Intervene are event more persuasive than those presented by Ohio Energy Professionals Association, however, because OMAEG had not event been organized at the time the instant case was initiated, thus precluding it from participating in the matter at the outset and for six subsequent years.

attempts to blur the lines regarding the status of the Movant; the fact remains, however, that OMAEG is the party seeking intervention in this matter, and that OMAEG satisfies the standard for intervention set forth in the Commission's rules and by statute.

AEP also attempts to characterize OMAEG's Motion for Leave to Intervene as based upon some "failure to monitor the Commission's dockets or review the Commission's daily activity reports[.]"⁵ OMAEG respectfully submits that AEP's characterization is baseless and in no way reflects the circumstances surrounding OMAEG's Motion for Leave to Intervene. AEP's supposition associates the timing of OMAEG's motion with some lack of attention to the Commission's dockets. In reality, as established in its Motion for Leave to Intervene, the Entry permitting intervention afforded parties only one week in which to intervene in the proceeding. As recognized by AEP, the case dates back to 2005;⁶ the substantive issues to be explored on remand are complicated by the extended amount of time over which the case has spanned and changes in law that have occurred over this time period. Unfortunately, one week presented an insufficient amount of time during which OMAEG could conduct its due diligence and make an informed decision regarding intervention. As such, OMAEG filed its Motion for Leave to Intervene once it was satisfied that it was in the best interests of the group and the Commission for it to participate in the case, that its members have a real and substantial interest in the matter, and that it could contribute to the full development of the issues under consideration in this phase of the proceeding and an equitable resolution thereof. This occurred only three weeks after the issuance of the Entry permitting parties to newly intervene in the case.

OMAEG submits that its Motion for Leave to Intervene, while filed out of time, was not so late as to prejudice any party in the development of its case. AEP contends that OMAEG's

⁵ Memorandum Contra at 2.

⁶ Id.

interests are already represented by other parties, namely Industrial Energy Users-Ohio (IEU-Ohio) and Ohio Energy Group (OEG).⁷ As the Commission surely recognizes, the parties and interests represented by IEU-Ohio, OEG, and OMAEG differ in many respects. AEP's assertion that OMAEG's interests are already represented in this proceeding heedlessly glosses over these differences and should accordingly be disregarded by the Commission. The Commission continuously recognizes these three organizations as customer organizations that represent various commercial and industrial customers and grants intervention to all three organizations on a regular basis.⁸

Further complicating AEP's assertion that OMAEG's interests are already represented in this proceeding is its contention that OMAEG's intervention "will prejudice AEP Ohio by requiring it to spend additional time and resources preparing for and conducting the hearing of this case."⁹ AEP cannot have it both ways: if, as AEP contends, OMAEG's interests are already represented in this case by other parties, AEP would not be required to spend additional time preparing for hearing if OMAEG is granted intervention. As explained above, OMAEG represents different parties and interests than other parties who have previously been granted intervention in this matter, and OMAEG's members may be adversely affected by the outcome of this proceeding and intervention is required to protect those interests.

Nonetheless, as explained previously, OMAEG is a regular intervenor in Commission proceedings and OMAEG's participation in this proceeding will in no way prejudice AEP, but

⁷ Id. at 3.

⁸ See generally, *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C 4928.143 in the form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Entry at 1, 4 (April 21, 2014); *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Finding and Order at 3 (October 17, 2012); *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 12-426-EL-SSO, et al.

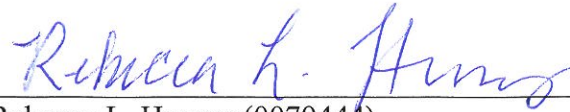
⁹ Id.

rather, will contribute to the full development of the issues. Given that OMAEG's request to intervene was only two weeks after the intervention deadline and OMAEG has agreed to take the record as it exists, no harm or prejudice has been imposed on AEP or any other party to the proceeding, and OMAEG's participation will not unduly delay or prolong the proceeding. Further, its members have incurred the Phase I costs under consideration in this proceeding, and will be affected by the Commission's decision on the costs that must be refunded.

III. CONCLUSION

As discussed above and in its Motion for Leave to Intervene, OMAEG has a real and substantial interest in this proceeding, and is so situated that the Commission's decision in this phase of the proceeding may impair or impede OMAEG's ability to protect that interest. OMAEG has also demonstrated, *inter alia*, that its interests are not adequately represented by existing parties. Further, OMAEG has demonstrated the extraordinary circumstances supporting a decision to grant its out-of-time intervention. OMAEG has therefore met the standards set forth in the Commission's rules and by statute for intervention, and has established that extraordinary circumstances exist which permit the Commission to grant OMAEG's late-filed motion. Accordingly, OMAEG respectfully requests that the Commission grant its Motion for Leave to Intervene in this proceeding.

Respectfully submitted,

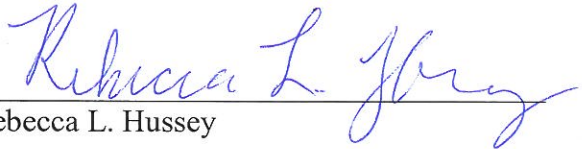


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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on September 24, 2014.


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

Summary: Reply to Ohio Power Company's Memorandum Contra the Motion for Leave to Intervene Out of Time of OMAEG electronically filed by Ms. Rebecca L Hussey on behalf of OMAEG