

FILE

4

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV
98 MAR 26 PM 4:44

PUCO

In the Matter of the Joint Application For)
Approval of Certain Transactions Between)
Ohio Power Company, Columbus Southern) Case No. 97-748-EL-ATR
Power Company, and AEP)
Communications, LLC.)

In the Matter of the Application of AEP)
Communications LLC to Provide) Case No. 97-842-CT-ACE
Competitive Telecommunications Service.)

THE OHIO CONSUMERS' COUNSEL'S
MEMORANDUM CONTRA
AEP COMMUNICATIONS, LLC'S
APPLICATION FOR REHEARING

Robert S. Tongren, in his official capacity as the Ohio Consumers' Counsel (OCC), hereby responds to AEP Communications, LLC's (AEPC) March 13, 1998 Application for Rehearing from the Finding and Order of the Public Utilities Commission of Ohio (Commission), entered in this docket on February 12, 1998. In its Finding and Order, the Commission granted the application, with certain modifications, for the approval of certain transactions under Section 34 of the Public Utilities Holding Company Act (PUHCA) of 1935 as amended by the 1996 Telecommunications Act. Contrary to AEPC's arguments, the Finding and Order is eminently reasonable and entirely lawful, and AEPC's application should be denied in its entirety.

AEPC first argues that the Commission's finding in Paragraph 25 that "AEP shall not acquire services from AEPC which AEPC does not offer in its tariff" is an unintended constraint which is impermissibly broad and restrictive. Accordingly, AEPC recommends that the Commission modify its Finding as follows: The Utilities shall not

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician *Joan Schenfler* Date Processed *3-27-98*

acquire any jurisdictional CTS service from AEPC which AEPC does not offer in its tariff, without prior approval of the Commission. AEPC Application for Rehearing at 3.

Contrary to AEPC's assertion, there is no indication in the Finding and Order that the above-stated restriction is unintentional. This prohibition is intentional, and indeed necessary, to ensure that AEPC will not offer any services to its electric utility affiliates that are not also offered to third parties. Hence, AEPC's remedy, if it wishes to offer additional services to its electric utility affiliates, is to revise its tariffs to generally offer the services to the public. AEPC's tariffs should reflect the services provided by AEPC; there should not be any contemplation that AEPC will offer services to its affiliates that are not offered by AEPC, through its tariffs, to the public at large.

AEPC's second allegation of error relates to Paragraph 16(b) of the Finding and Order. Paragraph 16(b) sets forth regulatory oversight provisions, including the requirement that AEPC file a notice letter at least 30 days prior to the transaction for all transactions under \$250,000. AEPC complains that this oversight provision is unduly burdensome and unreasonable for transactions less than \$100,000. Thus, AEPC asserts that the regulatory oversight stated in Paragraph 16(b) should not apply to transactions less than \$100,000. OCC disagrees with AEPC's contention that transactions below \$100,000 should occur without Commission oversight.

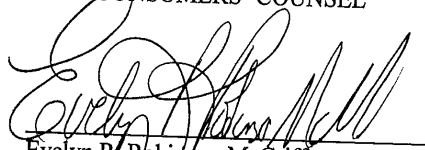
The transactions contemplated by AEPC in this application present new and novel issues. Thus, the Commission must ensure that its oversight is sufficient to protect the ratepayers. Contrary to AEPC's assertion, transactions less than \$100,000 are not insignificant. Such transactions have the potential to adversely affect ratepayers and, therefore, must be carefully scrutinized by the Commission as well. OCC believes that

all transactions under \$250,000, including those less than \$100,000, must receive Commission scrutiny. Accordingly, the Commission should deny this allegation of error.

For the reasons stated herein, the Commission should deny the Application for Rehearing in its entirety.

Respectfully submitted,

ROBERT S. TONGREN
OHIO CONSUMERS' COUNSEL



Evelyn R. Robinson-McGriff
Trial Attorney
Assistant Consumers' Counsel

OHIO CONSUMERS' COUNSEL
77 South High Street, 15th Floor
Columbus, Ohio 43266-0550
(614) 466-8574

CERTIFICATE OF SERVICE

I certify that a copy of the Ohio Consumers' Counsel's Memorandum Contra AEP Communications, LLC's Application for Rehearing has been served by first class mail, postage prepaid, or hand delivered to the following parties of record on this 26th day of March, 1998.



Evelyn R. Robinson-McGriff
Assistant Consumers' Counsel

PARTIES OF RECORD

ARTHUR E. KORKOSZ
Squire, Sanders & Dempsey
4900 Key Tower
127 Public Square
Cleveland, Ohio 44113-1304

DUANE W. LUCKEY, ESQ.
Attorney General Section Chief
Public Utilities Commission of Ohio
180 East Broad Street, 7th Floor
Columbus, Ohio 43266-0573

THOMAS G. BERKEMEYER, ESQ.
Senior Attorney
American Electric Power Service
Corporation
1 Riverside Plaza
Columbus, Ohio 43215

Martin L. Stern, Esq.
Preston Gates Ellis & Rouvelas Meeds,
L.L.P.
1735 New York Avenue, NW
Suite 500
Washington, DC 20006-5209

Attorneys for Applicants

SAMUEL C. RANDAZZO, ESQ.
RICHARD P. ROSENBERRY, ESQ.
McNees Wallace & Nurick
Fifth Third Bank
Suite 910
21 East State Street
Columbus, Ohio 43215