

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power )  
Company and Columbus Southern Power )  
Company for Certain Findings Under 15 U.S.C. ) Case No. 01-3289-EL-UNC  
79Z and 17 C.F.R. 250.53. )

ENTRY ON REHEARING

The Commission finds:

- (1) On December 21, 2001, Ohio Power Company (OP) and Columbus Southern Power Company (CSP), wholly owned subsidiaries of American Electric Power Corp. (collectively Applicants or AEP), filed an application requesting the Commission to: (a) make certain findings pursuant to the Public Utilities Holding Company Act of 1935 (PUHCA) for the conversion of Applicants to one or more Exempt Wholesale Generator (EWGs) entities, and (b) authorize the increase of Applicants' investment authority for EWGs and Foreign Utility Company investments, as described in the application and exhibits. Under the provisions of PUHCA, Applicants are required to apply to the Commission for a determination that allowing those generating plants, as listed in Exhibit 1 to the application, to become "Eligible Facilities" will benefit consumers, is in public interest, and does not violate Ohio law. "Eligible facility" status is a prerequisite to the Applicants seeking EWG status from the Federal Energy Regulatory Commission under PUHCA.
- (2) On October 17, 2002, the Commission issued a Finding and Order approving AEP's application and finding that allowing the generating plants to be eligible facilities under PUHCA will benefit consumers, is in the public interest, and does not violate Ohio law. The Commission also denied Ohio Consumers' Council's (OCC) motion to intervene inasmuch as no hearing was being held.
- (3) On November 15, 2002, OCC filed an application for rehearing. OCC argues that the Commission's findings violate Section 4928.35(E), Revised Code, which requires that amendments to approved corporate separation plans be filed and approved by the Commission. According to OCC, Applicants' corporate separation plan did not provide for the conversion of Applicants' generation facilities to EWGs. Further, OCC argues that AEP's corporate separation plan provided, and AEP personnel testified in AEP's electric transition plan proceeding, that all generating assets would remain in the existing legal structure of OP and

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 \_\_\_\_\_ Date Processed 12.12.02

CSP. Therefore, OCC contends that AEP's request for conversion is an amendment to its corporate separation plan and that a hearing should be held. Further, OCC contends that there is no record support for the Commission's findings and that the Commission's legal conclusions are not supported by law.

- (4) On November 25, 2002, AEP filed a memorandum contra to the application for rehearing. AEP argues that OCC has no party status to seek rehearing inasmuch as the Commission denied OCC's motion to intervene. With regard to the substantive arguments raised by OCC, AEP argues that its seeking of EWG status for its generating facilities is not inconsistent with its corporate separation plan or the testimony of company personnel. AEP states that the operating facilities are not being transfer from the operating companies. Instead, the status of the companies will be changed to EWGs. Therefore, it is not seeking to amend its corporate separation plan.
- (5) With regard to the issues raised by OCC, we find rehearing should be denied. As we stated in our Finding and Order, we do not believe that AEP's seeking EWG status conflicts with its corporate separation plan. As noted by AEP, the fact that it is seeking EWG status does not mean that the company is not going to own or operate its generation facilities. In addition, the Commission finds that OCC's argument that there is no evidentiary support for the Commission's finding misses the mark. There is no statutory requirement that the Commission hold a hearing in this matter. The Commission's findings are based on the application and the other pleadings filed in this matter. The Ohio Supreme Court has upheld the Commission's authority to approve applications based upon the filings in the docket where no statutory hearing is required. See *Consumers' Counsel v. PUCO*, 70 Ohio St.3d 244 (1994). The requirement that a complete record of all the proceedings be made, including a transcript of all testimony, under Section 4903.09, Revised Code, applies to contested cases where hearings are held by the Commission. Such hearings are held when required by law and in cases where the Commission deems that a hearing is appropriate, e.g., when it appears to the Commission that an application may be unjust or unreasonable under Section 4909.18, Revised Code. In *Ohio Domestic Violence v. PUCO*, 70 Ohio St.3d 311 (1994), the Supreme Court upheld the Commission's discretion to not hold a hearing and to deny intervention when hearings are discretionary. Accordingly, OCC's rehearing application will be denied.

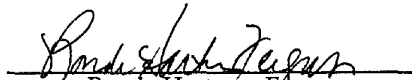
It is, therefore,

ORDERED, That the application for rehearing filed by OCC is denied. It is, further,

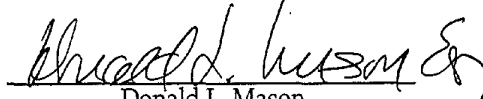
ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman

  
Ronda Hartman Fergus

  
Judith A. Jones


  
Donald L. Mason

\_\_\_\_\_  
Clarence D. Rogers, Jr.

RRG;geb

Entered in the Journal

DEC 12 2002

  
Gary E. Vigorito  
Secretary