

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

ENTRY

The attorney examiner finds:

- (1) On March 18, 2005, Columbus Southern Power Company and Ohio Power Company (AEP) filed an application for authority to recover costs associated with the construction and ultimate operation of an integrated gasification combined cycle electric generation facility.
- (2) On April 12, 2005, a prehearing conference was conducted to discuss the schedule for the proceeding. On April 19, 2005, the attorney examiner issued an entry establishing the procedural schedule, including a date of August 8, 2005, for the evidentiary hearing.
- (3) On April 25, 2005, the Ohio Consumers' Counsel (OCC) and the Ohio Energy Group (OEG) filed a joint interlocutory appeal and motion for certification regarding the procedural schedule established in the entry dated April 19, 2005. OCC and OEG argue that the April 19, 2005 presents a new and novel "implicit interpretation" of Ohio law and Commission policy and that an immediate determination by the Commission is necessary to prevent the likelihood of undue prejudice. On April 28, 2005, Industrial Energy Users-Ohio filed a memorandum in support of the joint interlocutory appeal.
- (4) On May 2, 2005, AEP filed a response to the joint interlocutory appeal and motion for certification. AEP challenges the assertion that there is anything new or novel about the ruling in the April 19, 2005, entry and that the procedural schedule allows more than adequate time for discovery and to prepare for the hearing.

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- (5) Rule 4901-1-15, Ohio Administrative Code (O.A.C.), sets forth the substantive standards for interlocutory appeals. The rule provides that no party may take an interlocutory appeal from a ruling by an attorney examiner unless that ruling is one of four specific rulings enumerated in paragraph (A) of the rule or unless the appeal is certified to the Commission by the attorney examiner pursuant to paragraph (B) of the rule. Paragraph (B) of Rule 4901-1-15, O.A.C. specifies that an attorney examiner shall not certify an interlocutory appeal unless the attorney examiner finds that the appeal presents a new or novel question of law or policy or an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties should the Commission ultimately reverse the ruling in question. Rule 4901-1-15(B), O.A.C.
- (6) The ruling establishing a procedural schedule does not fall within the four enumerated rulings specified by Rule 4901-1-15(A), O.A.C., from which interlocutory appeals may be taken without certification by the attorney examiner. Therefore, an interlocutory appeal of the April 19, 2005, entry may be taken only if the attorney examiner certifies the appeal pursuant to Rule 4901-1-15(B), O.A.C.
- (7) The attorney examiner finds that the April 19, 2005, entry establishing a procedural schedule in the proceeding does not involve a new or novel question of law or policy. Establishing a procedural schedule in a Commission hearing proceeding is a routine matter with which the Commission and its examiners have had long experience.
- (8) Moreover, the attorney examiner finds that an immediate determination of the Commission regarding the April 19, 2000, entry is not needed to prevent the likelihood of undue prejudice or expense to one or more of the parties should the Commission ultimately reverse the ruling in question. No discovery disputes have been brought to the attorney examiner's attention in the proceeding. There is no representation from any of the parties that discovery requests have been unduly burdensome or that discovery responses have been unduly delayed. The OCC and the OEG have broadly alleged that the procedural schedule creates undue prejudice in this case; they have not specifically demonstrated how the procedural schedule results in such prejudice. The

date of the technical conference is the sole specific example of prejudice alleged by the OCC; however, there is no right, under the Commission's rules, to even require that a technical conference be held, except in specific, limited circumstances. The technical conference is not held on the record and will not be relied upon by the Commission as a basis for the decision in this case; rather, it is an informal opportunity for the parties to exchange information, raise questions and seek clarifications regarding the application which should promote expedited discovery in this proceeding. Therefore, OCC cannot be prejudiced by the date of the technical conference.

- (9) Because the interlocutory appeal does not present a new or novel question of law or policy and an immediate determination by the Commission is not needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, the attorney examiner finds that the interlocutory appeal should not be certified to the Commission.
- (10) The attorney examiner notes that in the joint appeal and motion for certification, OCC and OEG raise the question of whether service of discovery requests by electronic mail will be permitted in this proceeding. The examiner further notes that AEP confirmed in their memorandum contra that service of discovery requests by electronic mail will be accepted by AEP. Any party to this proceeding which will not accept service of discovery requests by electronic mail should notify the examiner and all other parties, in writing, as soon as possible. Finally, the examiner encourages all parties to respond to discovery requests on an expedited basis and to avoid holding discovery responses for the maximum time allowed under the Commission rules.
- (11) Calpine Corporation filed a motion to intervene on April 18, 2005. In addition, a motion for admission *pro hac vice* was filed to admit Joseph D. Condo to practice before the Commission in this proceeding. On May 2, 2005, AEP filed a memorandum contra Calpine's motion to intervene. Calpine filed a reply on May 9, 2005. The attorney examiner finds that the motion to intervene and the motion for admission *pro hac vice* should be granted.

It is, therefore,

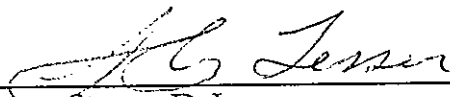
ORDERED, That the interlocutory appeal from the ruling dated April 19, 2005, establishing a procedural schedule for this proceeding is not certified to the Commission. It is, further,

ORDERED, That the motion to intervene filed by Calpine Corporation is granted. It is, further,

ORDERED, That the motion for admission *pro hac vice* of Joseph D. Condo is granted. It is, further,

ORDERED, That a copy of this entry should be served upon all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Steven D. Lesser  
Attorney Examiner

RRG /ct

Entered in the Journal  
MAY 10 2005



Renee J. Jenkins  
Secretary

**FILE**

**CASE NUMBER:** 05-0376-EL-UNC  
**CASE DESCRIPTION:** COLUMBUS SOUTHERN POWER COMPANY/OHIO POWER COMPANY  
**DOCUMENT SIGNED ON:** 5/10/2005  
**DATE OF SERVICE:** 5.10.2005 KW

**PARTIES SERVED**

**PARTIES OF RECORD**

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