

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
January 7, 2005

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.

CORRECTED ORDER

ORDER DENYING INTERVENTION AS A PARTY AND GRANTING RIGHT OF CROSS-
EXAMINATION

This proceeding under the Public Utility Holding Company Act of 1935 involves the application of American Electric Power, Inc. ("AEP"), a holding company registered under the Act, to acquire Central and South West Corporation. On appeal of our earlier decision approving the acquisition, the Court of Appeals remanded this matter, seeking a further explanation of our rationale. ^{1/} Following the remand, we determined that, in light of the issues raised by the Court, a hearing should be held with respect to the proposed transaction before an administrative law judge. ^{2/} The hearing is scheduled to begin on January 10, 2005.

Pursuant to Rule 210(c) of our Rules of Practice, the law judge granted Public Citizen, Inc. ("PC"), a consumer advocacy group, the right to participate on a limited basis in the remanded proceeding. The law judge denied PC's request to intervene as a party and, although Rule 210(c) provides that a limited participant may be granted such rights of a party as are deemed appropriate, the law judge denied PC the right to cross-examine the witnesses of the parties to this proceeding.

PC seeks interlocutory review of those rulings. Interlocutory appeals are disfavored, and the law judge declined to certify the appeal. However, given the circumstances here, pursuant to Rule 400(a) of our Rules of Practice, we have determined to grant that review on our own motion.

^{1/} National Rural Electric Cooperative Association v. SEC, 276 F.3d 609 (D.C. Cir. 2002).

^{2/} Holding Company Act Release No. 27886 (August 30, 2004), 83 SEC Docket 2450.

PC argues that it should be allowed to intervene as a party. It points to the fact that, in the recent revision of our Rules of Practice, language was removed from Rule 210(b)(1) that stated that such intervention would not be allowed unless it was determined that leave to participate pursuant to Rule 210(c) would be inadequate for the protection of the movant's interests. PC asserts that this change must have been designed to favor increased participation in proceedings by eliminating restrictions on full party status.

The release adopting the pertinent amendment to Rule 210(b)(1) offers no explanation for the change in that rule. ^{3/} While the deleted limitation is no longer mandatory, we consider that it continues to be a relevant factor in determining whether or not to accord full party status. We believe that PC's participation on a limited basis adequately protects its rights. Under Rule 210(c), the scope of that participation is vested in the hearing officer's discretion. We believe that, in the ordinary case, the law judge is in the best position to determine the appropriate level of participation.

Here the law judge granted PC the right to submit testimony, exhibits, briefs, and "other matters germane to the issues." He gave no reason for his refusal to allow PC to cross-examine witnesses. We see no reason not to accord PC that right. PC points out that AEP will be able to cross-examine PC's expert witnesses while PC will be foreclosed from examining those of AEP. PC has expressed particular interest in cross-examination of AEP's expert witness.

As a general rule, we believe it is appropriate to deny cross-examination to persons participating on a limited basis. However, under the circumstances here, we consider that giving PC the right to cross-examine will result in the development of a record that will permit a more informed determination of the issues. Particularly in light of the fact that we are giving PC the right of cross-examination in addition to the other rights accorded by the law judge, we deem it unnecessary to accord it full party status. Our ruling permitting cross-examination should not be

^{3/} Securities Exchange Act Rel. No. 49412 (March 19, 2004), 82 SEC Docket 1744.

construed as limiting the law judge's authority to exclude any evidence that is irrelevant, immaterial, or unduly repetitious pursuant to Rule of Practice 320 or the authority to rule on objections under Rule of Practice 321.

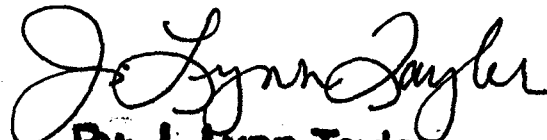
Accordingly, IT IS ORDERED that the request of Public Citizen, Inc. to intervene in this proceeding as a party be, and it hereby is, denied; and it is further

ORDERED that Public Citizen, Inc. be, and it hereby is, granted the right to cross-examine the witnesses of the parties to this proceeding; and it is further

ORDERED that the requests of Public Citizen, Inc. for a stay and oral argument be, and they hereby are, denied. 4/

By the Commission.

Jonathan G. Katz
Secretary


By: J. Lynn Taylor
Assistant Secretary

4/ PC's citation of Rule 451(a) of our Rules of Practice in support of its request for oral argument is inapposite. That rule provides that requests for oral argument with respect to a law judge's initial decision shall be granted unless "exceptional circumstances" make it impractical or inadvisable. No initial decision has been rendered here. PC is simply appealing preliminary rulings of the law judge.