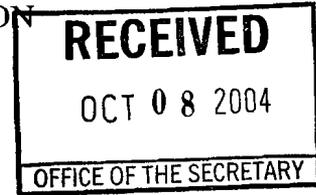


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



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In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.

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Administrative Proceeding  
File No. 3-11616

**OBJECTION OF AMERICAN ELECTRIC POWER COMPANY, INC. TO  
MOTION TO INTERVENE OF PUBLIC CITIZEN, INC.**

On or about October 1, 2004, Public Citizen, Inc. ("Public Citizen") filed a Notice of Appearance and Motion to Intervene in the above-captioned proceeding. American Electric Power Company, Inc. ("AEP") hereby objects to the granting of such motion as Public Citizen has failed to demonstrate that it meets the standards set forth in Rule 210 (b) of the SEC Rules of Practice and Procedure for becoming a party to this proceeding.

Rule 210 (b) governs the admission of a party to an administrative proceeding under the Public Utility Holding Company Act of 1935 ("PUHCA") and provides for mandatory admission and discretionary admission of a party. The criteria for mandatory admission as a party are as follows:

[A]ny interested representative, agency, authority or instrumentality of the United States or any interested State, State commission, municipality or other political subdivision of a state shall be admitted as a party ...

Rule 210 (b)(2). The criteria for discretionary admission as a party are as follows:

[A]ny representative of interested consumers or security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors or consumers, may be admitted

as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

Rule 210 (b)(1). An entity failing to meet the requirements for admission as a party may still participate in the proceeding as provided in Rule 210 (c):

[A]ny person may seek leave to participate on a limited basis as a non-party participant as to any matter affecting the person's interests.

Moreover, the Commission's Staff, has opined that "[t]he rules governing intervention in Commission proceedings clearly state a preference for granting motions to intervene on the basis of non-party participation."<sup>1</sup>

As Public Citizen is not (nor claims to be) a governmental body referenced in Rule 210 (b)(2), mandatory admission as a party is clearly not appropriate. Discretionary admission as party under Rule 210 (b)(1) turns on whether Public Citizen is a "representative of interested consumers or security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors or consumers ...." In support of its motion, Public Citizen makes only generalized assertions that "virtually all of its members are electricity consumers" and that "many of Public Citizen's members own utility stocks, either through mutual funds or otherwise, as part of their 401(k) plans or other pension plans, and therefore will be affected by the Commission's administration of PUHCA as investors."<sup>2</sup> With respect to

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<sup>1</sup> Enron Corp., Division of Investment Management's Brief in Opposition to Petitions for Review of Initial Decision Filed by Applicant Enron Corp., Limited Participants Southern California Edison Company and FPL Group, Inc., Amici Edison Electric Institute, National Association of Regulatory Utility Commissioners and the Public Utility Commission of Oregon (Aug. 21, 2003).

<sup>2</sup> In support of its motion, Public Citizen asserts that it was an intervenor in the initial proceeding resulting in the merger of American Electric Power Company, Inc. and Central and South West Corporation (HCAR Release No. 27186). Our records indicate that Public Citizen was one of eleven named entities on one request to intervene (out of nine separately filed requests). Despite several rounds of briefs from other

the alternative grounds for admission as a party under Rule 210 (b)(1), Public Citizen makes no assertion or other representation that its “participation in the proceeding may be in the public interest or for the protection of investors or consumers.”

The generalized assertions proffered by Public Citizen fail to meet the criteria of Rule 210 (b) for admission as a party. Rule 210 (b) requires that Public Citizen represent (1) actual consumers of the parties to the merger under consideration—not simply electricity consumers in general, or (2) actual security holders of either party to the merger under consideration—not simply security holders of utility stocks in general. Public Citizen has not asserted that it represents customers of the parties to the merger in question, nor has it asserted that its members are security holders of the parties to the merger in question. Nor has Public Citizen asserted that its “participation in the proceeding may be in the public interest or for the protection of investors or consumers,” an alternative grounds for admission as a party under Rule 210 (b)(1).

Failure to meet these criteria has resulted in the rejection of requests to intervene as a party in a proceeding under PUHCA. *See Enron Corp., Order Denying Motions of FPL Group, Inc., Sithe/Independence Power Partners, L.P., and the Electric Power Supply Association to Intervene But Authorizing Joint Participation on a Limited Basis* (Nov. 5, 2002)(denying request of entities either doing business with Enron or representing a class of entities which may transact with Enron for failure to establish status as customers of or investors in Enron). Asserting protection of customers other

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intervenors followed by an appellate proceeding at the United States Court of Appeals for the District of Columbia, our records indicate that Public Citizen did not participate apart from filing its initial request to intervene. In any event, the standards for intervention in this proceeding are dictated by Rule 210 (b) discussed *infra*.

than the customers of parties subject to the proceeding cannot cure a failure to demonstrate adequate nexus. See *Enron Corp, Order Denying Motion of Southern California Edison Company to Intervene But Authorizing Participation on a Limited Basis* (Nov. 5, 2002) (denying request to intervene despite movant's assertion that its customers, i.e., California ratepayers, would be affected by the outcome of the proceedings). Edison sought reconsideration of the Order to allow it to intervene as a party to this proceeding, but was again denied.<sup>3</sup> Commissioner Campos, in denying the reconsideration, stated:

As the Order specifically noted, Edison's March 26 motion failed to establish a basis to allow it to intervene. Indeed, other than a passing reference to overpayments that its ratepayers may ultimately bear, Edison did not make any representation in its March 26 motion or supplement sufficient to warrant Edison's intervention. In its motion for reconsideration, Edison asserts that it is acting on behalf of its ratepayer consumers. This assertion does not demonstrate, as required by Commission Rule of Practice 210(b)(1), why leave to participate under Rule 210(c) would be inadequate. The Division of Investment Management already opposes Enron's application and Edison's intervention would be merely cumulative.

Similar to Edison in the *Enron Corp.* matter, Public Citizen generally refers to the interest of its members that are electric utility customers as grounds for intervention. Rule 210 (b), however, requires not the generalized interests of customers or members of the movant. Rather, as in *Enron Corp.*, only representation of the interests of specific customers of the party subject to the proceeding warrants admission as a party. Public Citizen's failure to establish this, together with its failure to establish its status as a

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<sup>3</sup> *Enron Corp, Order Denying Motion by Southern California Edison Company for Reconsideration* (Nov. 19, 2002).

security holder of AEP and its failure to assert that its participation in the proceeding may be in the public interest or for the protection of investors or consumers, all require rejection of its request for admission as a party under Rule 210 (b)(1).

Similarly, there is some question whether Public Citizen meets the requirements (albeit less rigorous) of leave to participate on a limited basis. Pursuant to Commission Rule of Practice 210(c), the ability of a non-party to participate in a proceeding is discretionary, and approval from the hearing officer is required.<sup>4</sup> In order to obtain leave to participate on a limited basis, the matter must affect the person's interests. Although the Commission is more inclined to grant leave to participate on a limited basis rather than party status as noted above, it has, however, denied motions for leave to participate on a limited basis. *See Enron Corp., Order Denying Motion of Thelen Reid & Priest LLP to Participate on a Limited Basis* (Nov. 5, 2002) (denying request to participate when movant law firm alleged the proceeding involved interpretation of PUHCA and would affect the interests of its clients potentially subject to regulation under PUHCA).

In its motion, Thelen Reid & Priest LLP ("TRP") stated that it represented a number of exempt and registered public utility holding companies with issues under PUHCA similar to the issues under consideration in this proceeding, and therefore the determination whether Enron satisfies any of the particular criteria for an exemption from the Act "is of interest to many of the companies we represent." In rejecting the request, Commissioner Campos concluded that:

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<sup>4</sup> See Rule 210(c), Comment (c).

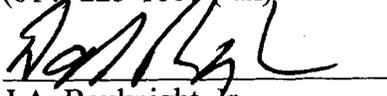
TRP's motion makes clear that, at best, the interests affected by this proceeding are those of TRP's exempt and registered public utility holding company clients. The affect, however, that this proceeding may have on exempt and/or registered public utility holding companies will be the same irrespective of whether such companies are clients of TRP.

Public Citizen's posture in this matter parallels that of TRP in *Enron Corp.* and Public Citizen's members here are in the same position of TRP's clients in *Enron Corp.* While it may be true that members of Public Citizen may be affected by this proceeding, the affect, however, that this proceeding may have on such members will be the same irrespective of whether they are members of Public Citizen. Accordingly, as in *Enron Corp.*, this does not provide adequate grounds for granting Public Citizen's request to intervene.

For the foregoing reasons, AEP respectfully requests that the Motion to Intervene of Public Citizen be denied.

Respectfully submitted,

  
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