

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.

Administrative Proceeding  
File No. 3-11616

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**OPPOSITION OF AMERICAN ELECTRIC POWER COMPANY, INC. TO  
THE MOTION FOR CLARIFICATION ETC. OF PUBLIC CITIZEN, INC.**

American Electric Power Company, Inc. (“AEP”) hereby opposes Public Citizen, Inc.’s (“Public Citizen”) December 3, 2004 Motion for Clarification.<sup>1</sup> Public Citizen’s request to clarify the October 22, 2004 Order (“Order”) in this proceeding is unwarranted, because the appropriate level of Public Citizen’s involvement has already been fully considered and clearly set forth in the October 22 Order. There is no reason to reopen the question of whether Public Citizen should be afforded full party status, as Public Citizen has offered no new evidence that merits elevating its involvement above that of a non-party participant.

Argument

Public Citizen argues that the October 22 Order must be clarified in order to confirm that it “has the right to present witnesses, cross-examine the witnesses of other parties, [and] brief all issues” in the case. Motion at 1. However, the question of Public Citizen’s involvement in this proceeding has been addressed. Rule 210(c)(1) gives the Presiding Judge wide latitude to “include such rights of a party as the hearing officer may deem appropriate.” *See also* 17 C.F.R.

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<sup>1</sup> AEP submits this opposition pursuant to Rule 154 of the Commission’s Rules of Practice, 17 C.F.R. § 201.154 (2004).

§ 201.210(f). The Order here is unmistakably clear about what terms and conditions have been imposed on Public Citizen's participation. The Order specifically determined that Public Citizen is not entitled to cross-examination, and that its involvement must not burden other parties or the proceeding with cumulative evidence: "It is further ordered that Public Citizen's participation, including participation in scheduled pre-hearing exchanges and meetings, *shall be limited* to non-duplicative involvement including the submission of any briefs, exhibits, testimony, or other matters germane to the issues on remand." Order at 2 (emphasis added).

Not only was this balancing of the need for an efficient proceeding and the level of Public Citizen's involvement within the Presiding Judge's discretion, it was appropriate. The limitation that Public Citizen may not cross-examine witnesses is not a barrier to its participation. Public Citizen has already been afforded substantial rights to be involved in the proceeding, including presenting testimony and exhibits, submitting briefs, and attending the hearing as a participant. The restriction that Public Citizen's involvement must not be duplicative likewise furthers the efficiency of the proceeding. The only other active intervenors are American Public Power Association and National Rural Electric Cooperative Association, which have indicated that they will not submit testimony in the proceeding and, in any case, represent wholesale customers, as contrasted with ultimate consumers.<sup>2</sup>

Indeed, Public Citizen offers no tenable reason to revisit the decision granting it limited participation as a non-party in the hearing—particularly considering that it has provided no new facts or evidence demonstrating that it should be afforded the rights of a full party. Public Citizen asserts that its intervention as a full party would benefit the public by representing the

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<sup>2</sup> Likewise, the National Association of Regulatory Utility Commissioners ("NARUC") is seeking to intervene, but this intervention has yet been decided, and NARUC represents state utility commissioners, not consumers.

interests of “consumers of AEP’s utility services,” but by its own admission, this is the same argument Public Citizen “previously” made to the Presiding Judge. Motion at 2. Having already received a full opportunity to demonstrate a need to secure its appellate rights as an intervening party and, indeed, having fully litigated the issue of its status, Public Citizen’s failure to provide any new reason to receive a greater status should not be excused at this late juncture.

Nor does Public Citizen explain why its current status as a non-party participant is insufficient to protect “investors and the public interest nationwide.” *Id.* Despite its apparent confusion, Public Citizen has already received the right to submit testimony and develop an evidentiary record before the Commission, as explained above. More important, the Commission—the agency charged with administering the Act—has dispatched its Trial Staff to act as participants in this proceeding. Public Citizen has never contended that Commission Staff’s participation will not ensure, or exceed, the protection for the public interest that it claims it can offer.

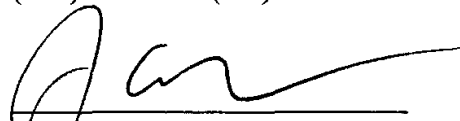
Conclusion

Accordingly, AEP respectfully requests that Public Citizen's motion be denied in its entirety. The October 22 Order fully and clearly resolved all the issues now put forward by Public Citizen, and allowing Public Citizen to reopen an issue that has already been decided absent any new evidence or arguments will only invite participants in other Commission proceedings to engage in attempts at needless relitigation of issues.

Respectfully submitted,



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