

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of)
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)
AMERICAN ELECTRIC POWER COMPANY, INC.) Administrative Proceeding
) File No. 3-11616
)
)

RESPONSE OF PUBLIC CITIZEN, INC.
TO OPPOSITION TO MOTION FOR CLARIFICATION
BY AMERICAN ELECTRIC POWER COMPANY

Public Citizen hereby responds to the Opposition to its Motion for Clarification filed by American Electric Power Company, Inc. (AEP) on December 9, 2004.

AEP is incorrect in stating that the extent of Public Citizen's participation in this proceeding has already been fully considered and determined. The Presiding Administrative Law Judge believed that Public Citizen was seeking limited participation status and granted our apparent motion for such status. Since he was unaware that we were attempting to seek full party status, he clearly was not deciding whether or not we were entitled to it.

AEP is, unfortunately, also incorrect in stating that 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.”

Public Citizen regrets that it has been forced to file concurrently with this response a Request to Subpoena the Trial Staff or other appropriate Commission official to respond to Public Citizen’s concerns regarding the lack of technical, utility and FERC expertise on the part of the Commission Staff. The Division of Investment Management refuses to even answer Public Citizen’s questions regarding what in-house expertise it may or may not possess.

While we believe that the Division is well intentioned in seeking to protect the public interest, we do not believe that they are well informed. For example, Public Citizen’s counsel has approximately thirty more years’ FERC practice experience than any member of the Division; Public Citizen’s expert witness, Dr. Casazza, has more years’ experience than that in actual electric utility operations. Yet the “Preliminary Statement” of the Division makes it clear that they will continue to rely on what they perceive, without adequate expertise in our view, to be “contemporary realities” of the electric utility industry and FERC initiatives. The Division’s refusal to hire technical or FERC experts, and the Commission’s apparent failure to

provide in-house experts, render the Division—however willing—unable, in our view, to adequately protect consumers, investors or the public interest from the barrage of alleged “technical” and FERC expertise being showered on them by AEP.

Indeed, as we file this, there is on-going a “technical conference” between the Trial Staff, AEP and other parties. Since no other parties have offered to provide “technical witnesses” (except Public Citizen, whose witness is not available today for health reasons), and Trial Staff has no in-house technical or utility operations experts, or FERC practice expertise, and has declined to hire independent experts, Trial Staff is presumably simply being given an expensive, one-sided, tutoring session by AEP and its hired experts and employees.

The one-sidedness of this exchange is extreme. The Commission should become concerned that this proceeding may appear to the public, or to a later reviewing court, as a joke. The Commission waited nearly three years after the remand to set this matter for hearing, without explanation. Its staff apparently do not believe that they need to hire technical experts, while planning to rely on their ability to evaluate the evidence of technical and alleged FERC “experts” provided by AEP. One of these “utility” experts has submitted exhibits and testimony concerning highways, railroads and

waterways. (We are afraid AEP may next provide as “evidence” a copy of the movie, “Planes, Trains & Automobiles,” which is arguably as relevant to this proceeding.) The rest of AEP’s experts happen to be company employees, no doubt a totally unbiased group.

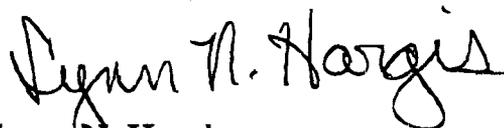
Public Citizen is the only other participant, besides AEP, who has proposed to file both expert technical and expert Federal Power Act and FERC testimony. Public Citizen is also the only participant who even purports to represent the interests of ultimate electric utility service consumers, with the exception of the Trial Staff, whose resource and expertise limitations are discussed above.

We believe that Public Citizen fully justified its right to full party status in its first intervention petition, which was simply inartful in what it was requesting, and has justified full party status now. Public Citizen believes that the most essential part of our participation rights is the right to appeal an adverse decision, and any status that fails to provide that right is clearly inadequate. If there is a need to limit repetitive testimony or cross-examination, we believe that the Administrative Law Judge has ample powers to accomplish that end without limiting the appeal rights of interested parties.

Conclusion

Counsel for Public Citizen, for the reasons stated above, respectfully requests the Presiding Administrative Law Judge to grant Public Citizen, Inc., full party status in this proceeding.

Respectfully submitted,

A handwritten signature in black ink that reads "Lynn N. Hargis". The signature is written in a cursive style with a large, looped initial "L".

Lynn N. Hargis
Counsel for Public Citizen, Inc.

Cc: Presiding Administrative Law Judge Mahoney
Service List