

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
)
_____)

REQUEST FOR CERTIFICATION TO COMMISSION
OF ORDER DENYING PUBLIC CITIZEN, INC.
FULL PARTY STATUS
AND MOTION FOR STAY PENDING DECISION

Public Citizen Inc. respectfully requests the Presiding Administrative Law Judge, pursuant to Commission Rules of Practice 400 and 401, to certify or certificate to the Commission for interlocutory review his December 10, 2004, order denying Public Citizen, Inc., full party status in the above-captioned proceeding, and to stay the hearing proceedings pending a Commission decision on Public Citizen's status.

In his first order issued October 22, the Presiding Administrative Law Judge stated that Public Citizen was seeking limited participation status and granted our motion for such status. Since he was unaware that Public Citizen intended to seek full party status, he had no occasion to, and did not,

decide whether or not we were entitled to it in the first order. As a consequence, the fact that Public Citizen has not shown “a change in circumstance” since it’s first request is irrelevant, since the Presiding Administrative Law Judge had never previously denied Public Citizen full party status or given a reason for doing so, but had simply granted an apparent request for limited party status. The second order similarly gives no reason why Public Citizen should not be a full party herein, other than that it has shown no “new evidence” that it deserves full party status. Since, as noted above, Public Citizen has never been told a reason why it should *not* be admitted as a full party on the basis of its “old evidence,” Public Citizen does not know what such “new evidence” would be.

The Commissions Rules of Practice state at Rule 210(b)(i):

“[I]n a proceeding under the Public Utility Holding Company Act of 1935, any 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.”

And, as we have discussed several times in this proceeding, there is *no longer* a requirement in the rules that an applicant be denied party status unless limited party status is inadequate.

Public Citizen has repeatedly stated that it has members that are consumers of electric service in AEP's subsidiary utilities' service areas that are affected by the merger, and no one has challenged this fact. Public Citizen has repeatedly stated that it has an interest in the enforcement of the Public Utility Holding Company Act of 1935 as well, and no has challenged this fact. Public Citizen is the only party other than the applicant, American Electric Power, that has offered to submit expert witnesses and testimony, and no one has challenged this fact. Public Citizen has stated that its participation will be in the public interest and in the interest of consumers and investors, and no one has submitted any reason to show why it will not be. Thus, Public Citizen is at a loss as to why the Presiding Administrative Law Judge, without explanation other than "no changed circumstances," has denied Public Citizen full party status. If the standard is indeed whether or not anything has changed, Public Citizen notes that there were no limitations on its status in the first phase of this proceeding, so that "no changed circumstances" should result in Public Citizen receiving full party status as it had in the first proceeding.

Public Citizen believes that reasoned decision-making is required for decisions before the Commission as well as before the Courts, and that no reason has been given for denying Public Citizen full party status herein.

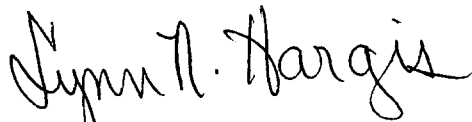
Public Citizen also believes that the loss of the right to cross examine the witnesses of other parties—when they will undoubtedly be given the right to cross-examine the witnesses presented by Public Citizen—is a substantial denial of due process to Public Citizen that it wishes to appeal to the Commission on an interlocutory basis. Obviously, appeal at the time of the initial decision will be too late, since Public Citizen will have already lost the opportunity to cross examine witnesses, etc. Public Citizen will therefore suffer irrevocable harm if the hearing is not stayed pursuant to Rule 401 pending the decision on its rights during the hearing.

Pursuant to Rule 400, Public Citizen submits that the denial of its rights to cross examine witnesses and to otherwise participate in this proceeding as a full party in interest, without explanation, is arbitrary and capricious, substantial and final, and that avoiding a possible court appeal regarding this controlling question of law as to Public Citizen's rights during the hearing may materially advance the completion of this proceeding.

Conclusion

Public Citizen therefore asks the Presiding Administrative Law Judge to either reconsider his decision or to certificate the question to the Commission on an interlocutory basis under Rule 400, and that, pursuant to Rule 401, the hearing be stayed pending a Commission decision on this question.

Respectfully submitted,



Lynn N. Hargis
Counsel for Public Citizen, Inc.

Cc: Presiding Administrative Law Judge Mahoney
Service List