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BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of )  
 American Municipal Power-Ohio, Inc., for a )  
 Certificate of Environmental Compatibility ) Case No. 06-1358-EL-BGN  
 and Public Need for an Electric Generation )  
 Station and Related Facilities in Meigs )  
 County, Ohio. )

ENTRY

The administrative law judge finds:

- (1) On May 4, 2007, American Municipal Power-Ohio, Inc. (AMP-Ohio) filed an application for a certificate of environmental compatibility and public need to construct a 960 megawatt (MW) electric generation facility, consisting of two 480 MW electric generating units in Meigs County, Ohio.
- (2) On October 25, 2007, the National Resources Defense Council, Ohio Environmental Council and Sierra Club (Citizen Groups) filed a motion to intervene in this proceeding. AMP-Ohio filed a memorandum contra the Citizen Groups' motion to intervene on November 9, 2007, and a supplemental memorandum contra the Citizen Groups' motion to intervene on November 15, 2007. The Citizen Groups filed a reply to the memoranda contra on November 19, 2007.
- (3) Further, on October 29, 2007, Elisa Young filed a petition to intervene in this proceeding. AMP-Ohio filed a memorandum contra Ms. Young's motion to intervene on November 13, 2007. Ms. Young filed a reply on November 26, 2007.
- (4) In its motion to intervene, the Citizen Groups represent that each group has members who live in Meigs County who would be directly and adversely impacted by the proposed facility. The Citizen Groups argue that its members who live in or near Meigs County would be adversely impacted by air and water pollution from the facility, the mining and transport of coal for the plant and the disposal of waste from the plant. In addition, the Citizen Groups allege that their members will be adversely impacted by the global warming that would be exacerbated by the proposed facility. Likewise, Ms. Young states that she lives

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within 10 to 15 miles of the location for the proposed facility and that she will be directly impacted by the proposed facility.

AMP-Ohio argues that the Citizen Groups failed to demonstrate good cause for intervention in this proceeding. AMP-Ohio argues that the Citizen Groups' stated interest in climate change issues is a policy question of international scale. AMP-Ohio argues that a recent decision by the Board demonstrates that the purpose of this proceeding is to evaluate the likely environmental effects of the construction, operation and maintenance of the proposed facility on the immediate surrounding community. See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for a Certificate of Environmental Compatibility and Public Need to Construct an Integrated Gasification Combined-Cycle Generation Facility in Meigs County, Ohio*, Case No. 06-30-EL-BGN, Entry (June 15, 2006) at 3-4. Similarly, AMP-Ohio argues that Ms. Young has failed to articulate and demonstrate the nature and extent of her interest in the proceeding.

Further, AMP-Ohio argues that the motions to intervene filed by both the Citizen Groups and Ms. Young were not filed within the time set forth by Section 4906.08(A)(3), Revised Code. AMP-Ohio contends that this statute requires that motions to intervene be filed within 30 days after the applicant has published notice of its application. AMP-Ohio notes that it published notice of the application on August 24, 2007; therefore, AMP-Ohio concludes that the motions to intervene should have been filed no later than September 24, 2007. AMP-Ohio also claims that the parties seeking intervention have not demonstrated that extraordinary circumstances exist, pursuant to Section 4906.08(B), Revised Code, to permit intervention after the time set forth by Section 4906.08(A)(3), Revised Code.

The Citizen Groups respond that AMP-Ohio waived its argument regarding the timeliness of the motions to intervene by failing to object at the time the administrative law judge established the intervention deadline. The Citizen Groups also argue that the deadline set by the administrative law judge is consistent with the statutory requirements governing Board proceedings. Finally, the Citizen Groups argue that reliance upon the intervention deadline established by the

administrative law judge constitutes extraordinary circumstances and that intervention should be granted.

The administrative law judge finds that the motions to intervene should be granted. The administrative law judge finds that the Citizen Groups have established that members of their organizations reside in Meigs County and would be directly affected by the proposed facility. In fact, at the public hearing held on November 1, 2007, members of the Citizen Groups testified that they resided in Meigs County or nearby communities (Tr. I at 26, 30, 40-41, 46-47).<sup>1</sup> Similarly, Ms. Young has established that she may be directly affected by the proposed facility (Tr. I at 66). The decision by the Board's administrative law judge in *Columbus Southern Power Company and Ohio Power Company* is not applicable to this proceeding because, in that case, the parties seeking intervention did not claim that any of their members were property owners within the general vicinity of the proposed facility. Moreover, the party seeking intervention in that case did not allege any interest in the environmental impacts of the proposed facility. *Columbus Southern Power Company and Ohio Power Company*, Case No. 06-30-EL-BGN at 3-4.

With respect to the question of whether the motions were timely filed, Section 4906.08(B), Revised Code, provides that the Board may grant intervention in extraordinary circumstances for good cause shown. By entry dated August 2, 2007, the administrative law judge set the deadline for intervention in this proceeding for up to five days prior to the scheduled date for the non-adjudicatory hearing. AMP-Ohio did not object to this ruling and included the deadline in its published notice of the hearings in this proceeding, as directed by the administrative law judge. AMP-Ohio now argues that the deadline established by the administrative law judge is not consistent with the statutory deadlines for intervention. However, even assuming, *arguendo*, that AMP-Ohio is correct and that the deadline established by the administrative law judge is not consistent with the statute, the administrative law judge finds that extraordinary circumstances exist and that any inconsistency between the deadline set by the administrative law judge and the statute should not prejudice the parties

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<sup>1</sup> All references to the transcript of the public hearing on November 1, 2007 will be designated as Tr. I.

seeking intervention in this proceeding. The administrative law judge notes that the Supreme Court of Ohio recently held, in an appeal from a decision by the Public Utilities Commission of Ohio, that statutes and rules governing intervention should be "generally liberally construed in favor of intervention." *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 384 (quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. Of Elections* (1995), 74 Ohio St.3d. 143, 144).

- (5) On November 19, 2007, AMP-Ohio filed a motion *in limine*, a motion to strike and a request for expedited ruling. The Citizen Groups filed a memorandum contra AMP-Ohio's motion *in limine* and motion to strike on November 26, 2007.

In its motion *in limine*, AMP-Ohio requests that the intervenors in this proceeding (the Citizen Groups and Ms. Young) be prohibited from introducing any evidence at hearing related to global warming, carbon dioxide emissions, potential costs for control and regulation of carbon dioxide emissions, the potential regulation of carbon dioxide emissions, fuel selection and the basic design of AMP-Ohio's proposed generation facility. AMP-Ohio argues that the intervenors raise issues outside the scope of this proceeding. AMP-Ohio notes that global warming, carbon dioxide emissions, costs of carbon dioxide control and regulation and the potential regulation of carbon dioxide are national and global issue of policy. Thus, AMP-Ohio concludes that these issues are more appropriately considered by legislative or rulemaking bodies. Moreover, AMP-Ohio contends that the basic design of the proposed generating facility is outside the scope of this proceeding. Finally, AMP-Ohio argues that the fuel selection is outside of the scope of this proceeding because the General Assembly has explicitly declared its policy to increase coal use in this state.

The Citizen Groups argue that Section 4906.10, Revised Code, requires an evaluation of carbon dioxide emissions and project costs and that nothing in that statute limits the Board's review to only the impacts to the immediate surrounding community.

The administrative law judge finds that AMP-Ohio's motion *in limine* should be denied. Section 4906.10, Revised Code, requires the Board to determine "the nature of the probable environmental impact" and that "the facility represents the

minimum environmental impact, considering the state of available technology and the nature and economics of the various alternatives." AMP-Ohio seeks to exclude all evidence relating to global warming, carbon dioxide emissions, potential costs for control and regulation of carbon dioxide emissions, the potential regulation of carbon dioxide emissions, fuel selection and the basic design of AMP-Ohio's proposed generation facility. However, all of the evidence which AMP-Ohio seeks to exclude may be related to the environmental impact of the proposed facility; therefore, all of this evidence is relevant to the Board's determination of the nature of the probable environmental impact and whether AMP-Ohio's proposed facility represents the minimum environmental impact. The administrative law judge notes, however, that weight which the Board should give to such evidence is at issue in this proceeding, and the parties should be prepared to address that issue at hearing and in their post-hearing briefs.

- (6) AMP-Ohio also moved to strike various attachments to the motions to intervene filed by the Citizens Groups and Ms. Young. AMP-Ohio argues that these attachments have not been properly offered into evidence in this proceeding.

The administrative law judge finds that the motion to strike should be denied. The attachments in question clearly were offered in support of the motions to intervene rather than as evidence for the Board in considering AMP-Ohio's application.

- (7) On October 25, 2007, motions for admission *pro hac vice* were filed on behalf of Shannon Fisk and Sanjay Narayan. Moreover, on November 29, 2007, motions for admission *pro hac vice* were filed on behalf of Aaron Colangelo and Anjali Jaiswal. The administrative law judge finds that these motions should be granted.
- (8) On December 3, 2007, a motion to compel discovery was filed by the Citizens Groups. The administrative law judge urges the parties to review his ruling on AMP-Ohio's motion *in limine* and reevaluate any objections previously made on the basis of relevance. Further, in order to provide an opportunity to informally resolve any outstanding discovery disputes, a discovery conference will be held on Thursday, December 6, 2007, at 9:00 a.m. Parties may participate in the discovery

conference by telephone. The administrative law judge will circulate a telephone number to call in to prior to the conference.

It is, therefore,

ORDERED, That the motions to intervene filed by the Citizen Groups and Ms. Young be granted. It is, further,

ORDERED, That the motion *in limine* and motion to strike filed by AMP-Ohio be denied. It is, further,

ORDERED, That the motions for admission *pro hac vice* filed on behalf of Shannon Fisk, Sanjay Narayan, Aaron Colangelo and Anjali Jaiswal be granted. It is, further,

ORDERED, That a copy of this entry should be served upon AMP-Ohio and its counsel, those individuals served with a copy of the certified application pursuant to Rule 4906-05, O.A.C., and all other interested persons of record.

OHIO POWER SITING BOARD



By: Gregory A. Price  
Administrative Law Judge

GRJ/ct

Entered in the Journal

DEC 04 2007



Renee J. Jenkins  
Secretary