

## BEFORE

## THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of The City of	)	
Delaware,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 06-1070-EL-CSS
	)	
Columbus Southern Power Company,	)	
	)	
Respondent.	)	
	)	
Relative to Violations of the Certified	)	
Territory Act.	)	

ENTRY

The Commission finds:

- (1) On August 28, 2006, the city of Delaware (Delaware) filed a complaint alleging violations relative to the Certified Territory Act, Sections 4933.81 through 4933.90, Revised Code, by Columbus Southern Power Company (CSP). Delaware states that by Ordinance No. 04-22, February 9, 2004, it granted CSP a 25-year franchise to supply electricity within the city of Delaware. Delaware further states that the franchise agreement is non-exclusive. Delaware adds that by Ordinance No. 04-179, on October 11, 2004, it granted a separate franchise to Consolidated Electric Cooperative, Inc., using identical language as to it being non-exclusive. Delaware contends that through a course of discussions and a letter dated July 25, 2006, CSP has asserted an exclusive right to serve customers within the city of Delaware. Delaware concludes that this assertion of an exclusive right pursuant to Section 4933.83(A), Revised Code, constitutes the rendering of service in violation of that provision of the Revised Code. Delaware requests that the Commission find reasonable grounds for complaint have been stated, that CSP cease and desist from claiming the exclusive right and that CSP be found in violation of Section 4933.83(A), Revised Code.

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- (2) On September 18, 2006, CSP filed an answer and affirmative defenses to the complaint. CSP submits that Section 4933.83(A), Revised Code addresses the prohibition of an electric supplier providing service within the certified territory of another electric supplier, and further provides that the Certified Territory Act does not impair the right of a municipality to require franchises for the provision of electric service within the city's boundary. CSP contends that since the complaint neither alleges that CSP is providing service within the certified territory of another supplier, nor that CSP is failing to comply with the city's request to enter into a franchise agreement, that Delaware's filing fails to state a claim under Section 4933.83(A), Revised Code.
- (3) The Commission believes that Section 4933.83(A), Revised Code, limits the issues to the exclusivity of electric service suppliers within certified territories, with a prohibition of extending service to other suppliers' certified territories, and granting municipalities the right to require franchises for electric service providers. The Ohio Supreme Court has confirmed that the Commission has jurisdiction to hear complaints from an electric supplier, regarding another electric supplier furnishing service within the territory of another supplier. *Cleveland Electric Illum. Co. v. Pub. Util. Comm.* (1996), 76 Ohio St.3d 521. In this case, the complainant is a municipality, alleging that the assertion by a franchised electric supplier that it has exclusive rights within the boundaries of the city is sufficient to provide the Commission with jurisdiction to resolve whether that assertion is a violation of the Certified Territory Act. The Commission finds that the complaint does not allege that CSP has furnished or offered to provide service in the territory of another service provider. Nor does the complaint allege that CSP has failed to comply with Delaware's franchise requirement. Therefore, Delaware has not stated a claim that is within the purview of Section 4933.83(A), Revised Code. Thereby, Delaware has not stated a claim upon which relief may be granted, and the complaint should be dismissed. It should be noted that in Case No. 06-890-EL-CSS, *Ohio Power Company Inc. vs. Consolidated Electric Cooperative Inc.*, involving similar certified territory allegations between two electric suppliers, Delaware was granted intervention.

It is, therefore,

ORDERED, That the city of Delaware's complaint fails to state a claim upon which relief may be granted. It is, further,

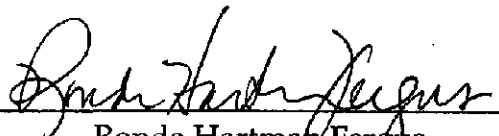
ORDERED, That the city of Delaware's complaint should be dismissed. It is, further,

ORDERED, That copies of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


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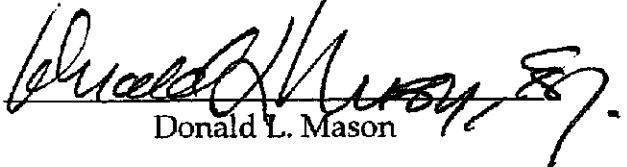
Alan R. Schriber, Chairman

  
Ronda Hartman Fergus

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Judith A. Jones


  
Valerie A. Lemmie

  
Donald L. Mason

SDL:geb

Entered in the Journal

**JAN 24 2007**

  
Renee J. Jenkins  
Secretary