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February 4, 2000

VIA NEXT DAY AIR

The Public Utilities Commission
of Ohio
Docketing Division
180 East Broad Street
Columbus, OH 43215

RE: **Monongahela Power Company,**
dba Allegheny Power
Electric Transition Plan Filing
Case No. 00-02-EL-ETP

Dear Docketing Division:

Enclosed please find ***Monongahela Power Company's Memorandum Contra To The Motion To Reject Of Coalition For Choice In Electricity*** for filing in the above-referenced case.

Sincerely yours,

Gary A. Jack
Senior Attorney

GAJ:tmw
cc: Parties of Record

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician Joan Schuyler Date Processed 2 8 00

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Monongahela Power Company for Approval of Transition Plan and Pursuant to § 4928.31, Revised Code and for the Opportunity to Receive Transition Revenues as Authorized Under §§ 4928.31 to 4928.40, Revised Code	))))))))	**Case No. 00-02-EL-ETP**

MONONGAHELA POWER COMPANY'S MEMORANDUM CONTRA TO THE MOTION TO REJECT OF COALITION FOR CHOICE IN ELECTRICITY

Monongahela Power Company hereby responds to the Motion of the Coalition for Choice in Electricity to reject and dismiss the transition plan and application for transition revenue filed by Monongahela.

A. CCE Motion is contrary to and inconsistent with the process established by statute and Commission rules.

The Commission established a process where it would conduct an adequacy review of a utility's transition plan filing within thirty (30) days of such filing. The rule provides that "if no Commission ruling is issued within the 30-day period, the application will automatically be deemed minimally adequate. The 30-day adequacy review should not constitute a substitute ruling upon the merits of the transition plan filing." (OAC Rule

4901:1-20-14) Accordingly, the Commission's initial review of the transition plan is not a substantive one. It does not seek to adjudicate merits, as CCE proposes. Instead, the initial determination is merely one to determine that the essential pertinent parts of the transition plan are included in the filing and meet a minimal adequacy standard.

Additionally, the Commission's rules do not contemplate that all the parties in the proceeding would participate in this initial review process. The Commission is quite able to conduct this initial review by itself. If the Commission intended to receive input from all the parties to assist in this initial review, it would have made provision for that in its rules. The filing of CCE's motion does not fall within the procedural framework established by the Commission and may and should be rejected on that ground alone.

This nonsubstantive review of an initial filing is performed in other types of filings before the Commission. Rate cases are reviewed by the Commission for minimal adequacy. Certainly the Commission does not adjudicate the merits of rate cases within the first 30 days by accepting party's arguments that utility-proposed revenue requirements are excessive. Similarly, the Ohio Power Siting Board performs a minimal review of power siting applications. Its minimal review of the application for adequacy does not certify the proposed facility or grant a certificate.

CCE has different interpretations of the apposite statutes and rules and proffers alternatives it desires to have adopted. The Commission has expressly set forth a procedural framework to allow other parties to present those views and, if necessary, litigate the same. Every party will be given the right and opportunity to present its views on a given transition plan, just as a utility will present its view of an acceptable transition plan. The Commission supports this approach as stated in its November 30, 1999 Finding and Order in Case No. 99-1141-EL-ORD. The parties' views will undoubtedly

differ on some points but such differences do not warrant rejection of any party's filing, including the utility's filing.

B. Monongahela has provided all necessary information required by the filing.

The purpose of the filing is to provide necessary information to the Commission with regard to Monongahela's transition plan in accordance with the Ohio statute. Monongahela has complied with that requirement.[1]

C. CCE lacks standing.

Monongahela raises the legal issue of standing with regard to CCE bringing the motion. To Monongahela's knowledge, CCE has not moved to intervene in this subject proceeding. Moreover, Monongahela does not believe that all of the individual parties that comprise CCE have moved for intervention.

D. There is no authoritative foundation or basis for a Motion to Reject.

It would appear to Monongahela that while interested parties may file objections, offer testimony and otherwise participate in a proceeding, Monongahela is unaware of any statutory or regulatory authorization for a party to file or have granted a motion to reject a filed transition plan.

E. CCE Motion fails to present compelling grounds for which Monongahela's transition plan should be rejected.

Monongahela, as noted before, believes that the Commission should not entertain the substantive arguments of CCE at this point in time. CCE will have its

[1] Monongahela noted at its technical conference that a supplemental filing was necessary due to inadvertent omissions, copying error, etc. That supplemental filing was made on January 31, 2000. From a review of CCE's motion, that supplemental filing of Monongahela would not satisfy any of the allegations of CCE. Monongahela will likewise be making a second supplemental filing in response to the Commission's sua sponte Order with regard to corporate separation.

opportunity to present all of its view and, if necessary, adjudicate its position for a decision on the merits. As such, the CCE motion should be rejected as procedurally inappropriate and ill-timed. Nevertheless, should the Commission desire to delve into these issues, at this point in time, even though Monongahela believes such review is not appropriate at these early stages, Monongahela hereby provides a short analysis of and response to the allegations of CCE.

(1) Monongahela's filing provides analysis and justification of the "total allowable amount of the transitions cost of the utility to be received as transition revenues."

CCE contends that Monongahela violates Section 4928.39 and OAC 4901:1-20-03 Appendix D because it disagrees with the methodology of calculation of transition costs. The short answer is the statute and Commission rules do not dictate a specific method for determining stranded generation costs. Specifically, it does not dictate a "bottoms up" method or a "top down" method. CCE does not provide legal support for its methodology. The statute provides four (4) general criteria to be met for a cost to be a "stranded cost" and such costs were represented by Monongahela to meet those criteria. Monongahela clearly identified its generation stranded cost and its regulatory stranded cost and those amounts. The Company is free to propose a particular methodology and CCE is free to disagree with the same. It is not grounds to reject a filing as inadequate.

(2) Monongahela limited its transition charges to its transition costs.

Monongahela's supported that it had stranded generation investment of approximately $11.8 million (grossed-up for taxes $19.6 million). It requested recovery of only $16 million due to the limited transition period. Hence, Monongahela's transition charge proposes to recover less than its actual generation stranded cost. The

additional $6.3 million of regulatory assets and $3.2 million of other transition costs are detailed in the testimony of the respective witnesses and are not proposed by Monongahela to be fully recovered during the market transition period. The transition charge proposed by Monongahela only seeks to recover some of its generation stranded costs during the market period.

Monongahela asserts that its transition costs do meet the test of the statute but that such a detailed review is inappropriate in determining minimum requirements of filing adequacy.

(3) Monongahela transition plan does not violate 4928.40(c).

Monongahela believes that the Commission has been given discretion in regard to the possible 5% rate reduction for residential customers. Had the Legislature truly intended that the 5% reduction be across the board to all utilities and there was to be no deviation, it would have so stated in the legislation, such as "the amount of rate reduction shall be 5% of the amount of the unbundled generation component." The Legislature did not do that however. Within the very same sentence that it discusses a rate reduction of 5%, the Legislature went on to say "but [it] shall not unduly discourage market entry by alternative suppliers seeking to serve the residential market in this state." This shows a clear intention of the Legislature, Monongahela believes, to provide discretion to the PUCO and to provide deviation from the 5% reduction should that reduction unduly discourage market entry by alternative suppliers seeking to serve the residential market in Ohio.

As CCE knows, Monongahela's residential rates are comparatively low. Monongahela knows that a further reduction will discourage market entry by alternative suppliers. Market entry is an issue that the Legislature explicitly noted and directed to

be reviewed by this Commission. Further, the language "no such termination of rate reduction shall take effect prior to the mid-point of the utilities market development period" does not in any way obligate the Commission to initially establish a 5% reduction. That language merely provides that should the Commission establish a rate reduction initially, there shall not be a modification of that reduction until the mid-point of the market development period.

(4) Monongahela's plan does not violate 4928.37 with regard to shopping incentive.

Monongahela provided information with regard to a shopping incentive. As noted, the transition charge proposes to recover less than the actual generation stranded costs. This, in and of itself, is a shopping incentive. Secondly, further rate reductions would not encourage the entry of alternative suppliers and the development of effective competition in the retail electric generation service. The proposal not to further reduce rates is a shopping incentive and will assist in developing a possible robust market. Thirdly, the incurrence of certain other transition costs, such as advertising, call center, metering, etc., and the proposed postponement of recovery of those costs until after the market development period is likewise a shopping incentive. Lastly, 4928.40 ties the need for shopping incentives to the development of effective competition by requiring, to the extent possible, a 20% switching rate in designated customer classes halfway through the market development period but not later than December 31, 2003. In other words, a shopping incentive is necessary only to the extent that the designated switching objectives are not achieved. Monongahela believes it is likely premature, in light of the aforementioned shopping incentives, to add additional incentives. In sum, the statute gave the utility and the Commission flexibility,

taking into account the circumstances of an individual utility, to structure an appropriate transition cost recovery mechanism and shopping incentive.

(5) Monongahela's plan does not unlawfully reduce the generation component.

CCE goes into specific detail on how it proposes to unbundle. Suffice it to point out that it would unbundle differently than Monongahela. Monongahela's unbundling does not violate the law, however. The unbundling performed for Monongahela's Ohio territory is consistent with the unbundling done by Allegheny Power in Pennsylvania, Maryland and West Virginia.

Monongahela is uncertain whether CCE fully understands its filing. CCE says Monongahela reduced generation ("G") by deducting regulatory transition costs ("RTC"). Monongahela does not propose to recover RTC until after the market period. Hence, the RTC is 0. Likewise, Monongahela did not reduce G by the EEF or the USF. The EEF and USF are separate surcharges and have no bearing on, and is not a deduction to, the generation component rates.

Additionally, CCE seems to be concerned that it will need to "reconstruct" a new plan with correct numbers and that this involves work and costs upon CCE. While Monongahela is not attempting to impose any additional work or costs upon any party in this proceeding, it has already invested substantial costs and work in an effort for it to comply with what it feels the statute and rules require. CCE is under no obligation to perform such work and costs in this case.

Finally, Monongahela believes the Commission addressed this issue in its Second Entry on Rehearing in Case No. 99-1141-EL-ORD when it stated:

> AEP and FirstEnergy have correctly noted that our rule was structured to allow the utilities to file and support what should and should not be included in the generation component.

> We are unwilling to modify the filing requirement provision as CCE has suggested. CCE (as well as other parties) can question the make-up of the generation component in the context of the individual transition plan proceedings. We will take such argument into consideration at that time. (p. 15 of Order dated January 27, 2000)

(6) Monongahela has complied with the filing requirements.

The items listed for #6 appear for the most part to be a rehash of the earlier items. One new item in paragraph 2 of Item 6 is where CCE claims certain information wasn't provided. We direct CCE to UNB-6 for the necessary information. The remaining CCE arguments appear to gain a decision on the merits on various issues.

(7) Monongahela's proposal for covering the cost of the new KWH tax complies with the statute.

CCE attempts to litigate its view on the tax provisions of the statute. Nothing in the statute states that the accompanying tax law changes will not lead to increases in some rate schedules. The statute requires the Commission to ensure the electric utilities are made whole on any net increases and tax expenses that result from the new law and that shareholders are held harmless. (Section 4928.34(a)(6).) Furthermore, the Second Entry on Rehearing in 99-1141-EL-ORD addresses the CCE argument squarely by saying:

> We do not agree that Section 4928.34(A)(6), Revised Code, requires all tax changes to not increase the price of electricity, as CCE has stated. In fact, that provision of the legislation specifically states that tax-related adjustments shall, in certain circumstances, be addressed by the Commission through accounting procedures, refunds, or an annual surcharge or credit to customers. Additionally, taxation rate adjustments shall have a corresponding adjustment to the rate cap for each rate schedule. Chapter 4928, Revised Code, acknowledges that electric rates may increase as a result of tax changes and restructuring, even

though the goal may be to eliminate price increases to the extent possible. (p. 18 of Order dated January 27, 2000)

(8) Monongahela's transition plan does not violate the law with regard to independent transmission plans.

As CCE readily admits, the statute allows for the submission of information with regard to independent transmission plans or regional transmission entities (Motion at p. 19). Monongahela did not file a detailed independent transmission plan with its transition plan, as expressly permitted by the Ohio statute. (See Revised Code 4923.31(A), 4928.34(A)15 and 4928.35(G).) It is not under an obligation to presently derive a detailed independent transmission plan in the transition plan. Monongahela did, however, exceed its obligation by providing information to the Commission on its current circumstances, as it continues to evaluate various alternatives in the marketplace. Monongahela may supplement its filing during the pendancy of this case on this issue. Moreover, Monongahela is reviewing the Commission's recent modification to its rule with regard to independent transmission plans to determine if any additional filing may be worthwhile or necessary. The Company, in its filing, did confirm that it will demonstrate its compliance with the independent transmission entity specifications. Such entity, whether it be the Alliance, Midwest ISO, PJM, or some other alternative, is still under review, especially in light of recent FERC pronouncements in this area, including FERC Order 2000 and the FERC order on the Alliance .

While CCE may not be in agreement with the Ohio statute's requirements concerning regional transmission requirements and the transition plan, it should not and cannot attempt to modify the law by imposing a filing requirement upon Monongahela.

(9) The Commission should reject expedited treatment.

Monongahela knows of no compelling reason why the Commission must endure expedition of this motion. No party is losing or waiving rights and, in fact, the procedural framework provides an additional 15 days for CCE to provide its comments within the 45-day comment period.

Conclusion

CCE's motion should be rejected for many reasons. First, there is no authoritative foundation or basis for such a motion. Secondly, CCE would appear to lack standing, and moreover, some of its participants have not intervened in this proceeding. Thirdly, its motion contradicts the procedural framework established by the Legislature and Commission for review of a utility's transition plan filing. CCE's motion attempts to have the Commission adjudicate various issues up-front before a hearing. The 30-day Commission review is nothing more than a technical review to determine that requisite information is present in the filings. The 30-day review is not, nor can it be procedurally and under dictates of due process, a substantive decision on the merits. The Commission rules provide a 45-day comment period for interested parties. That is the procedural framework established by Commission for CCE to presents its opinions to the Commission, the utility and other parties. Monongahela looks forward to receiving those comments from CCE and to working constructively with it and the other parties and Staff to achieve a transition plan acceptable to all. Monongahela does not look forward to having to respond to motions to dismiss and engage in other burdensome and time-consuming exercises to further prolong this necessary filing.

Monongahela states that while the CCE positions may be issues that could be a part of this proceeding, they are issues that should not be litigated or decided by the

Commission at this early juncture of the proceeding. These issues raised by CCE have nothing to do with the minimal filing requirements, which the Commission, on its own, will review. Nor does that initial review by the Commission foreclose any regulatory action or oversight by the Commission henceforth or prejudice any party. Monongahela has provided the information necessary for the filing. Should the Commission delve into the substantive merits of these issues (which it should not at this point), the Commission will find that CCE's positions are incorrect and/or certainly do not rise to the level of rejecting a filed transition plan as described herein.

IN WITNESS WHEREOF, Monongahela requests that the Motion to Reject/Dismiss of CCE be rejected.

Respectfully submitted,

MONONGAHELA POWER COMPANY
dba ALLEGHENY POWER

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that ***Monongahela Power Company's Memorandum Contra To The Motion To Reject Of Coalition For Choice In Electricity*** was served by U.S. Mail, First Class, postage prepaid, this 4th day of February, 2000, upon the following:

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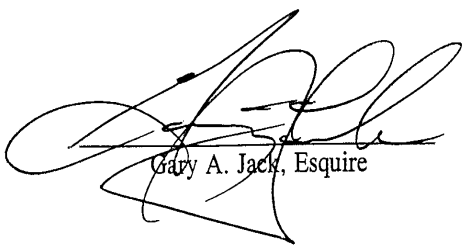

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