

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Complaint of )  
Ohio Power Company, )  
 )  
Complainant, )  
 )  
v. ) Case No. 06-890-EL-CSS  
Consolidated Electric Cooperative, Inc., )  
 )  
Respondent, )  
 )  
Relative to Violations of the Certified )  
Territory Act. )

TESTIMONY OF R. THOMAS HOMAN

on behalf of

Intervenor, the City of Delaware

January 29, 2007

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1     **1.     Q.     Please state your name and on whose behalf you are testifying.**

2           **A.     My name is R. Thomas Homan. I am the City Manager for the City of Delaware,**  
3                   Ohio. My business address is One South Sandusky Street, Delaware, Ohio,  
4                   43015. I have held the position of City Manager since February of 1999. I am  
5                   testifying on behalf of the City of Delaware in support of the Respondent,  
6                   Consolidated Electric Cooperative, Inc. ("Consolidated").

7     **2.     Q.     What is the purpose of your testimony?**

8           **A.     The purpose of my testimony is to explain the importance of this complaint case**  
9                   to the City of Delaware and the background, intent and importance of the City of  
10                  Delaware's Ordinance Numbers 04-22 and 04-179, which contain identical  
11                  language to the ordinances of the Village of Lexington that are in issue in this  
12                  case.

13    **3.     Q.     How is this complaint case relevant to the City of Delaware?**

14          **A.     This case is relevant to the City of Delaware because Ohio Power Company's**  
15                  ("Ohio Power") sister operating company, Columbus Southern Power Company  
16                  ("CSPC"), is making the same claim against Consolidated within the municipal  
17                  boundaries of the City of Delaware under nearly identical circumstances. If the  
18                  Commission were to grant Ohio Power's requested relief in this case and nullify  
19                  the language in Ohio Power's franchise agreement with the Village of Lexington  
20                  that states that Ohio Power's rights, privileges, and franchise to serve customers  
21                  within the Village of Lexington are not to be construed to be exclusive, this may  
22                  have a precedential effect on the City of Delaware's franchise language. If this  
23                  were to happen, the City of Delaware may be left with no recourse but to find

1 CSPC in material breach of its ordinance. The City of Delaware does not want to  
2 be left in that position, and I have to believe that this Commission would not want  
3 to force the city into that position.

4 Instead, the City of Delaware seeks to explain to the Commission the importance  
5 of the "nonexclusivity" language contained in its ordinances in order to assist it in  
6 putting this language in the proper context as it applies to the regulations in  
7 question in this case.

8 **4. Q. Please describe the City of Delaware's Ordinances.**

9 **A.** Ordinance No. 04-22 was adopted by the Delaware City Council on February 9,  
10 2004. It grants CSPC the right and franchise to operate its electric transmission  
11 and distribution business within the municipal boundaries of the City of Delaware  
12 and to provide electric services to the city and its inhabitants. The ordinance has a  
13 duration of 25 years. The right and franchise granted by this ordinance is  
14 explicitly non-exclusive and reserves to the city the authority to grant similar  
15 rights and franchises to other entities. The terms and conditions of this ordinance  
16 were accepted by CSPC by letter dated March 15, 2004, a copy of which is  
17 attached to the complaint filed in this matter. Ohio Power's franchise agreement  
18 with the Village of Lexington contains the identical language.

19 **5. Q. Has the city granted similar rights and franchises to other entities?**

20 **A.** Yes. Ordinance No. 04-179, adopted by the Delaware City Council on October  
21 11, 2004, gives Consolidated the identical rights and franchise. Copies of both  
22 ordinances are attached to my testimony. I have attached copies of both  
23 ordinances to my testimony as Attachments A and B.

1    6.    **Q.    What is your understanding of the purpose of the non-exclusive feature of**  
2                   **these ordinances?**

3           **A.    The purpose is to enable the city and its inhabitants to obtain electric service from**  
4                   **multiple providers.**

5    7.    **Q.    Was it the intention of the Delaware City Council to make the “non-**  
6                   **exclusivity” provision within these ordinances subject to the exclusivity**  
7                   **provisions within the Certified Territories for Electric Suppliers Act?**

8           **A.    No, the ordinances are general to the City of Delaware. No territorial boundaries**  
9                   **within the city are contemplated by the ordinances.**

10   8.    **Q.    Of what significance is the “nonexclusivity” provisions of these ordinances to**  
11                   **the city?**

12           **A.    These provisions are critically important to the economic wellbeing of the city.**  
13                   **Economic development practices have changed over time and competition among**  
14                   **communities, particularly in the Midwest and Ohio, to attract new and diverse**  
15                   **businesses and industry, with their attendant jobs, has become very intense. Cities**  
16                   **like Delaware can no longer afford to be passive about the creation or retention of**  
17                   **commercial activities within their territories. This is particularly true with respect**  
18                   **to the provision of basic infrastructure; it must be a better value than the**  
19                   **infrastructure of the “competition.” Utility services—electric, gas,**  
20                   **communications, water and sewer—are essential tools of economic development.**  
21                   **The cost and reliability of these services cannot be taken for granted by today’s**  
22                   **employers, and, in turn, by communities seeking to retain and attract such**  
23                   **employers. As it pertains to electric service, a diversity of supply, both in terms of**

1 the source of generation and the path of delivery, is a major benefit in terms of  
2 both reliability and cost.

3 The economic benefits of multiple providers is borne out by an actual example  
4 that is directly analogous to this case. When Associated Hygienic Products  
5 ("AHP") sought to expand its Ohio operations in late 2005, the ability of the City  
6 of Delaware to provide AHP with a choice of electric suppliers was critical to  
7 AHP's decision to re-locate its operations to the City of Delaware. CSPC's terms  
8 for supplying AHP with electric service were not satisfactory to AHP. Had CSPC  
9 been the only choice for electric service available to AHP, the Delaware site  
10 would not have been acceptable to AHP. But due to the availability of an  
11 alternative electric supplier, Consolidated, the City of Delaware was able to secure  
12 an additional 200 jobs for its community and a major new manufacturing facility  
13 for its tax base.

14 **9. Q. Why did the City of Delaware decide to intervene in this case?**

15 **A.** Earlier in 2006, AHP, in conjunction with the City of Delaware's office of  
16 economic development, had been in contact with CSPC about the provision of  
17 electric services to AHP's proposed Delaware facility. When the terms offered by  
18 CSPC proved to be unacceptable to AHP, Consolidated was contacted and  
19 acceptable terms for electric service were offered by Consolidated. Subsequently,  
20 CSPC indicated to Consolidated that it considered Consolidated's provision of  
21 service to the AHP site to be a violation of the Certified Territories for Electric  
22 Suppliers Act. This was a major concern to AHP and threatened to cause AHP to  
23 reconsider its relocation to the city of Delaware. The economic consequences to

- 1    **10.    Q.    What is the City of Delaware asking the Commission to do in this case?**
- 2           **A.    The City of Delaware is asking the Commission to put an end to the threat of**
- 3               **future claims by CSPC, or any other electric franchisee of the City of Delaware,**
- 4               **by denying Ohio Power's complaint.**
- 5    **11.    Q.    Does this conclude your testimony?**
- 6           **A.    Yes.**


1 the City of Delaware would have been enormous had Consolidated been  
2 prevented from serving AHP by CSPC's Certified Territories for Electric  
3 Suppliers Act claim. AHP's relocation to Delaware brings 200 new jobs and an  
4 approximately \$7 Million payroll.

5 The City of Delaware made it known to CSPC that its claim under the Certified  
6 Territories Electric Supply Act were at fundamental odds with the non-exclusive  
7 terms and conditions of CSPC's franchise. Within a few weeks after the City of  
8 Delaware made its position clear to CSPC, Ohio Power, CSPC's sister company,  
9 filed this complaint against Consolidated. Ohio Power's complaint involves  
10 virtually the identical question, namely whether the terms of a city ordinance  
11 supersede an electric utility's rights under the Certified Territories Electric Supply  
12 Act.

13 The City of Delaware is compelled to defend the terms and conditions of its duly  
14 enacted ordinances; and the actions of CSPC in making similar claims in the AHP  
15 incident have caused significant problems with respect to the City of Delaware's  
16 economic development efforts. The continuing threat of a lawsuit is, by itself, an  
17 interference in the economic development activities of the city. We cannot  
18 tolerate this type of interference with our hard-fought efforts to keep the economy  
19 of our community healthy and strong. The time, effort and cost that was required  
20 to defuse the AHP situation, at least temporarily, are resources that the City of  
21 Delaware needs to expend in more productive ways.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing TESTIMONY OF R. THOMAS HOLMAN was served via first class mail, facsimile or electronic mail upon the following, this 29th day of January 2007.

  
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ORDINANCE NO. 04-22

AN ORDINANCE GRANTING FRANCHISE TO COLUMBUS SOUTHERN POWER COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO ACQUIRE, CONSTRUCT, MAINTAIN, AND OPERATE IN THE STREETS, THOROUGHFARES, ALLEYS, BRIDGES, AND PUBLIC PLACES OF THE CITY OF DELAWARE, STATE OF OHIO, AND ITS SUCCESSORS, LINES FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRIC ENERGY TO THE CITY OF DELAWARE, AND THE INHABITANTS THEREOF FOR LIGHT, HEAT, POWER, AND OTHER PURPOSES, AND FOR THE TRANSMISSION AND DISTRIBUTION OF THE SAME WITHIN, THROUGH, OR ACROSS SAID CITY OF DELAWARE, STATE OF OHIO.

Be it ordained by the Council of the City of Delaware, State of Ohio:

SECTION 1. Columbus Southern Power Company, its successors, and assigns (hereinafter called "Grantee") are hereby granted the right, privilege, franchise, and authority to acquire, construct, maintain, and operate in, above, under, across, and along the streets, thoroughfares, alleys, bridges, and public places (as the same now exist or may hereafter be laid out) of the City of Delaware, State of Ohio, lines for the transmission and distribution of electric energy only, either by means of overhead or underground conductors, with all the necessary or desirable appurtenances and appliances, including electric substations, to render public utility service in said City and to the inhabitants thereof by supplying electric energy to said City and the inhabitants thereof, and persons or corporations beyond the limits thereof for light, heat, power, or any other purposes or purpose for which electric energy is now or may hereafter be used, and the transmission and distribution of the same within, through, or across said City of Delaware, State of Ohio.

SECTION 2. Said lines, appurtenances and appliances shall be constructed so as to interfere as little as possible with the traveling public in its use of the streets, thoroughfares, alleys, bridges, and public places.

SECTION 3. The rights, privileges, and franchise hereby granted shall be in force and effect for a period of 25 years from the date of the passage of this Ordinance.

The rights, privileges, and franchise hereby granted shall not be construed to be exclusive and the Council of the City of Delaware hereby reserves the power to grant similar rights, privileges, and franchises to any other person or persons, firm or firms, corporation or corporations.

SECTION 4. Said Grantee shall save the City harmless from any and all liability arising in any way from Grantee's negligence in the erection, maintenance, or operation of said lines for the distribution and transmission of electric energy.

SECTION 5. Whenever said Grantee shall begin the erection or installation of any lines or equipment, it shall comply with the provisions of Delaware City Code Chapter 901 and/or similar chapters of the Delaware City Code with regard to right of way excavations as that chapter now exists or is hereafter modified; promptly and diligently prosecute the work to completion and leave the streets, thoroughfares, alleys, bridges, and public places where such work is done in as good condition of repair as before such work was commenced.

SECTION 6. Nothing in this grant of franchise shall be interpreted to interfere with, prevent or preclude the future ability of the City to properly charge fees to the Grantee for the use of the City's right of way.

SECTION 7. Wherever in this Ordinance, reference is made to the City or the Grantee, it shall be deemed to include the respective successors or assigns of either; and all rights, privileges, franchises, and obligations herein contained by or on behalf of said City, or by or on behalf of said Grantee, shall be binding upon, and inure to the benefit of the respective successors or assigns of said City, or of said Grantee, whether so expressed or not.

SECTION 8. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

SECTION 10. EMERGENCY CLAUSE. That this ordinance is hereby declared to be an emergency measure necessary to provide for the public peace, safety, health and welfare of the City, and as such will be in full force and effect immediately upon its passage.

SECTION 11. This Ordinance shall be accepted by the Grantee within sixty (60) days from the date of the passage of same.

VOTE ON RULES SUSPENSION:

YEAS 6 NAYS 0  
ABSTAIN 0

VOTE ON EMERGENCY CLAUSE:

YEAS 6 NAYS 0  
ABSTAIN 0

PASSED: February 9, 2004

YEAS 6 NAYS 0  
ABSTAIN 0

ATTEST:

Reby M. Johnson  
CITY CLERK

Winifred Wheeler  
MAYOR

ORDINANCE NO. 04-179

AN ORDINANCE GRANTING FRANCHISE TO CONSOLIDATED ELECTRIC COOPERATIVE, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO ACQUIRE, CONSTRUCT, MAINTAIN, AND OPERATE IN THE STREETS, THOROUGHFARES, ALLEYS, BRIDGES, AND PUBLIC PLACES OF THE CITY OF DELAWARE, STATE OF OHIO, AND ITS SUCCESSORS, LINES FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRIC ENERGY TO THE CITY OF DELAWARE, AND THE INHABITANTS THEREOF FOR LIGHT, HEAT, POWER, AND OTHER PURPOSES, AND FOR THE TRANSMISSION AND DISTRIBUTION OF THE SAME WITHIN, THROUGH, OR ACROSS SAID CITY OF DELAWARE, STATE OF OHIO.

Be it ordained by the Council of the City of Delaware, State of Ohio:

SECTION 1. Consolidated Electric Cooperative, its successors, and assigns (hereinafter called "Grantee") are hereby granted the right, privilege, franchise, and authority to acquire, construct, maintain, and operate in, above, under, across, and along the streets, thoroughfares, alleys, bridges, and public places (as the same now exist or may hereafter be laid out) of the City of Delaware, State of Ohio, lines for the transmission and distribution of electric energy only, either by means of overhead or underground conductors, with all the necessary or desirable appurtenances and appliances, including electric substations, to render public utility service in said City and to the inhabitants thereof by supplying electric energy to said City and the inhabitants thereof, and persons or corporations beyond the limits thereof for light, heat, power, or any other purposes or purpose for which electric energy is now or may hereafter be used, and the transmission and distribution of the same within, through, or across said City of Delaware, State of Ohio.

SECTION 2. Said lines, appurtenances and appliances shall be constructed so as to interfere as little as possible with the traveling public in its use of the streets, thoroughfares, alleys, bridges, and public places.

SECTION 3. The rights, privileges, and franchise hereby granted shall be in force and effect for a period of 25 years from the date of the passage of this Ordinance.

The rights, privileges, and franchise hereby granted shall not be construed to be exclusive and the Council of the City of Delaware hereby reserves the power to grant similar rights, privileges, and franchises to any other person or persons, firm or firms, corporation or corporations.

SECTION 4. Said Grantee shall save the City harmless from any and all liability arising in any way from Grantee's negligence in the erection, maintenance, or operation of said lines for the distribution and transmission of electric energy.

SECTION 5. Whenever said Grantee shall begin the erection or installation of any lines or equipment, it shall comply with the provisions of Delaware City Code Chapter 901 and/or similar chapters of the Delaware City Code with regard to right of way excavations as that chapter now exists or is hereafter modified; promptly and diligently prosecute the work to completion and leave the streets, thoroughfares, alleys, bridges, and public places where such work is done in as good condition of repair as before such work was commenced.

SECTION 6. Nothing in this grant of franchise shall be interpreted to interfere with, prevent or preclude the future ability of the City to properly charge fees to the Grantee for the use of the City's right of way.

SECTION 7. Wherever in this Ordinance, reference is made to the City or the Grantee, it shall be deemed to include the respective successors or assigns of either; and all rights, privileges, franchises, and obligations herein contained by or on behalf of said City, or by or on behalf of said Grantee, shall be binding upon, and inure to the benefit of the respective successors or assigns of said City, or of said Grantee, whether so expressed or not.

SECTION 9. This grant of franchise is intended to replace and cancel any previous grant of franchise existing between the Grantee and the City.

SECTION 8. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

SECTION 10. EMERGENCY CLAUSE. That this ordinance is hereby declared to be an emergency measure necessary to provide for the public

peace, safety, health and welfare of the City, and as such will be in full force and effect immediately upon its passage.

SECTION 11. This Ordinance shall be accepted by the Grantee within sixty (60) days from the date of the passage of same.

VOTE ON RULES SUSPENSION:

YEAS 6 NAYS 0  
ABSTAIN 0

VOTE ON EMERGENCY CLAUSE:

YEAS 6 NAYS 0  
ABSTAIN 0

PASSED: October 11, 2004

YEAS 6 NAYS 0  
ABSTAIN 0

ATTEST:

Bobby Neal  
CITY CLERK

Windell Wheeler  
MAYOR