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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Transfer of Monongahela)
Power Company's Certified Territory) Case No. 05-765-EL-UNC
to Columbus Southern Power Company)

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MONONGAHELA POWER COMPANY'S MEMORANDUM CONTRA
THE OHIO CONSUMERS' COUNSEL'S
APPLICATION FOR REHEARING

Dated: December 14, 2005

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MEMORANDUM CONTRA

The Commission issued its Opinion and Order in this proceeding on November 9, 2005. It approved Monongahela Power Company's (Mon Power) voluntary transfer of its certified territory and sale of utility property in Ohio to Columbus Southern Power Company (CSP). It also ordered CSP to assume the right and obligation to provide electric service to consumers within Mon Power's former certified territory, effective January 1, 2006. The Commission's order resulted from its review of the Joint Report and Asset Purchase Agreement (APA) that Mon Power and CSP had filed on August 9, 2005 in response to the Commission's June 14, 2005 Entry, which directed the two companies to discuss the terms and conditions that would enable a transfer of Mon Power's certified territory to CSP. The Commission found in its November 9 order that the transfer transaction conducted in the manner detailed in the Joint Report and APA, with minor modifications, meets the requirements of Sections 4933.85 and 4905.48, Revised Code, and is not contrary to the public interest and would result in the provision of adequate service for a reasonable and just rate.

Among other things, Mon Power agreed to sell its Ohio utility property to CSP at net book value. It also agreed to sell wholesale power to CSP during the first 17 months after the transfer in amounts sufficient to meet the default generation service requirements for the transferred customers and at \$45/MWh, a price substantially below current estimates of the full market price for such power during that period. In addition, Mon Power agreed to terminate certain litigation it had commenced to recover wholesale power costs incurred during 2004-2005 to serve its large commercial and industrial customers, and CSP agreed to make an additional \$10 million payment to Mon Power. And, of course, CSP agreed to provide electric service to

the former Mon Power customers pursuant to the terms, including pricing, of its Rate Stabilization Plan.

On December 9, 2005, the Ohio Consumers' Counsel filed an application for rehearing of the Commission's Opinion and Order, raising two issues. First, OCC contends that the order is unreasonable and unlawful because it provides that recovery of the \$10 million litigation termination payment will be accomplished through a surcharge that applies to all customers, including residential customers. OCC contends that residential customers did not cause the wholesale costs that Mon Power has incurred to provide service to its large commercial and industrial customers during the 2004-2005 period, let alone the litigation that Mon Power commenced to recover those costs. Therefore, OCC claims, it is unreasonable and unlawful to require residential customers to pay a surcharge to CSP that recovers a portion of the \$10 million payment.

The primary flaw in OCC's reasoning results from its refusal to view the \$10 million litigation termination payment as part of the overall transaction. Mon Power has agreed to transfer its certified territory and sell its utility property in Ohio to CSP. As a result, Mon Power's current customers, including residential customers, will be able to obtain electric service, including default generation service, at CSP's Rate Stabilization Plan prices. They will avoid the significantly higher prices that would result from Mon Power providing default generation service based on wholesale market costs beginning January 1, 2006. As Mon Power explained at the hearing in this matter, the \$10 million represents a portion of the total value of the transaction to Mon Power and cannot be viewed in isolation. It was part and parcel of a negotiation that included the sale of property at net book value and the favorably priced power purchase agreement. If any one component of the consideration to Mon Power for its agreement

to enter into the transaction had been different, then the other components would have had to change also to maintain the total valuation of the transaction to Mon Power. [Mon Power Ex. 5, at p. 8 (Mader).]

The Commission determined that the \$10 million is not unreasonable as a part of the purchase price of the transfer and that “this portion of the purchase price should be spread overall between Mon Power and CSP customers, just as the other costs of the transfer will eventually be paid by all customers.” Opinion and Order, at page 20. Thus, the Commission properly found, based on the evidence, that the \$10 million payment could not be viewed in isolation, but rather must be considered as part of the total value to Mon Power of the transaction. It was within the Commission’s discretion to conclude that the cost of delivering that component, and all other components, of the transaction’s value to Mon Power should be borne by all customers.

The Commission made its decision in its Opinion and Order after considering and rejecting the OCC’s argument that CSP should not be allowed to recover any part of the \$10 million payment from residential customers. OCC has raised nothing new in support of its position on this issue on rehearing.

OCC’s second issue on rehearing is that the Commission erred because it did not phase in over five years the difference between the current Mon Power rates and the CSP rates that will be in effect after the transfer, beginning January 1, 2006. OCC mischaracterizes this difference as a “rate increase,” and believes that it would be better to phase in the higher rates that the former Mon Power customers will experience as a result of becoming CSP customers. As is the case with OCC’s first rehearing issues, the Commission addressed OCC’s rehearing arguments regarding its preference for a phase-in in the Opinion and Order:

With regard to OCC's proposal for a phase-in plan to address its and OPAE's concern over rate shock, we believe that with the transfers of Mon Power's customers to CSP and the charging of CSP's RSP rates, the Commission is ameliorating rate shock as much as reasonably possible. Although we recognize that the CSP rates are higher than Mon Power's current rates, whether you use CSP's or OCC's estimated increases, it does not seem unreasonable to ask Mon Power customers to pay the same rates that CSP customers are charged, particularly when looking at the alternative. We also note that Mon Power's rates have been the lowest in the state and its customers benefited from those rates for many years.

Id. at page 11.


CONCLUSION

OCC's Application for Rehearing should be denied.

Dated: December 14, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of Mon Power's Memorandum Contra OCC's Application for Rehearing has been served upon the counsel delineated below via e-mail and U.S. Mail this 14th day of December 2005:

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