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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of)
Monongahela Power Company)
for Approval of a Market-Based) Case No. 03-1104-EL-ATA
Standard Service Offer and)
Competitive Bidding Process.)

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In the Matter of the Application of)
Monongahela Power Company and for) Case No. 03-993-EL-UNC
Certain Findings Under Public Utility)
Holding Company Act of 1935.)

APPLICATION FOR REHEARING AND MEMORANDUM IN
SUPPORT OF INDUSTRIAL ENERGY USERS-OHIO

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November 21, 2003

On behalf of Industrial Energy-Users Ohio

(C14143)

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APPLICATION FOR REHEARING

Pursuant to Rule 4901-1-35 of the Ohio Administrative Code and Section 4903.10 of the Ohio Revised Code, Industrial Energy Users-Ohio ("IEU-Ohio") respectfully submits this Application for Rehearing of the Public Utilities Commission of Ohio's ("Commission") October 22, 2003 Finding and Order filed in the above-captioned proceeding for the reasons set forth in the following Memorandum in Support.

Respectfully submitted,


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MEMORANDUM IN SUPPORT

On April 24, 2003, the Monongahela Power Company ("Mon Power") filed an Application for Approval of a Market-Based Standard Service Offer ("MBSSO") and Competitive Bidding Process ("CBP"). Moreover, Mon Power attempted to invoke the Commission's powers to end the market development period ("MDP") on December 31, 2003 to pursue its objectives regarding its obligations after the MDP.

On July 18, 2003, IEU-Ohio filed a Motion to Dismiss the present case or to consolidate this case with Mon Power's Application for Certain Findings Under the Public Utility Holding Company Act of 1935 (hereinafter "Motion to Dismiss").

On July 24, 2003, the Commission issued a Finding and Order that permitted Mon Power to proceed with the request for proposals ("RFP") process for large commercial and industrial customers, but stayed the balance of the Application. At the

conclusion of the RFP process, Mon Power requested that the Commission permit it to increase total electric bills for the affected customers by almost 45 percent and increase, on average, the generation portion of the customers' bills by over 57 percent for 2004. These percentage increase figures translated into a request by Mon Power to extract more than \$12,000,000 in additional revenue in 2004 from 68 commercial and industrial customers located in a relatively small area in Southeast Ohio for the benefit of its unregulated affiliate (the "winning bidder").

On October 9, 2003, IEU-Ohio filed a Memorandum Contra Mon Power's Motion for Approval and Expedited Treatment and Restatement of IEU-Ohio's Motion to Dismiss as a Matter of Law (hereinafter "Memo Contra").

On October 22, 2003, the Commission issued a Finding and Order that granted IEU-Ohio's Motion to Dismiss and denied Mon Power's Application to modify generation rates inasmuch as the Commission found that no customer switching has occurred, that sufficient competition does not exist as required by Ohio's restructuring law, and the limited bids from the RFP process clearly indicated that the market has not developed as anticipated. The Commission directed Mon Power to maintain its current rates and shopping credits through December 31, 2005, or until the Commission specifically orders otherwise. Finally, the Commission noted that Mon Power may submit another application when it can demonstrate that 20 percent switching or effective competition exists in its certified territory.

In the October 22, 2003 Finding and Order, the Commission stated that the Stipulation and Recommendation in Mon Power's electric transition plan ("ETP") proceeding¹ provided for frozen rates during the MDP for industrial customers, large commercial customers and street lighting and that the MDP "was scheduled to end on December 31, 2003." See *Finding and Order* at 1, paragraph (5) and at 2, paragraph (8). This is a mischaracterization of Mon Power's ETP Stipulation.

As discussed in IEU-Ohio's Motion to Dismiss and Memo Contra, the present immaturity of the wholesale electric market, the lack of shopping in Mon Power's service areas, and the long-standing difficulties that have denied existence of a fully functional regional transmission entity compliant with Section 4928.12, Ohio Revised Code, prevent the Commission from allowing Mon Power's MDP to end prior to December 31, 2005, the default MDP end date mandated by Ohio law. The ETP Stipulation only permitted Mon Power to end its MDP prior to December 31, 2005 if the statutory conditions were met. The ETP Stipulation did not schedule the MDP to end on December 31, 2003 outright and without regard for the statutory requirements.

IEU-Ohio respectfully requests that the Commission grant rehearing for the limited purpose of clarifying its Order so that it is clear that Mon Power's ETP Stipulation did not establish a schedule to end the MDP on December 31, 2003 but only permitted an accelerated end date after Commission approval and provided the statutory requirements were met. IEU-Ohio believes this clarification is warranted to better

¹ *In the matter of the Application of Monongahela Power Company for Approval of Transition Plan, 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, Stipulation and Recommendation (June 22, 2000) ("ETP Stipulation"); *Id.* at Opinion and Order (October 5, 2000).

document the facts and law should Mon Power seek to contest the Commission's decision by way of appeal to the Ohio Supreme Court.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing* was served upon the following parties of record this 21st day of November 2003, *via* electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.


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