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April 14, 2003

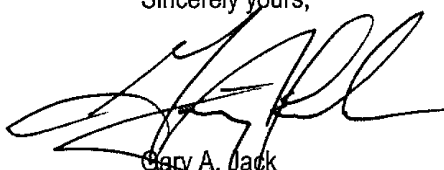
Docketing Division  
The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

RE: **Application of Monongahela Power  
Company for certain findings under  
Public Utility Holding Company Act of 1935  
Case No. 03- 993 -EL-UNC**

Dear Docketing:

Enclosed for filing is the Application of Monongahela Power Company, dba Allegheny Power, in the above-referenced matter.

Sincerely yours,



Gary A. Jack  
Senior Attorney

GAJ:sac

cc: Raman Ravisankar

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**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**Application of Monongahela Power  
Company for certain findings under  
Public Utility Holding Company Act  
of 1935**

**Case No. 03-\_\_\_\_\_-EL-UNC**

**To the Honorable  
The Public Utilities Commission of Ohio**

**The Application respectfully shows:**

**I**

**INTRODUCTION**

1. The Applicant, Monongahela Power Company (hereinafter called "Company" or "Applicant"), is an Ohio corporation, having its principal office in the City of Marietta in said State, and a public utility as defined in Section 4905.02 of the Ohio Revised Code. The Company is engaged in the transmission, distribution and sale of electricity in Washington, Monroe, Morgan, Athens, Noble and Meigs Counties, Ohio, and elsewhere, including the north central portion of West Virginia.

2. The name and mailing address of the Company is:

Monongahela Power Company  
1310 Fairmont Avenue  
P. O. Box 1392  
Fairmont, WV 26555-1392

## II

### APPLICANT

3. The Applicant is a wholly owned subsidiary of Allegheny Energy, Inc., (hereinafter called "Allegheny"), a Maryland corporation, and a holding company registered under the Public Utility Holding Company Act of 1935. Allegheny as a registered holding company, and the Company as a subsidiary of a registered holding company, are subject to the jurisdiction of the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935. In addition, the Applicant is subject as to certain aspects of its operations to the jurisdiction of the Federal Energy Regulatory Commission and the West Virginia Public Service Commission.

4. Applicant, upon the facts to be set forth hereafter, applies to this Commission to make certain findings pursuant to Public Utility Holding Company Act of 1935 (PUHCA) in connection with generating facilities of Monongahela Power Company and its affiliated sister operating companies that were in the retail rate base on October 24, 1992.

## III

### OVERVIEW

5. Under the Public Utility Holding Company Act of 1935 ("PUHCA"), an exempt wholesale generator ("EWG") is an entity which is exclusively engaged in the sale of electricity at the wholesale level. An EWG is exempt from regulation as a public utility under PUHCA.

6. Section 32(c) of the PUHCA, as amended, provides that, as to any generating facilities that were in an electric utility's State retail ratebase on October 24, 1992, the facilities can only become "eligible facilities" within the meaning of Section 32(a)(2) if every State commission with jurisdiction over the rates or charges of the electric utility makes a specific

determination that allowing the Facilities to become an eligible Facilities: (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law. 15 U.S.C. § 79z-5a(c) (2000). Section 32(c) further contemplates that when a rate or charge with respect to the facilities in question were in the retail rates of an affiliate of a registered holding company, each State commission with retail rate jurisdiction over the affiliates of such registered holding company must also make each of these three findings. *Id.*

7. Moreover, before an applicant who will become an EWG under Section 32(a)(1) can sell power at wholesale, either directly or through an affiliated public utility which is not subject to retail rate regulation by any State, to a State-franchised electric utility affiliate that is part of a registered holding company system, Section 32(k)(2) requires every State commission with retail rate jurisdiction over the franchised affiliate to determine that the State commission has sufficient regulatory authority, resources and access to the books and records of the electric utility company affiliate, and any relevant associate, affiliate or subsidiary company, to exercise its duties under subparagraph (A). *Id.* at § 79z-5a(k)(2). Each such State commission must further find that the proposed transaction: (1) will benefit consumers, (2) does not violate any State law (including, where applicable, least cost planning), (3) would not provide the EWG any unfair competitive advantage by virtue of its affiliation or association with the electric utility, and (4) is in the public interest. *Id.* Section 365.3(b) of the FERC's regulations implements the foregoing requirements. 18 C.F.R. § 365.3(b) (2002).

#### IV

#### **REQUESTED RELIEF AND RATIONALE**

8. The Applicant states that the generating facilities listed on Attachment 1 ("Facilities") were in the retail ratebase of Applicant in this State on October 24, 1992. The

Applicant also states that by Commission Order dated October 5, 2000 ("Order") the Commission authorized Monongahela Power to transfer its interest in the Facilities related to serving Ohio customer load to an affiliate, thereby removing these assets from retail ratebase in Ohio.<sup>1</sup> The Applicant interprets the Order as having implicitly found that such transfer would (1) benefit consumers in our State, (2) be in the public interest, and (3) not violate State law. The Applicant or an affiliate is seeking similar treatment for other generating facilities used to serve customers which were previously in the retail ratebases of the electric utility companies of the Allegheny holding company system, including facilities which were transferred to an affiliate pursuant to the Ohio Order.

9. Accordingly, Monongahela Power requests the Commission confirm that transferring Monongahela's interest in the Facilities and any of the generating facilities listed on Attachment 1 hereto to an affiliate, or third party, would (1) benefit consumers in Ohio, (2) be in the public interest, and (3) not violate the laws of the State.

10. In support, the Applicant's proposal benefits consumers in Ohio and is in the public interest because it enables the Applicant to comply with its corporate separation plan approved by the Commission's Order, facilitates the functioning of a competitive electric power industry in Ohio, and furthers the state's electric restructuring policy objectives set forth in Section 4928.02 of the Revised Code. The findings requested herein are necessary to permit the Applicant, or its affiliates, to divest the affected generation by sale to third parties. Such divestiture is consistent with the legislative objective to promote competition for electric power

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<sup>1</sup> A complete list of generating facilities that were in the retail rates of Monongahela and its other franchised electric utility company affiliates (The Potomac Edison Company and West Penn Power Company) are attached as Attachment 1 hereto.

by ensuring the diversity of electricity supplies and suppliers. The proposal does not violate Ohio law; rather, it is consistent with the purposes and requirements of ORC Chapter 49.

11. Section 32(c) of PUHCA could be read to require that the Commission needs to make similar findings to permit Monongahela or its affiliates to transfer to an EWG interests in any of the generating facilities listed on Attachment 1 that were in retail ratebase in another State, but not its own, on October 24, 1992. In this regard, Monongahela requests the Commission to confirm that the transfer of the interests in the Facilities and the other generating facilities listed on Attachment 1 to an EWG: (1) will benefit consumers in our State, (2) is in the public interest, and (3) does not violate the laws of our State.

12. In support of this finding, transfer of generating assets owned by Applicant's out-of-State affiliates to an EWG benefits Ohio consumers and is in the public interest because such transfer potentially increases supplies of electricity available in the wholesale power market. The possible transfer of these facilities to third parties will enhance opportunities for other entities (the purchasers or transferees) to offer electricity from these facilities to Ohio consumers at competitive prices. Moreover, nothing in the Revised Code precludes the Applicant's out-of-state affiliates from transferring their interests in generating facilities to third parties. Even if the Revised Code were applicable, it contemplates such transfers as discussed above.

13. Finally, Applicant and/or one or more other affiliated EWGs may wish to sell power from the Facilities and/or the other generating facilities listed on Attachment 1, directly or indirectly, to its franchised electric utility affiliates to serve retail consumers and others in their respective States. Section 32(k) of PUHCA requires the Commission to find that (1) it has sufficient regulatory authority, resources and access to the books, records and accounts of Monongahela and its affiliates to exercise the Commission's responsibilities under Section 32(k),

and (2) the transaction will benefit consumers, is in the public interest, does not violate state law, and would not confer upon the EWG any unfair competitive advantage by virtue of its affiliation with Monongahela.

14. Administrative Code Section 4901:1-20-16(I)(1) gives the Commission "authority to examine books, accounts, and/or other pertinent records kept by an electric utility," and further gives the Commission the discretion to initiate investigations. Thus, the Commission plainly has the authority necessary to fulfill its responsibilities under Section 32(k), Subparagraph (A), of PUHCA.

15. Moreover, the sale of power from an affiliated EWG to Monongahela benefits consumers, is in the public interest, and does not violate state law for many of the reasons given above. Monongahela Power believes that the availability of power from the Facilities and the generating facilities listed on Attachment 1 to consumers in our State on reasonable terms and conditions is in the public interest. Such sales would help to ensure the availability to consumers of adequate, reliable, safe, efficient, and reasonably priced power, consistent with the goals set forth in Section 4928.02, Revised Code. Moreover, the corporate separation plan approved by the Commission in Monongahela's electric transition plan proceeding and order ensures that an EWG would not obtain any unfair competitive advantage solely as a result of its affiliation with Monongahela. *See* Section 4928.17(A)(2), Revised Code (requiring that the corporate separation plan "satisfies the public interest in preventing unfair competitive advantage and preventing the abuse of market power.").

16. Accordingly, pursuant to Section 32(k), Monongahela Power requests the Commission to confirm that it has sufficient regulatory authority, resources and access to the books and records of Monongahela, and any relevant associate, affiliate or subsidiary company,

to exercise our duties under subparagraph (A) of Section 32(k)(2). In addition, to confirm that the purchase of electric energy at wholesale from an affiliated EWG: (1) will benefit consumers in our State, (2) does not violate any State law (including any least cost planning requirements), (3) would not provide the EWG any unfair competitive advantage by virtue of its affiliation or association with a franchised electric utility company, and (4) is in the public interest.

V

**MISCELLANEOUS MATTERS**

17. As the Commission is aware, Monongahela Power and its sister operating companies have been a fully functioning member of PJM-West since April 1, 2002. Designation of generation as eligible facilities and operating with EWG status furthers the expansion of the PJM market and contributes to fluidness and robustness of the market since generators know they are not subject to public utility requirements under PUHCA. The Commission, therefore, would be furthering the competitive forces of the PJM market and its regional transmission system by granting the application.

18. This requested determination is consistent with Applicant's electric transmission plan case, Case No. 00-02-EL-ETP. As part of the Commission's Order concerning corporate separation, the Commission stated

"Finally, there will be compliance with the rules promulgated by the Commission, specifically Rule 4901:1-20-16, O.A.C. Pursuant to the Stipulation, the subject portion of the Ohio generation assets will be transferred to an unregulated affiliate or other party at book value on or after January 1, 2001. We agree with the signatory parties that the corporate separation plan complies with the corporate separation rules promulgated under Sections 4927.17 and 4928.06, Revised Code." Order at Page 6.

19. This application only requests a designation or redesignation of transferred assets, as well as generating assets for Monongahela Power Company's other affiliates, and does not



reflect new or additional investment by Monongahela Power Company or its affiliates in eligible facilities or EWGs.

## VI

### SUMMARY

20. In summary, the conversion of these generating units to EWG eligibility will benefit consumers in Ohio by permitting compliance with the legislative policies adopted by the Ohio Legislature. For Ohio, a determination that the generating plants are eligible facilities will benefit consumers and is in the public interest because it will further encourage a developing competitive generation market in the state. The transactions underlying this Application are or were being undertaken, in part, because of the requirements of SB 3 to separate control of the generating plants from the regulated wires businesses. The corporate separation requirements in SB 3 help effectuate the policy set forth in Ohio Rev. Code Section 4928.02. Ohio Rev. Code, which is to create a robust competitive marketplace, which is in the public interest and will benefit consumers. Ohio retail customers of Applicant will benefit from the greater availability of a liquid market for wholesale electricity to improve the reliability and availability of electric service. The conversion of these generating units to EWG status also will advance the public interest by implementing the legislative initiatives adopted by Ohio.

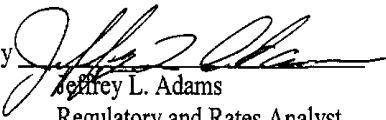
21. A determination that the operating plants are eligible facilities will not violate Ohio law. There is nothing in the law that prevents such a determination. In fact, the determination, which will facilitate the corporate separation required by SB 3, is entirely consistent with Ohio law.

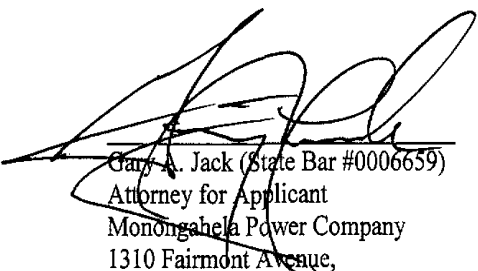
22. **Wherefore,** Applicant respectfully requests that the Commission issue a determination that allowing the Facilities and generating plants listed in Exhibit 1 to be eligible

facilities and to permit their transfer to an EWG will benefit consumers, is in the public interest, and does not violate Ohio law. Additionally, for purposes of sale and resale of power by, to and through affiliates that the Commission issue the necessary determinations as required by Section 32(k)(2) noted above confirming that Ohio has sufficient regulatory authority, resources and access to the books and records of Monongahela, and any relevant associate, affiliate or subsidiary company to exercise duties under subparagraph (A) of Section 32(k)(2) and confirm that the purchase of electric energy at wholesale from an affiliated EWG: (1) will benefit consumers in Ohio, (2) does not violate any State law (including any least cost planning requirements), (3) would not provide the EWG any unfair competitive advantage by virtue of its affiliation or association with a franchised electric utility company, and (4) is in the public interest.

Respectively submitted,

MONONGAHELA POWER COMPANY

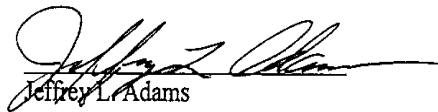
By   
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Regulatory and Rates Analyst

  
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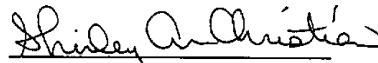
STATE OF WEST VIRGINIA,

COUNTY OF MARION,

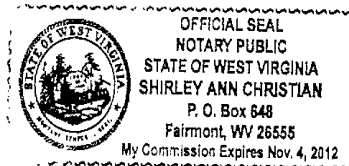
Jeffrey L. Adams, being first duly sworn, deposes and states that he is the Regulatory and Rates Analyst, of Monongahela Power Company, the Applicant in the foregoing Application, and that the statements and allegations contained therein are true to the best of his knowledge, information and belief.

  
Jeffrey L. Adams

Sworn to and subscribed before me this 14<sup>th</sup> day of April, 2003.

  
Notary Public

(SEAL)



ATTACHMENT 1

<u>Generation Stations</u>	<u>Units</u>
Albright	3
Armstrong	2
Fort Martin	2
Harrison	3
Hatfield's Ferry	3
Mitchell	1
Pleasants	2
Rivesville	2
R. Paul Smith	2
Willow Island	2
Bath County	6
Lake Lynn	4
Potomac Edison hydro units	22