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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

COLUMBUS SOUTHERN POWER COMPANY'S
MEMORANDUM CONTRA OCC'S
APPLICATION FOR REHEARING

INTRODUCTION

On November 9, 2005, the Commission issued its Opinion and Order in this proceeding. The Opinion and Order directed Columbus Southern Power Company (CSP) to "assume the right and obligation to provide electric service to consumers within [Monongahela Power Company's] former certified service territory, effective January 1, 2006." (p. 33). Because of the short time span between the issuance of the Opinion and Order and the effective date of CSP's expanded service responsibility, the Commission encouraged any party that planned to seek rehearing to do so as soon as possible. Further, the Commission shortened the time allotted for filing a memorandum contra to 5 days after the filing of an application for rehearing.

OCC filed its application for rehearing on December 9, 2005, the last possible date for such a filing. OCC has raised two issues on rehearing. First, it argues that the Commission erred by applying the Litigation Termination Rider to all customers. OCC believes that residential customers received no benefit associated with the litigation that Monongahela Power Company (Mon Power) has agreed to terminate. Second, it argues that the switch for Mon Power's residential customers from Mon Power's current rates to CSP's rates that will be effective January 1, 2006 should have been phased in over time.

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OCC has turned a deaf ear to the Commission's request that rehearing applications be promptly filed instead of being filed on the last day permitted by statute. It also has turned a blind eye to the significant benefits accruing to current Mon Power residential customers from the Commission's Opinion and Order. These benefits support the broad application of the Litigation Termination Rider to all CSP customers, including its present and new residential customers. Further, the service area transfer directed by the Commission significantly minimizes the rate increases which the Mon Power customers would have experienced. Further moderation of the rate increases which Mon Power's customers would have experienced absent the Opinion and Order is not needed and could not lawfully be imposed on CSP. Therefore, OCC's application for rehearing should be denied in its entirety.

ARGUMENT

The Litigation Termination Rider Issue

OCC is wrong when it argues that the Litigation Termination Rider is not the result of the negotiated price of the transfer of service territory. As Staff witness Hess testified, without the \$10 million payment (which will be recovered through that rider) "I don't believe Monongahela Power will go forward with the deal." (Tr. I, p. 183). The \$10 million is a significant piece of "the deal" and it is CSP's position that there would be no "deal" if that amount were not paid to Mon Power. The service territory transfer was dependent on termination of the outstanding litigation and on the related \$10 million payment. The Commission found that "the transfer transaction, as modified as set forth below, does meet the [statutory] requirements...and is not contrary to the public interest and will result in the public being furnished adequate service for a reasonable and just rate." (Opinion and Order, p. 10). OCC does not object to this conclusion. Instead, it argues for further adjustments that would make residential customers' rates lower yet.

Contrary to OCC's assertions, residential customers have benefited from the \$10 million payment which is to be recovered by the Litigation Termination Rider. The payment was a significant part of the transaction that serves to protect residential customers from very large and volatile price increases. Based on the arguments presented in this memorandum contra and in CSP's post-hearing briefs, the Commission should deny rehearing on the Litigation Termination Rider issue.

The Phase-in Issue

There are two sound reasons for denying OCC's rehearing argument for a phase-in of the rate difference Mon Power's residential customers will pay upon becoming CSP customers. First, imposing such an increase on CSP is unlawful. See, Columbus S. Power Co. v. Pub. Util. Comm., (1993) 67 Ohio St. 3d 535. The Commission, however, does not need to rely solely on that authority. The second reason for denying rehearing on the phase-in issue is that a phase-in is not warranted. By authorizing the service territory transfer, the Commission already has gone a long way to ameliorate the rate increase that Mon Power's current residential customers would face if the transfer were not consummated.

Finally, it again must be pointed out that under OCC's phase-in proposal the generation-related costs that would not be collected from residential customers during the phase-in could be spread over all customer classes. (OCC Ex. 2, p. 8; Tr. II, p. 23).¹ It should not be lost on the Commission that OCC's phase-in proposal, which would shift residential revenue responsibility to other customer classes, is plainly inconsistent with its argument (which is factually wrong) against imposing litigation termination costs on residential customers. Based on the arguments

¹ This unique feature was pointed out in CSP's initial brief at page 18. CSP's entire discussion of the phase-in issue at pages 18-21 of its initial brief and pages 4-7 of its reply brief are incorporated into this memorandum contra as if fully rewritten.

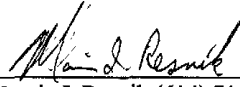
presented in this memorandum contra and in CSP's post-hearing briefs, the Commission should deny rehearing on the phase-in issue.

CONCLUSION

OCC has not raised any new arguments in its application for rehearing. The Commission's decision to broaden the scope of the Litigation Termination Rider and to reject OCC's phase-in proposal are lawful and just and reasonable based on the record in this case.

Rehearing should be denied.

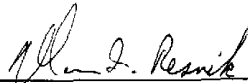
Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Columbus Southern Power Company's Memorandum Contra OCC's Application for Rehearing was served by First-Class U.S. Mail and by electronic mail upon counsel identified below for all parties of record this 14th day of December, 2005.



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