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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, dba)
Allegheny Power, For Authority To Issue)
And Sell Debt Securities or Enter Into)
Credit Facilities.)

Case No. 05-249-EL-AIS

MONONGAHELA POWER COMPANY'S MEMORANDUM CONTRA
IEU-OHIO'S MOTION TO INTERVENE

On February 23, 2005, Monongahela Power Company ("Mon Power", "Company", or "Applicant") filed its Application for authority to (1) issue and sell Debt Securities or enter into Credit Facilities, or (2) issue and sell Preferred Stock, or (3) issue and sell or enter into any combination of Debt Securities, Credit Facilities, and Preferred Stock, not to exceed an aggregate amount of \$130 million. Application, at page 1. The proceeds will be used (1) to repay, refinance or redeem certain outstanding bonds and preferred stock; and (2) to pay any premiums or penalties and accrued and unpaid interest or dividends on debt and preferred stock being repaid, refinanced or redeemed, plus reasonable fees and expenses associated with any such transaction. Id.

The Company believes that, in light of current and prospective market conditions, particularly interest rates, it may be able to reduce the cost of its long-term financing by refinancing certain existing debt and preferred stock. Indeed, the reduction of capital costs is the purpose of the Application. One could not hypothesize a financing application that has a less controversial purpose, deserves more widespread support, or merits a more prompt review and approval by the Commission.

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Yet, on March 15, 2005, IEU-Ohio filed a motion to intervene in this proceeding in order to oppose the Application. In its motion, IEU-Ohio states that it seeks to intervene in this proceeding in order to “urge[] the Commission to initiate an investigation for the purpose of identifying and remedying problems created by support inappropriately provided by regulated operations to unregulated businesses.” IEU’s Motion, at page 2. According to IEU’s Motion, this yet-to-be initiated proceeding “should be consolidated with this proceeding and the Commission should not grant any security issuance approvals for Mon Power pending the conclusion of the investigation recommended by IEU-Ohio.” Id.

IEU’s motion to intervene should be denied. Allowing intervention would delay, and might impair, the Company’s ability to realize the cost reductions it seeks to achieve through the Application. In addition, the agenda that IEU-Ohio seeks to pursue through its intervention is unrelated to the subject matter of the Application. Consequently, IEU-Ohio has articulated no legitimate interest upon which intervention could be allowed.

This Commission has supported the Company’s successful efforts to reduce its capital costs and thereby improve its financial position through the refinancing of its securities. See, e.g., In re Mon Power Co., PUCO Case No. 04-99-EL-AIS, Finding and Order (April 7, 2004).¹ It should continue to support the Company’s efforts by denying IEU-Ohio’s intervention request in this case and promptly approving the Company’s Application.

¹ In June 2004, as a result of the Commission’s approval of the Company’s application in Case No. 04-99-EL-AIS, Mon Power issued \$120 million of First Mortgage Bonds with 6.7% interest and a maturity of June 15, 2014. Proceeds from the issuance were used to: 1) repay the \$53.61 million 364-day revolving credit facility due September 2004 and 2) fund the call of \$40 million 8.375% First Mortgage Bonds due 2022 and \$25 million 7.25% First Mortgage Bonds due 2007 that were fully redeemed at call prices of 103.29% and 100% in July, 2004 respectively. The refinancing of \$65 million of the First Mortgage Bonds resulted in after tax present value savings for Mon Power (West Virginia and Ohio) of approximately \$3.5 million and pre-tax interest savings of approximately \$500,000 per year.

1. The Commission Should Deny IEU's Intervention Request Because It Will Lead To Protracted Proceedings That Not Only Will Benefit Nobody's Interest, But Will Delay Mon Power's Efforts To Reduce Its Capital Costs And Improve Its Financial Position.

The Company's goal is to access the capital markets in order to *reduce* its existing capital costs. In order to best achieve that objective, the Company needs prompt approval of its Application because current beneficial market conditions may change. The Commission has previously recognized that intervention and protracted proceedings in financing cases serve nobody's interest and, accordingly, has rejected requests for intervention in them.

For example, in In re The Dayton Power and Light Co., PUCO Case No. 89-1374-EL-AIS, Finding and Order (October 17, 1989), the Office of the Consumers' Counsel (OCC) moved to intervene in a financing proceeding in which the electric utility sought authority to issue and sell \$200 million of Notes and to borrow up to \$200 million from its parent (with the total borrowed by the utility not to exceed \$300 million at any one time). OCC contended that the utility's rates were already excessive and the financing application, if approved, would affect its revenue requirements and, thus, customers' rates. The Commission rejected OCC's intervention request, finding as follows:

Although it is true that financing arrangements may ultimately affect the rates charged by the Applicant, the Commission has generally found that this ultimate effect is not a sufficient basis to support intervention, because the rate treatment for the costs in question is a matter which can be litigated in a subsequent rate case or other appropriate proceeding. Further, the nature of this proceeding is one in which the management of the applicant should be given wide latitude for the exercise of discretion. The exigencies of the capital markets, combined with the lack of any immediate impact on the rate payers, are persuasive reasons for allowing broad management discretion. Thus, absent a compelling public interest

to the contrary, protracted proceedings on a financing application are in nobody's interest.

Id., at pages 2-3.

Similarly, in In re Ohio Power Co., PUCO Case No. 93-793-EL-AIS, Finding and Order (December 9, 1993), the Commission rejected intervention requests by the Industrial Energy Consumers. In that financing case the electric utility sought approval of a lease agreement through which it would finance the construction of scrubbers at one of its power plants. IEC indicated in its intervention request that it was concerned that the costs of the lease would be included in future ratemaking determinations. The Commission noted, as it had in DP&L, supra, that approval of the financing application was separate from and did not equate to a decision on ratemaking. Consequently, the Commission found that IEC's intervention request should be denied.

OCC's intervention request in the DP&L financing case and IEC's request in Ohio Power were premised on concerns that the costs of the securities issued and lease arrangements entered into pursuant to Commission approvals in those cases would *increase* the utilities' costs and, ultimately, adversely affect customer rates. The Commission's decisions to deny intervention in DP&L and Ohio Power apply with even greater force to IEU's intervention request in this proceeding because, as explained above, approval of this Application will provide the Company with an opportunity to *reduce* costs.

IEU's request in its Motion in the instant proceeding to consolidate this case with another unrelated and, indeed, non-existent proceeding likewise should be rejected. In DP&L the Commission also considered OCC's request to consolidate the utility's

financing application with a pending complaint case in which OCC was contending that the utility's rates were excessive. The Commission also rejected that request:

The Commission finds that the effect of this financing arrangement on the Applicant's revenue requirement is an appropriate consideration for the complaint case. However, the complaint proceeding has not yet been set for hearing. Because OCC has not presented any compelling circumstance and because time may be of the essence to the Applicant in obtaining the best terms for the financing arrangement, it is not appropriate to consolidate this case with the pending complaint case. Accordingly, OCC's motion to intervene in Case No. 89-1374-EL-AIS and to consolidate Case No. 89-1374-EL-AIS with Case No. 88-1744-EL-CSS should be denied.

Id., at page 3.

Again, the Commission's rationale for denying OCC's consolidation request in DP&L applies even more strongly to IEU's request to consolidate this Application with another proceeding. In DP&L the Commission conceded that there was some link between the consequence of the financing case, additional capital costs, and the complaint case, in which OCC contended that the utility's rates were excessive. Nevertheless, the Commission properly denied OCC's consolidation request. In the instant case, IEU has not articulated any connection between the purpose of the Application, which is reducing capital costs by replacing existing securities with less costly ones, and the purpose of the proceeding with which IEU-Ohio seeks to consolidate the Application, which apparently is to investigate whether the Company is leveraging itself to benefit its affiliates. There is no such connection that could be made. Consequently, the Commission's reasoning in DP&L against consolidation is even more compelling in this instance.²

² In addition, in DP&L there was an existing proceeding with which OCC sought consolidation. In this case, there is no existing proceeding with which IEU seeks to consolidate this Application. This further reinforces the conclusion that, if consolidation was inappropriate in DP&L, it would be even more inappropriate in this case.

2. IEU-Ohio's Interest Is In Matters Unrelated To This Application.

IEU-Ohio contends that it has “a direct, real and substantial interest in the issues and matters involved in [the Company’s Application], and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest.” Motion, at page 2. It also recites that its participation “will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just and expeditious resolution of issues raised in this proceeding.” Id. After reciting this intervention boiler plate, however, IEU-Ohio reveals its objective, which is to have the Commission initiate an investigation “for the purpose of identifying and remedying problems created by support inappropriately provided by regulated operations to unregulated businesses.” Id.

There is simply no aspect of the Company’s Application that intersects with the issue in which IEU-Ohio has indicated it has an interest. The Application seeks to reduce the costs of its existing securities, an objective whose pursuit can only benefit the Company and its customers. The Company’s Application is not for the purpose of providing “support . . . to unregulated operations.” Consequently, IEU-Ohio has not articulated a “direct, real, and substantial interest” in the Application.³

Moreover, IEU-Ohio’s recitations that its intervention request will not cause undue delay and will not unjustly prejudice any existing party are patently untrue. In

³ At page 26 of its Motion, IEU-Ohio states “that it had an interest in the effect this proceeding has upon price, adequacy, and reliability of the electric supply and related services within Ohio, including areas presently served by Mon Power.” If this were so, IEU-Ohio would not be seeking to obstruct and delay Mon Power’s efforts to reduce its capital costs. In any event, the Commission rejected this argument in support of intervention, even when advocated in good faith, in DP&L, *supra*.

fact, IEU's object is to delay or prevent the approval of the Application and, thus, to delay or prevent the Company from realizing reductions in its *existing* capital costs.

Such delay, whose purpose can only be to inflict harm on the utility (and, ultimately, on the utility's customers), could not be more undue, and the prejudice it would cause the Company (and, ultimately, its customers) could not be more unjust. Even if the Commission had not already ruled in cases such as DP&L and Ohio Power that intervention requests such as this should be denied, it is clear that IEU-Ohio has not met the standard for intervention in this proceeding.

3. IEU-Ohio's Arguments In Support Of Its Motion Are Simply Not Relevant To The Application.

The Commission should not be side tracked by IEU-Ohio's 25 page-plus screed that, while purportedly is in support of the motion to intervene, raises issues and arguments that have nothing to do with the Application and do not support IEU's intervention request.⁴

The closest that IEU-Ohio comes to addressing the Application is its contention that Mon Power's March 8, 2005 letter amendment to the Application "is short but loaded with mystery [and] alarmingly uninformative." Motion, at pages 1-2. This is nonsense. The March 8 letter amendment states, in pertinent part:

Monongahela Power Company agrees that the Debt Securities, Credit Facilities, and Preferred Stock that Mon Power seeks authority to issue through its Application in this proceeding will be issued in accordance with the Company's transition plan as approved by the Commission in Case No. 00-02-EL-ETP.

⁴ Suffice it to say that Mon Power strongly disagrees with the positions that IEU-Ohio has advanced with regard to the irrelevant matters that it has included in its Motion and Memorandum in Support, but this financing case is not the forum to continue that debate.

IEU-Ohio never does explain how this commitment is "mysterious" or "alarming," probably because, as with its other unsubstantiated claims, it can provide none. What is a mystery is how IEU-Ohio could contend that efforts by the Company to issue securities and enter into credit arrangements that reduce its existing capital costs can possibly be in conflict with its transition plan. What is both mysterious and alarming is IEU-Ohio's effort to delay and obstruct the Company's efforts.

Conclusion

As explained above, IEU's Motion to Intervene and its request to consolidate the Company's Application with a proceeding that does not even exist should be denied. The Commission should grant the Application and permit the Company to attempt to reduce its existing capital costs as quickly as possible.

March 29, 2005

Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that a copy of Monongahela Power Company's Memorandum Contra IEU-Ohio's Motion to Intervene was served upon the following counsel for IEU-Ohio by first class mail, postage prepaid, this 29th day of March 2005.


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