

Public Service Commission of West Virginia

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August 5, 2016

01:18 PM AUG 05 2016 PSC EXEC SEC DIV

Ingrid Ferrell, Executive Secretary
Public Service Commission
PO Box 812
Charleston, WV 25323

Re: Case No. 16-1074-E-P

Dear Ms. Ferrell:

Enclosed for filing are the original and twelve (12) copies of the "*Petition of Commission Staff and the Consumer Advocate Division Requiring Monongahela Power Company and The Potomac Edison Company to Show Cause Why They Should not be Required to File Requests for Proposals for All Future Capacity and Energy Requirements Above 100 MW.*"

Sincerely,

A handwritten signature in cursive script that reads "John Auville".

John R. Auville
Staff Attorney
West Virginia State Bar I.D. No. 8057

JRA/bg
Enclosures

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**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO.

**PETITION OF COMMISSION STAFF AND THE CONSUMER ADVOCATE
DIVISION REQUIRING MONONGAHELA POWER AND THE POTOMAC
EDISON COMPANY TO SHOW CAUSE WHY THEY SHOULD NOT BE
REQUIRED TO FILE REQUESTS FOR PROPOSALS FOR ALL FUTURE
CAPACITY AND ENERGY REQUIREMENTS ABOVE 100 MW**

Staff of the West Virginia Public Service Commission, by John R. Auville, Esq. Staff Attorney, and the Consumer Advocate Division by Jacqueline L. Roberts Esq., Consumer Advocate submits this *Petition of Commission Staff and the Consumer Advocate Division Requiring Monongahela Power Company and The Potomac Edison Company to Show Cause Why They Should not be Required to File Requests for Proposals for All Future Capacity and Energy Requirements Above 100 MW* (Companies). In support of this filing, Petitioners, by Counsel state as follows:

The broad regulatory powers and duties of the Commission provided in *W. Va. Code* §24-1-1(a) require the Commission to enforce the obligations of a utility to 1) provide “economical” utility service, 2) “. . . ensure that rates and charges for utility service are just and reasonable . . . and [e]ncourage energy conservation and the effective and efficient management of regulated utility enterprises.” The Commission is also responsible for appraising and balancing the interests of current and future customers, the

general interests of the state's economy and the interests of the utilities subject to its jurisdiction in its deliberations and decisions. *Id.*, at subsection (b).

The Commission serves as a proxy for market forces, the operation of which would confound and limit the application of controls necessary to discipline the activities of a monopoly enterprise in a manner consistent with the public interest. This bargain, or “regulatory compact” that a utility strikes with the regulatory agency entitles it to operate as a monopoly in exchange for authority to earn a return on and of its investment. This long-standing paradigm also permits a utility a certain degree of latitude in a number of its practices including matters involving the acquisition of capacity and supply necessary to serve the Companies’ customers.

The discretion of the utility in this particular arena is not unrestrained, however. The utility must adhere to the obligations discussed above in matters of capacity and supply acquisition, and must also acquire those “commodities” at the lowest cost, reasonably available. The Staff and CAD believes that these Companies, especially in light of the inexorable collapse of the coal industry driven primarily by the availability of cheaper and more plentiful natural gas, continue to rely on acquisition practices that are not in the best interests of the consuming public and the economy of the State. Historically, coal generation plants constituted base load generation for supplying customers. With the advent of shale gas, gas is now displacing coal in the economic dispatch order in the PJM markets, creating greater risk of economic dispatch for coal.

In today's market, it simply makes sense for the Companies to issue an RFP for an acquisition of capacity and energy above 100 MW. The Companies could obtain competitive, cost-effective proposals for acquiring capacity and energy by using the RFP process. The use of an RFP could allow the Companies to move beyond past approaches and allow the competitive process to offer a variety of generation resources to meet customers' needs. Perhaps one of the best explanations of the advantages of the RFP process was provided by Byron Harris, former Consumer Advocate, in his pre-filed direct testimony concerning the proposal for the First Energy Companies to acquire the Harrison plant. Case No. 12-1571-E-PC, *Monongahela Power Company and The Potomac Edison Company*. Mr. Harris stated, "[A]ny type of modeling analysis is necessarily an abstract representation of the cost of new capacity and/or demand-side resources. No model will ever be able to capture the dynamics of an open market, where existing resources can compete with new resources." Mr. Harris explained, "[T]he terms and conditions of resources procured under an RFP would be more likely to be reasonable because the terms are set by market forces." Given that ratepayers ultimately bear the financial risks associated with acquiring capacity and energy, they should be allowed the benefits of the RFP process.

Contrary to the intent of the Legislature, the Companies appear to have concluded that Commission review of purchases for future capacity and energy requirements is not required by *W. Va. Code* §24-2-19. Pursuant to its obligations under Section *W. Va. Code* §24-2-19, the Commission directed all electric utilities in West Virginia to file an

“integrated resource plan” (IRP). *See*, General Order No. 184.35, *Integrated Resource Planning*, Commission Order, March 19, 2015. In accordance with the Commission’s Order, Monongahela Power Company and The Potomac Edison Company filed their plans on December 30, 2015. *See*, Case No. 15-2002-E-IRP, *Monongahela Power Company and The Potomac Edison Company*.

The Commission’s final order in that case dated June 3, 2016 basically invited this filing. In that order, the Commission stated:

With regard to the concern expressed by Staff and CAD about the Companies’ compliance with the RFP provision in the Harrison Stipulation, that issue is outside the scope of this proceeding. Further, there is not in any event a sufficient record on which to make a determination regarding either the applicability of or the Companies’ intentions as to the RFP provision, in the context of a potential coal-fired power plant purchase that the Companies may or may not pursue in the future.

With that said, we do not intend to minimize the concerns of Staff and CAD. We take seriously the obligations of all parties to comply with the terms of their agreements, particularly where, as here, the Commission approved the agreement in connection with resolving a highly-contested proceeding and expressly required the stipulating parties “to comport themselves in accord with the terms” of the agreement. Case No. 12-1571-EPC, Commission Order of October 7, 2013, at 48. The issue of the adequacy of the RFP or whether that RFP satisfies the Harrison Stipulation may be a matter for determination in a later proceeding.

This Commission language was in reaction to comments made by the Staff and CAD. Staff, in its Final Joint Staff Memorandum on April 27, 2016, stated:

Legal Staff notes that in Case No. 12-1571-E-PC, the parties entered into a stipulated agreement that contained the following provision:

- (1) If the Companies determine in any annual PJM Base Residual Auction (“BRA”) that their combined capacity obligations for the delivery year covered by the BRA (“Delivery Year”) exceed the

Companies' owned or contracted-for capacity resources for the Delivery Year by 100 MW or more ("Capacity Shortfall"), then not later than the end of the calendar year following the BRA, the Companies will develop an RFP for capacity resources to address the Capacity Shortfall and submit the RFP to the Commission and the Parties for their review and comment. The RFP will allow proposals from both supply-side and demand-side resources.

- (2) The Companies will have no obligation under this paragraph (m) if
 - (i) the Capacity Shortfall arises from unusual and non-reoccurring circumstances (such as unexpected unforced outages) that reduced the Companies' owned and contracted-for capacity resources; and
 - (ii) the Companies reasonably believe that notwithstanding those circumstances, they would have adequate capacity resources in the Delivery Year to not create a Capacity Shortfall.
- (3) For the purposes of this Joint Stipulation, the Companies will be obligated to comply with the provisions of subparagraph (1) of this paragraph (m) in respect of only one BRA and corresponding Delivery Year.
- (4) Nothing in this paragraph (m) will preclude the Companies from conducting capacity resource planning and acquisition efforts in the normal course of business.

The Joint Stipulation filed on September 13, 2013, was adopted by the Commission Order entered on October 7, 2013. The Companies agreed to this requirement to issue an RFP as part of negotiations and is now bound by a Commission Order requiring it to do so.

In response to the CAD's First Request for Information, Question #3, the Companies responded that they have not issued a RFP because the terms of the stipulation have not been met, as the Companies still have a capacity surplus. The Companies further indicate that they will continue to monitor the situation to see if the condition is met. The actions and answers of the Companies concern Legal Staff. One of the Companies' recommendations in its IRP is to purchase or acquire approximately 850 MW of additional capacity based upon a levelized cost analysis of resource options. The Companies believe that a "significant cost" will be necessary for such a

transaction. If the Companies actually act on the result of this IRP and contract to purchase an additional coal-fired power plant, the conditions outlined in the stipulation will never be met. Legal Staff and the CAD believe any filing by the Companies to purchase such a power plant, without the issuance of an RFP, would be an end-around this stipulated provision. When Staff entered into that stipulation, it was believed that the next time the Companies were in need of additional capacity, an RFP would be issued. Staff hopes that the Companies intend to voluntarily and timely honor the agreement they made in Case No. 12-1571-E-PC and issue a RFP before they bring any proposal to obtain a substantial amount of new capacity before the Commission because the acquisition of such a large capacity resource at “significant cost” is not the “normal course of business.”

In its April 28, 2016 comments, the CAD stated:

The sole product of the Companies’ planning process is to purchase another merchant coal-fired generation plant owned by an affiliate. This is precisely why the Parties to the Harrison Stipulation required the Companies to issue an RFP for future generation.

CAD further stated:

While an RFP is not mentioned in the Companies’ Plan, the CAD believes that the requirement to issue an RFP in the stated circumstances presents the Companies with an opportunity to ensure that needed capacity is procured at terms most favorable to ratepayers. For that reason, the CAD requests that the Commission remind the Companies of this obligation and specifically require them to comply with the provision at the earliest possible moment. The timing of the RFP, according to the Companies testimony in Harrison is important, and must be planned for now to meet the projected need. This was clear from the exchange between the PSC Chairman and the Companies’

Witness Delmar at the Harrison hearings:

(Delmar)

I mean, it takes time to do an RFP. It takes time to issue it. You have to get enough time to respond to it. I mean, you can’t give people two weeks to say, we’re going to do this. And then it takes time for us to diligence. You know, in one of the points we made in the ---.

CHAIRMAN ALBERT:

When you get the response?

(Delmar)

When you get the response. Let's say you get --- you know, it's a robust return or we get, you know, 50 responses and 15 of them are power plants. So you've got to go visit. I mean, you've got to kick the tires and you've got to make sure that you do enough diligence to make sure that there's nothing that you don't know about, which is obviously a benefit we had with Harrison. And that process --- you know, the RFP process, you know, I believe, the LDV issued there is --- their latest one, September, which doesn't include the final compare; and as of last week when we spoke with them, they're still not done. So, I mean, we're talking about over ten months or maybe more. And then the fact is that the issue came to us. It was --- the offer we were looking at was not an existing plant, then we've got a construction period as well.

Staff and the CAD believe this is the appropriate time and filing for this issue to be examined. Staff and the CAD are concerned the Companies' will provide the same excuse Mr. Delmar provided to Chairman Albert if the Parties wait until the Companies file a request to procure a new asset. Staff and CAD further believe that the Commission needs to act on this motion expeditiously.

The CEO of First Energy stated in an earnings call earlier this year that the sale of the Pleasant Power Station to the West Virginia affiliates was being contemplated:

We filed our integrated resource plan with West Virginia. I think later this year, they'll start taking a look at it seriously, and it's up to the West Virginia commission to decide, would Pleasants be the appropriate solution.¹

FirstEnergy and the Companies could currently be negotiating a purchase agreement. Given the statements of Companies' witness Delmar, if an RFP is to be issued for

¹ Earnings Call, April 27, 2016.

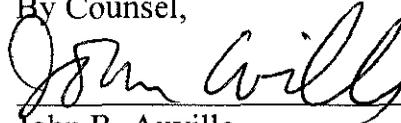
generation, that process must commence *before* Companies make a filing to acquire Pleasants.

Wherefore, Commission Staff and the CAD respectfully request the Commission use its regulatory authority, act as the proxy market force, and expeditiously issue an order directing Monongahela Power Company and The Potomac Edison Company to show cause as to why they are not required to issue a request for purchase for any additional energy above 100 MW. At the very least, the Commission should issue a show cause as to if and/or how the Companies plan to fulfill the obligations related to the stipulation in the Harrison transaction.²

Respectfully submitted this the 5th day of August 2016.

STAFF OF THE PUBLIC SERVICE
COMMISSION OF WEST VIRGINIA

By Counsel,

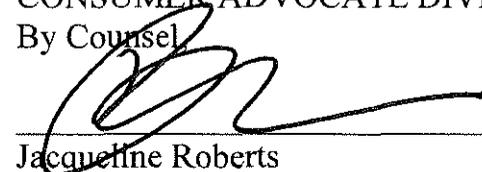


John R. Auville

W.Va. State Bar I.D. No. 8057

CONSUMER ADVOCATE DIVISION

By Counsel



Jacqueline Roberts

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² This Petition is being served on all Parties to Case No. 12-1571-E-PC, *Monongahela Power Company and The Potomac Edison Company* and Case No. 15-2002-E-IRP, *Monongahela Power Company and The Potomac Edison Company*.

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO.

CERTIFICATE OF SERVICE

I, JOHN R. AUVILLE, Staff Attorney for the Public Service Commission of West Virginia, hereby certify that I have served a copy of the foregoing "*Petition of Commission Staff and the Consumer Advocate Division Requiring Monongahela Power Company and The Potomac Edison Company to Show Cause Why They Should not be Required to File Requests for Proposals for All Future Capacity and Energy Requirements Above 100 MW.*" upon all parties of record by First Class United States Mail, postage prepaid on the 5th day of August, 2016.

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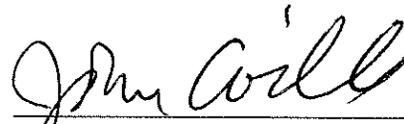
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