

Shuman, McCuskey & Slicer PLLC
Attorneys at Law

1411 Virginia Street, East
Suite 200
P.O. Box 3953
Charleston, West Virginia 25339
Telephone 304.345.1400
Facsimile 304.343.1826

www.shumanlaw.com

1445 Stewartstown Road, Suite 200
Morgantown, West Virginia 26505
Telephone 304.291.2702
Facsimile 304.291.2840

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Charlotte R. Lane
clane@shumanlaw.com

304-720-4027

July 9, 2013

Via Hand Delivery

Ms. Sandra Squire, Executive Secretary
Public Service Commission
P. O. Box 812
Charleston, WV 25323

Re: Monongahela Power and The Potomac Edison Company
CASE NO. 12-1571-E-PC

Dear Ms. Squire:

Enclosed for filing in the above matter, please find an original and twelve (12) copies of the "Initial Brief Filed by the West Virginia Coal Association."

Should you have any questions concerning this matter, please do not hesitate to contact me, at your earliest possible convenience.

Sincerely,



Charlotte R. Lane

CRL/klm

Enclosure

cc: Counsel of Record

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
CHARLESTON

CASE NO. 12-1571-E-PC

MONONGAHELA POWER COMPANY and
THE POTOMAC EDISON COMPANY

Petition for Approval of a Generation Resource
Transaction and Related Relief

INITIAL BRIEF FILED BY THE WEST VIRGINIA COAL ASSOCIATION

I. INTRODUCTION

The West Virginia Coal Association (“WVCA”), by counsel, Charlotte R. Lane and Shuman, McCuskey & Slicer, PLLC, files this initial brief in accordance with the briefing schedule established by the Commission.

II. BACKGROUND

This proceeding was filed by Monongahela Power Company and the Potomac Edison Company (the “Companies” or “Mon Power”), to address a capacity deficit of 938 megawatts needed to serve its West Virginia customers. Mon Power seeks to obtain complete ownership of the Harrison Power Station (the Transaction), which will increase Mon Power’s net installed capacity by 1,476 megawatts; thus, curing the capacity deficiency.

The WVCA intervened in this case in support of the Transaction.

This brief will address whether the standards in W. Va. Code §§ 24-1-1 and 24-2-12 have been met so as to support the Commission's approval of this Transaction.

Many issues have been raised in this proceeding, including alternative energy services, diversity of supply, demand response and energy efficiency. Some of these issues have some importance, but the requirements for the Commission to consider are set forth in Chapter 24 of the West Virginia Code.

III. ANALYSIS

A. **The Transaction should be approved as it meets the criteria set forth in W. Va. Code § 24-1-1.**

W. Va. Code § 24-1-1 delineates the authority and duties of the West Virginia Public Service Commission in regulating the "practices, services, and rates of public utilities in order to:

- (1) . . . ;
- (2) Provide the availability of adequate economical and reliable utility services . . . ;
- (3) Encourage the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the States' energy resources, such as coal;
- (4) Ensure that rates and charges for utility services are just and reasonable . . . and based primarily upon the cost of providing these services;"

It is undisputed that the Companies are capacity deficient in the amount of 938 megawatts (except for Ms. Kunkel who believes it might be less using an unrealistic reserve margin, Kunkel-D at 3) and the approval of the transaction will cure that deficiency by increasing the Companies' net installed capacity by 1,476 megawatts.

The record establishes that the Harrison facility is sound and reliable and can provide the power Mon Power needs to serve its customers. This coal fired facility will provide "adequate, economical, and reliable utility services" as required by W. Va. Code § 24-1-1(a)(2). There are billions of tons of coal reserves which create a long-term stability for customers. Tr. I (Laurita) at 151-154, 156-165.

Owning 100 percent of Harrison allows Mon Power to have control of the power costs, rather than subjecting its customers to the volatility of the marketplace. (Laurita-D at 2)

Second, approving this Transaction falls within the Commission's duty to encourage the use of West Virginia coal. W. Va. Code § 24-1-1(a)(3). With all the challenges coal faces today, it should be the Public Service Commission and West Virginia that take a stand to support coal-fired plants and ownership rather than impose additional uncertainty on the coal industry and the State by delaying or conditioning approval of this transaction.

The record is replete with evidence that Harrison uses almost 5 million tons of West Virginia coal on an annual bases. (Petition, p. 5) Control of Harrison by Mon Power will ensure the continued use of West Virginia coal. Under current ownership, the non-regulated Harrison Station can easily reduce its production of power if market prices decrease,

resulting in the use of less coal, which in turn has a cascading economic effect upon employees and others who depend upon a vibrant coal industry. (Marsh-R at 2)

Coal is the key resource in Mon Power's supply options. Some witness testimony advocated diversity of supply or don't "put all your eggs in one basket." That adage doesn't apply here. Diversity of supply is only relevant if the main supply is inadequate or at risk. Such is not the case at Harrison,. The coal supply is abundant; the reserves are abundant and are readily available. The reserves at Consol's Robinson Run Mine are in excess of 30-50 years.

There are no transportation unknowns or vulnerabilities with coal use at Harrison. In fact, a mine-mouth power station, of which there are few in this country, has essentially zero (0) transportation costs. Some of the alternatives suggested by witnesses advocating diversity would create problems for Mon Power and its customers because transporting coal by barge, rail or truck to other facility is expensive and is subject to unforeseen difficulties and interruptions. Tr. I (Laurita) at 171, 172.

Mon Power having full control of Harrison as opposed to a merchant/competitive owner and operator, has benefits to the state and customers. As Witness Marsh of Consol Energy stated:

It is better for Mon Power to have controlling interest in Harrison for the reasons of: long term capital investment, the capacity and energy markets, better long-term decision making, and having in-state generating assets. (Marsh at 2, 3).

Witness Laurita in his rebuttal testimony felt that capacity factors would more than likely be lower if Harrison were to remain primarily a merchant

generator as the views of such operators can be different than regulated utilities. He also felt CAD's comparison of other plants in other regions were not comparable due to the other plants being old, smaller, needed substantial environmental upgrades, and having very high delivered fuel costs due to distance from the coal fields. (Laurita-R at 2, 3).

Switching to natural gas subjects customers to the volatility of the gas market. Mr. Rose indicated that natural gas was at least twice as volatile as coal prices. (Rose-D at 30, 31). Reviewing the years 2007-2009 should strike fear in the heart of any consumer.

Witnesses advocate buying other facilities which may or may not be available. These witnesses recognized that these facilities may lack transmission access to Mon Power's lines and customer load. (Rose-R at 17) Siting and building transmission lines in West Virginia, or anywhere, is not easy.

In summary, approving the Transaction squares with the duties of the Commission to ensure and provide adequate, reliable, economical utility service while encouraging the use of West Virginia coal.

B. The Transaction's terms and conditions are reasonable; neither party is given an undue advantage over the other and the transaction does not adversely affect the public in this state

The criteria for the Commission to approve the transaction pursuant to its authority and duty in W. Va. Code § 24-1-1 have been met and the criteria in W. Va. Code § 24-2-12 have also been met.

The witnesses discussed the tough negotiations between the buyer and the seller and no other witnesses rebutted the testimony. (Szwed-R at 2, 5) West Virginia law allows affiliated transactions and the Companies' testimony is unrebutted, supporting a finding that

the Transaction is an arms length transaction, and that neither party is given an undue advantage over the other.

Second, many witnesses questioned the price, but once again no evidence was offered to establish a different price. The record is replete with how the purchase price was determined and no one testified that the purchase price accounting adjustment made at the time of the merger was wrong, unacceptable, or without a basis in law. (Houlihan-D at 2, 7; Wagner-R at 2-9)

Some witnesses suggested the Companies should have put out a Request For Proposal but no one clearly defined this process nor did they present convincing evidence that such a process would result in a satisfactory solution to Mon Power's capacity deficiency. The fact that no other generation supplier came forward to sell generation assets in this case should be instructive to this Commission on the outcome of any RFP. Further, it is undisputed that Mon Power wanted a West Virginia facility and Harrison was and is the only one available that was suitable.

Looking at other sales of generation facilities is not an adequate solution as these presented transmission, transportation, location, and fuel supply issues that showed the true value of Harrison over other plants. (Rose-R at 13-17)

Mon Power has a long history in this State of providing good, reliable service at reasonable rates to its customers using almost all West Virginia coal. Mon Power has demonstrated over the years that it is an efficient utility that takes its responsibility to its

customers seriously. Mon Power and the Commission each can take credit for the utilities' fulfillment of its responsibility to its customers.

The commitment to generate enough power for its customers is embedded in Mon Power's culture, history, and business model. This commitment has served this State and its customers well. At no time in history has Mon Power had the capacity deficiency that it has today. The Commission has previously supported the coal-fired stations Mon Power built. With all the challenges being imposed on coal and coal-fired generation due to federal action now is the time for the Commission to support coal and the acquisition of regulated coal-fired generation. The price is reasonable and has been proven to be lower than market without contravention from any witness. And as coal plants that can't afford the environmental compliance costs retire, it is WVCA's belief that Harrison will become even more valuable.

The benefits to the State cannot be over-emphasized, as William Raney said in his pre-filed testimony:

This proposal will help ensure West Virginia residents and businesses have a continued supply of reliable, low-cost electricity for years to come and that both Mon Power/PE customers and the State of West Virginia will benefit in the long run from this transaction. (Raney-D at 4, 5).

Further, Witness Laurita indicated there are many benefits to the West Virginia coal industry from the Transaction:

Not only will the coal industry, and more importantly the employees of this industry benefit from the continued operation of this facility, but also the many thousands of support jobs that are associated with supplying the equipment, material, and supplies that the coal industry consumes. Our

transportation expenses are much lower if we supply coal to plants in close proximity to our stations, rather than shipping potentially hundreds of miles away and having to compete with coal suppliers from other states. This does not protect our industry, but lowers our total delivered cost of supply to our local stations. (Laurita-D at 4).

Likewise, Mr. Laurita feels that Mon Power/PE customers and the State of West Virginia will benefit in the long run from this transaction. (*Id.* at pp. 5, 7).

This Transaction gives Mon Power the capacity it needs. In addition, it continues to ensure that West Virginia coal will be burned at Harrison, maintaining the thousands of coal mining jobs in the area, and continuing to provide the spin-off benefits to the community and the State. While energy efficiency, renewable reserves, and demand response programs can be considered as part of a supply mix, they are not the answer to Mon Power's capacity deficiency. Tr. I (Laurita) at 166, 167.

In making any decision, the Commission looks to the record and the record in this case provides support for the need and the purchase price, without any contrary evidence. Thus, this Transaction should be approved as it meets all the statutory criteria.

Respectfully Submitted by:

The West Virginia Coal Association
By Counsel:



Charlotte R. Lane (WV Bar No. 2135)
Shuman, McCuskey & Slicer, PLLC
P. O. Box 3953
Charleston, WV 25339
Telephone: (304) 345-1400
Facsimile: (304) 343-1826

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CERTIFICATE OF SERVICE

Service of the foregoing "Initial Brief of the West Virginia Coal Association" was served upon the following by United States mail, postage prepaid, this 9th day of July, 2013:

Christopher L. Callas, Esq.
Counsel, Mon Power and PE
Jackson Kelly, PLLC
P. O. Box 553
Charleston, WV 25332

William V. DePaulo, Esq.
Counsel, WV Citizen Action Group
179 Summers Street, Suite 232
Charleston, WV 25301-2163

Gary A. Jack, Esq.
Senior Corporate Counsel
Monongahela Power Company
5001 NASA Boulevard
Fairmont, WV 26554

Susan J. Riggs, Esq.
Counsel, WV Energy Users Group
Spilman Thomas & Battle
P. O. Box 273
Charleston, WV 25321-0273

Patrick K. Maroney, Esq.
Counsel, Utility Workers Union
Maroney, Williams, Weaver & Pancake,
PLLC
608 Virginia Street, E.
Charleston, WV 25301

Scott J. Rubin, Esq.
333 Oak Lane
Bloomsburg, PA 17815

Zachary Fabish, Esq.
Counsel, The Sierra Club
50 F Street, N. W., 8th Floor
Washington, DC 20001

David B. Hanna, Esq.
Thomas N. Hanna, Esq.
Counsel for IOGA
Hanna & Hanna, PLLC
P. O. Box 3967
Charleston, WV 25239

Mike Becher, Esq.
Counsel, The Sierra Club
Appalachian Mountain Advocate
P. O. Box 507
Lewisburg, WV 24901

Jacqueline Lake Roberts, Esq.
Consumer Advocate Division
700 Union Building
723 Kanawha Blvd., E.
Charleston, WV 25301

Timothy L. Hairston, Esq.
Recording Secretary
I.B.E.W. Locate 2357, AFL-CIO
P. O. Box 346
Dellslow, WV 26531-0346

Richard L. Gottlieb, Esq.
Counsel, WV Oil & Natural Gas Assoc.
Lewis, Glasser, Casey & Rollins, PLLC
P. O. Box 1746
Charleston, WV 25326-1746

Vincent Trivelli
Counsel for WV State Building &
Construction Trades Council, AFL-CIO
Law Office of Vincent Trivelli, PLLC
178 Chancery Row
Morgantown, WV 26505



Charlotte R. Lane (WV Bar No. 2135)
Shuman, McCuskey & Slicer, PLLC
P. O. Box 3953
Charleston, WV 25339
Telephone: (304) 345-1400
Facsimile: (304) 343-1826