

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

October 7, 2013

CASE NO. 12-1571-E-PC

MONONGAHELA POWER COMPANY and
THE POTOMAC EDISON COMPANY
Petition for approval of generation resource
Transaction and related relief.

DISSENTING OPINION OF COMMISSIONER PALMER

By Commission Order entered on October 7, 2013, the Majority of the Commission proposed modifications to the Joint Stipulation and Agreement for Settlement (Joint Stipulation) filed by the Monongahela Power Company (Mon Power), The Potomac Edison Company (Potomac Edison) (collectively, the Companies), and other parties to this case.¹ I respectfully dissent from the Majority's decision on grounds that the Joint Stipulation, as filed and as modified, does not meet the requirements of W. Va. Code §24-2-12 because its terms are not reasonable and would adversely affect the ratepayers of Mon Power and Potomac Edison. As discussed below, the purchase price of the Harrison Power Station (Harrison plant) is unreasonable because it violates a prior Order of the Commission and Commission policy, many of the assumptions the Companies use in their models are flawed and results-driven, the transaction will likely harm the Companies' financial condition, and currently stable wholesale markets afford the Companies sufficient time to explore other alternatives to satisfy their capacity shortfall.²

**The \$1.2 Billion Purchase Price of the Harrison Plant is Unreasonable
Because it Violates the Merger Stipulation and Contradicts Commission Policy**

The Harrison plant, located in Haywood, West Virginia, is a coal-fired power plant with an installed capacity rating of 1,983 megawatts. Mon Power currently owns 20.54% of the plant, with the remaining 79.46% owned by its affiliate, Allegheny Energy Supply (AES). In this proceeding, Mon Power seeks Commission approval to purchase

¹ The West Virginia Citizens Action Group (WVCAG) did not join in the Joint Stipulation and filed a formal Objection to the Joint Stipulation. WVCAG Objection filed August 23, 2013. The West Virginia Oil and Natural Gas Association and the Independent Oil and Gas Association did not join, but indicated they did not object to, the Joint Stipulation.

² The hearing transcript citations in this opinion include: "Tr. I" to refer to the hearing on May 29, 2013, "Tr. II" to refer to the hearing on May 30, 2013, "Tr. III" to refer to the hearing on May 31, 2013, and "Tr. IV" to refer to the hearing on September 13, 2013. Citations to pre-filed testimony are to the public and redacted versions and not to confidential versions.

AES's ownership share of the Harrison plant for \$1.2 billion as part of an overall transaction valued at \$1.02 billion.³

The \$1.2 billion purchase price that Mon Power intends to pay for the Harrison plant is unreasonable because it exceeds the net original cost of the plant by \$589 million, as evidenced by the accounting for the transaction which includes a \$589 million Acquisition Adjustment. This significant Acquisition Adjustment violates the Merger Stipulation entered in the Merger Case⁴ and contradicts Commission policy.

If not for the excess purchase price paid by FirstEnergy Corp. (FirstEnergy) to Allegheny Energy, Inc.⁵ as a result of the Merger Case, the net book value, or cost, of the Harrison plant would be \$574 million and not the post merger book value of \$1.2 billion.⁶ The Joint Stipulation as filed would allow a total of \$858 million of the purchase price to be recovered in rates, with \$257 million of that amount representing the merger Acquisition Adjustment. The remaining \$332 million of the Acquisition Adjustment is to be written-off as a loss by Mon Power.

The Majority has attempted to mitigate the rate impact of the proposed transaction through a mechanism tied to net margins from off-system sales (the Acquisition Adjustment Condition). This attempt to shield ratepayers is commendable but somewhat ineffective because it will offset the rate impact of the transaction with off-system sales margins that would otherwise have been used to lower the ENEC costs charged to ratepayers.

³ In addition to the Mon Power acquisition of Harrison, the transaction consists of the AES acquisition from Mon Power of the 7.69% interest currently owned by Mon Power in the Pleasants Power Station, which will result in AES becoming the sole owner of Pleasants. At consummation of the transaction, Mon Power will make a net payment to AES of \$1.102 billion calculated as the excess of Mon Power's \$1.2 billion payment (adjusted for inventory and fuel stock) to AES for Harrison, less AES's \$73 million payment (adjusted for inventory and fuel stock) to Mon Power for Pleasants, plus a \$73.4 million credit to Mon Power for its assumption of AES's pollution control note. The transaction also includes a temporary surcharge on utility rates and certain affiliate agreements described in the case documents.

⁴ In Monongahela Power Company and The Potomac Edison Company both dba Allegheny Power, et al., Case No. 10-0713-E-PC, Commission Order December 16, 2010, the Commission granted prior consent and approval, pursuant to W. Va. Code §24-2-12, of a proposed Merger transaction, through which Allegheny Energy, Inc., the former parent company of Mon Power, and Potomac Edison and Trans-Allegheny Interstate Line Company, became a wholly-owned subsidiary of FirstEnergy Corp. The contested issues were resolved among the majority of the parties to the case including the Companies, Staff, CAD, WVEUG, the Utility Workers Union of America, AFL-CIO, and UWUA System Local No. 102-0, WVCAG, IBEW, Building Trades and Marion County. The stipulating parties recommended in a Joint Stipulation and Agreement for Settlement that the Commission approve the Merger and Affiliate Agreements subject to certain conditions and commitments of the parties. By Order entered December 16, 2010, the Commission adopted the stipulation in resolution of the case.

⁵ Prior to the merger described in footnote 4, Allegheny Energy, Inc. was the parent of Mon Power, Potomac Edison Company, TrAILCo and other subsidiaries.

⁶ At the time of the merger in 2011, the Harrison plant was owned by AES and had a net book value of approximately \$544 million. When post-merger plant additions and other factors are taken into account the current net book value of the Harrison plant, under FERC and WVPSC accounting rules, is approximately \$574 million.

Any ratepayer-funded recovery of the Acquisition Adjustment, including the Majority's Acquisition Adjustment Condition, violates not only Commission policy but also the Merger Stipulation approved in the Merger Case. All parties to the Merger Stipulation agreed that FirstEnergy should not be permitted to recover any amount of the excess purchase price from the Companies' ratepayers. Accordingly, those parties included specific language in the Merger Stipulation to protect utility ratepayers from ever having to pay for the merger-related write-up of the Harrison plant value on the AES books.⁷

In fact, Anthony Alexander, president and chief executive officer of FirstEnergy Corporation, pointedly testified in the Merger Case that Transaction Costs as defined "will not be recoverable in base rates."⁸ Transaction Costs were defined in the settlement and included "purchase price goodwill."⁹ Acquiring the Harrison plant at a price that is \$589 million higher than its pre-merger net book value, and burdening ratepayers with any amount whatsoever of the purchase price goodwill, is exactly the type of outcome that the parties were attempting to avoid by executing the Merger Stipulation.

Despite Mr. Alexander's comments and FirstEnergy's commitment not to pass the Acquisition Adjustment or any "purchase price goodwill" to ratepayers, less than 21 months after completing the merger FirstEnergy's subsidiary AES attempted to sell the Harrison plant to Mon Power, its affiliate, for \$1.2 billion.¹⁰ It is clear to me that the public utility is paying too high a price. As discussed below, paying such a high price will likely adversely affect not only ratepayers but also the financial condition of the Companies. It is also troubling that the agreed-upon high price was proposed to the Commission without sufficient evidence of arms-length negotiations between the Companies and the seller, AES, or its holding company, FirstEnergy.¹¹

The Companies' hair splitting that "acquisition premium" and "goodwill" have specific GAAP meanings does not alter the fact that for regulatory purposes this Commission has always considered an Acquisition Premium, Acquisition Adjustment and Goodwill as one in the same. Weston Transfer, Inc. et al., Case No. 12-0436-MC-42A et al., Recommended Decision final August 16, 2013; Wallace Van & Storage Corp., Case No. 11-0703-MC-TC, Commission Order August 22, 2011; Mountaineer Village, Commission Order March 17, 2008, Case No. 07-2072-S-PC; Apple Valley Waste Service, Case No. 10-1630-MC-TC, Commission Order December 29, 2010 at 3 and

⁷ Merger Stipulation attached to December 16, 2010 Commission Order in Case No. 10-0713-E-PC as Exhibit A at paragraph 15. h through k; WVEUG witness Baron Tr. II at 113-114; Harris Tr. III at 70.

⁸ Transcript from hearing held on November 8, 2010 in Case No. 10-0713-E-PC at 49.

⁹ Merger Stipulation at paragraph 15.h.i.

¹⁰ The FirstEnergy acquisition of Allegheny closed on Feb. 25, 2011. Closed entry filing in Case No. 10-0713-E-PC on February 25, 2011. Mon Power and Potomac Edison filed the instant case on November 16, 2012.

¹¹ Companies witness Delmar Cross, Tr. I at 178-192; Companies witness Wagner Cross, Tr. II at 194; Companies witness Szwed Rebuttal, Companies Exh. SFS-R at 4-7; Szwed Cross, Tr. II at 222-225, 228-232, 243.

Conclusion of Law No. 4; West Virginia-American Water Co. and Thames Water Aqua Holdings GMBH, Case No. 01-1691-W-PC, Commission Order October 23, 2002.

I am troubled by the position of the Companies as reflected in the proposed order filed on September 17, 2013, that the Commission should now disregard the Merger Stipulation because most of the parties who entered into the Merger Stipulation are parties to the Joint Stipulation filed in this case. The WVCAG, however, is not a party to the Joint Stipulation, and it should be noted that prior to the filing of the Joint Stipulation all parties who were also parties to the Merger Case, including Staff, CAD, WVEUG, WVCAG and Sierra Club, argued that any inclusion of the Harrison Acquisition Adjustment in retail rates was specifically prohibited by the Commission's decision adopting the Merger Stipulation.¹²

The Companies' proposed order also states that it is appropriate for the Commission to disregard the Merger Stipulation because the parties executed the Merger Stipulation "in contemplation of continuing Commission regulation." This position seems to imply that Commission Orders adopting Joint Stipulations are of lesser importance and carry less weight than other Commission Orders. I strongly disagree.

The Majority sets the Merger Stipulation aside and concludes that the purchase price and rate base allowance as modified by its Order are fair. The Majority bases this conclusion on current economic conditions, the alternative costs if Mon Power did not acquire the Harrison plant, the benefits of power supply from the Harrison plant, and expected offsetting sales margins. My consideration of these factors leads me to the opposite conclusion.

In addition to my disagreement with the Majority based on the Merger Stipulation, I object to allowing any portion of the Acquisition Adjustment in rate recovery on policy grounds. Absent compelling public interest needs, the Commission does not allow rate recovery of a utility asset purchase price premium, also known as an Acquisition Adjustment or Goodwill, because to do so is contrary to the basic ratemaking principle that rates be cost-based. Willow Spring Public Service Corporation, Case No. 12-0217-S-PC, Commission Orders January 8, 2013, and March 8, 2013; Weston Transfer, Inc. et al., Case No. 12-0436-MC-42A etc., Recommended Decision final August 16, 2013; Wallace Van & Storage Corp., Case No. 11-0703-MC-TC, Commission Order August 22, 2011; Mountaineer Village, Commission Order March 17, 2008, Case No. 07-2072-S-PC; Apple Valley Waste Service, Case No. 10-1630-MC-TC, Commission Order December 29, 2010 at 3 and COL No. 4; Suburban Sanitation Co., Case Nos. 10-1757-MC-TC, 10-1758-MC-TC, and Allied Waste Services of North America, Case No. 10-1759-SWF-P and Case No. 11-0239-SWF-C, Recommended Decision final July 31, 2011 at COL No. 6 and fifth ordering paragraph, C&J Utilities, Inc. and John M. Vetter and John Vetter, Jr., Case No. 10-0482-S-PC, Recommended Decision final October 19, 2010

¹² WVEUG witness Baron Direct, WVEUG Exh.1 at 13-14; CAD witness Harris Direct, CAD Exh. BLH-D at 14-15; Staff witness Oxley Direct, Staff Exh. ELO-D at 18-19; WVCAG and Sierra Club witness Schlissel Direct, WVCAG Exh. DAS-D at 53.

at 3, COL No. 4 and third ordering paragraph; West Virginia-American Water Co. and Thames Water Aqua Holdings GMBH, Case No. 01-1691-W-PC, Commission Order October 23, 2002. The Companies did not show any compelling public interest need for Mon Power to acquire Harrison at the purchase price. The Companies also provided only scant precedent of other state regulatory bodies having approved Acquisition Adjustments for ratemaking purposes when a regulated utility acquires a non-regulated asset.¹³

At its best, the Companies' attempt to burden ratepayers with the entire \$1.2 billion purchase price for the Harrison plant, including the Acquisition Adjustment, is another example of "corporate enthusiasm." At its worst, the originally proposed transaction is a text book write-up of which JP Morgan and Samuel Insull would be proud. While the Joint Stipulation as modified by the Majority reduces or mitigates some of the negative impacts included in the original Generation Resource Transaction and the Joint Stipulation, it fails to completely protect ratepayers from the write-up that the parties to the Merger Stipulation foresaw and attempted to prevent. Therefore, any amount over original cost net book value passed on to ratepayers in this case violates the Merger Stipulation and Commission policy, and is unreasonable.

Many of the Assumptions that the Companies Use in the LCOE Models are Flawed and Results-Driven

Based on the assumptions used in this proceeding in the modeling of capacity, energy, fuel and other costs, the levelized cost of energy (LCOE) analysis of Harrison can appear to be more or less economical when compared to the LCOE analyses of a natural gas plant, continuing to rely on wholesale markets, or other options. Several of the Companies' modeling assumptions used in its LCOE were called into question by parties in the case, who argued that the models were manipulated to strengthen the rationale supporting the acquisition of the Harrison plant.

I find that the numerous results-driven assumptions in Mon Power's models were effectively questioned in this proceeding. Some of the inputs criticized in the Companies' LCOE analyses include: overstated projected company specific load growth (1.4%);¹⁴ overstated projections of market wholesale prices and off-system sales;¹⁵ low natural gas capacity factor (25%);¹⁶ high Harrison capacity factor (75%);¹⁷ failure to

¹³ Wagner Rebuttal, Companies Exh. HLW-R at 10; Wagner Cross, Tr. II at 202.

¹⁴ Delmar Cross, Tr. I at 68-70, 292; Baron Direct, WVEUG Exh. 1 at 10; Gregg Direct, CAD Exh. BJG-D at 5.

¹⁵ Hornby Direct, CAD Exh. JRH-D at 27-32; Delmar Cross, Tr. I at 76; Harris, Tr. III at 88 (Sales of excess electricity has been in a steady decline since 2007).

¹⁶ Schlissel Direct, WVCAG Exh. DAS-D at 6, 21, 34-36; Hornby Direct, CAD Exh. JRH-D at 21; Hornby Cross, Tr. III at 35.

¹⁷ Schlissel Direct, WVCAG Exh. DAS-D at 21, 32-34; Hornby Direct, CAD Exh. JRH-D at 25-26, 36.

account for known and lower than forecasted PJM capacity prices;¹⁸ failure to account for potential increased costs from new EPA effluent limitations under the Clean Water Act;¹⁹ failure to consider the possibility of purchasing part or all of an existing natural gas-fired power plant;²⁰ failure to account for the “War on Coal” and a potential Carbon Tax or costs due to other related regulation;²¹ failure to consider demand-side options such as energy efficiency and demand response;²² and failure to account for the lack of a coal supply contract for Harrison after 2013.²³

The evidence does not support use of the Companies’ LCOE models as support for the Joint Stipulation or as any basis to indicate that the LCOE at the Harrison plant will be more economical than the LCOE for other options.²⁴ Furthermore, as discussed below, Mon Power’s failure to appropriately analyze potential options for natural gas electric generation, despite its location in the heart of Marcellus Shale gas region, is perplexing.

Overreliance on One Fuel Source

Replacing market purchases with ownership of Harrison will make the Companies more reliant on coal than ever before. Upon approval of the Joint Stipulation as modified by the Commission, over 90% of the total installed capacity of the Companies will come from coal and waste coal-fired generation. The acquisition of Harrison and the deactivation of the Albright, Rivesville and Willow Island plants will result in installed capacity of the Companies comprised of 3,091 MW of owned coal-fired capacity from the Fort Martin and Harrison plants (82.6%), 488 MW of owned pumped storage hydroelectric capacity from the Bath County facility (13.1%), 130 MW of contracted waste coal capacity under the Public Utilities Regulatory Policies Act (PURPA) (4.3%), and thirty-one MW of contracted hydroelectric capacity under PURPA.²⁵ The City of New Martinsville 31 MW Hannibal hydro plant is the only portion of the installed capacity that does not utilize coal.

¹⁸ Bid auction clearing prices for 2016 and 2017 of \$59.37 per megawatt hour are less than 50% of the prior year’s auction pricing. Delmar Cross, Tr. I at 66-67; Companies witness Staub Cross, Tr. I at 125; Schlissel, Tr. II at 144-146.

¹⁹ Companies witness Pezze Cross, Tr. II at 290; See also Sierra Club Initial Brief filed July 9, 2013 at 16-17 (anticipated effluent limitations would focus on “flue gas desulfurization, fly ash [and] bottom ash”).

²⁰ Schlissel Direct, WVCAG Exh. DAS-D at 5, 30-31.

²¹ Hornby Direct, CAD Exh. JRH-D at 34; Delmar Cross, Tr. I at 234. Resource Plan, Exhibit A to Company Exh. 1, at 13; Schlissel Direct, WVCAG Exh. DAS-D at 7, 26-27; *The President’s Climate Action Plan*, June 2013:

<http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf>. Also, EPA issuance on September 20, 2013 of its proposed air emission standards for new coal fired power plants and expected proposals of standards for **existing** power plants by June 1, 2014.

²² Schlissel Direct, WVCAG Exh. DAS-D; WVCAG witness Kunkel Direct, WVCAG Exh. CMK-D.

²³ CAD witness Gregg Direct, CAD Exh. BJG-D at 17; Gregg Tr. III at 115-117, 119-120; Harris Cross, Tr. III at 56.

²⁴ Hornby Direct, CAD Exh. JRH-D at 26, 31-36.

²⁵ Companies post-hearing Exhibit filed September 17, 2013.

Although the Bath County facility is a pump hydroelectric facility, it needs power to operate and Companies witness Wise testified that the facility purchases that power from PJM.²⁶ The facility uses off-peak electricity to pump water to an upper reservoir. The water is then released through a turbine into a lower reservoir to create electricity when the system is experiencing heavy demand. Of the power purchased from the PJM market to operate the facility, approximately 44.3%, comes from coal-fired generation.²⁷ Coal-fired generation, therefore, accounts for at least 217 MW of the Companies' capacity from the Bath County pump hydroelectric facility. Adding the coal waste PURPA facilities, which use a mix of waste and coal from time to time, the percentage of the Companies' capacity that is either owned or under PURPA contracts and that will rely on coal is 91.9%.

This overreliance on one fuel source, and the imposition on ratepayers of a large, long-term fixed cost for twenty-five years regardless of whether the Harrison acquisition proves cost-effective, will expose ratepayers to an unreasonable level of risk. It is likely that an adequate evaluation and exploration of alternatives would result in a capacity solution that would reduce that level of risk.²⁸

The Virginia State Corporation Commission recently cited overreliance on one fuel source as a reason to deny the proposed acquisition by Appalachian Power Company (APCo) of the Mitchell Power Plant. In the Order denying acquisition of the Mitchell Plant the Virginia Commission noted that if APCo's original proposal was approved, "by 2015 coal would represent 68% of [APCo's] capacity and 73% of its energy . . ."²⁹

The Virginia Commission further found that "[e]liminating the possibility for additional fuel diversity at this time unreasonably increases customers' risks related to coal. Those risks include, for example, the price impacts on customers, decreases in the supply of coal, and . . . the likelihood of increased federal regulation of carbon dioxide emissions from existing coal plants."³⁰ The West Virginia Commission is not bound by regulatory decisions of sister states, but I regard the Virginia Commission's ruling to be informative and relevant to this proceeding.

By approving the Joint Stipulation in this proceeding, in any form, the Majority is approving an energy portfolio for the Companies that results in far less diversification than the Virginia Commission determined to be unreasonable when it denied the transfer of the Mitchell plant. Such an undiversified portfolio of resources will expose customers

²⁶ Companies witness Wise, Tr. IV at 127-128.

²⁷ PJM "Quarterly State of the Market Report: January through June" (2013) at 43.

http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2013/2013q2-som-pjm.pdf

²⁸ Schlissel Direct, WVCAG Exh. DAS-D at 16-18; Hornby Direct, CAD Exh. JRH-D at 44-45; Kunkel Direct, WVCAG Exh. CMK-D at 4, 6; Harris Direct, CAD Exh. BLH-D at 26-27; Gregg Direct, CAD Exh. BJG-D at 19-20.

²⁹ Case No. PUE-2012000141, July 31, 2013 Order of the Virginia State Corporation Commission at 8.

³⁰ *Id.*

to several risks, including: higher than projected generation costs due to higher than forecasted coal prices; higher than projected capital expenditures due to new, unaccounted-for environmental regulations; direct or indirect costs to comply with restrictions on carbon emissions; and limited benefits from low market prices for electricity due to the need to finance the cost of owned capacity.

Moving forward with a portfolio of over 90% coal-dependent generation for the foreseeable future, despite the tangible risks, will leave the utility no ability to shift generation between fuel sources in response to market signals, and is unreasonable. Furthermore, to ignore the unquestioned paradigm shift that has occurred in the electric generation industry due to Marcellus Shale gas is unwise.³¹ Increased natural gas supplies coupled with stable, competitive prices have significantly expanded the role that natural gas plays in our region's energy portfolio and is surely an option worthy of serious evaluation.

By approving the settlement and the transfer of Harrison the Majority is going "all in" on coal, at a time when the coal industry is under attack and the general school of thought is to diversify.³² While coal-fired electric generation has been and will continue to be an essential piece of the energy mix for West Virginia and the entire country, it is unreasonable for Mon Power, located in the heart of the Marcellus Shale, to move forward with such an undiversified resource portfolio, especially when it failed to conduct a legitimate analysis and balancing of risks associated with potential natural gas generation (either owned or purchased from the market), beyond the problematic LCOE analysis.

The Harrison Acquisition Will Likely Harm the Financial Condition and Bond Rating of the Companies

The Joint Stipulation requires Mon Power to write-off as a loss approximately \$332 million of the purchase price, despite evidence indicating that such a write-off will harm Mon Power's bond rating. Section 11(1)(2) of the Joint Stipulation addresses the bond rating of the Companies:

The Companies believe that the Transaction will not cause Mon Power's or PE's senior secured credit ratings from Moody's to fall below Baa1 and from S & P's to fall below BBB+.

Section 11(1)(2) directly conflicts with the evidence presented by the Companies. In the rebuttal testimony of Companies witness Staub, Mr. Staub asserts that "[t]he disallowance and non-recovery of 25% of [Mon Power's] cost of capital would have a material and prolonged damaging effect on Monongahela Power's financial condition."³³

³¹ Gregg Direct, CAD Exh. BJK-D at 20; Gregg, Tr. III at 110.

³² Id.; Kunkel Exh. WVCAG -D; Hornby Direct, CAD Exh. JRH-D at 7, 44-45; Schlissel Direct, WVCAG Exh. DAS-D at 4, 31; Harris Redirect, Tr. III at 96.

³³ Staub Rebuttal, Companies Exh. SRS-R at 6; See also Staub Direct, Companies Exh. SRS-D at 8.

Mr. Staub further explained his views under cross examination in the May hearing, when he testified that anything more than a \$10 million disallowance would be material.³⁴ He also testified that Mon Power has very limited financial flexibility because “[the Companies are] at the bottom end of the investment grade” and “[w]e can’t make a capital investment and not get recovery of it. We won’t be able to sustain our credit profile, our credit ratings. We would be downgraded.”³⁵

When questioned at the September hearing, Companies witness Wise testified to his understanding that the Companies now believe that a \$332 million disallowance will not harm Mon Power’s financial condition. The Companies offered little explanation or reasoning, however, to support this change in position.³⁶ Mr. Wise did refer to an August 21, 2013 announcement from Moody’s Investors Service to support the argument that the proposed settlement in this proceeding would not negatively impact Mon Power’s bond rating.³⁷ While the headline of the announcement seems to support Mr. Wise’s assertion, the text does not. The text at the end of the announcement analyzes Mon Power’s expected financial condition if the Joint Stipulation is approved as filed and states, “Mon Power’s proposed funding for the transaction will weaken its positioning within its current credit rating category.” It continues, “we expect Mon Power’s key financial metrics . . . to decline . . . these metrics continue to suggest a Baa3 rating for Mon Power.”³⁸ A Baa3 rating is a two-step downgrade from Baa1, and only one rating above Ba1, classified as Non-investment grade speculative or high yield (junk). Not mentioned by Mr. Wise is that the article clearly indicates that if there are any positives from the proposed settlement, they accrue to AES. Specifically, Moody’s noted, “the transaction will improve AE Supply’s liquidity profile and decrease the group’s more risky non-regulated asset base.”³⁹

Mr. Staub’s rebuttal testimony and statements under cross examination, as well as the Moody’s announcement referred to by Mr. Wise at the September hearing, all conflict with Section 11(1)(2) of the Joint Stipulation which states that the Companies believe that the transaction will not cause the bond rating of the Companies to fall below Baa1. Despite the “belief” of the Companies to the contrary, the record indicates that a \$332 million disallowance is unwise and will damage Mon Power’s bond rating and financial condition.

³⁴ Staub Cross, Tr. I. at 117 (note transcription error at Tr. I at 117 line 6 – “material” should read “immaterial”).

³⁵ Staub Cross, Tr. I at 111-112; 115-116.

³⁶ Wise, Tr. IV at 52, 121-122.

³⁷ Wise, Tr. IV at 53; Announcement: Moody’s: “Proposed settlement involving FirstEnergy affiliates has no rating implications” https://www.moody.com/research/Moodys-Proposed-settlement-involving-FirstEnergy-affiliates-has-no-rating-implications--PR_280721

³⁸ *Id.*

³⁹ *Id.*

There is No Immediate Need for the Transaction

Throughout this proceeding the Companies have asserted that “prompt action is needed” to address the Companies’ capacity shortfall. The record indicates, however, that this sense of urgency is unnecessary. Mon Power is meeting its capacity needs through market purchases at this time and the market is currently favorable to continue to buy from PJM.⁴⁰

The Companies characterize the Harrison acquisition as a financial hedge against the wholesale market. The Majority supports its decision that the transaction as modified is in the public interest by describing the Acquisition Adjustment Condition as a hedge against the risks of Mon Power owning a large coal-fired plant. Either hedge, however, comes at a time when capacity prices on the wholesale market are at historically low levels. I believe the evidence presented in this case is more convincing that the Companies and their customers are better protected if the Companies continue to use wholesale market purchases as a hedge against the significant risks associated with acquisition of the Harrison plant. Rushing into the expensive, long-term commitment proposed in the Joint Stipulation without a more thorough evaluation of other options, including the potential construction of a new natural gas combined cycle plant or the acquisition of part or all of an existing natural gas-fired power plant, is unreasonable.⁴¹

Conclusion

Based on the foregoing discussions regarding the acquisition purchase price, departure from Commission policy, violation of the Merger Stipulation, flawed cost modeling, homogeneous fuel portfolio, negative impact on the Companies’ financial condition, and a lack of urgency, I dissent from the decision of the Majority. The record in this case does not contain the required showing under W. Va. Code §24-2-12 that the terms of the Joint Stipulation as filed or as modified by the Majority are reasonable, nor do I believe that the Companies have shown that the transaction will not adversely affect the public in this State.

A True Copy, Teste:


Sandra Squire
Executive Secretary

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⁴⁰ Schlissel Direct, WVCAG Exh. DAS-D at 9, 13, 44-45, 55; Schlissel Cross, Tr. II at 168-170; See also Hornby Direct, CAD Exh. JRH-D at 16, 39; Hornby Cross Tr. III at 17-21, 27-28.

⁴¹ Hornby Direct, CAD Exh. JRH-D at 6, 16-17, 39-40; Hornby Tr. III at 48; Harris Direct, CAD Exh. BLH-D at 25-27; Gregg Direct, CAD Exh. BJD-D at 19.