

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbus )  
Southern Power Company and Ohio Power )  
Company for Authority to Recover Costs ) Case No. 05-376-EL-UNC  
Associated with the Ultimate Construction and )  
Operation of an Integrated Gasification )  
Combined Cycle Electric Generation Facility. )

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**REPLY COMMENTS OF  
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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**I. BACKGROUND AND PROCEDURAL HISTORY**

The procedural history of the above-captioned case is long and varied. Of particular pertinence to this phase of the proceeding are the following facts: on April 10, 2006, the Commission issued an Opinion and Order in this matter which approved the application of Columbus Southern Power Company and Ohio Power Company (collectively, AEP or AEP Ohio) to establish a mechanism by which it could recover Phase I costs related to the design and construction of the Great Bend integrated gasification combined cycle (IGCC) electric generation facility.<sup>1</sup> In its entry on rehearing, issued on June 28, 2006 (Entry on Rehearing), the Commission clarified the conditions of its approval of the application, indicating that (1) all Phase I costs would be subject to subsequent audits to determine whether such expenditures were reasonable and prudently incurred to construct the proposed IGCC facility; and (2) if AEP Ohio had not commenced a continuous course of construction of the proposed facility within five years after the entry on rehearing, all Phase I charges collected for expenditures associated with

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<sup>1</sup> See generally *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Ultimate Construction and Operation of an Integrated Gasification Combined Cycle Electric Generation Facility*, Case No. 05-376-EL-UNC, Opinion and Order (April 10, 2006).

items that may be utilized in projects at other sites must be refunded to Ohio ratepayers with interest.<sup>2</sup>

Industrial Energy Users-Ohio (IEU-Ohio), FirstEnergy Solutions (FES), the Office of the Ohio Consumers' Counsel (OCC), and Ohio Energy Group (OEG) appealed the Commission's order to the Supreme Court of Ohio. On March 13, 2008, the Court affirmed the Commission's decision in part, but determined that the Commission's classification of the proposed IGCC facility "as a distribution-ancillary service is contrary to law",<sup>3</sup> held that the evidence did not support the Commission's order permitting AEP Ohio to recover the Phase I research and development costs under its POLR obligation,<sup>4</sup> and remanded the case to the Commission for further development of the record.<sup>5</sup> In support of its decision to remand the case to the Commission, the Court stated:

[W]e note that, while the commission details potential problems with the fleet of existing generation facilities, it fails to make any findings regarding the amount of generation that AEP needs to guarantee its Ohio distribution responsibilities. Nor does the record demonstrate what portion of the facility's costs should be attributed to AEP's POLR obligation versus what costs should be recovered through competitive rates when the facility begins generating electricity. Accordingly, the record before us is incomplete in these respects and the commission is instructed to make additional findings in support of its conclusions in this regard. We remand the case to the commission for further proceedings consistent with this opinion.<sup>6</sup>

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<sup>2</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Ultimate Construction and Operation of an Integrated Gasification Combined Cycle Electric Generation Facility*, Case No. 05-376-EL-UNC, Entry on Rehearing at 16 (June 28, 2006).

<sup>3</sup> *Industrial Energy Users-Ohio v. Public Utilities Commission* (2008) 117 Ohio St.3d 486, 2008-Ohio-990 at ¶ 22.

<sup>4</sup> *Id.* at ¶ 32.

<sup>5</sup> *Id.* at ¶ 33.

<sup>6</sup> *Id.*

Moreover, the Court determined that, in view of its remand of the matter to the Commission, a ruling upon IEU-Ohio and OCC's requests for refund of the approximately \$24 million in costs that AEP Ohio had already recovery from customers was unwarranted.<sup>7</sup>

On June 28, 2011, OCC, Ohio Partners for Affordable Energy, IEU-Ohio, and OEG filed a joint motion on remand, requesting that the Commission direct AEP Ohio to refund to customers, with interest, revenues it had previously collected for the design, construction, and operation of the Great Bend IGCC electric generation facility. On June 29, 2011, AEP Ohio filed a reply statement (Statement) regarding the status of the facility, indicating that "[f]ive years have now passed since the issuance of the June 28, 2006 Entry on Rehearing, and AEP Ohio has not commenced a continuous course of construction on the IGCC facility at the Great Bend, Meigs County, site."<sup>8</sup> AEP Ohio also recommended in its statement that the difference between the amounts charged to and collected from customers during Phase I, which totaled \$24.24 million, and the amounts expended on Phase I activities at the Great Bend IGCC site, which totaled \$21.074 million, should be refunded to customers; thus, AEP Ohio recommended that \$3.166 million should be returned to customers, with interest.<sup>9</sup> For its interest calculations, AEP Ohio recommended that the interest rates used by Ohio Power Company and Columbus Southern Power Company to calculate interest on customer deposits, respectively 5.25 percent for Ohio Power Company and 5 percent for Columbus Southern Power Company, should be utilized to determine the interest due to customers.<sup>10</sup>

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<sup>7</sup> Id. at ¶ 36.

<sup>8</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Ultimate Construction and Operation of an Integrated Gasification Combined Cycle Electric Generation Facility*, Case No. 05-376-EL-UNC, Statement of Columbus Southern Power Company and Ohio Power Company regarding the Status of Construction of the Integrated Gasification Combined Cycle Electric Generation Facility at Great Bend in Meigs County, Ohio at 2 (June 29, 2011).

<sup>9</sup> Id. at 3.

<sup>10</sup> Id. at 4.

On August 11, 2014, almost three years after the last activity in the docket, an entry was issued establishing a procedural schedule in the above-captioned matter. Inter alia, the entry established an intervention deadline. On September 2, the Ohio Manufacturers' Association Energy Group (OMAEG) filed a motion for leave to intervene in the matter out of time, explaining that its members, like other parties in the case, have a real and substantial interest in the matter, as they previously paid to AEP Ohio costs associated with Phase I. Further, OMAEG explained that the unusual procedural history of this proceeding, the minimal period of time provided in the entry in which parties could intervene, and OMAEG's lack of existence during a significant portion of the previous phases of the proceeding qualify as extraordinary circumstances under which the Commission may grant its motion to intervene out of time.

On September 5, 2014, pursuant to the established procedural schedule, comments were filed in the proceeding by AEP Ohio, IEU-Ohio and OCC, OEG, and OP&E. OMAEG hereby submits reply comments in response to those comments.

## **II. REPLY COMMENTS**

In its initial comments, AEP Ohio contends that "there is little, if any practical value" in addressing the Commission's authority to approve recovery of the costs of developing, constructing, and operating the Great Bend IGCC facility in relation to the standard articulated by the Court, given the changes to the statutory framework and the changes in circumstance since AEP Ohio filed its application and the Commission issued its earlier orders in this case.<sup>11</sup> While OMAEG recognizes that the statutory framework and circumstances surrounding the construction of the IGCC have changed since AEP Ohio filed its application and the Commission issued its orders, OMAEG believes that AEP Ohio's dismissal of the importance of the applicable standards governing recovery of the costs, previously collected from customers, that it

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<sup>11</sup> AEP Ohio Initial Comments at 7.

seeks authority not to return to customers, is troubling. AEP's decision to ignore the previous statutory framework in its initial comments highlights its attempt to conveniently distill the issues on remand effectively down to (1) what portion of the Phase I charges collected were for expenditures associated with items that may be utilized in projects at other sites, which it claims is zero, and (2) what interest rate should be applied to the amounts that must be refunded. The "principal issues" to be determined in this proceeding, as identified by AEP Ohio,<sup>12</sup> oversimplify the considerations at issue on remand.

As noted in IEU-Ohio and OCC's Joint Initial Comments, "neither the law as it existed under Senate Bill 3 ('SB 3') nor current law under Amended Substitute Senate Bill 221 ('SB 221') provide the Commission with any authority to permit AEP-Ohio to retain the \$24.24 million" as competitive generation-related costs may not be collected through noncompetitive rates.<sup>13</sup> Further, AEP Ohio cannot make the requisite demonstration, as required by the Court, that it complied with the application requirements of Section 4909.18, Revised Code, or demonstrate that it has complied with the 75 percent used and useful standard. Thus, AEP should be required to refund the full \$24.24 million, previously collected from customers, to customers with interest.

As established above, the Commission held in its Entry on Rehearing that if AEP Ohio had not commenced a continuous course of construction of the proposed facility within five years after the entry on rehearing, all Phase I charges collected for expenditures associated with items that may be utilized in projects at other sites must be refunded to Ohio ratepayers with interest.<sup>14</sup> As indicated previously, in its June 29, 2011 Statement, AEP admitted that it had not

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<sup>12</sup> Id. at 7-8.

<sup>13</sup> Joint Initial Comments of IEU-Ohio and OCC at 2.

<sup>14</sup> Entry on Rehearing at 16.

commenced a continuous course of construction at the facility site.<sup>15</sup> Further, the Ohio Power Siting Board has since revoked AEP's certificate of environmental compatibility and public need to construct the IGCC facility.<sup>16</sup> Thus, construction may no longer lawfully commence at the site. Given these facts, AEP cannot demonstrate that the facility is at least 75 percent complete for purposes of Section 4909.15, Revised Code. Accordingly, it may not permissibly retain the costs collected from customers in conjunction with the construction of the facility.

The Entry on Rehearing further detailed that all Phase I costs would be subject to subsequent audits to determine whether such expenditures were reasonable and prudently incurred to construct the proposed IGCC facility.<sup>17</sup> On remand, the Court directed AEP to demonstrate that such costs were associated with its "effort to secure competitive retail electric service in furtherance of its statutory POLR obligation" in accordance with Chapters 4905 and 4909, Revised Code.<sup>18</sup> AEP has made no effort to make such a demonstration since the case was remanded to the Commission in 2008. Further, as of January 1, 2015, all of the energy needed to fulfill AEP's SSO load will be procured through a competitive bidding process; thus, AEP may not properly argue that the IGCC facility is necessary for it to provide SSO customer with retail electric generation service. Accordingly, AEP should be required to return all Phase I costs to customers with interest.

AEP argues in its initial comments that only \$3.166 million, which represents the difference between the \$24.24 million collected from customers during Phase I and the \$21.074 million expended on Phase I activities at the Great Bend IGCC site, should be returned to

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<sup>15</sup> Statement at 2.

<sup>16</sup> See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Facility in Meigs County, Ohio*, Case No. 06-30-EL-BGN, et al., Entry at 2-3 (July 30, 2012).

<sup>17</sup> Entry on Rehearing at 16.

<sup>18</sup> *Industrial Energy Users-Ohio v. Public Utilities Commission* at ¶ 31.

customers, with interest.<sup>19</sup> In support of this argument, AEP contends that none of the \$21.074 million of expenditures on Phase I of the IGCC project are associated with items that may be utilized in projects at other AEP sites. As discussed above, however, as a threshold matter, AEP has not demonstrated that the costs were reasonable and prudently incurred. As such, AEP's argument that only \$3.166 million, with interest, should be refunded to its customers, is without merit.

AEP further contends in its initial comments that the appropriate interest rate to be applied to the amount to be returned to ratepayers is the tariffed rate of customer deposits, which, in 2011, was 5.25 percent for Ohio Power Company and 5 percent for Columbus Southern Power Company. Although recommending that these interest rates be applied, AEP offers no rationale for applying them, as opposed to applying the same interest rates AEP requested to be utilized in conjunction with this matter, which were 12.73 percent for the Ohio Power Company zone, and 12.78 percent for the Columbus Southern Power Company zone.<sup>20</sup> The interest rates which were actually utilized earlier in the proceeding for the Ohio Power Company and Columbus Southern Power Company zones, 12.73 percent and 12.78 percent, respectively, provide a more suitable interest rate for application to the amounts to be returned to customers in this phase of the proceeding. An interest rate applicable to customer deposits is irrelevant to the proceeding at hand, and results in inequity to customers who have already paid these costs. AEP has retained the enjoyment and use of the funds at issue for approximately seven years. As such, the Commission should refund to customers the \$24.24 million collected by AEP, with interest allocated at a rate of 12.73 percent or 12.78 percent, depending upon the applicable zone.

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<sup>19</sup> See AEP Ohio Initial Comments at 7-8, incorporating the arguments contained in its June 29, 2011 Statement.

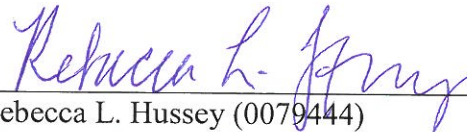
<sup>20</sup> See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Ultimate Construction and Operation of an Integrated Gasification Combined Cycle Electric Generation Facility*, Case No. 05-376-EL-UNC, Direct Testimony of Philip J. Nelson at 4-5 (May 5, 2005) (referring to the weighted average cost of capital used to estimate carrying costs for the project).



### III. CONCLUSION

In connection with the arguments set forth above, OMAEG respectfully requests that the Commission order AEP Ohio to refund the total amount it collected from customers in connection with Phase I, specifically, \$11.89 million to Ohio Power Company customers and \$12.35 million to Columbus Southern Power customers, with interest at rates of 12.73 and 12.78 percent, respectively.

Respectfully submitted,



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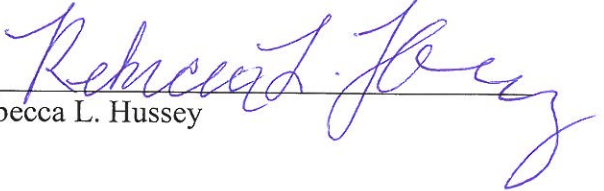
Rebecca L. Hussey (0079444)  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
Telephone: (614) 365-4110  
Email: Hussey@carpenterlipps.com

*Counsel for OMAEG*



## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on September 19, 2014.

  
Rebecca L. Hussey

stnourse@aep.com  
mjsatterwhite@aep.com  
dconway@porterwright.com  
cblend@porterwright.com  
mhpetricoff@vorys.com  
dboehm@bkllawfirm.com  
mkurtz@bkllawfirm.com  
mdortch@kravitzllc.com  
grady@occ.ohio.gov  
fdarr@mwncmh.com  
jbentine@amppartners.org  
myurick@taftlaw.com  
Cynthia.brady@constellation.com  
Joseph.clark@directenergy.com  
mhayden@firstenergycorp.com  
john.bui@greenmountain.com  
sam@mwncmh.com  
drinebolt@ohiopartners.org  
sbloomfield@bricker.com  
trosenberg@ralaw.com  
jdavis@ralaw.com  
richardka@calpine.com  
Thomas.mcnamee@puc.stat.oh.us  
Christine.pirik@puc.state.oh.us  
Greta.see@puc.state.oh.us

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Summary: Comments (Reply Comments) of OMAEG electronically filed by Ms. Rebecca L  
Hussey on behalf of OMAEG