

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 Associated with the Ultimate ) Case No. 05-376-EL-UNC  
Construction and Operation of an )  
Integrated Gasification Combined Cycle )  
Electric Generation Facility. )

ENTRY

The attorney examiner finds:

- (1) On March 18, 2005, Columbus Southern Power Company and Ohio Power Company (jointly AEP-Ohio)<sup>1</sup> filed an application with the Commission for authority to recovery \$23.7 million associated with the cost to design, construct and operate an integrated gasification combined cycle (IGCC) electric generation facility to be built in Meigs County, Ohio (Great Bend Facility). The Commission issued its Opinion and Order approving AEP-Ohio's application to establish a mechanism to recover Phase I costs related to the design and construction of the Great Bend IGCC facility on the premise that construction of the IGCC facility was necessary for AEP-Ohio to fulfill its obligation as the provider of last resort (POLR). *In re AEP-Ohio*, Case No. 05-376-EL-UNC, Order (Apr. 10, 2006); Entry on Rehearing (June 28, 2006) (*Great Bend Case*).
- (2) In the Entry on Rehearing, the Commission clarified the conditions of its approval of AEP-Ohio's Great Bend application, stating that: (a) all Phase I costs would be subject to subsequent audit(s) to determine whether such expenditures were reasonable and prudently incurred to construct the proposed IGCC facility; and (b) if the proposed IGCC facility was not constructed and in operation within five years after the

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<sup>1</sup> By entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company into Ohio Power Company, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

date of the Entry on Rehearing, all Phase I charges collected must be refunded to Ohio ratepayers with interest. However, the Commission clarified, at Finding (40), that:

All Phase I costs will be the subject of subsequent audit(s) to determine whether such expenditures were reasonably incurred to construct the proposed IGCC facility in Ohio. AEP-Ohio's request for clarification does raise the issue of the status of the Phase I charges that are collected. Although we continue to find that AEP-Ohio should be permitted to recover the reasonable costs of further developing and detailing the project proposal, the Commission believes that there may be elements of the design and engineering that may be transferable to other projects. Therefore, we find that if AEP-Ohio has not commenced a continuous course of construction of the proposed facility within five years of the date of issuance of this 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.

*Great Bend Case*, Entry on Rehearing (June 28, 2006) at 16.

- (3) Industrial Energy Users-Ohio (IEU), FirstEnergy Solutions Corporation (FirstSolutions), the Office of Ohio Consumers' Counsel (OCC) and Ohio Energy Group (OEG) appealed the Commission's Order approving AEP-Ohio's recovery of the Phase I design and development costs for the Great Bend IGCC facility to the Ohio Supreme Court (Court).
- (4) On March 24, 2006, AEP-Ohio filed an application with the Ohio Power Siting Board (Board) for a certificate of environmental compatibility and public need to construct the Great Bend IGCC facility. *In re AEP-Ohio*, Case No. 06-30-EL-BGN (*Great Bend Certificate Case*). By Opinion, Order, and Certificate (Certificate Order) issued on April 23, 2007, the Board approved a stipulation filed by AEP-Ohio and Board Staff for a certificate to construct the Great Bend IGCC facility, pursuant to R.C. Chapter 4906. The Board certificate to

construct the facility was subject to 36 specific conditions, including the following condition:

That the certificate shall become invalid if AEP-Ohio has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.

Therefore, pursuant to the *Great Bend Certificate Case*, AEP-Ohio was required to commence a continuous course of construction on the Great Bend IGCC facility by April 23, 2012. *Great Bend Certificate Case*, Opinion, Order and Certificate (April 23, 2007) at 32, 35.

- (5) By decision issued March 13, 2008, the Court affirmed, in part, reversed, in part, and remanded the Commission's *Great Bend Case*. The Court affirmed the Commission's Order to the extent that there may be merit to the Commission's regulation of the design, construction and operation of the proposed generation facility as a distribution-ancillary service related to AEP-Ohio's POLR obligation. However, the Court concluded that the record did not support the Commission's regulation of a generation facility for distribution-ancillary services in support of the Companies' POLR obligation in this matter and remanded the case for further development of the record. The Court further declined to rule upon IEU's request for a refund of costs already collected from AEP-Ohio's customers, stating that the matter was being remanded for further development of the record and noting that the Entry on Rehearing included a conditional refund provision that remained in effect. *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-Ohio-990.
- (6) Most recently, on June 28, 2011, OCC, OP&E, IEU and OEG filed a joint motion on remand requesting that the Commission direct AEP-Ohio to refund to customers, with interest, the revenues collected for the design, construction, and operation of the Great Bend IGCC electric generation facility. AEP-Ohio filed a reply statement regarding the status of the facility on June 29, 2011.

- (7) In order to assist the Commission in its review of the issues on remand in this case, the attorney examiner finds that the following procedural schedule should be established:
- (a) Motions to intervene should be filed by August 18, 2014.
  - (b) To allow parties to update their position on the issues presented, comments should be filed by September 5, 2014, and reply comments filed by September 19, 2014.
  - (c) Discovery requests, except for notices of deposition, should be served by November 18, 2014.
  - (d) Testimony on behalf of AEP-Ohio should be filed by October 23, 2014.
  - (e) Testimony on behalf of Staff and intervenors should be filed by November 6, 2014.
  - (f) A procedural conference shall be scheduled for November 24, 2014, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-A, 180 East Broad Street, Columbus, Ohio.
  - (g) The evidentiary hearing shall commence on December 8, 2014, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-A, 180 East Broad Street, Columbus, Ohio.
- (8) Finally, in order to ensure the evidentiary hearing proceeds in an orderly and expeditious manner, as set forth in Ohio Adm.Code 4901-1-27(B)(7)(d), the attorney examiner finds it necessary to require that, in the event any party intends to move to strike prefiled witness testimony, such party should make such a motion in writing and docket the motion prior to the evidentiary hearing. Accordingly, any motions to strike witness testimony shall be filed by November 24, 2014, and any memoranda contra should be filed by December 1, 2014. Further, no replies to memoranda contra will be permitted in association with motions to strike testimony.

- (9) Parties are encouraged to take advantage of Ohio Adm.Code 4901-1-05(C), which provides that service of pleadings may occur by electronic message. Discovery requests and replies shall be served by hand delivery, electronic message, or facsimile transmission (unless otherwise agreed by the parties). An attorney serving a discovery request shall attempt to contact the attorney upon whom the discovery request will be served in advance to advise him/her that a request will be forthcoming (unless otherwise agreed by the parties). To the extent that a party has difficulty responding to a particular discovery request, counsel for the parties should discuss the problem and work out a mutually satisfactory solution.

It is, therefore,

ORDERED, That the parties comply with the procedural schedule set forth in Findings (7) and (8). It is, further,

ORDERED, That a copy of this Entry be served upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Greta See

By: Greta See  
Attorney Examiner

jrj/vrm

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 05-0376-EL-UNC**

Summary: Attorney Examiner Entry establishing a procedural schedule; electronically filed by Vesta R Miller on behalf of Greta See, Attorney Examiner, Public Utilities Commission of Ohio