

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

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**INITIAL COMMENTS OF  
OHIO POWER COMPANY**

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On August 11, 2014, the Attorney Examiner issued an Entry establishing a procedural schedule for this case, in order to address issues that remain pending. As part of that schedule, the Entry provides, at Finding 7(b), that in order to allow parties to update their positions on the issues, initial comments should be filed by September 5, 2014, and reply comments should be filed by September 19, 2014. Ohio Power Company (“OP”, “AEP Ohio”, or “the Company”) provides the following initial comments.

**Background**

This proceeding has its origins in the Commission’s January 26, 2005 Opinion and Order in Case No. 04-169-EL-UNC, the Rate Stabilization Plan (RSP) proceeding for Ohio Power Company (OP) and Columbus Southern Power Company (CSP) (also, collectively, “AEP Ohio” or “the Companies”).<sup>1</sup> At pages 37-38 of that Opinion and Order, the Commission urged OP and CSP to move forward with a plan to construct an integrated gasification combined-cycle (IGCC) facility in Ohio, stating in relevant part as follows:

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<sup>1</sup> OP and CSP subsequently combined through a merger that occurred on December 31, 2011, which the Commission approved in Case No. 10-2376-EL-UNC, Entry (Mar. 7, 2012).

We believe that, consistent with Section 4928.02, Revised Code, Ohio consumers are entitled to a future secure in the knowledge that electricity will be available at competitive prices. We also feel strongly that electric generators of the future should be both environmentally friendly and capable of taking advantage of Ohio's vast fuel resources. With the recognition that new technologies must be forthcoming to replace the utilities' aging generation fleet, we urge AEP to move forward with a plan to construct an integrated gasification combined-cycle (IGCC) facility in Ohio. AEP should engage the Ohio Power Siting Board in pursuit of such a plant. We are encouraged by emerging information that suggests that the IGCC technology will be economically attractive. It is worth noting that the Commission is exploring regulatory mechanisms by which utilities, given their POLR [provider of last resort] responsibilities, might recover the costs of these new facilities.

Subsequently, on March 18, 2005, CSP and OP filed an Application in this case for authority to recover costs associated with the construction and operation of an IGCC generating facility to be built at Great Bend in Meigs County, Ohio. The purpose of the plant was to provide a resource that would assist the Companies in meeting their POLR obligation. They proposed that all reasonably incurred costs related to the IGCC facility be recovered in three phases. In Phase I, they proposed to recover, through a 12-month bypassable generation surcharge, an estimated \$23.7 million of preconstruction costs, *i.e.*, those costs incurred prior to entering into an engineering, procurement, and construction (EPC) contract. In Phase II, they proposed to recover the carrying costs on the cumulative investment in the IGCC facility, also through a bypassable generation surcharge, that would remain in effect until the commercial operation of the plant began. During Phase III, the Companies proposed that the capital costs, carrying costs, and operating costs of the plant would be recovered through non-bypassable surcharges included in their distribution rates once the plant was placed in commercial operation.

On April 10, 2006, the Commission issued its Opinion and Order. It concluded that it was vested with the authority to establish a mechanism for recovery of the costs associated with

the design, construction, and operation of an IGCC generating plant where the plant fulfills AEP Ohio's POLR obligation. The Commission approved the Phase I cost recovery mechanism of AEP Ohio's application, but it directed that additional hearings would be held at which AEP Ohio should economically justify its technology choices, its timing, its financing structure, and various other matters that had not been resolved in the Application. *Id.*, at 20. The Commission noted its Staff's support for permitting the Companies to recover the relatively small amount of research and development costs of Phase I, compared to the risks of not exploring further the IGCC proposal. *Id.* at 19. The Commission also noted that the Companies had mitigated the impact on customers of the Phase I surcharges by agreeing to reduce the additional generation increases that they otherwise would have been permitted to request under their RSPs by the amount of the IGCC-related revenues collected through those Phase I surcharges. *Id.* In other words, the Commission recognized that, with regard to the Phase I surcharges, there might be no net impact on customers when compared to the alternative of not pursuing Phase I.

Moreover, the Commission found in its Opinion and Order that, "with the approval of Phase I cost recovery, the Companies [would] have the funds to investigate, analyze, evaluate, and develop a realistic plan to address the very real concerns presented in this case." It further explained that "the reasonable costs to develop that plan and supporting analyses should be recoverable from ratepayers as a proper cost of providing distribution service." *Id.* at 20-21. In other words, the Commission found that it was proper for customers to pay for the Phase I costs in order to determine the feasibility of the IGCC project, particularly in light of the fact that those costs would be offset by the Companies' agreement to reduce the RSP rate increases that they might otherwise have obtained.

Subsequently, by its Entry on Rehearing issued on June 28, 2006, at Finding 40, the Commission reaffirmed that AEP Ohio should be permitted to recover the reasonable costs of Phase I, subject to a subsequent audit to confirm that the expenditures were reasonably incurred to perform the Phase I tasks. In addition, the Commission allowed that if AEP Ohio had not commenced a “continuous course of construction” of the IGCC facility within five years of the June 28, 2006 Entry on Rehearing, the portions of the charges collected associated with expenditures useful in projects at other sites would be subject to refund with interest:

All phase I costs will be the subject of subsequent audit(s) to determine whether such proposed 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 the 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.

*Id.* at 16.

Accordingly, there were only two exceptions to AEP Ohio’s right to recover Phase I costs established by the Commission’s orders in this proceeding. First, recovery of Phase I costs was subject to a subsequent audit to ensure that the costs were reasonably incurred. Second, if a continuous course of construction had not commenced within five years of June 28, 2006, Phase I charges associated with items that may be utilized at other sites would be refunded.<sup>2</sup>

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<sup>2</sup> See also Finding 8 of its Finding and Order, also issued on June 28, 2006, that approved the Companies Phase I surcharge tariffs.

Several parties then appealed to the Ohio Supreme Court the Commission's determination that it had statutory authority to allow cost recovery for the design, construction and operation of the IGCC facility. In a decision issued on March 13, 2008, the Court affirmed in part and reversed in part the Commission's decision. While finding that "provisions of S.B. 3 prevent an electric-distribution utility from using revenues from noncompetitive distribution services to subsidize the cost of providing a competitive generation-service component" the Court allowed 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's POLR obligation." Concluding that the record was not fully developed in that regard, the Court also remanded the matter to the Commission for further findings. In addition, the Court declined to rule on IEU's request for refund of Phase I costs already collected from the Companies' customers, in light of the remand and because the Commission had already issued a conditional refund order that remained in effect. *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 4.

Shortly thereafter in 2008, the statutory framework of S.B. 3, the basis upon which the Companies made their Application, the Commission issued its orders, and the Court reviewed those orders, was substantially revised when the General Assembly enacted S.B. 221. While the provisions of S.B. 221 provided a revised statutory framework for addressing the need for, and authorizing recovery of the costs of deploying, advanced energy resources such as IGCC technology-based generating plants, those provisions nevertheless also presented significant challenges of their own to the construction of new base load generation in Ohio, including IGCC facilities. Uncertainty resulting from S.B. 221, also resulting from the impact of the recession that began in 2008, and regarding future load growth led to further delays in the Companies'

pursuit of Phase II and Phase III of the Great Bend IGCC project. Ultimately, by the time of the five-year anniversary of the June 28, 2006 Entry on Rehearing, AEP Ohio had not commenced a continuous course of construction on the project.

**AEP Ohio's June 29, 2011 Statement Regarding The Status Of Construction And Amounts Collected And Expended During Phase I**

On June 29, 2011, the day after the five-year anniversary of the June 28, 2006 Entry on Rehearing, AEP Ohio filed its Statement that reported on the status of construction of the Great Bend IGCC facility and the amounts collected and expended during Phase I. In its Statement, AEP Ohio reported that the five-year period had passed without commencement of a continuous course of construction on the facility. It also reported the amounts it had collected through the Phase I surcharges, the amounts it had expended on Phase I, and the amounts expended on Phase I that may be utilized at other sites.

AEP Ohio reported that the two companies collected a total of \$24.24 million in Phase I charges during the twelve month period July 1, 2006 through July 2, 2007. While AEP Ohio originally estimated that Phase I expenditures on the Great Bend IGCC project would be approximately \$23.7 million, the total amount that it actually expended on Phase I was \$21.074 million. AEP Ohio also concluded that none of the \$21.074 million of expenditures on Phase I of the project may be used at other sites.

The Companies recommended that the difference between the amounts charged to and collected from customers during Phase I (\$24.24 million) and the amounts expended on Phase I activities (\$21.074 million), which is \$3.166 million, should be returned to customers with interest.<sup>3</sup>

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<sup>3</sup> After AEP Ohio filed its June 29, 2011 report, the Staff conducted a review of the amounts that the Companies collected and expended, but Staff has not yet issued a report of its investigation.

As of July 31, 2014, AEP Ohio estimates that the amount to be returned to customers including interest, with the interest component calculated using interest rates paid by AEP Ohio on customer deposits during the period of the over-collection, is \$4.7 million.<sup>4</sup>

### **Issues That Remain To Be Addressed In This Proceeding**

While one might address the Commission's authority to approve recovery of the costs of developing, constructing, and operating the Great Bend IGCC facility in relation with the standard that the Ohio Supreme Court articulated in its decision, it would be a hypothetical exercise due to the changes to the statutory framework and other circumstances since AEP Ohio filed its Application and the Commission issued its prior orders in this case. Consequently, there is little, if any, practical value in such an exercise. Rather, AEP Ohio submits that the principal issues that remain to be addressed in this proceeding as a practical matter are those that the Commission identified in its June 28, 2006 Entry on Rehearing. Those issues include:

(1) Were the expenditures AEP Ohio made during Phase I reasonably incurred in connection with construction of the proposed IGCC facility at Great Bend, Meigs County, Ohio?

(2) Related to the first issue, did AEP Ohio collect more from the Phase I surcharges than its actual reasonably incurred Phase I expenditures for the IGCC facility, and if so, what is the amount of the over-collection?

(3) If AEP Ohio has not commenced a continuous course of construction of the proposed facility within five years of the date of the issuance of the June 28, 2006 Entry on Rehearing, what portion of the Phase I charges collected were for expenditures associated with items that may be utilized in projects at other sites? and

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<sup>4</sup> During the time since the Commission issued its orders approving the Phase I surcharges in this proceeding until the Commission's order in their most recent distribution rate cases, Case Nos. 11-351-EL-AIR and 11-352-EL-AIR, interest rates on customer deposits were 5.25% for Ohio Power Company and 5.00% for Columbus Southern Power Company. Effective starting January 1, 2012, the interest rate on customer deposits established by the Commission's order in Case Nos. 11-351-EL-AIR and 11-352-EL-AIR has been 3.00%.

(4) With regard to any amounts identified in response to questions (3) and (4) that should be refunded, what interest rate should be applied?

AEP Ohio addressed these remaining issues in its June 29, 2011 Statement, which it incorporates by reference in these Initial Comments.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Initial Comments Ohio Power Company was served upon the following counsel of record by e-mail this September 5, 2014:

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Summary: Comments Initial Comments of Ohio Power Company electronically filed by Ms. Christen M. Blend on behalf of Ohio Power Company and Conway, Daniel R. Mr.