

BOEHM, KURTZ & LOWRY

ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

Via E-File

September 5, 2014

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

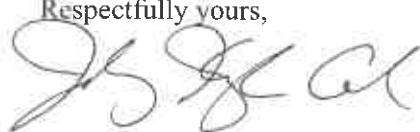
In re: Case No. 05-376-EL-UNC

Dear Sir/Madam:

Please find attached the COMMENTS OF THE OHIO ENERGY GROUP for filing in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Encl.

Cc: Thomas McNamee, Esq.
Christine Pirik, Esq.
Greta See, Esq.
Certificate of Service

**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**
Ultimate Construction and Operation of an Integrated :
Gasification Combined Cycle Electric Generation :
Facility. :

**COMMENTS OF
THE OHIO ENERGY GROUP**

I. BACKGROUND

On April 10, 2006, the Public Utilities Commission of Ohio (“Commission”) approved Columbus Southern Power Company’s and Ohio Power Company’s (collectively, “AEP Ohio”) request to recover an estimated \$23.7 million in pre-construction costs associated with a proposed integrated gasification combined cycle (“IGCC”) electric generation facility to be built in Meigs County, Ohio (“Phase I costs”).¹ The Commission found that the Phase I costs were not related to providing “*retail electric generation service*,” but instead were related to providing “*distribution ancillary services*,” and therefore were recoverable under Senate Bill 3.² The Commission also found that it could authorize recovery of the Phase I costs because they were associated with AEP Ohio’s provider-of-last-resort (“POLR”) obligation.³ On rehearing, the Commission clarified 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.*”⁴ As discussed below, this standard for determining whether Phase I costs should be refunded to consumers was superseded by a decision of the Supreme Court of Ohio.

¹ Columbus Southern Power Company has since merged with Ohio Power Company.

² Opinion & Order (April 10, 2006) at 17.

³ Id. at 18.

⁴ Finding and Order (June 28, 2006)(“Rehearing Order”) at 2.

Several parties appealed the Commission's decision approving recovery of the Phase I costs from customers to the Supreme Court of Ohio. And on March 13, 2008, the Court issued an Order reversing the Commission's finding that the Phase I costs could be recovered from customers as "*distribution ancillary service*" costs under the provisions of Senate Bill 3.⁵ However, the Court provided the Commission an opportunity to justify its finding that the Phase I costs were related to AEP Ohio's POLR obligation on remand.

While explaining that retail generation service was "*competitive*" and therefore not subject to Commission regulation under Senate Bill 3,⁶ the Court noted that "*noncompetitive*" costs associated with a utility's POLR obligation may be recoverable.⁷ Accordingly, the Court held out the possibility that the Phase I costs could be approved by the Commission if those costs were proven to be "*noncompetitive*" and related to AEP Ohio's POLR obligation. The Court instructed the Commission to further develop its record with evidence supporting several additional findings.⁸ The Court explained:

*While the commission may allow recovery of an electric-distribution utility's noncompetitive costs that are associated with its effort to secure competitive retail electric service in furtherance of its statutory POLR obligation, the commission's approval must be given in accordance with R.C. Chapters 4905 and 4909. The evidence does not support the order permitting AEP to recover the costs associated with the research and development of the proposed generation facility. To warrant its conclusions regarding AEP's POLR obligation, the commission may supplement the record with evidence to support its order and must verify that AEP has complied with the application requirements under R.C. 4909.18. Also, because AEP has not yet begun construction of the generation facility, compliance with the 75 percent used-and-useful standard should also be addressed. Additionally, we 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.*⁹

⁵ *Industrial Energy Users-Ohio v. Pub. Util. Comm. of Ohio*, 2008-Ohio-990 at ¶24.

⁶ *Id.* at ¶20.

⁷ *Id.* at ¶27.

⁸ *Id.* at ¶33.

⁹ *Id.* at ¶31-33.

Because of its decision to remand the case to the Commission, the Court did not decide the matter of whether AEP Ohio should refund the Phase I costs to customers.¹⁰

Subsequent to the Court's decision, intervenors filed motions for a refund of the Phase I costs in this case. Those motions have yet to be ruled upon by the Commission.

On June 29, 2011, in light of the fact that five years had passed since the Commission's Rehearing Order, AEP Ohio filed a statement in this case explaining that it had collected a total of \$24.24 million in Phase I charges from customers through a nonbypassable surcharges during the period July 1, 2006 through July 2, 2007. AEP Ohio noted that its actual Phase I expenditures had totaled \$21.074 million. AEP Ohio also acknowledged that it had not commenced "*a continuous course of construction*" of the IGCC facility, as contemplated in the Rehearing Order. Consequently, with regard to the potential refund of Phase I costs to customers dictated by the Rehearing Order, AEP Ohio claimed that none of the \$21.074 million of expenditures of Phase I of the IGCC project may be utilized at other sites. AEP Ohio recommended that the \$3.166 million difference between what was collected from customers and the Phase I expenditures should be refunded to customers, with interest.

On August 11, 2014, the Attorney Examiner issued an Entry establishing the current procedural schedule in this case.

II. COMMENT: The Commission Should Require AEP Ohio to Refund the \$24.24 Million in Phase I Costs to Customers, with Interest, Because the Commission Findings Required in Order for Those Costs to be Recoverable Cannot Be Made.

Pursuant to the Supreme Court of Ohio's instructions in its March 13, 2008 Order, in order to justify approving recovery of the \$24.24 million in Phase I costs from customers, the Commission must now further develop the record in this case with evidence sufficient to make the following findings:

1. AEP Ohio has complied with the application requirements under R.C. 4909.18.
2. AEP Ohio has complied with the 75 percent "*used and useful*" standard set forth in R.C. 4909.15.
3. The IGCC is necessary to guarantee AEP Ohio's distribution responsibilities.

¹⁰ Id at ¶36.

4. The Phase I costs should be attributed to AEP Ohio's POLR obligation versus recovered through competitive rates.

However, the Commission cannot make all of the requisite findings in this case. AEP Ohio has not proceeded with construction of the IGCC project. Moreover, the Ohio Power Siting Board revoked AEP Ohio's certificate to construct the IGCC facility on July 30, 2012.¹¹ Thus, construction of the proposed IGCC plant in the near future seems highly unlikely.

In light of these facts, AEP Ohio cannot provide the Commission sufficient evidence to support a finding that it has complied with the 75 percent "*used and useful*" standard set forth in R.C. §4909.15. Nor can AEP Ohio provide evidence sufficient to prove that the IGCC facility is necessary to guarantee its distribution responsibilities. As of January 1, 2015, AEP Ohio will procure 100% of the energy necessary to serve its Standard Service Offer ("SSO") customers through competitive auction and the winning bidders will assume responsibility for providing generation service SSO customers. Finally, AEP Ohio cannot prove that the Phase I costs should be attributed to AEP Ohio's POLR obligation since those costs are not currently assisting in the provision of POLR service to customers and are unlikely to assist in providing POLR service in the near future.

Because AEP Ohio cannot provide evidence sufficient to support the Commission findings required in order to satisfy the Court's remand standard and because the Commission's other stated rationale for approving recovery of the Phase I costs was rejected by the Court, the Commission lacked authority to allow AEP Ohio to recover those costs from customers under Senate Bill 3. Moreover, no provision of Senate Bill 221 currently authorizes recovery of the Phase I costs from customers. Hence, a refund to customers, with interest, is in order.

¹¹ Entry, Case No. 06-30-EL-BGN at 2-3.

WHEREFORE, for the foregoing reasons, OEG respectfully requests that the Commission require AEP Ohio to refund the \$24.24 million in Phase I costs to customers, with interest.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "m.l. kurtz", is written over a horizontal line.

David F. Boehm, Esq.

Michael L. Kurtz, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: dboehm@BKLawfirm.com

mkurtz@BKLawfirm.com

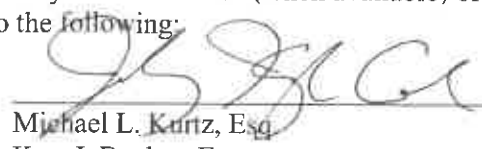
jkylercohn@BKLawfirm.com

September 5, 2014

COUNSEL FOR THE OHIO ENERGY GROUP

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 5TH day of September, 2014 to the following:


Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.

SELWYN J DIAS
850 TECH CENTER DR
GAHANNA OH 43230

WILLIAMS, SANDRA SENIOR ATTORNEY
1 RIVERSIDE PLAZA, 29TH FLOOR
COLUMBUS OH 43215

COLUMBUS SOUTHERN POWER COMPANY
VP REG & FINANCE
SELWYN J DIAS
850 TECH CENTER DR
GAHANNA OH 43230

*CONWAY, DANIEL R. MR.
PORTER WRIGHT MORRIS & ARTHUR LLP
41 SOUTH HIGH STREET
COLUMBUS OH 43215

CALPINE CORPORATION
PATRICK J KEALY, ESQ.
717 TEXAS STREET
HOUSTON TX 77002-2761

KANOFF, RICHARD A ATTORNEY AT LAW
CALPINE CORPORATION
717 TEXAS STREET STE 1000
HOUSTON TX 77002

*DORTCH, MICHAEL D. MR.
KRAVITZ, BROWN & DORTCH, LLC
65 E. STATE STREET SUITE 200
COLUMBUS OH 43215

*PETRICOFF, M HOWARD
VORYS SATER SEYMOUR AND PEASE LLP
52 E. GAY STREET P.O. BOX 1008
COLUMBUS OH 43216-1008

GRADY, MAUREEN
OFFICE OF CONSUMERS' COUNSEL
10 W. BROAD STREET SUITE 1800
COLUMBUS OH 43215-3485

*RINEBOLT, DAVID C MR.
OHIO PARTNERS FOR AFFORDABLE ENERGY
231 W LIMA ST PO BOX 1793
FINDLAY OH 45840-1793

DAVIS, JESSICA ATTORNEY-AT-LAW
ROETZEL & ANDRESS, LPA
NATIONAL CITY CENTER
155 EAST BROAD STREET, TWELFTH FLR.
COLUMBUS OH 43215

PACE SR., RICHARD W.
GREEN MOUNTAIN ENERGY COMPANY
300 W 6TH STREET
SUITE 900
AUSTIN TX 78701

*HUSSEY, REBECCA L MS.
CARPENTER LIPPS & LELAND
280 PLAZA, SUITE 1300 280 N. HIGH STREET
COLUMBUS OH 43215

*BLEND, CHRISTEN M. MS.
PORTER WRIGHT MORRIS & ARTHUR, LLP
41 SOUTH HIGH STREET 30TH FLOOR
COLUMBUS OH 43215

*KEETON, KIMBERLY L
OHIO ATTORNEY GENERAL'S OFFICE
180 EAST BROAD STREET, 6TH FLOOR
COLUMBUS OH 43215-3793

ATHENS COUNTY COMMISSIONERS
15 S. COURT ST.
ATHENS OH 45701

AMERICAN MUNICIPAL POWER-OHIO INC
MARC GERKEN, P.E., PRESID
1111 SCHROCK ROAD SUITE 100
COLUMBUS OH 43229-1155

AMERICAN MUNICIPAL POWER-OHIO INC
MARC GERKEN, P.E., PRESID
1111 SCHROCK ROAD SUITE 100
COLUMBUS OH 43229-1155

AMERICAN MUNICIPAL POWER-OHIO INC
MARC GERKEN, P.E., PRESID
1111 SCHROCK ROAD SUITE 100
COLUMBUS OH 43229-1155

BECHTEL POWER CORPORATION
MICHAEL D. DORTCH, ATTORNEY
CAPITAL SQUARE, SUITE 2100 65 EAST STATE STREET
COLUMBUS OH 43215

CALPINE CORPORATION
PATRICK J KEALY, ESQ.
717 TEXAS STREET
HOUSTON TX 77002-2761

DIRECT ENERGY SERVICES LLC SR MGR GOV'T &
REG AFFAIRS
TERESA RINGENBACH
9605 EL CAMINO LN
PLAIN CITY OH 43064
FIRSTENERGY SOLUTIONS
LOUIS M D'ALESSANDRIS

*MILLER, VESTA R
PUBLIC UTILITIES COMMISSION OF OHIO
180 EAST BROAD STREET
COLUMBUS OH 43215

OHIO STEEL INDUSTRY ADVISORY COUNCIL
WILLIAM A. BRAKE
24865 EMERY RD.
CLEVELAND OH 44128

*SCHULENBERG, CHRISTINE
CHESTER WILLCOX & SAXBE LLP
65 E. STATE STREET SUITE 1000
COLUMBUS OH 43215

*BENTINE, JOHN MR.
AMERICAN MUNICIPAL POWER, INC.
1111 SCHROCK ROAD SUITE 100
COLUMBUS OH 43229

*SINGH, BOBBY MR.
INTEGRYS ENERGY SERVICES, INC.
300 WEST WILSON BRIDGE ROAD, SUITE 350
WORTHINGTON OH 43054

DORTCH, MICHAEL D. ATTORNEY
KRAVITZ, BROWN & DORTCH, LLC
65 E. STATE STREET STE 200
COLUMBUS OHIO 43215

CONSTELLATION NEWENERGY INC SR COUNSEL
CYNTHIA FONNER BRADY
P.O. BOX 1125
CHICAGO IL 60690-1125

STINSON, DANE
BAILEY CAVALIERI LLC
10 WEST BROAD STREET SUITE 2100
COLUMBUS OH 43215

*KOLICH, KATHY J MS.
FIRSTENERGY CORP

341 WHITE POND DRIVE
AKRON OH 44320

76 SOUTH MAIN STREET
AKRON OH 44308

GE ENERGY (USA) LLC
MICHAEL D. DORTCH, ATTORNEY
CAPITAL SQUARE, SUITE 2100 65 EAST STATE STREET
COLUMBUS OH 43215

DORTCH, MICHAEL D. ATTORNEY
KRAVITZ, BROWN & DORTCH, LLC
65 E. STATE STREET STE 200
COLUMBUS OHIO 43215

JOHN M. SERAL, CIO
GENERAL ELECTRIC COMPANY
NELA PARK, 1975 NOBLE RD.
CLEVELAND OH 44112-6300

FLAHIVE, CAROLYN
THOMPSON HINE LLP
41 S. HIGH STREET SUITE 1700
COLUMBUS OH 43215-3435

GLOBAL ENERGY INC
DWIGHT N. LOCKWOOD, GROUP
P.O. BOX 30434
CINCINNATI OH 45230-0434

SAMUEL C RANDAZZO
MCNEES WALLACE & NURICK LLC
FIFTH THIRD CENTER, 21 EAST STATE ST, 17TH FL
COLUMBUS OH 43215

GREEN MOUNTAIN ENERGY COMPANY
JOHN BUI
300 W. 6TH STREET SUITE 900
AUSTIN TX 78701
COLUMBUS OH 43215

ROBINSON, EVELYN
GREEN MOUNTAIN ENERGY COMPANY
1721 LEIGHTON DRIVE
REYNOLDSBURG OH 43068

This foregoing document was electronically filed with the Public Utilities

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in

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

Summary: Comments Ohio Energy Group (OEG) Comments electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group