

**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)	Case No. 05-376-EL-UNC
Recover Costs Associated with the)	
Integrated Gasification Combined Cycle)	
Electric Generating Facility)	

**REPLY COMMENTS OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

Introduction

The instant case has a long procedural history that was documented by several of the parties in their initial comments. Ohio Partners for Affordable Energy ("OPAE") will not reiterate the background herein, but notes that the Attorney Examiner's Entry of August 11, 2014 established a procedural schedule to address the issues raised by the Ohio Supreme Court in its decision in *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 4, and, in turn, provide a decision on the Office of the Ohio Consumers' Counsel's *Motion on Remand from the Supreme Court for a Refund of Revenues that AEP Collected from Customers*, filed on September 17, 2008, some six years ago, and the subsequent Industrial Energy Users-Ohio's *Motion Requesting that the Commission Direct AEP-Ohio to Refund IGCC Revenue Collected or Show Cause Why the Revenue Should not be Immediately Refunded*, filed on September 18, 2009, some five years ago. OPAE offers the following reply comments pursuant to the Entry of August 11, 2014.

Reply Comments

OPAE supports the joint comments filed by the Office of the Ohio Consumers' Counsel and Industrial Energy Users-Ohio, as well as those filed by the Ohio Energy Group on September 5, 2014. As those parties make clear, Ohio Power Company ("AEP") can only recover funds related to Phase 1 of the plan if they are "noncompetitive" costs associated with a utility's Provider of Last Resort ("POLR") obligation. *Industrial Energy Users-Ohio v. Pub. Util. Comm. of Ohio*, 2008-Ohio-990. The Supreme Court provided the Commission with guidance on the steps it needed to take to determine whether or not the recovery of costs was permitted under Ohio law and what portion of the costs met the criteria necessary for recovery.

AEP's initial comments filed on September 5, 2014, focus on a statement filed on June 29, 2011, which provided a general overview of the amount of funds expended during Phase 1, broken down into 7 broad categories. The statement includes details on the recovery under the rider, but fails to provide any detail on the nature of the expenditures recovered through that rider. AEP, in its September 5, 2014 comments, seeks to focus the Commission on four issues:

- 1) Were the expenditures reasonably incurred;
- 2) Were the collections under the rider in excess of the reasonably incurred expenditures;
- 3) If construction has not commenced (and it has not), what portion of the Phase I charges could be utilized at other projects on other sites; and,
- 4) If there is a refund, what is the interest rate that should be used to determine the amount to be refunded?

AEP alleges that the information needed to answer these questions was included in the statement filed on June 29, 2011, and proceeds to calculate the amount that should be refunded to consumers.

Given the paucity of information provided by AEP in the June 29, 2011 statement, it is impossible to determine whether or not any of the activities funded during Phase 1 could be used in the development of a similar powerplant at a site outside of Ohio, a condition of any refund per the Commission's Finding and Order issued on June 28, 2006 at 2. It is clear most of the money recovered was expended, but it is not clear what the money purchased.

While AEP wants the Commission to focus on these four narrow issues, it misses the point. The primary issue before the Commission is, given the decision by the Supreme Court, were the expenditures related to noncompetitive services, specifically ancillary services, as required by AEP to meet its POLR responsibilities.

AEP attempts to evade this issue, noting that "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." Initial Comments of Ohio Power Company (September 5, 2014) at 7. Accordingly, AEP opines that "there is little, if any, practical value in such an exercise." *Id.*

The Commission cannot avoid this exercise. The subsequent enactment of SB 221 and the substitution of a standard service offer for a POLR obligation are not relevant to the case at hand. What is relevant is whether, during the time period when the Commission authorized Phase I recovery, the collection of these costs was lawful. Unless the utility can demonstrate that all or a portion of the costs were incurred to provide customers with distribution ancillary services, the costs are not lawfully recoverable and should be refunded.

The Supreme Court also found that the provisions of Revised Code Chapters 4905 and 4909, and in particular R.C. 4909.18, the requirements for an application for cost recovery, must be followed. These Chapters existed prior to the passage of SB 3 and still exist today, long after the passage of SB 221. There is no change of law that justifies deviating from these requirements.

Conclusion

AEP has failed to address the issues identified by the Supreme Court in its decision. It has failed to establish that any of the expenditures were necessary to provide distribution ancillary services required for Columbus Southern Power Company and Ohio Power Company to meet their POLR obligations. It has failed to file the information necessary to meet the requirements of R.C. 4909.18 or Chapters 4905 and 4909 as required by the Supreme Court. As such there is no legal support for the recovery of any of the Phase 1 costs, and the revenues collected through Phase I should be refunded to customers with interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was electronically served upon the parties of record identified below in this case on this 19th day of September 2014.

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Summary: Reply Comments electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy