

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 Generating Facility. )

OPINION AND ORDER

The Public Utilities Commission of Ohio (Commission), having considered the testimony and all other evidence presented in this matter and relevant provisions of the Revised Code, hereby issues its Opinion and Order.

APPEARANCES

Marvin I. Resnik and Sandra K. Williams, 1 Riverside Plaza, Columbus, Ohio 43215-2373; and Daniel Conway, Porter, Wright, Morris & Arthur, 41 South High Street, Columbus, Ohio 43215, on behalf of Columbus Southern Power Company and Ohio Power Company.

Jim Petro, Attorney General of the state of Ohio, Duane W. Luckey, Senior Deputy Attorney General, Steven T. Nourse, Werner L. Margard III, and Thomas W. McNamee, Assistant Attorneys General, 180 East Broad Street, 9<sup>th</sup> Floor, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, Kimberly J. Bojko and Jeffery L. Small, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485, on behalf of the residential customers of Columbus Power Company and Ohio Power Company.

Kathy J. Kolich, 76 South Main Street, Akron, Ohio 44308, on behalf of FirstEnergy Solutions Corporation.

Samuel C. Randazzo and Lisa Gatchell McAlister, McNees Wallace & Nurick LLC, Fifth Third Center, 21 East State Street, Suite 1700, Columbus, Ohio 43215-4228, on behalf of Industrial Energy Users-Ohio.

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John W. Bentine, Joseph C. Pickens and Bobby Singh, Chester, Wilcox & Saxbe, LLP, 65 East State Street, Suite 1000, Columbus, Ohio 43215, on behalf of American Municipal Power-Ohio, Inc.

Sally W. Bloomfield and Thomas J. O'Brien, Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215-4291; and Joseph Condo, Calpine Corporation, 250 Parkway Drive, Suite 380, Lincolnshire, Illinois 60069, on behalf of Calpine Corporation.

M. Howard Petricoff, Stephen Howard and Michael Settineri, Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of Constellation Generation Group, LLC, Constellation Energy Commodities Group, Inc., Constellation NewEnergy Inc., and Baard Generation, LLC.

Michael D. Dortch, Baker & Hostetler, Capitol Square, 65 East State Street, Suite 2100, Columbus, Ohio 43215-4260, on behalf of General Electric Company, GE Energy (USA), LLC, Bechtel Corporation, and Bechtel Power Corporation.

David C. Rinebolt, 237 South Main Street, 4<sup>th</sup> Floor, Suite 5, P.O. Box 1793, Findlay, Ohio 45839-1793, on behalf of Ohio Partners for Affordable Energy.

David Boehm and Michael L. Kurtz, Boehm, Kurtz & Lowry, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202-4454, on behalf of Ohio Energy Group.

Thomas L. Rosenberg and Jessica L. Davis, Roetzel & Andress, LPA, National City Center, 155 East Broad Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215, on behalf of the International Brotherhood of Electrical Workers Local #970, Ironworkers Local #787; the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local #168, Parkersburg-Marion Building and Construction Trades Council AFL-CIO.

Thomas Lodge, Thompson Hine, LLP, One Columbus, 10 West Broad Street, Suite 700, Columbus, Ohio 43215-3435, on behalf of Global Energy and Lima Energy Company.

Dane Stinson and William A. Adams, Bailey, Cavalieri, LLC, 10 West Broad Street, Suite 2100, Columbus, Ohio 43215, on behalf of Direct Energy Services, LLC.

Evelyn R. Robinson, 5450 Frantz Road, Suite 240, Dublin, Ohio 43016, on behalf of Green Mountain Energy Company.

OPINIONHistory of the Proceeding

On March 18, 2005, Columbus Southern Power Company (CSP) and Ohio Power Company (Ohio Power) (collectively AEP, AEP Companies or Companies) filed an application with the Commission for approval of a mechanism to recover the costs associated with the construction and operation of an integrated gasification combined cycle (IGCC) electric generation facility in Ohio. The Companies request approval of its proposed cost recovery mechanism to provide for the design, construction and operation of a 629<sup>1</sup> [net] megawatt (MW) electric generation facility in Meigs County, Ohio. The AEP Companies have concluded that the facility is necessary to allow the Companies to provide a firm supply of generation service to the Companies' Ohio customers. The Companies contend that they must be ready and able to provide firm, generation service to customers who have not selected a competitive retail electric service (CRES) provider and any customer who returns to the AEP Companies' service as a result of the CRES provider's default or at the customer's election. The Companies contend that the proposed IGCC facility will allow the companies to help meet their respective obligations as the provider of last resort (POLR). The Companies are proposing to recover the costs of the IGCC facility in three phases to continue throughout the commercial life of the facility. Further details of the Companies' proposal are provided below.

On April 12, 2005, a conference was held to develop the procedural schedule for this case. The procedural schedule was published by entry issued April 19, 2005. The procedural schedule was established as follows: the Companies' testimony was due by May 5, 2005; a technical conference was scheduled for May 16, 2005; motions to intervene were due by July 1, 2005; intervenor testimony was due to be filed by July 13, 2005; all discovery requests were to be submitted by the parties by no later than July 25, 2005; staff testimony was due by July 25, 2005; the Companies supplemental testimony was due by August 1, 2005; and the evidentiary hearing was scheduled to begin on August 8, 2005.

Motions to intervene were timely filed by Industrial Energy Users-Ohio (IEU); Ohio Energy Group (OEG); FirstEnergy Solutions Corporation (FirstSolutions); Ohio Consumers' Counsel (OCC); Calpine Corporation (Calpine); Global Energy and Lima Energy Company (jointly Lima Energy); International Brotherhood of Electrical Workers Local #970, Ironworkers Local #787; the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local #168, Parkersburg-Marion Building and Construction Trades Council AFL-CIO, (collectively the Unions); Direct Energy Services, LLC (Direct Energy); Baard Generation, LLC (Baard); Ohio Partners for Affordable Energy (OPAE); Constellation Generation

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<sup>1</sup> Subsequent to the filing of the initial application, the Companies revised the facility output from 600 MW to 629 MW. See Company Ex. 5-B at 4.

Group, LLC, Constellation Energy Commodities Group, Inc., and Constellation NewEnergy Inc. (jointly Constellation); and Green Mountain Energy Company (Green Mountain). All of the requests for intervention were granted. American Municipal Power-Ohio, Inc. (AMP-Ohio) filed a late request for intervention. Nonetheless, AMP-Ohio's request was granted. Pursuant to entry issued August 1, 2005, General Electric Company, GE Energy (USA), LLC, Bechtel Corporation, and Bechtel Power Corporation (jointly GE/Bechtel) were granted limited intervention in this matter for the purpose of protecting their interest in certain confidential and proprietary documents exchanged as a part of the discovery process.

On May 5, 2005, the AEP Companies filed testimony in support of the application. The AEP Companies filed the direct testimony of Kevin E. Walker (Company Ex. 1), J. Craig Baker (Companies Ex. 2), Bruce H. Braine (Companies Ex. 3), Michael J. Mudd (Companies Ex. 4), William M. Jasper (Companies Ex. 5), Philip J. Nelson (Companies Ex. 6), David M. Roush (Companies Ex. 7), and Stephen T. Haynes (Companies Ex. 8).

Pursuant to the procedural schedule, intervenor testimony was filed on July 15, 2005. OCC filed the direct testimony of Donald C. Lechnar (OCC Ex. 1) and Michael Haugh (OCC Exs. 2 and 2-A). Baard filed the direct testimony of John Baardson (Baard Ex. 1). Direct Energy filed the direct testimony of Mark R. Frye (Direct Energy Ex. 1). IEU filed the direct testimony of J. Bertram Solomon (IEU Ex. 24). Calpine filed the direct testimony of William J. Taylor, III (Calpine Ex. 1). OEG filed the direct testimony of Kevin C. Higgins (OEG Ex. 10 and OEG 10A). Staff filed, on July 25, 2005, the direct testimony of Kim Wissman (Staff Ex. 1), Klaus Lambeck (Staff Ex. 2), and Richard Cahaan (Staff Ex. 3).

By entry issued May 26, 2005, as supplemented by entry issued June 30, 2005, local public hearings were scheduled in CSP's and Ohio Power's service areas. Public hearings were held in Hilliard, Canton, and Pomeroy, Ohio. The AEP Companies published notice of the hearings and filed proof of publication (Companies Ex. 16). At the public hearing held in Hilliard on August 1, 2005, five witnesses offered testimony: two witnesses testified in opposition to the application, two witnesses testified in favor of the facility, and one witness made comments. A local public hearing was held on August 3, 2005 in Canton, Ohio. At the Canton hearing, three witnesses offered testimony: two persons who are opposed to the application and one person who is in favor of the project.

On August 4, 2005, a local public hearing was held in Pomeroy, Ohio, the same county as the proposed location for the IGCC facility. At the Pomeroy hearing there were over 100 people in attendance of which 30 offered testimony. Twenty-six witnesses testified in favor of the project and four witnesses raised environmental and safety concerns about the project. The witnesses offering testimony in support of the proposed facility included Senator Joyce Padgett and Representative Jimmy Stewart. Senator Padgett endorsed the construction and operation of the proposed facility for its beneficial

effect on the county, the State of Ohio, and the families and businesses in Meigs County and the surrounding areas. Senator Padgett also noted that the facility will support the Ohio coal industry and clean coal technology. Representative Stewart's testimony focused on the overall benefits of IGCC technology and the environmental advantages of IGCC. A statement by Representative Jennifer Garrison endorsing the construction of the IGCC facility was also offered into the record. Also offering testimony at the Pomeroy local hearing were numerous representatives and members of the skilled trades and labor unions in the area. The Unions strongly endorse this project for the 1,250-2,000 construction jobs and 125 permanent jobs that it will bring to the county and the benefit to the local economy.

The evidentiary hearing commenced on August 8, 2005 and continued each business day through August 16, 2005. At the conclusion of the hearing, the Companies and certain other parties to this proceeding had not reached a resolution regarding the recalling of witnesses (Tr. VII at 93). To that end, on September 6, 2005, OCC, IEU-Ohio and the Companies docketed late-filed exhibits in lieu of calling or recalling additional witnesses (Late filed OCC/IEU Exs. 1-2, 4-11, 14-15, 18-26, 28, 29, 31-38, 41 and 44-45). By entry issued September 7, 2005, all parties were directed that, unless the Commission received a motion in opposition to the late-filed exhibits, the exhibits would be admitted into the record. No party filed a motion in opposition to the late-filed exhibits. Initial briefs were filed by the parties on September 20, 2005. Reply briefs were filed by the parties no later than October 11, 2005.

On December 27, 2005, Direct Energy filed a request that the Commission take administrative notice of certain press releases by the AEP Companies. The press releases cited were those issued by the AEP Companies on December 15 and December 20, 2005 and the newspaper article carried by a Cincinnati newspaper, *The Enquirer*. The press releases and article discuss American Electric Power's earnings, 2006 projected earnings and the purchase of a natural gas generation facility. Direct Energy contends that the representations made in the article and press releases support the claims of Direct Energy and the other interveners as to the need for the proposed IGCC facility and the risk to Ohio's ratepayers.

On January 6, 2006, the Companies filed a memorandum contra the request for administrative notice. The AEP Companies ask that the Commission recognize that the nature of the activities noted in the press releases and article were known at the time of the hearing and referenced in the record (Tr. V at 204, 206). The Companies also note that the record in this case has been closed for almost four months.

The Commission agrees that it is improper to take administrative notice of the press releases and newspaper article at this time; the AEP Companies' earnings and the

purchase of a generating facility are issues that could have been addressed during the hearing. Accordingly, Direct Energy's request for administrative notice is denied.

Proprietary Information in this Proceeding

On July 14, 2005, OCC filed a motion to compel discovery and to permit the supplementation of OCC testimony. OCC claimed that the AEP Companies had not fully responded to OCC's request for the production of documents, pending the execution of a protective agreement. The Companies filed a memorandum contra OCC's motion. The Companies represented that OCC was given the opportunity to view any documents requested at the Companies' offices. On July 19, 2005, the Attorney Examiners held an off-the-record conference between OCC and the Companies to discuss the discovery dispute. At the end of the conference, the Attorney Examiners concluded that there were three classes of documents at issue in this discovery dispute: (a) documents which the AEP Companies claimed were confidential; (b) documents that contained or reflected information from GE/Bechtel;<sup>2</sup> and (c) critical energy infrastructure information (CEII), as determined by the Companies. As OCC and the Companies were informed at the conference, and as confirmed by entry issued July 21, 2005, the AEP Companies were ordered to provide, pursuant to the protective agreement attached to OCC's motion to compel, the documents the Companies claimed to be confidential, the GE/Bechtel documents and the CEII documents identified as responsive to OCC's requests for production of documents. Further, as to the CEII, OCC was directed to review the CEII documents at the Companies' offices to determine which documents were needed by OCC to prepare for the hearing.

On July 22, 2005, GE/Bechtel filed a motion to intervene in this case for the limited purpose of protecting certain confidential information. GE/Bechtel also filed an interlocutory appeal of the July 21, 2005 entry and a motion for protective order on July 26, 2005. On August 1, 2005, OCC filed a memorandum contra GE/Bechtel's motion for protective order and interlocutory appeal.

By entry issued August 1, 2005, the Attorney Examiners granted GE/Bechtel's motion to intervene. By the same entry, the Attorney Examiners granted GE/Bechtel's request for protective order by issuing a protective order that would protect the documents at issue unless and until OCC and GE/Bechtel executed a negotiated protective agreement. Further, to allow the case to continue in accordance with the schedule established, OCC and GE/Bechtel were directed to develop a proposal on the introduction of exhibits and the redaction of confidential and/or proprietary information. OCC and GE/Bechtel were informed that if they could not agree on the proprietary nature

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<sup>2</sup> GE/Bechtel is a third-party vendor with whom the Companies have contracted to provide certain engineering, procurement and construction services in relation to the proposed IGCC facility.

of information in the documents, the Attorney Examiners would conduct an in-camera review to determine the nature of the documents at issue.

On August 8, 2005, GE/Bechtel and the Companies each filed motions to maintain the confidentiality of their respective confidential documents and the testimony drawn therefrom. OCC subsequently filed a memorandum contra the motions of GE/Bechtel and AEP. During the hearing, on August 9, 2005, after an in-camera review of certain documents, the Attorney Examiners ruled that certain information provided to OCC by GE/Bechtel and AEP, and to other intervenors pursuant to a protective agreement, contained trade secrets and/or confidential or proprietary information that should be protected from public disclosure (Tr. II at 78-80). To avoid the delay of the hearing, the proceedings were periodically closed to facilitate the cross-examination of witnesses in regard to confidential matters. At the conclusion of the hearing, the Companies and GE/Bechtel were directed to review the confidential documents introduced into evidence in the case and to redact confidential and/or proprietary information and file the redacted documents in the public record. The redacted documents were then filed in the docket by the AEP Companies on August 30, 2005 and by GE/Bechtel on September 1, 2005.

In its initial brief, OCC argues that vast amounts of the record in this case have been sealed from public scrutiny in violation of Section 149.43, Revised Code, and Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.). OCC notes that in Case No. 93-487-TP-ALT, *In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation*, entry issued November 25, 2003, the Commission acknowledged that:

All proceedings at the Commission and all documents and records in its possession are public records, except as provided in Ohio's public records law (Section 149.43, Revised Code) and as consistent with the purposes of Title 49 of the Revised Code. Ohio public records law is intended to be liberally construed to "ensure that governmental records be open and made available to the public and . . . are subject only to a few very limited and narrow exceptions." *State ex rel. Williams v. Cleveland* (1992), 64 Ohio St.3d 544, 549; *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 518.

OCC argues that the Companies and GE/Bechtel have been permitted the "wholesale" removal of documents from the public record. OCC argues that the AEP Companies' and GE/Bechtel's motions filed August 8, 2005 fail to specifically state the contents of each document that each company seeks to protect from public disclosure. OCC asserts that the AEP Companies and GE/Bechtel failed to meet their burden under Ohio law. Therefore, OCC concludes that the Attorney Examiners' ruling granting the Companies' and GE/Bechtel's requests for confidential treatment was in error and should be reversed (OCC Brief at 43-46).

AEP Companies argue that OCC's request to place in the public record the limited amount of confidential information protected under seal in this case overlooks the need to protect the proprietary and confidential information of third-party vendors against the public policy that favors public access to information presented to a public agency (Companies Reply Brief at 41-43). The Companies emphasize that the proposed power plant design relies on proprietary IGCC technology that GE/Bechtel, Battelle and Sargent & Lundy<sup>3</sup> seek to protect to retain the commercial value of their investments (*Id.* at 41).

The AEP Companies contend that, at the direction of the presiding Attorney Examiners, they, in consultation with Sargent & Lundy, Battelle and GE/Bechtel, reviewed all the exhibits and testimony included in the confidential portion of the record to reduce the amount of information under seal (*Id.* at 42). The Companies emphasize that releasing such information into the public record, as OCC requests, will have a chilling effect on the deployment of new technologies in Ohio. The Companies assert that significant effort has been expended to protect the confidential nature of certain information in the record and to minimize the confidential portion of the record. The Companies maintain that it is crucial that the Commission carefully balance the release of confidential, proprietary information owned by third-party vendors with the public record requirements for state agencies. For these reasons, the Companies ask that the Commission reject OCC's request to place the limited amount of protected information in the public record.

GE/Bechtel also opposes OCC's request. GE/Bechtel argues that OCC's request misrepresents the facts, is procedurally defective and ignores the exceptions to Ohio's public records law. GE/Bechtel also notes that OCC has mischaracterized the process implemented by the Attorney Examiners and failed to mention that an in-camera examination of the documents was conducted, and that GE/Bechtel, at the direction of the Attorney Examiners, examined the exhibits and the transcripts filed under seal and redacted any GE/Bechtel proprietary information from the documents and filed the redacted copies in the public record (GE/Bechtel Reply Brief at 3-4).<sup>4</sup>

GE/Bechtel further argues that OCC's request to place all documents and exhibits in the public record is untimely. According to GE/Bechtel, OCC's recourse was an interlocutory appeal of the Attorney Examiners' August 9 ruling in accordance with Rule 4901-1-15, O.A.C. GE/Bechtel states that, pursuant to Rule 4901-1-15, O.A.C., OCC had only five days after the August 9, 2005 ruling to file an appeal. GE/Bechtel reasons that

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<sup>3</sup> Battelle and Sargent & Lundy performed various analyses for the AEP Companies in regards to the proposed IGCC facility.

<sup>4</sup> Furthermore, GE/Bechtel states that after the close of the hearing, the OCC identified an additional 45 exhibits that it demanded to be filed in the public record as late-filed exhibits. GE/Bechtel examined those exhibits and, consistent with the Attorney Examiners ruling, redacted confidential and proprietary information from copies of those exhibits. GE/Bechtel provided those redacted copies to both OCC and IEU-Ohio on September 1, 2005. OCC and IEU-Ohio subsequently filed those redacted copies as exhibits in the public record, and unredacted copies under seal, on September 6, 2005.



paragraph (A) of Rule 4901-1-15, O.A.C., is not applicable. GE/Bechtel argues that Rule 4901-1-15(A), O.A.C., applies, under the circumstances presented in this matter, when any party's motion for a protective order is denied. The motions of the AEP Companies and GE/Bechtel for protective orders were granted. GE/Bechtel acknowledges that pursuant to Rule 4901-1-15(B), O.A.C., OCC could seek to appeal the August 9, 2005 Attorney Examiners' ruling by requesting that the issue be certified to the Commission. GE/Bechtel notes OCC has not made any such request to certify the record. GE/Bechtel argues that, pursuant to Rule 4901-1-15(C), O.A.C., if OCC wished to take an interlocutory appeal, it was required to file an interlocutory appeal of the Attorney Examiners' August 9, 2005 ruling within five days.<sup>5</sup> Thus, GE/Bechtel reasons that OCC's request that the confidential information in this case become part of the public record is procedurally defective and should be denied.

Finally, GE/Bechtel posits that, contrary to OCC's claims, GE/Bechtel's July 26, 2005 and August 8, 2005 motions included the affidavits of GE/Bechtel representatives that: (1) detailed the nature and the kinds of information contained in the documents; (2) stated that GE/Bechtel protects the information at issue from disclosure, even internally; (3) noted that the information was provided to the AEP Companies pursuant to a protective agreement; (4) listed the protections undertaken by GE/Bechtel to prevent the disclosure of the information at issue; (5) discussed the value of the information to GE/Bechtel; and (6) stated the potential harm to GE/Bechtel if the information was known to the public. Thus, GE/Bechtel believes it presented sufficient information to justify its request to treat the information as proprietary trade secrets under Ohio law.

With respect to GE/Bechtel's procedural arguments, Rule 4901-1-15, O.A.C., does not require a party to file an interlocutory appeal to an attorney examiner's ruling. Paragraph (A) of the rule states that a party "may" file an interlocutory appeal; it does not require that one be filed. Further, paragraph (B) of the rule permits the filing of interlocutory appeals to certain rulings only if certified by the attorney examiner first. Accordingly, we find that Rule 4901-1-15, O.A.C., does not preclude OCC from raising the issue on brief. Lastly, we also note that the AEP Companies and GE/Bechtel were not requested to determine what information submitted under seal at the hearing would remain under seal until after the hearing had concluded. Accordingly, we find no merit to the procedural arguments made by GE/Bechtel.

With respect to the substantive issue, we find that the record in this case supports the Attorney Examiners' ruling that the documents filed under seal included proprietary trade secret information. First, the Commission notes that, pursuant to Section 4901.12,

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<sup>5</sup> Rule 4901-1-15(C), O.A.C., provides in part:

Any party wishing to take an interlocutory appeal from any ruling must file an application for review with the commission within five days after the ruling is issued.

Revised Code, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code, all proceedings of the Commission and all documents and records in its possession are public records. Section 149.43(A), Revised Code provides that:

"Public record" means records kept by any public office ... "Public record" does not mean any of the following:

- (v) Records the release of which is prohibited by state or federal law.

The Commission recognizes that Ohio's public records law is intended "to be liberally construed to ensure that governmental records be open and made available to the public and that public records are subject only to a few very limited and narrow exceptions." *State ex. rel Williams* at 549. However, one of the exceptions is for trade secrets. See Sections 1333.62 and 1333.63, Revised Code. Section 1333.61(D), Revised Code, defines trade secret as:

Information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>6</sup>

<sup>6</sup> We recognize that the Ohio Supreme Court has adopted several factors to determine whether a trade secret claim meets the statutory definition in Section 1333.61(D), Revised Code. See *State ex. rel The Plain Dealer v. Ohio Dept. of Ins.*, at 524-525, citing *Pyromatics, Inc. v. Petruziello* (1983), 7 Ohio App.3d 131. *Pyromatics* states the factors are: (a) the extent to which the information is known outside the business; (b) the extent to which it is known to those inside the business, i.e., by the employees; (c) the precautions taken by the holder of the "trade secret" to guard against the secrecy of the information; (d) the savings effected and the value to the holder in having the information as against competitors; (e) the amount of effort or money expended in obtaining and developing the information; (f) the amount of time and expense it would take for others to acquire and duplicate the information.

The Commission finds that the Attorney Examiner's ruling and the confidential record developed in this case are consistent with Ohio public records law and Title 49. We note that in an effort to avoid further delay of the hearing and allow OCC an opportunity to cross-examine the Companies' witnesses, portions of the hearing were closed to any party that did not have a protective agreement, and subsequently the AEP Companies and GE/Bechtel were directed to review and redact the documents introduced into evidence that contained proprietary, trade secret information. Thus, the Commission concludes that the August 9, 2005 ruling is reasonable, in light of the fact that the hearing was in progress and the subsequent directive to the AEP Companies and GE/Bechtel to reduce the amount of proprietary information in the record. Accordingly, OCC's request to overturn the Attorney Examiners' August 9, 2005 ruling is denied. Furthermore, the documents filed under seal in this proceeding should remain under seal for 18 months after the issue date of this order.

#### Companies' Application

On March 18, 2005, Ohio Power and CSP filed an application for authority to recover costs associated with the construction and operation of an IGCC generating facility (Application). The Companies intend to use the output from this generating station to serve their POLR customers.

The Application proposes that all reasonably incurred costs related to the IGCC facility be recovered in three phases (App. at 5; Tr. I at 200). The first phase will recover preconstruction costs, such as engineering and scoping study. First phase cost recovery will be through a 12-month bypassable generation surcharge, set to commence in January 2006 (App. at 5-8). The surcharge would be applied to the Companies' standard service rate schedules approved in their rate stabilization plan proceeding (RSP) (*In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Post Market Development Period Rate Stabilization Plan*, Case No. 04-169-EL-UNC, Opinion and Order [January 26, 2005]) (RSP Order). The surcharge is intended to recover the Companies' preconstruction costs; that is, costs incurred prior to the Companies entering into an engineering, procurement and construction (EPC) contract estimated to be \$23.7 million (Companies Ex. 5B, WMJ Ex. 4). The net of the over- and underrecovered revenues during Phase I will be subtracted from or added to the Construction Work in Process (CWIP) accounts for the IGCC facility which will be used in determining the IGCC Recovery Factor during Phase III (App. at 4, 5).

Phase II of the cost recovery mechanism also provides a bypassable temporary generation rate surcharge. Under the Companies' proposal, this surcharge would begin with the first billing cycle in 2007. The level of the surcharge would change each year, until the surcharge terminates after the last billing before the IGCC plant goes into commercial operation, which is currently estimated to occur in mid-2010 (Companies Ex. 2 at 5). Phase II costs are the carrying costs on the cumulative investment in the generating

facility (App. at 8). The carrying costs will include carrying costs deferred after the EPC contract is executed, which is expected to be in approximately July 2006, until the Phase II surcharges begin. As with the Phase I surcharges, the Phase II generation rate surcharges will be applied to the Commission-approved standard service rate schedules.

Phase III covers the operating life of the IGCC facility. Phase III costs are the actual capital costs, carrying costs and operating costs of the plant, all of which the Companies propose will be recovered through surcharges known as the IGCC Recovery Factor and IGCC Adjustment Factor. These surcharges will be included in the Companies' distribution rates once the plant is placed in commercial operation (App. at 10-11). The IGCC Recovery Factor will be based on a return of and a return on the investment in the IGCC facility as well as operating expenses, including fuel and consumables (Tr. I at 242). Under the Companies' proposal, the Commission would consider and approve the IGCC Recovery Factor after a hearing and the Companies' showing that it is reasonable. The IGCC Recovery Factor will be subject to future adjustment throughout Phase III for relevant changes, such as investment level, customer load, appropriate rate of return, life expectancy of the IGCC facility and operating expenses (Companies' Ex. 2, at 9).

The IGCC Recovery Factor would be adjusted annually to reflect changes in the costs of fuel and consumables since the time it was last set, as well as any prior over- or underrecovery of actual fuel costs, including purchased power and consumables. Once an IGCC Recovery Factor is determined, it would be compared to the then-current Commission-approved standard service offer. Based on that comparison an IGCC Adjustment Factor would be calculated to reflect the revenue difference between the Recovery Factor and the then-current Commission-approved standard service offer (*Id.*). The IGCC Adjustment Factor will be either a charge (if there is a revenue deficiency) or credit (if there is a revenue surplus) to the Companies' Commission-approved distribution rate schedules. The IGCC Adjustment Factor would be revised throughout Phase III as the Commission approves changes to the Companies' standard service offer and to the IGCC Recovery Factor (*Id.* at 11, 12).

#### Jurisdiction Issues

The Companies argue that when enacting Senate Bill 3 (SB 3), the General Assembly contemplated that, even at the end of the five-year Market Development Period (MDP), not all customers will have switched to a competitive retail electric service ("CRES") provider for generation service. To provide a safety net for those customers, the General Assembly imposed the POLR generation service obligation on electric distribution utilities:

After its market development period, an electric distribution utility in this state shall provide consumers...a market-based standard service offer of all competitive retail electric services

necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. (Section 4928.14(A), Revised Code).

The General Assembly also provided a safety net for those customers who did switch to a CRES provider that subsequently failed to supply generation service to those customers. Those customers would default back to their electric distribution utility (EDU) for the provisions of generation service:

After the market development period, the failure of a supplier to provide retail electric generation service to customers within the certified territory of the electric distribution utility shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service offer filed under division (A) of this section until the customer chooses an alternative supplier. (Section 4928.14(C), Revised Code).

The Companies aver that the Commission has recognized that Divisions (A) and (B) of Section 4928.14, Revised Code, require the Companies to fulfill POLR responsibilities after the MDP (RSP Order at 27). The Commission specifically noted in the RSP order that the Companies will be held as the POLR to consumers who either fail to choose an alternative supplier or who choose to return to them after taking service from another generation supplier (*Id.* at 37). Consistent with that obligation to serve, the AEP Companies assert that the Companies' responsibility extends beyond ensuring that they have the capacity to serve non-switching or returning customers whose requirements may be readily predicted, that they must also have sufficient capacity to meet unanticipated demand (*Id.*). The AEP Companies add that the Commission also has recognized that the EDU's POLR responsibility is one for which it incurs necessary costs and which warrants compensation. (RSP Order at 27; *In Re The Dayton Power and Light Co.*, Case No. 02-2779-EL-ATA, Opinion and Order, at page 28 (September 2, 2003); *In Re Ohio Edison Co et al.*, Case No. 03-2144-EL-ATA, Opinion and Order at pages 23-24 (June 9, 2004)).

The AEP Companies note that the Ohio Supreme Court (Court) has confirmed the EDU's POLR responsibility and the lawfulness of establishing a separate charge for recovering the costs of fulfilling that obligation (*Constellation NewEnergy, Inc. v. Pub. Util Comm'n*, 104 Ohio St. 3d 530 (2004)).

In the *Constellation NewEnergy* case, the Court considered the Commission's authorization of a "rate stabilization surcharge" ("RSS") that was imposed on all of a utility's customers. In affirming the Commission's order, the Court noted the Commission's explanation that the utility "will incur costs in its position as the provider of last resort ["POLR"], which costs would not be recoverable other than through the RSS . . .

. [T]he Commission does find that the existence of POLR costs makes it reasonable to apply the RSS to all customers" (*Id.* at 539). The Court also included the following observation in footnote 5 as part of its discussion:

POLR costs are those costs incurred by [the electric distribution utility] for risks associated with its legal obligation as the default provider, or electricity provider, of last resort, for customers who shop and then return . . . for generation service (*Id.* at footnote 5).

CSP and Ohio Power argue that it follows that the Court's decision in *Constellation NewEnergy* not only confirms the Companies' POLR obligation but also confirms the Commission's authority to establish a charge on all customers for the costs associated with meeting that obligation (AEP Reply Brief at 4).

The Companies contend that the Commission recognized this inherent authority, in its Opinion and Order approving the Companies' RSP, to empower EDUs to secure sufficient capacity to meet their POLR obligations (AEP Reply Brief at 2).

The Companies postulate the proposition that the EDU's capacity resources that are necessary to fulfill an EDU's POLR obligation may include generation assets that the EDU owns or controls, and that support for that proposition is found in Section 4928.17(E), Revised Code. That provision generally allows the EDU to divest its generation assets without the requirement of Commission approval pursuant to the provisions of Title 49, Revised Code, that might have applied prior to SB 3's enactment, such as Section 4905.48, Revised Code. Section 4928.17(E), Revised Code, specifically notes that the relief from the Commission's jurisdiction is subject to those provisions of Title 49 "relating to the transfer of transmission, distribution, or ancillary service provided by such generating asset." (emphasis added). Therefore, according to AEP, Section 4928.17(E), Revised Code, confirms that there is no blanket requirement in SB 3 that the EDU may not own generation assets and that Section 4928.17(E), Revised Code, confirms that there are circumstances in which ownership and control of generation assets is necessary to support the EDU's distribution function (*Id.* at 36, 37).

AEP reasons that the Commission must have relied upon the law's flexibility when it encouraged the Companies to move forward with plans for the construction of an IGCC facility in Ohio (RSP Order at 37-38). In doing so, according to the Companies, the Commission must have recognized that it is appropriate for an EDU to have access to a portfolio of capacity and energy responses in order to meet its post-MDP POLR obligations. However, under SB 3 and the Companies' RSP, none of the existing generation assets that AEP owns is dedicated to meeting that POLR obligation beyond the end of 2005 except to the extent that the Companies have voluntarily done for 2006-2008 in order to fulfill their RSP commitments (*Id.* at 38).

AEP maintains that access to owned generation that is dedicated to the POLR task during periods subsequent to the RSP is an appropriate component of a portfolio of capacity and energy resources that the EDU uses to satisfy its POLR obligation. AEP further contends that, because it will be owned by the Companies, the commitment of the IGCC plant's output to serve its POLR loads is highly reliable, provides a long-term hedge against the volatility in both the availability and pricing of wholesale capacity and energy supplies, and thereby help to forestall or mitigate market imperfections, to the benefit of the Companies' retail customers (AEP Reply Brief at 18-20).

The Staff concurs that an EDU may own generating facilities in Ohio, but that EDU's do have a limitation if they also provide a competitive service. In that situation, they must have an approved corporate separation plan. Section 4928.17(A), Revised Code. Staff notes that AEP's corporate separation plan was approved as part of the RSP (RSP Order at 35 and RSP Rehearing Entry issued March 23, 2005 at 12). Therefore, Staff argues that since there is no bar to the AEP Companies owning generating plant regardless of whether that plant is used to provide competitive or noncompetitive services, there is similarly no bar to building a generating plant (Staff Reply Brief at 8).

The next issue, according to Staff, is the extent to which the Commission may regulate that plant. Staff asserts that Section 4928.03, Revised Code, does state that retail electric generation service is competitive and, therefore, not subject to Commission regulation, but that this case is not about regulating retail electric generation service. Staff postulates that AEP's application concerns the provision of ancillary services, necessary to support the distribution function. Staff notes that it is the Commission's obligation to assure reliable distribution service, and therefore, noncompetitive retail electric services remain subject to the regulation of this Commission. Section 4928.03, Revised Code. Noncompetitive retail electric services are defined as components of retail electric service which neither have been declared competitive by this Commission (and no services have been declared competitive) nor declared competitive by statute. Section 4928.01(B), Revised Code. Ancillary service is not listed as competitive by statute and has not been declared competitive by the Commission (*Id.*). Staff concludes that since ancillary service meets neither test for being competitive, it is a noncompetitive retail electric service subject to the continuing regulation of the Commission (*Id.* at 3-7).

Ancillary service, as a regulated service, is defined as follows:

"Ancillary service" means any function necessary to the provision of electric transmission or distribution service to a retail customer and includes, but is not limited to, scheduling, system control, and dispatch services; reactive supply from generation resources and voltage control service; reactive supply from transmission resources service; regulation service; frequency response service;

energy imbalance service; operating reserve-spinning reserve service; operating reserve-supplemental reserve service; load following; back-up supply service; real-power loss replacement service; dynamic scheduling; system black start capability; and network stability service. Section 4928.01(A)(1), Revised Code.

Staff contends that these ancillary services require generating plant and, therefore, SB 3 contemplated that the utility would provide services from generating plant at least until such time as the Commission found that the market conditions had developed sufficiently to allow a declaration of competitiveness (*Id.* at 4).

Many of the intervenors have argued that Section 4928.14, Revised Code, requires a market-based standard service offer (SSO) in the post MDP, and that precludes the Commission from approving the Companies' application (FirstSolutions Brief at 4-7; see also Calpine's Brief at 4, 5 and note 3; and Baard Brief at 5, 6). IEU argues that AEP's application seeks authority from the Commission to reestablish a utility-friendly form of cost-of-service rate regulation for the purposes of establishing prices under Section 4928.14, Revised Code. IEU contends that the Commission found in the AEP RSP case that cost-of-service regulation has been displaced by a statutory scheme that makes SSO prices subject to the market, not cost-of-service regulation. IEU adds that, in the RSP Order, the Commission held in favor of the Companies' position that the Commission is powerless to set SSO prices after considering the cost of providing SSO service, including a return on and of generating plant, even where there is no market or information on which the Commission may reasonably rely to establish SSO prices. IEU concludes that, notwithstanding the Commission's belief in IGCC technology, or its cost, the Commission does not have the authority to substitute its judgment for the judgment of the General Assembly, to re-write the law or to bypass the requirements of current law (IEU Brief at 9-13). OEG offers that the Companies have proposed to provide a SSO based on the cost of the IGCC plant plus the market price of electric power, not on the market price of electric power alone as Section 4928.14, Revised Code, requires (OEG Brief at 3, 4). Constellation's theory is that the Companies should be required to offer the output of the IGCC plant at market-based rates (Constellation Brief at 20).

The intervenors further assert that the Commission does not have the authority to provide for recovery of the costs of an IGCC plant. FirstSolutions argues that this limitation follows expressly from Section 4928.05(A), Revised Code, which provides that competitive retail electric service "shall not be subject to supervision and regulation...by the public utilities commission under Chapters 4901 to 4909...4935...of the Revised Code..." (FirstSolutions Brief at 9-11). OCC also makes this argument, adding that "[t]he general application of Chapter 4909, Revised Code, ratemaking applies to distribution rate cases, not to the regulation of the generation function" (OCC Brief at 10, 11; see also Direct Energy Brief at 6, 7). In addition, OCC contends that there is no specific authority in Ohio



law for the Commission to adopt the Companies' cost recovery proposal for the IGCC plant (OCC Brief at 16-19). Finally, OCC states that the Companies' corporate separation plan, established pursuant to the requirements of Section 4928.17, Revised Code, mandates that any provision of generation service be through a fully separated affiliate. OCC submits, that although the Commission has granted a temporary waiver of the requirement for AEP to structurally separate their generation and distribution functions, compliance with Section 4928.17, Revised Code, cannot be reconciled with the long-term ownership commitment and cost recovery by the Companies to the generating plant that is the subject of this application (*Id.* at 8, 9).

We believe that the arguments that the AEP Companies' proposal violates Section 4928.14, Revised Code, are not on point because they mischaracterize the Companies' application. The application is not proposing that the Commission use cost-of-service ratemaking to establish pricing for the SSO that Section 4928.14, Revised Code, requires at the end of the MDP; the Companies' Application has no impact on the determination of AEP's market-based SSO. The Commission will establish AEP's SSO in accordance with the market-based standard of Section 4928.14, Revised Code, independent from the cost-recovery mechanism that the Companies have proposed for the IGCC plant. The proposed IGCC Recovery Factor and the IGCC Adjustment Factor are for the stated purpose of recovery of the costs of the IGCC plant. The issue is where the Commission's jurisdiction to grant cost recovery for the plant lies.

While Section 4928.03, Revised Code, states that retail electric generation service is competitive and, therefore, not subject to Commission regulation, this Application is not about regulating retail electric generation service, but about providing the distribution ancillary services. These services are subject to Commission regulation, as being necessary to support the distribution function. It is the Commission's obligation to assure reliable distribution service under Section 4928.02(A), Revised Code, and noncompetitive retail electric service are subject to the regulation of this Commission under Section 4928.05(A)(2), Revised Code. Noncompetitive retail electric services are defined as components of retail electric service which neither have been declared competitive by this Commission nor declared competitive by statute. The legislature declared retail electric generation, aggregation, power marketing, and power brokerage services to be competitive. Ancillary service is not listed as competitive under Section 4928.03, Revised Code. In fact, although it is included within the list of components which could be declared competitive by this Commission, it has not been declared competitive. Section 4928.05(A), Revised Code. Since ancillary service meets neither test for being competitive, it is a noncompetitive retail electric service subject to the continuing regulation of the Commission. Section 4928.01(B), Revised Code.

It is clear to this Commission that most of these ancillary services require generating plant. Thus, we find that SB 3 contemplates that the EDU would provide ancillary service from generating plant at least until such time as the Commission found that the market conditions had developed sufficiently to allow a declaration of competitiveness. The Commission could then relinquish its regulatory obligations as to retail ancillary service if there is effective competition and available alternatives. Section 4928.04(A), Revised Code. However, the POLR responsibility cannot be left unregulated, as it must be available if the market option fails. Therefore, we find that the statutory scheme of SB 3 does contemplate that the EDU would provide services from generating plant to provide "ancillary service" as it relates to POLR service. Consequently, there is no conflict between the market-based standard that Section 4928.14(A), Revised Code, requires for post-MDP SSOs and the Companies' proposal for assuring recovery of the costs of the IGCC plant.

Distribution reliability is a core concern of the Commission and the EDU's POLR function is a distribution-related service. The EDU is the only entity that can fill the POLR obligation. Neither a CRES provider nor a regional transmission organization (RTO), such as PJM, can provide POLR service. RTOs have a role at the wholesale, not retail level, to facilitate market transactions and indirectly promote reliability; but RTOs do not have direct responsibility to the customers of a particular EDU. Even though a CRES provider does have a retail relationship and direct responsibility to customers, the EDU still stands as the backup POLR provider and that standby duty is distinct from the CRES function of fulfilling day-to-day or minute-to-minute power requirements. The EDU is the entity that operates the distribution wires and these wires must remain charged for connected customers to receive service; the EDU must have capacity available ancillary to the provision of the distribution service.

In addition, the Ohio Supreme Court has confirmed the Commission's authority to establish a mechanism that assures recovery of costs that the EDU incurs in its position as the POLR. *Constellation NewEnergy, supra*. As was the case in the rate stabilization surcharge addressed in *Constellation NewEnergy*, the costs of the IGCC plant are costs that the Companies will incur in their position as POLR; they are costs that will be incurred to assist them in meeting their POLR obligation to all consumers in their certified territory; they are costs the recovery of which can be assured through the recovery mechanism that the IGCC Cost Recovery and Adjustment Factors provide; and the existence of these costs makes it reasonable to recover them through a POLR cost recovery mechanism that applies to all customers. Therefore, the Companies' proposed mechanism for assuring recovery of the IGCC plant's costs is comparable to the Rate Stabilization Surcharge that the Ohio Supreme Court confirmed when it affirmed the Commission decision in *Constellation NewEnergy, supra*. It is also comparable to the POLR charges that the Commission approved in the Companies' RSP Order, *supra*, at 27, 29, and 37. We find that this Commission has the authority to approve a mechanism that grants recovery of the costs of the IGCC plant.

### Conclusion

The AEP Application lays out a regulatory mechanism by which it might recover the costs of a coal-fired electric generating facility, to address the long-term reliability and security of the energy supply for the POLR obligation. However, the current proposal has no detailed schedules, budgets, designs, feasibility studies or financing options. AEP stated that it is presently negotiating a "wrap" agreement with GE/Bechtel that would provide for construction of, and performance guarantees associated with, the IGCC unit in exchange for AEP's agreement to pay a firm price (Tr. III at 268-269; Tr. II at 45). The AEP Companies recognize that they will need to subsequently bring a rate-case-style application before the Commission in a subsequent phase of litigation (Tr. II at 52). At issue in that subsequent phase will be the appropriate level of cost recovery as well as the method of recovery (rate design) (*Id.*).

The Staff stated its continuing interest in the clean coal technology of the IGCC plant. Staff witness Wissman documented AEP's aging generation fleet and the upcoming need for base load capacity. Discussing the increasingly stringent environmental requirements, Ms. Wissman concluded that "there does appear to be a need to invest in new clean coal technology given the aforementioned circumstances" (Staff Ex. 1 at 3). Staff witness Lambeck also observed that IGCC technology is "very attractive for high sulfur bituminous coals" and concluded that "the value of IGCC may be its importance as a hedging strategy - a way to keep using the nation's most abundant energy resource while providing options to deal with long-term environmental demands" (Staff Ex. 2 at 3-4). Staff argued that the Companies should be permitted to recover the relatively small costs, compared to the risks of not exploring further the IGCC proposal (i.e., the Phase I costs).

The AEP Companies contend that the proposed IGCC plant will advance the commercialization of IGCC technology and greatly reduce the emissions of nitrogen oxide, sulfur dioxide, carbon dioxide, particulates and mercury. The IGCC facility will be designed to incorporate carbon sequestration equipment for future installation (Tr. 3 at 270-271). It was generally agreed among the expert witnesses in this case that the key advantage offered by the IGCC technology is its potential to sequester carbon as part of the gasification process, in order to virtually eliminate the carbon dioxide emissions normally associated with a coal plant. Although it cannot be stated for certain whether carbon sequestration regulations will be passed during the operational life of the plant (or what the content and timing of such requirements may be), no expert witness stated a belief that carbon sequestration regulations would not be passed during the life of the plant. In addition, there are other technologies which anticipate removal of carbon dioxide in addition to IGCC (Staff Ex. 3 at 3-4); this technology choice should be explored and subjected to a test of economic comparison in the future phase of this proceeding.

As was clear from the public testimony offered at the Meigs County hearing, the local residents support the project for the jobs that the proposed facility will bring to the area. In addition to the direct economic and environmental impact of building an IGCC unit in Ohio, there are also significant secondary or indirect benefits including generation of new tax revenue and promotion of advanced technology. Therefore, the Staff recommends that the Commission allow the AEP Companies to recover the costs of the first phase of its proposal (the pre-construction costs). The Commission agrees that such economic benefits and technological advances are beneficial for the environment, the state of Ohio, the region, and the nation. Further, the Commission finds that, with the recent volatility of natural gas prices, the environmental cost of pulverized coal generation facilities, the age of the generating facilities in Ohio, the likely implementation of carbon sequestration legislation, the lead time required to place a generation facility in operation and the life-cycle of generation facilities, the diversification of electric generation facilities is wise. The Commission is not opposed to the consideration of an IGCC facility, and we, therefore, believe it is appropriate to take the initial step of approving Phase I cost recovery mechanism of the application.

It should be noted that the Companies have proposed that IGCC-related revenues collected through the Phase I surcharge would be tracked so as to reduce the total of additional generation increases that the Companies may request under the RSP. Therefore, with the approval of Phase I cost recovery, the Companies will have the funds to investigate, analyze, evaluate, and develop a realistic plan to address the very real concerns presented in this case. The Companies propose that the Phase I surcharge be collected for 12 consecutive months. Given that this Order directs the Companies to file additional information and anticipates that additional evidentiary hearings will be necessary, the Phase II and Phase III surcharges shall not become effective 90 days after the filing of the application as proposed by the Companies. Further, the Commission notes that the Phase I surcharge is bypassable. Therefore, the arguments raised by certain intervenors in regard to the non-bypassable nature of the proposed Phase III surcharge and the affect on competition are not applicable. Accordingly, the Commission will not address such arguments at this time.

OPAE argues that because the Companies' application will increase residential rates, approving the application will exacerbate a difficult financial situation for low income and percentage of income payment plan (PIPP) customers. OPAE requests that the Companies be required to fund a program to reduce the energy burden on CSP's and Ohio Power's low income customers (OPAE Brief at 15-21). The Commission will consider this issue in the next phase of the proceeding.

The Commission concludes that AEP should economically justify its construction choices, its technology choices, its timing, its financing structure, and the various other matters that have been left open in the current application. The reasonable costs to

develop that plan and supporting analyses should be recoverable from ratepayers as a proper cost of providing distribution service. In addition to the level of cost recovery and rate design issues, there are certain specific issues that the Commission believes should be addressed in the next phase of this proceeding which are enumerated below:

1. The details of how the output of the proposed facility would flow to the benefit of Ohio customers either through or despite any interconnection or pooling agreements.
2. The delineation of the means, including transportation, through which Ohio coal would be used in the project.
3. The multiple issues concerning the production and sale of by-products from an IGCC unit.
4. The Companies are aware of and have committed to pursue financing opportunities available under the Energy Policy Act of 2005. The Energy Policy Act of 2005 provides significant incentives for deployment of clean coal technologies, including IGCC. The Companies are directed to determine its eligibility for and develop a proposal to obtain federal, state and other funding and/or tax incentives available to construct, operate and maintain the proposed IGCC facility. The Companies shall include, as a part of the detailed information provided in the next phase of this proceeding, a list of the potential funding sources considered and an explanation of whether or not such sources of funding were pursued by the Companies.
5. The Companies' consideration and evaluation of investors in the proposed IGCC facility.

Adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service cannot be provided to consumers in Ohio unless there is a functioning distribution system. The Commission's decision in this case is about ensuring the long-term viability of the distribution system and adequate capacity for AEP's POLR obligation. The AEP Companies should be permitted to recover the reasonable costs of further developing and detailing their proposal, to be considered by this Commission in a future proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) CSP and Ohio Power are electric distribution utilities as defined in Section 4928.01(A), Revised Code, and, therefore, the provider of last resort to electric consumers in their respective service areas.
- (2) On March 18, 2005, the Companies filed an application for approval of a cost recovery mechanism for a proposed IGCC electric generation facility. The Companies propose a three phase cost recovery process to commence prior to the construction of the IGCC facility and continue during the operating life of the IGCC facility.
- (3) Fourteen entities filed for intervention in this proceeding. All requests for intervention were granted.
- (4) Local public hearings were held in Hilliard, Canton, and Pomeroy, Ohio. The evidentiary hearing was held in Columbus, Ohio, August 8, 2005 through August 16, 2005.
- (5) OCC's request to overturn the Attorney Examiners' ruling and place certain confidential and proprietary information in the public record should be denied.
- (6) The confidential, proprietary information filed under seal in this proceeding shall remain under seal for 18 months from the date this order is issued.
- (7) The Commission is vested with the authority to oversee distribution ancillary services, pursuant to Section 4928.01(A), Revised Code, and vested with the obligation to ensure Ohio consumers with an adequate, reliable and reasonably priced electric service, pursuant to Section 4928.02(A), Revised Code.
- (8) The EDU is the POLR for consumers who either fail to choose an alternative supplier or return from another supplier.
- (9) The Commission has the authority to establish a charge for recovering the costs of fulfilling the POLR obligation.

- (10) The AEP Companies should provide additional detailed information, as enumerated above, for the Commission to consider the Companies' proposed Phase II and Phase III costs recovery.

ORDER

It is, therefore,

ORDERED, That OCC's request to overturn the Attorney Examiners' ruling and place certain confidential and proprietary documents in the public record is denied. The unredacted documents filed under seal in this phase of the proceeding shall remain under seal for 18 months after the date this order is issued. It is, further,

ORDERED, That should the AEP Companies and/or GE/Bechtel want the unredacted documents to remain under seal after the 18 months have elapsed, the Companies or GE/Bechtel must file a motion for a protective order pursuant to Rule 4901-1-24(F), O.A.C., in this docket. It is, further,

ORDERED, That the Companies' request for a cost recovery mechanism is granted, as modified herein, as to Phase I preconstruction costs. It is, further,

ORDERED, That the Companies file, for Commission approval in this docket, tariffs and customer notices to recover costs associated with Phase I. It is, further,

ORDERED, That the Companies' request for a cost recovery mechanism as to the proposed Phase II and Phase III cost is deferred to the next proceeding. It is, further,

ORDERED, That the Companies submit in this case the additional detailed information set forth above for the Commission's consideration. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon the AEP Companies and their counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



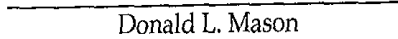
Alan R. Schriber, Chairman



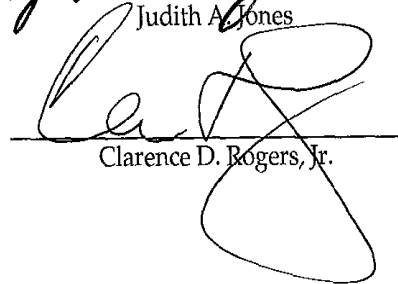
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Judith A. Jones



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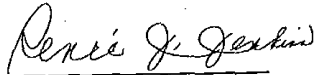


Clarence D. Rogers, Jr.

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Renee J. Jenkins  
Secretary