

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company for Authority to)
Recover Costs Associated with the)
Construction and Operation of an)
Integrated Gasification Combined Cycle)
Electric Generating Facility.)

Case No. 05-376-EL-UNC

AMERICAN MUNICIPAL POWER-OHIO, INC.'S
POST-HEARING REPLY BRIEF

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**BEFORE
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**AMERICAN MUNICIPAL POWER-OHIO, INC.'S
POST-HEARING REPLY BRIEF**

I. Background

American Municipal Power-Ohio, Inc ("AMP-Ohio"), headquartered in Columbus, Ohio, is a service organization that serves the needs of its 110 member municipal electric utilities. 81 of Ohio's 86 municipal electric utilities are AMP-Ohio members, as well as 2 public power systems in West Virginia, 25 in Pennsylvania, and 2 in Michigan. AMP-Ohio has numerous members that are located within the service footprint of Columbus Southern Power Company and Ohio Power Company (collectively, "Companies" or "AEP").

AMP-Ohio purchases, on behalf of its members, electric power and energy on the open market and from AEP affiliates, and schedules it over facilities owned, operated, and/or controlled by AEP. AMP-Ohio, on behalf of its members, is also actively engaged in the generation, procurement, and wholesale sales of power in the regional transmission organization service areas, including Ohio. The Companies' application in this proceeding seeks to establish a new procedure pursuant to which its electric distribution companies may own and fully recover through their regulated rates the full cost of constructing, maintaining and operating a generation

facility. AMP-Ohio has devoted resources to studying the installation of coal-based generating facilities in the region, including both integrated gasification combined cycle (“IGCC”) and pulverized coal generating facilities. If granted, AEP’s application will have a profound effect on the generation market in Ohio and surrounding areas. Thus, AMP-Ohio intervened in this proceeding on behalf of its members.

II. Discussion & Comments

Parties to this proceeding may disagree over whether Ohio’s express statutory language and/or legislative intent permits the Commission the flexibility to interpret Ohio law in a manner that would allow the Commission to approve the Companies’ application to own and recover costs associated with a generation asset. That issue is for this Commission and, perhaps, the Ohio Supreme Court to ultimately decide based on the law and the voluminous arguments on the record on that subject. AMP-Ohio takes no position in this case on the subject of whether or not SB 3¹ permits the ownership and operation of generation assets by a Commission-regulated electric distribution utility (“EDU”).

Regardless of Ohio’s statutory policy, Staff has indicated in this case that it believes that there is “a need to invest in new clean coal technology,”² and “[S]taff supports the deployment of new base load coal generation.”³ Staff notes that the Companies’ “Provider of Last Resort mechanism is one possible way to accomplish this end,” although Staff warns that “[i]t is also important, however, in a competitive environment not to preclude opportunities for any entrant

¹ Am. Sub. Senate Bill No. 3 (123rd) General Assembly.

² See Prepared Testimony of Kim Wissman at p. 6.

³ See *id.* at p. 7.

into the market.”⁴ Recognizing the harm to the marketplace resulting from prejudicial incentives to Commission-regulated EDUs, Ms. Wissman strongly recommended that the Commission “not preclude opportunities for others to do the same,”⁵ In this regard, Ms. Wissman testified that:

[w]hat the Staff is suggesting is that in the Commission deliberations they need to make sure that they don’t give AEP some advantage by providing this opportunity *without looking at some potential opportunities for others that wish to invest.*⁶

Further, Ms. Wissman testified that the Commission should “be sure and consider all those potential alternatives”⁷ so that others that desire to invest in new base load generation in Ohio “be afforded some mechanism that would be commensurate with” Companies’ request.⁸

As noted above, AMP-Ohio desires to invest in new base load generation in Ohio and/or in this region, and has devoted considerable resources to studying such an investment, including the use of the IGCC technology. AMP-Ohio and AEP have had numerous discussions going back at least to 2002 concerning entering into a relationship with respect to new base load generation projects to meet AEP and AMP-Ohio’s long-term power supply needs, including the use of IGCC technology. Consistent with those prior discussions, on May 18, 2005, AMP-Ohio informed AEP that it desires to participate in the proposed IGCC facility on a small scale, up to 50 MW. *See Exhibit A hereto*⁹ As Exhibit A indicates, AMP-Ohio desired to partner with AEP

⁴ *See id.*

⁵ *See* Tr. Vol V at p. 164 (Wissman).

⁶ *See id.* at 200-201 (emphasis added).

⁷ *See id.* at 165.

⁸ *See id.* at 164-165; *see also id.* at 201.

⁹ Portions of the attachment to Exhibit A have been redacted, because AEP marked its letter confidential. AMP-Ohio does not believe that the contents of AEP’s letter contains or would otherwise qualify for privileged treatment. Thus, AMP-Ohio does not object to AEP making the contents of that letter public. To the extent AEP argues that Exhibit A is extra-record evidence, AMP-Ohio respectfully requests the Commission to accept Exhibit A and discussions surrounding it as arguments and comments for the Commission’s consideration. AMP-Ohio respectfully submits that AEP is not prejudiced by such discussion and disclosure of Exhibit A.

to construct and operate the proposed IGCC base load facility because:

[w]e believe our participation would offset some of the risk concerns of this project both for AEP and its Ohio consumers. It would also allow AMP-Ohio to support a project that we truly believe is a key to the local economic development of Ohio and that will hopefully establish IGCC as a proven commercial technology to utilize Ohio coal. AMP-Ohio has completed extensive research into IGCC technology and has ready access to the capital markets. We would be a strong partner. AMP-Ohio's Board of Trustees has approved this letter.

For some time after transmittal of the above-mentioned letter to AEP, AMP-Ohio pressed AEP for a meeting to discuss the matter. That meeting finally took place on July 2, 2005, among Marc Gerken, P.E., AMP-Ohio's President, and AEP representatives Messrs. Michael Morris, J. Craig Baker, and others. At that meeting AEP promised AMP-Ohio a "prompt" written response. No response from AEP was forthcoming during the course of the recently-held hearing in this proceeding or prior to filings of initial briefs. In September, Mr. Gerken instructed AMP-Ohio's counsel, John W. Bentine, to contact AEP and ask for an answer. AEP finally responded on September 21, 2005, via telephone, and indicated that further discussions were "premature." To date, AMP-Ohio has not received a written response from AEP. Inasmuch as AEP did not respond to AMP-Ohio until after the hearing, AMP-Ohio was unable to address any related issues on the record.

Prior to the Commission's order in its Rate Stabilization Plan case¹⁰ and the instant cost-recovery application to the Commission, it appeared that AEP was actively looking for partners to share in the risk of developing base load generation facilities. It now appears that AEP is no longer interested in partners that would mitigate the risk to AEP's shareholders and customers through their participation in the establishment of IGCC as a viable clean-coal technology for the benefit of Ohio consumers generally.

¹⁰ Case No. 04-169-EL-UNC.

AMP-Ohio submits that the Commission's approval of AEP's application permitting it to pass on to Ohio consumers the risks and costs of the IGCC facility would afford AEP a substantial subsidy and would unjustly discriminate against other developers and owners of base load generation facilities¹¹ – unless, as Ms. Wissman also testified, other interested developers of base load generation, such as AMP-Ohio, are permitted a comparable opportunity to invest in this or other incentivized generation projects.¹² AMP-Ohio respectfully submits that its requested participation in this project is exactly such a comparable opportunity to invest in constructing base load generation facilities for the benefit of Ohio consumers.

III. Conclusion

Commission Staff's initial brief takes the position that "the company should be permitted to recover the relatively small costs, compared to the risks that Staff sees, of exploring further the IGCC proposal (i.e., the phase I costs)," and that the "other issues of approving an actual proposal to build the plant and related cost recovery matters should be left for separate determination in the near future," presumably in a subsequent hearing.¹³ Should the Commission accept Staff's suggestion and approve AEP's phase I cost recovery request, it should as part of any subsequent hearing direct AEP to present testimony that explains why AEP has not accepted AMP-Ohio's request to participate in the project, as well as generally request testimony that explores what incentives and comparable opportunities might be made available to other market participants that desire to invest in base load generation in Ohio. To the extent the Commission approves AEP's request, the Commission should make its approval contingent on AEP entering

¹¹ See Tr. Vol V at p. 163.

¹² See *id.* at 200-201.

¹³ See Staff's post hearing brief at p. 4.

into good faith negotiations with AMP-Ohio, so that AMP-Ohio may acquire, on comparable terms and conditions, up to a 50 MW participation in the project.

Respectfully submitted,



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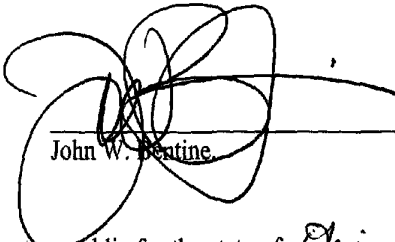
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Attorneys for American Municipal Power-Ohio, Inc.


AFFIDAVIT

John W. Bentine, with the law firm of Chester, Willcox & Saxbe LLP, as General Counsel for AMP-Ohio, hereby affirm and verify that the facts surrounding AMP-Ohio's request to AEP to participate in the proposed IGCC facility as set forth in the foregoing pleading are true and accurate to the best of my knowledge and belief.



John W. Bentine.

Sworn to and subscribed before me, a notary public for the state of Ohio on this
the 6th day of October 2005.



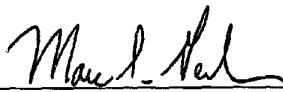
Notary Public by MICHAEL RODGERS, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration
date, Section 147.03 O.R.C.

My commission expires: _____



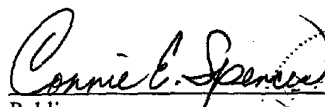
AFFIDAVIT

Marc Gerken, P.E., as President of AMP-Ohio, hereby affirm and verify that the facts surrounding AMP-Ohio's request to AEP to participate in the proposed IGCC facility as set forth in the foregoing pleading are true and accurate to the best of my knowledge and belief.

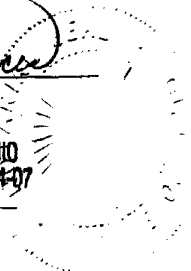


Marc Gerken, P.E.

Sworn to and subscribed before me, a notary public for the state of Ohio on this
the 6th day of October 2005.

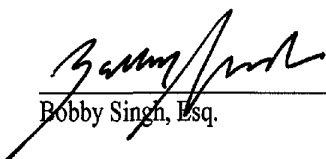


Notary Public
CONNIE E. SPENCER
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 07-14-07
My commission expires: _____



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing American Municipal Power-Ohio, Inc.'s Post-Hearing Reply Brief was served upon the following parties of record or as a courtesy, via ordinary U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission, on October 7, 2005.


Bobby Singh, Esq.

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American Municipal
Power-Ohio, Inc.

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BEACH CITY
BERLIN, PA
BLANCHESTER
BLOOMDALE
BOWLING GREEN
BRADNER
BREWSTER
BRYAN
CAREY
CELINA
CLEVELAND
CLYDE
COLUMBIANA
COLUMBUS
CUSTAR
CUYAHOGA FALLS
CYGNET
DESHLER
DOVER
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WELLINGTON
WESTERVILLE
WHARTON
WOODSFIELD
WOODVILLE
WYANDOTTE, MI
YELLOW SPRINGS

May 18, 2005

Mr. Michael Morris
American Electric Power
1 Riverside Plaza
P.O. Box 16631
Columbus, OH 43216-6631

Re: AEP/IGCC Project

Dear Mr. Morris:

Over the past four years, our organizations have had several conversations relative to potential partnering on a new baseload generation project.

In 2002, our organization was seriously considering a DOE funding application to retrofit our Richard H. Gorsuch Generating Station with IGCC technology in conjunction with a major oil company. American Electric Power (AEP) expressed an interest in the project and attended a meeting at our office; however, the major oil company ultimately didn't pursue the project.

Now, AMP-Ohio and its members are in the final stages of completing a developmental study for a new baseload generating facility utilizing clean coal technology. Our plans are to initiate permitting the last quarter of 2005. As part of this process, we undertook an extensive request of interest process with third parties regarding potential partnering or power purchase opportunities. Our early conversations with AEP on this front led to the attached letter being issued and a follow-up meeting taking place. At that meeting, AEP officials indicated that they had no immediate plans for base load capacity.

This correspondence is intended to inform you that AMP-Ohio and its members are interested in participating in your recently announced IGCC project on a small scale (50 MW or less).

We believe our participation would offset some of the risk concerns of this project both for AEP and its Ohio consumers. It would also allow AMP-Ohio to support a project that we truly believe is a key to the local economic development of Ohio and that will hopefully establish IGCC as a proven commercial technology to utilize Ohio coal. AMP-Ohio has completed extensive research into IGCC technology and has ready access to the capital markets. We would be a strong partner. AMP-Ohio's Board of Trustees has approved this letter.

We look forward to hearing from you about the potential partnership.

On Behalf of the Members,

Marc S. Gerken, P.E.
President
AMP-Ohio, Inc.

MSG/cs

cc: Michael Weadock, Chairman/AMP-Ohio Board of Trustees

c:/connie/marc/aep letter 51105

MSG/LHRAN

EXHIBIT A





AEP: America's Energy Partner™

PRIVELEGED AND CONFIDENTIAL

March 19, 2004

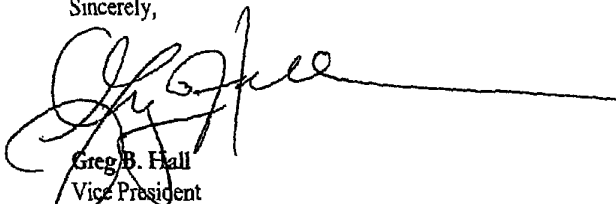
American Municipal Power-Ohio, Inc.
ATTN: Patrick W. Frazier
Vice President Energy Operations
2600 Airport Drive
Columbus, OH 43219
Phone: (614) 337-6222

RE: AMP-Ohio – Request of Interest

Dear Pat,

This portion has been redacted, because AEP marked this letter confidential. However, AMP-Ohio will not object to AEP publicly disclosing the contents of this document.

Sincerely,



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Vice President
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gbhall@aep.com