

IN THE SUPREME COURT OF OHIO
On Appeal From the Public Utilities Commission of Ohio

Industrial Energy Users – Ohio, et al.	)	Case No. 06-1594
)	
Appellants,)	
	)	Appeal from the Public
v.	)	Utilities Commission of Ohio
	)	Case No. 05-376-EL-UNC
The Public Utilities Commission)	
of Ohio,)	
)	
Appellee.)	

**REPLY BRIEF AND REPLY APPENDIX OF APPELLANT,
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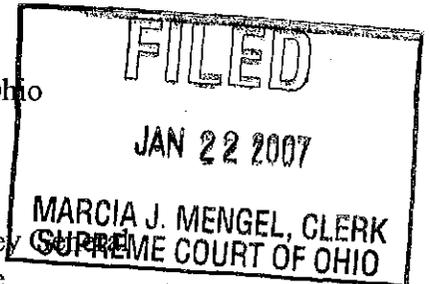
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I. STATEMENT OF FACTS AND CASE

A. Introduction

The order (“Order”¹) of the Public Utilities Commission of Ohio (“PUCO” or “Commission”) in the case below requires more than 1.3 million customers of the Columbus Southern Power and Ohio Power Companies (“Companies,” subsidiaries of American Electric Power Company, and collectively “AEP”) to subsidize AEP’s preliminary research into integrated gasification combined cycle (“IGCC”) generation technology. The Order states that the Companies failed to justify their plans, and states that “the current proposal has no detailed schedules, budgets, designs, feasibility studies or financing options.” Order at 19 (Appx. 45.). Nonetheless, AEP’s customers will pay a total of \$24 million in rate increases by mid-2007.

The instant case involves an awkward and unprecedented decision based upon mixing distribution and generation service rationales for rate increases. The Order argues that AEP’s “Application is not about regulating retail electric generation service, but about providing distribution ancillary services.” Order at 17 (Appx. 43.); see also PUCO Merit Brief at 5. AEP’s application (“Application”) never mentioned “distribution ancillary services,” and the evidentiary record contains no mention of such services.² The PUCO’s Entry on Rehearing³ did not clearly state whether it had approved distribution or generation rate increases, but the Order stated that

¹ *In re AEP IGCC Proposal*, PUCO Case No. 05-376-EL-UNC, Opinion and Order (April 10, 2006), 2006 Ohio PUC Lexis 249.

² As noted in OCC’s Merit Brief, the PUCO Staff first mentioned distribution ancillary services in its post hearing brief. OCC Merit Brief at 23. This fact was raised in applications for rehearing, but the PUCO did not respond to the argument except to refer to “six pages of discussion” in the Commission’s Order that do not address the argument. *In re AEP IGCC Proposal*, Case No. 05-376-EL-UNC, Entry on Rehearing at 8, ¶ (24) (June 28, 2006), 2006 Ohio PUC Lexis 372 Appx. 17.) (“Entry on Rehearing”).

³ Entry on Rehearing at 16 (Appx. 25.).

AEP was awarded \$24 million “as a proper cost of providing *distribution* service.” Order at 21 (Appx. 47.) (emphasis added). The OCC and other appellants based a portion of their arguments on the belief that the Commission increased distribution rates based upon AEP’s plans to build generators. See, e.g., OCC Merit Brief at 19-34. However, the PUCO’s Merit Brief states that the Commission approved a “12-month bypassable *generation surcharge* applied to the Companies’ standard service rate schedules approved in their rate stabilization plan proceeding.” PUCO Merit Brief at 5, citing the Order at 11 (Appx. 37.) (a summary of AEP’s Application, not the PUCO’s determinations⁴) (emphasis added). The PUCO apparently argues that a need exists for additional *distribution* services that resulted in the approval of higher *generation* rates. What emerges from these separate attempts to characterize this \$24 million increase is that the Commission itself is confused and does not know how to appropriately explain it. One cannot put a square peg into a round hole and that is what the Commission is attempting to do here by finding some place in the law where it can argue that the cost increase is lawful.

Since the PUCO bases its recent arguments before this Court upon an increase in generation rates, the OCC’s Reply Brief focuses on rebutting the PUCO’s most recent assertion that it properly increased generation rates.

B. Supplemental Statement of Facts

The OCC incorporates the facts as stated in its Merit Brief filed on November 13, 2006, as supplemented herein.

⁴ The citation to AEP’s Application to explain the PUCO’s determination is curious since the PUCO’s Merit Brief states that “the utilities’ intent in making the filings is of no consequence and does not control the Commission. * * * Ultimately it is the intent of the Commission which is at issue in this appeal, not that of the utility.” PUCO Merit Brief at 17. The OCC read page 11 of the Order as a summary of AEP’s Application, not as a statement of the Commission’s determinations.

The first mention of an IGCC generator in the PUCO's case law is an order in AEP's post market development period ("MDP"⁵) service case. *In re AEP Post-MDP Service Case*, Case No. 04-169-EL-UNC, Order (January 26, 2005) (Supp. 180.) ("Post-MDP Service Order" in the "*Post-MDP Service Case*"), 2005 Ohio PUC Lexis 32; vacated and remanded, 109 Ohio St.3d 511, 2006-Ohio-3054; reinstated in Case No. 04-169-EL-UNC, Entry at 2, ¶(4) (August 9, 2006) (Supp. 221.), 2006 Ohio PUC Lexis 443. The PUCO's last word on the subject, prior to appellants' appeals, stands in stark contrast to AEP's statement that "Phase I recovery [at issue in the appeals] is not dependent on the eventual construction and operation of the Companies' proposed IGCC facility." AEP Merit Brief at 44. The PUCO stated:

[W]e find 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.

Entry on Rehearing at 16 (Appx. 25.) (emphasis added) (quoted in OCC Merit Brief at 10).

Contrary to AEP's argument, the rate increases were not granted to develop a "realistic plan to address the Companies' POLR obligation" (AEP Merit Brief at 44), but covered AEP's already incurred (i.e., "sunk costs") research spending on its plan to construct a new generator. Company Ex. 5b at 5 and WMJ Exhibit 4 (Jasper Supplemental) (R. Appx. 7.) (demonstrating the funds that had been expended by the time of the Entry on Rehearing).

In addition to the merit briefs of appellees, amicus curiae briefs were filed on December 22 and December 26, 2006 by Murray Energy Corporation ("Murray") and the International

⁵ Pursuant to R.C. 4928.40(A), the market development period for AEP ended no later than December 31, 2005. (Appx. 111.).

Brotherhood of Electric Workers Local #972, et al. (“Locals #972, #168, and #787”), respectively. These briefs, amicus curiae, will only be addressed in this subsection.

Murray is apparently a coal producer, who did not intervene in the case below. Murray attaches an appendix to its brief that does not contain any material from the evidentiary record in this case and should therefore be stricken or ignored. Murray’s amicus curiae brief focuses on the role of coal mining in the Ohio economy (e.g., Murray Brief at 2). However, as the record demonstrates, AEP has not made any commitments, or even statements, to the fact that its proposed plant would use Ohio coal. Tr. Vol. I at 65 (AEP Witness Walker) (R. Appx. 6.). Murray’s brief fails to contribute to the main issue raised by the appellants in this case: the illegality of a regulatory cost recovery mechanism to support AEP’s preliminary research activities into a particular generation technology under a legal framework that has largely divested the PUCO from authority over generation service.

Locals #972, #168, and #787 made an appearance in the case below; however, the group did not participate in the hearings, and only submitted a brief to the Commission that never referenced any legal authority. The Supplement for Locals #972, #168, and #787 contains materials from the local public hearings, but the remainder is not part of the evidentiary record and should therefore be stricken or ignored. Its amicus curiae brief also fails to cite any legal authority.

II. ARGUMENT

Proposition of Law No. 1 [Responsive to PUCO Proposition of Law III]:

The PUCO Order Should Be Reversed When It is Not Based Upon Findings of Fact and is Against the Manifest Weight of the Evidence.

In its Merit Brief, the PUCO states that its “reasoning [was] perfectly clear” in its Order; however, the Merit Brief provides the first statement that the Commission approved an increase in generation rates. PUCO Merit Brief at 5. The Order stated that AEP was awarded \$24 million “as a proper cost of providing distribution service.” Order at 21 (Appx. 47.).

In its Merit Brief, the Commission asks an important question regarding the definition of a “distribution ancillary service” that it fails to answer using any portion of the evidentiary record. PUCO Merit Brief at 13. The Commission’s response to its question quotes from R.C. 4928.01(A)(1) (PUCO App. 66.), not from the record in the case below, which is silent on the subject. PUCO Merit Brief at 13. The statute mentions both transmission and distribution services, and the specific nature of the ancillary service connected with the distribution function is not identified. Indeed, the services elaborated upon by the PUCO are part of the transmission-related services. The Commission never explains how its concept of ancillary service “function[s] . . . are required to support and assure the reliability of the distribution system.” PUCO Merit Brief at 22.

The PUCO expands upon its unexplained and unexamined premise that it is concerned about distribution ancillary services by claiming that its “decision in this case is about ensuring the long-term viability of the distribution system and adequate capacity for AEP’s POLR obligation.” Order at 21 (Appx. 47.), cited in PUCO Merit Brief at 22-23. By relying upon the “POLR obligation,” as previously examined in the OCC’s Merit Brief, the PUCO relies upon

imprecise terminology. “POLR” (i.e., Provider of Last Resort), was the subject of the Post-MDP Service Order and is defined in Ohio Adm.Code 4901:1-35-03 (R. Appx. 17.):

Provider of last resort is the statutory responsibility of the EDU to provide electric supply service to its customers on a comparable and nondiscriminatory basis within its certified territory. This responsibility may be fulfilled by the EDU providing standard service offer and by providing all other retail electric service necessary to maintain essential electric service to consumers.

The “responsibility” referred to is the same responsibility stated in R.C. 4928.14(A) (Appx. 104.). A distribution utility meets this responsibility by offering a “market-based standard service offer” that may be fulfilled (pursuant to R.C. 4928.14(B) and PUCO’s approval of an EDU request) by “the competitive bidding option.” R.C. 4928.14(B) (Appx. 104.). In both cases, R.C. 4928.14 provides that customers receive service priced in a market for *generation* service. Rather than ensuring the viability of the distribution system, the PUCO’s Order rests upon transmission services that are ancillary to the generation function needed to meet the utility’s POLR responsibilities.

The PUCO’s Merit Brief departs from the evidentiary record when it states the need to encourage IGCC technology. The PUCO states: “[N]othing is being done about this [plant obsolescence] problem.” PUCO Merit Brief at 26. The evidentiary record in this case alone reveals plans by Beard Generation (Beard Exhibit 1 at 2 (Baardson) (R. Appx. 14.)) and Lima Energy (Tr. Vol. V at 200-202 (Wissman) (R. Appx. 2-4.), also OCC Exhibit 2 at 8-9 (Haugh) (R. Appx. 11-12.)) to develop IGCC facilities in Ohio without forcing electric customers to pay

upfront for plant development costs.⁶ At the hearing, the PUCO Staff “suggest[ed] . . . that in the Commission deliberations they need to make sure that they don’t give AEP some advantage.” Tr. Vol. V at 200-201 (Wissman) (R. Appx. 2-3.). The favorable rate treatment given to AEP’s project places these other projects at risk and gives AEP an undue market advantage. By assuring recovery from ratepayers, AEP’s plant may be viewed as less risky, thereby assuring them a better interest rate to cover the cost of the plant. See, e.g., Beard Exhibit 1 at 2-4 (Baardson) (R. Appx. 14-16.).

The PUCO’s Merit Brief also departs from the evidentiary record when it states the relationship between the rate increases and AEP’s planning process. The PUCO states that the Commission “ordered AEP to develop a plan to address this concern and to justify that plan” and “allowed recovery of the funds needed to address this concern.” PUCO Merit Brief at 29-30. The PUCO stated that it expects AEP to provide additional information regarding the use of its generation pooling agreements, the use of Ohio coal, the sale of by-products from an IGCC plant, eligibility for tax and other incentives regarding an IGCC plant, and consideration of other investors in a future proceeding. Order at 21 (Appx. 47.). However, most (if not all) of the \$24 million in research costs recovered in rates had already been spent by June 2006 when the Commission issued its Entry on Rehearing. Company Ex. 5b at 5 and WMJ Exhibit 4 (Jasper Supplemental) (R. Appx. 7.). The PUCO did not set in motion a study that would be paid for by customers. Instead, the PUCO required customers to pay for AEP’s sunk research costs.

⁶ Nonetheless, if the Commission has a concern about power plant development, there are more appropriate ways to deal with the issue such as through a Commission ordered investigation where the electric companies would file information indicating their demand and supply projections over the next fifteen to twenty years and what plans they have to meet that demand. Another solution would be to remove the barriers to competition that have kept suppliers from supplying a portion of the demand.

The Order awards millions of dollars to the Companies despite the fact that moving forward with any IGCC facility has not been justified to satisfy any purpose. The Order states the manifest weight of the evidence in the case below:

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.

Order at 20 (Appx. 46.), also Entry on Rehearing at 15 (Appx. 24.). Therefore, AEP failed to meet its burden of proof regarding rate increases (R.C. 4909.19 (Appx. 97.)). An increase in rates to support the Companies' favored IGCC technology, despite the lack of evidentiary support for the technology choice relative to other alternatives, violates Ohio law and demonstrates a willful disregard for the PUCO's duty.⁷

Proposition of Law No. 2 [Responsive to PUCO Proposition of Law II]:

The PUCO Lacks Authority to Increase Rates that Customers Pay to an Electric Distribution Utility so that the Utility May Construct a Generating Facility.

A. As a creature of statute, the PUCO may not approve the collection from customers of generation-related costs that are outside the PUCO's jurisdiction.

The PUCO fails to recognize the extraordinary impact that could follow if the Court affirms the PUCO's reach for additional authority. The PUCO states that the Order "could not have been more clear" (PUCO Merit Brief at 15), and quotes page 17 of the Order (Appx. 43.):

While Section 4928.03, Revised Code, states that retail electric generation service is competitive and, not subject to Commission regulation, this Application is not about

⁷ AEP's argument that deference should be given to the Commission with regard to specialized issues fails to demonstrate that the PUCO's decision was in fact supported by the evidentiary record and meets the standard of review specified by AEP. AEP Merit Brief at 14-15, 25. The standard of review supported by AEP allows a PUCO Order to be reversed on appeal where the record demonstrates that the order was against the weight of the evidence and is so unsupported by the record to show misapprehension, mistake, or willful disregard of duty. *Id.* Such situation exists in the case at bar.

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.

The PUCO based an increase in generation rates upon functions of the electric service that are ancillary to “transmission or distribution service” (R.C. 4928.01(A)(1) (PUCO Appx. 66.)), without any explanation regarding the distribution services provided and without any increase in distribution rates. A vital role is played by this appeal in Ohio’s regulatory history because no legal basis regarding the PUCO’s jurisdiction appears to distinguish the award of \$24 million in preliminary research costs in the case below from the eventual approval of the \$1.3 billion for financing and construction of an IGCC facility that was requested by AEP in its original Application.⁸

The PUCO’s Merit Brief does not address the OCC’s concerns over the lack of limitation to the PUCO’s reasoning regarding the Commission’s jurisdiction. See, e.g., OCC Merit Brief at 33. The PUCO states that the Commission has authority to approve “limited amounts of coal-fired generation that the legislature had always intended.” PUCO Merit Brief at 15. No reason exists under the rationale used in the Order for the PUCO’s claimed jurisdiction to be limited to AEP’s IGCC plant, or limited to AEP’s generating plants. Neither the PUCO’s Merit Brief nor AEP’s Merit Brief respond to OCC’s argument (OCC Merit Brief at 13) that the Commission permitted three electric distribution utilities affiliated with FirstEnergy Corp. to corporately separate themselves from all their generating plants without expressing any concern over “distribution

⁸ Relief from the increased rates, at least eventually, will be provided upon failure of AEP to conduct a “continuous program of construction of the proposed facility within five years of the date of this entry on rehearing.” Entry on Rehearing at 16 (Appx. 25.).

ancillary services.”⁹ Left undisturbed, the Order could turn R.C. Chapter 4928 on its head by permitting PUCO regulation over the generation function of electric utilities in Ohio based upon the “ancillary services” that were not defined and never discussed at the hearing.

The PUCO’s Order states an after-the-hearing rationalization that was issued to advance an agenda that cannot be reconciled with Ohio law. AEP has picked up on the Commission’s unlawful rationalization in its Order and attempts to further mold the new concept, using it for justification of their Application as if the argument existed before or during the hearing process. AEP Merit Brief at 19-22, 26-30. Nonetheless, the law is clear. The PUCO does not have jurisdiction over the generation services that would be provided if AEP’s IGCC research results in the construction of a power plant. The Order disingenuously characterizes IGCC development as distribution-related, and the PUCO’s latest explanation is that the rates increased were for generation service.¹⁰ The PUCO approved additional charges for generation service that are illegal.

B. The PUCO may not order an increase in rates that customers pay based upon plans to develop a generating plant where the order, without explanation, fails to respect the PUCO’s own precedents.

The PUCO’s Merit Brief appears to recognize the need for consistency in the Commission’s actions, yet incredibly states that the order in AEP’s *Post-MDP Service Case* and

⁹ The PUCO’s Merit Brief states that “[i]ndeed, the system collapses if the Commission fails in this duty [to address distribution reliability].” PUCO Merit Brief at 22. However, the customers located in Toledo, Cleveland, and Akron, where the FirstEnergy distribution companies provide service without owning any generators, continue to burn their morning toast. AEP also makes the irrational leap that because a POLR function is necessary, distribution companies must be allowed to own generating plants as an ancillary service. AEP Merit Brief at 16-17. However, such a conclusion cannot be reconciled with the law. See, e.g., R.C. 4928.17 (Appx. 106.).

¹⁰ AEP seems to disagree with the Commission’s recent explanation, stating that the approved charges are not “part of the price for default generation service. Rather, they are POLR charges (or credits).” AEP Merit Brief at 28. AEP further explains that the POLR charges will help AEP meet its *distribution-related* POLR obligations to provide generation service. *Id.* at 28-29.

the more recent Order in the case below “fit together seamlessly.” PUCO Merit Brief at 17. In *Cleveland Elec. Illum. Co. v. Public Util. Comm.* (1975), 42 Ohio St.2d 403, 431; 330 N.E.2d 1, the Court stated:

Although the Commission should be willing to change its position when the need therefore is clear and it is shown that prior decisions are in error, it should also respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.

In *Ohio Consumers’ Counsel v. Public Util. Comm.* (1985), 16 Ohio St.3d 9, 10; 475 N.E.2d 782, this Court stated:

These doctrines [of res judicata and collateral estoppel] operate to preclude the relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction. The doctrine of collateral estoppel has been applied to administrative proceedings.

(Citations omitted). The PUCO must justify any changes from its previous orders on the same subject. See, e.g., *Ohio Consumers’ Counsel v. Public Util. Comm.* (2006), 110 Ohio St.3d 394, 399; 853 N.E.2d 1153; 2006-Ohio-4706. In the case below, the PUCO did not justify its change nor did it have a reason for the change. Contrary to AEP’s claim, circumstances had not changed from the time of the *Post-MDP Service Case* to the case below to warrant a change in the PUCO’s position. AEP Merit Brief at 40. Filing an unlawful application to build an IGCC plant does not rise to the level of a change in circumstances which would justify modifying the prior order issued in the *Post-MDP Service Case*. See *id.*

In the PUCO’s Merit Brief, the Commission discusses the order in the *Post-MDP Service Case*, stating: “[T]he Commission’s earlier order always contemplated the possibility of additional increases during the three-year period of the plan.” PUCO Merit Brief at 18. The PUCO refers to previously approved rate adjustments that are “effectively capped at four percent,” and only related to “environmental requirements, security, taxes, and new generation-

related regulatory requirements . . . or . . . customer load switches that materially jeopardize . . . generation revenues.” Post-MDP Service Order at 20 (Supp. 199.). The Order in the case below provides rate increases outside this framework, creating a new category of costs (i.e., “distribution-related” IGCC research funding) that may be used to increase rates. The creation of a new category of costs is a modification to the prior order despite AEP’s attempt to assert otherwise. AEP Merit Brief at 39. The PUCO’s only response to this argument is to state that additional charges “could” have resulted from the *Post-MDP Service Case*. PUCO Merit Brief at 19. Therefore, the PUCO admits that a seam exists between the order in AEP’s *Post-MDP Service Case* and the more recent Order in the case below. The Order also fixes costs such that additional rate increases are now certain rather than being set after a Commission hearing to evaluate higher rates based upon the prescribed (non-IGCC) categories of costs. *Id.* at 27 and 37 (Supp. 206 and 216).¹¹ The PUCO states that in this circumstance, “[t]he only entity harmed by the Commission’s inclusion of these costs in the 4% cap . . . is the utility.” PUCO Brief at 19. That conclusion could only be supported if AEP was entitled to the entire four percent increase in rates regardless of circumstances. The persons harmed by the rate increases in the case below are AEP’s residential and other customers since the four percent increase was previously subject to a test of AEP’s costs in limited categories.

The concluding section of the PUCO’s Order provides various rationales for the construction of an IGCC facility that fail to support the PUCO’s alteration of the Post-MDP

¹¹ The Order states that “the costs of the IGCC plant are costs that the Companies will incur in their position as POLR,” and that the IGCC plant’s costs are “comparable to the POLR charges that the Commission approved in the Companies’ RSP Order [i.e., the order in the *Post-MDP Service Case*].” Order at 18 (Appx. 44.). The Order therefore makes the OCC’s point that the Companies collaterally attacked the Post-MDP Service Order.

Service Order in connection with “a functioning *distribution* system.” Order at 21 (Appx. 47.)

(emphasis added). The PUCO summarized its considerations, stating:

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.

Order at 20 (emphasis added) (Appx. 46.). These rationales apply to the construction of *generating* facilities. The PUCO did not justify, as required by *Ohio Consumers' Counsel v. Public Util. Comm.* (2006), 110 Ohio St.3d 394, 2006-Ohio-4706 and related cases, a distribution-related need that arose after the conclusion of the *Post-MDP Service Case* that required a change from the rates approved in that earlier case.

C. As a creature of statute, the PUCO may not permit the violation of the corporate separation requirements contained in R.C. 4928.17.

Ohio law prohibits the long-term ownership of generating plants by an electric utility, not just the collection of costs for such generating plants from customers to cover expenditures connected with planning such plants. The Companies' corporate separation plan, established pursuant to the requirements of R.C. 4928.17 (Appx. 106.), requires the provision of generation and “wires” services through “fully separated affiliates.” The Companies' corporate separation plan was established, in compliance with R.C. 4928.17(A)(3) (Appx. 106.), to “ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own

business engaged in the business of supplying the competitive retail electric service”¹² In the first instance, the PUCO relies upon the “waiver of any requirement to structurally separate [AEP’s] competitive from their non-competitive holdings.” PUCO Merit Brief at 20. The Commission has merely delayed corporate separation by means of a temporary waiver. Post-MDP Service Order at 35 (Supp. 214.)¹³ The significance of this case is that the PUCO, for the first time, has approved research costs into a long-lived asset. See PUCO Merit Brief at 26. The requirements contained in R.C. 4928.17 (Appx. 106.) cannot be reconciled with the *long-term* ownership commitment by the Companies to a new generating plant.

The second defense of the corporate separation violation stated in the PUCO’s Merit Brief, as well as in AEP’s Merit Brief, is that “corporate separation does not apply” because “the Commission decision below is concerned with the investigation of . . . a non-competitive item, specifically distribution ancillary service.” PUCO Merit Brief at 20; AEP Merit Brief at 30-31. AEP further claims that it is “not ‘engaged in the business’ of supplying competitive retail electric services,” and therefore, “R.C. 4928.17 [does] not preclude the Companies from owning

¹² The Revised Code provides that, “beginning on the starting date of competitive retail electric service, no electric utility shall engage in this state . . . in the business of supplying a noncompetitive retail electric service, or in the business of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service, *unless the utility implements and operates under a corporate separation plan that is approved by the public utilities commission* under this section” R.C. 4928.17 (Appx. 106.) (emphasis added). Compliance is not optional.

¹³ The OCC argued that the Commission permitted the illegal delay of the Companies’ corporate separation obligations. See, e.g., OCC Notice of Appeal, S.Ct. Case No. 05-767 at 3 (April 29, 2005) (Supp. 236.), PUCO order vacated and remanded, 109 Ohio St.3d 511, 2006-Ohio-3054; reinstated in Case No. 04-169-EL-UNC, Entry at 2, ¶(4) (August 9, 2006) (Supp. 221.), 2006 Ohio PUC Lexis 443. R.C. 4928.17(C) permits “an interim period” after January 1, 2001 for functional rather than corporate separation of entities that provide competitive and noncompetitive services. A period that covers the lengthy, useful life of a major generating station would not constitute an “interim period” and would render the statute a nullity.

the IGCC plant or providing the generation or ancillary services.” AEP Merit Brief at 31. AEP’s argument is disingenuous. If AEP owns a generating plant, it will be “engaged in the business” of providing generation service from the generating facility to customers. A rose by any other name is still a rose. Furthermore, AEP’s Application was not based upon the need to provide “distribution ancillary services,” and these services were never mentioned during the hearing. Application at 1-14 (Supp. 1-14.). Thus, the record is devoid of information to support this argument. The PUCO’s Order, as analyzed in the OCC’s Merit Brief (see, e.g., OCC Merit Brief at 11), and again in this Reply is plainly based upon the provision of generation services *for which the PUCO raised rates* in the case below. The PUCO illegally trampled upon fundamental provisions in the regulation of the electric utility industry without any record upon which to base its decision.

One of the stated purposes of the Commission’s actions regarding various electric distribution utilities in the post-MDP cases (including the *Post-MDP Service Case* for the Companies) is the development of the competitive market. Post-MDP Service Order at 5 (Supp. 184.). AEP’s potential rivals -- such as Beard Generation and Lima Energy that have announced their own IGCC projects in Ohio -- are forced to compete with AEP without rate recovery from captive distribution customers.¹⁴ The purpose of corporate separation is to “ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own business.” R.C. 4928.17(A)(3) (Appx. 106.). The PUCO’s Order increases AEP’s rates so that customers pay for the Companies’ preliminary IGCC research, and thereby provides an undue preference and advantage to the part of AEP’s business that investigates and develops generation

¹⁴ Contrary to AEP’s assertion, AEP will be competing against other generation providers, particularly providers of generation produced by an IGCC facility. AEP Merit Brief at 31-32.

projects. The conflict between the order in AEP's *Post-MDP Service Case* and the more recent Order in the case below reveals yet another "seam" between the two orders. The advantage shown to AEP relative to its competitors is one that R.C. 4918.17 was expressly designed to eradicate in favor of bringing to customers the benefits of competitive markets.

The Order's furtherance of the addition of generating plants by the Companies conflicts with both the Companies' obligations under their Commission-approved corporate separation plan and the Commission's recent pronouncements regarding post-MDP service.

Proposition of Law No. 3 [Responsive to PUCO Proposition of Law I]:

As a Creature of Statute, the PUCO May Not Approve an Application that Contravenes the Procedural Requirements that Apply to Generation Pricing.

The PUCO's Merit Brief endeavored to assure this Court that "[t]he Commission agree[d] with AEP-Ohio that the rate-making statutes [in R.C. Chapter 4909] [were] not applicable in this proceeding'." Merit Brief at 9, quoting Entry on Rehearing at 11. However, the PUCO fails to deal with the applicability of R.C. Chapter 4909 to the approval of an increase in generation as well as to distribution rates. Indeed, the PUCO's Merit Brief refers only to the OCC's arguments regarding increases in distribution rates and does not attempt to refute the OCC's Proposition of Law 1.D in which the OCC argued that the PUCO's procedure under R.C. Chapter 4909 was improper for an increase in *generation* rates. PUCO Merit Brief at 9, footnote 19.

R.C. Chapter 4928 addresses the Commission's approval for generation rates. R.C. 4928.14 requires Ohio's electric utilities such as the Columbus Southern Power Company and the Ohio Power Company to provide "a market-based standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers" that "shall

be filed with the public utilities commission under section 4909.18 of the Revised Code.” R.C. 4928.14(A) (Appx. 104.). The standard service offer was the subject of the *Post-MDP Service Case* that addressed the totality of services provided by generation plants. AEP’s preliminary research for a generation technology that AEP desires to explore does not provide “[s]uch offer,” as required by R.C. 4928.14(A) (Appx. 104.). The PUCO admits that AEP’s Application was not handled in compliance with that statute. PUCO Merit Brief at 9-10 (e.g., “did not set out to comply”).

The PUCO appears to grasp for a counter-factual explanation for its lack of procedure. It states that AEP’s standard service generation rates could not address the “ancillary service need because the problem is entirely *new*, being a creation of electric restructuring.”¹⁵ PUCO Merit Brief at 9-10. This Court addressed the Commission’s requirement to abide by procedural requirements regarding the approval of generation rates in an earlier OCC appeal: “R.C. 4909.18 applies to increases of an ‘existing’ rate changed by a utility.” *Ohio Consumers’ Counsel v. Public Util. Comm.* (2006), 111 Ohio St.3d 300, 2006-Ohio-5789 at ¶18. That case involved the setting of generation rates for the first time following the frozen rates required by electric restructuring.

In contrast, the case at issue follows the Commission’s approval of rates -- in the earlier *Post-MDP Service Case* that placed rates in effect at the beginning of 2006 -- for “*all* competitive retail electric services necessary to maintain essential electric service to consumers.” R.C. 4928.14(A) (Appx. 104.) (emphasis added). The increase in generation rates approved in

¹⁵ AEP also incorrectly claims that this is a new distribution service component created by electric restructuring that is distinguished from traditional distribution service. AEP Merit Brief at 34.

the case below involved the PUCO's *second* consideration of AEP's market-based standard service offer for generation. The PUCO failed to abide by the procedural requirements stated in R.C. 4909.18 and related statutes.

An application for the approval of increased rates for generation service must meet the requirements under R.C. Chapter 4909 that are implicated by a filing for an increase in rates under R.C. 4909.18 (Appx. 95.). For example, the PUCO Merit Brief does not address the OCC's example that R.C. 4909.19 (Appx. 97.) requires that "[u]pon the filing of any application for increase provided for by section 4909.18 of the Revised Code . . . the commission shall at once *cause an investigation to be made of the facts* set forth in said application and the exhibits attached thereto, and of the matters connected therewith." R.C. 4909.19 (Appx. 97.) (emphasis added). According to the PUCO Staff testimony: "Staff [did] not address[] the overall economic issues associated with AEP's proposed IGCC plant or whether the Commission should grant or deny the application." Staff Ex. 1 at 2 (Wissman) (Supp. 64.). The PUCO's statement that it "substantially complied" "through [this PUCO Staff] testimony and brief" treats the statutory requirement with contempt. PUCO Merit Brief at 10.

The PUCO's decision should be reversed and the case remanded on procedural grounds as well as substantive matters.

III. CONCLUSION

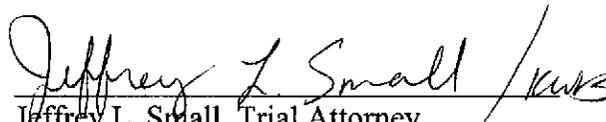
The Commission's Order fails to abide by the treatment of competitive generation services under the Revised Code. The Order takes Ohio down a path not cleared by Ohio lawmakers, and towards a long-term structure for electric generation service that is being improvised along the way by the PUCO.

The PUCO already has forced customers to pay millions of dollars through higher rates that are not authorized by law and for a purpose that may never provide customers with any benefits. Moreover, AEP's customers have been forced to subsidize the Companies' preliminary research for an IGCC generation plant that will favor AEP against its potential competitors for generation (IGCC and non-IGCC) projects in Ohio, and thereby customers are paying to harm the very competition for generation that the General Assembly intends to benefit customers. The General Assembly has enacted the statutory scheme under which builders of generation may construct an IGCC or other power plants in Ohio, and AEP (like other generators) may avail itself of what the General Assembly has provided -- as opposed to what the PUCO has invented.

The PUCO's Order is illegal on its face, and its findings are unprecedented in the history of Ohio ratemaking. This Court should reverse the PUCO's decision.

Respectfully submitted,

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bojko@occ.state.oh.us

IN THE SUPREME COURT OF OHIO
On Appeal From the Public Utilities Commission of Ohio

Industrial Energy Users – Ohio, et al.	)	Case No. 06-1594
)	
Appellants,)	
)	
v.	)	Appeal from the Public
	)	Utilities Commission of Ohio
The Public Utilities Commission	)	Case No. 05-376-EL-UNC
of Ohio,)	
)	
Appellee.)	
)	

REPLY APPENDIX OF APPELLANT,
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

APPENDIX
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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter the :
 Application of Columbus :
 Southern Power Company and:
 Ohio Power Company for :
 Authority to Recover Costs:
 Associated with the : Case No. 05-376-EL-UNC
 Construction and Ultimate :
 Operation of an Integrated:
 Gasification Combined :
 Cycle Electric Generating :
 Facility. :

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PROCEEDINGS

before Hearing Examiners Steven D. Lesser and Greta
 See, at the Public Utilities Commission of Ohio,
 commencing at 9:00 a.m., on Friday, August 12, 2005,
 in Hearing Room 11-C, 180 East Broad Street,
 Columbus, Ohio.

VOLUME V

ARMSTRONG & OKEY, INC.
 185 South Fifth Street, Suite 101
 Columbus, Ohio 43215-5201
 (614) 224-9481 - (800) 223-9481
 Fax - (614) 224-5724

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1 A. The Power Siting Board itself did not or
2 does not have the capability of creating or
3 recommending incentives, if you will.

4 Q. What incentives did the Commission make
5 available or suggest might be available to Lima
6 Energy IGCC to help that project move forward?

7 A. I don't believe there's been any
8 application by Lima directly to this commission for
9 anything of that nature.

10 Q. Okay. Let's assume that the application
11 in this case is granted as requested by AEP, would it
12 be your position that Lima Energy should have the
13 same opportunity as AEP's IGCC facility to obtain
14 assured cost recovery?

15 THE WITNESS: Could I have the question
16 reread, please?

17 (Question read.)

18 A. Even given the assumption that you laid
19 out in the beginning of that question, that the
20 Commission would grant this application as it was
21 filed, I'm not sure that precisely the same treatment
22 could or would be afforded to Lima. What the staff
23 is suggesting is that in the Commission deliberations
24 they need to make sure that they don't give AEP some

1 advantage by providing this opportunity without
2 looking at some potential opportunities for others
3 that wish to invest.

4 Q. Okay. Fair enough.

5 But I gave you an assumption, I asked you
6 to assume that the application was granted. What
7 would be necessary, in your judgment, to allow Lima
8 Energy IGCC the same or comparable opportunity
9 relative to ensure cost recovery? What would the
10 customers need to be prepared to pay to help out Lima
11 Energy?

12 THE WITNESS: Could I have the first
13 question reread? I think there were two there.

14 Q. The same question stated differently.
15 Let me withdraw the questions and I'll try it again.

16 Based upon your notion -- the notion that
17 you've advanced here today that the Commission needs
18 to be mindful that whatever it does relative to this
19 application may trigger an obligation to treat others
20 in a comparable fashion -- is that a fair statement?

21 A. Yes.

22 Q. Okay. If the application in this case is
23 granted, what would be the comparable treatment for
24 the Lima Energy IGCC facility?

1 A. I'm not sure I know. I believe that what
2 the staff -- well, I know what the staff is
3 suggesting, but the staff believes that the
4 Commission needs to, as you said, be mindful that
5 they can't foreclose opportunities for others.
6 Precisely what that would take and what form that
7 would take, I don't know.

8 There could be perhaps, you know, a
9 purchased power agreement available to Lima from an
10 EDU that would -- I mean, a comparable situation
11 would be that Lima would provide some POLR
12 opportunities in the state through an EDU, for
13 instance through a purchased power agreement.
14 Precisely what that would look like, I don't know.
15 The staff didn't really evaluate all potential
16 opportunities that should be put on the table.

17 Q. And I appreciate the difficulties
18 associated with trying to get specific, but based
19 upon the concepts that we're talking about here, if
20 the Commission were to grant this application and
21 provide comparable opportunities to independent power
22 producers or merchant plant owners, it would mean
23 that there's another wave of costs that might be
24 unloaded on customers as a result of the obligation

1 A. The purpose of the 12.5 percent is
2 to say what the unemployment rate is now in
3 Meigs County. The other benefits are benefits
4 of the project that we feel confident will be
5 benefited towards Meigs County. It's not going
6 to eradicate the 12.5 percent, but it will
7 impact that 12.5 percent.

8 Q. I'm trying to figure out the
9 magnitude. You don't know the magnitude that
10 this project will actually have on that
11 information.

12 A. Yes. Correct, we do not know the
13 magnitude.

14 Q. And, Mr. Walker, will Ohio coal be
15 used exclusively in the project?

16 A. We have not made a commitment that
17 Ohio coal would exclusively be used in this
18 project.

19 Q. Mr. Walker, are you aware of other
20 entities exploring construction of IGCC plants
21 in Ohio?

22 A. I'm aware loosely of the plant in
23 the Lima area.

24 Q. Is that the only one?

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EXHIBIT NO. _____

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application)	
of Columbus Southern Power Company and	)	Case No. 05-376-EL-UNC
Ohio Power Company for Authority to)	
Recover Costs Associated with the)	
Construction and Ultimate Operation of an)	
Integrated Gasification Combined Cycle)	
Electric Generating Facility)	

SUPPLEMENTAL TESTIMONY OF
WILLIAM M. JASPER
ON BEHALF OF
COLUMBUS SOUTHERN POWER COMPANY
AND
OHIO POWER COMPANY

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Filed: August 3, 2005

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1 are traditionally considered to be Owner's costs. These Owner's costs include
2 materials handling beyond what is required for reclaim from a storage pile and
3 conveyance to the plant's silos. The Owner's costs also include river frontage
4 improvements for providing for the mooring and unloading of barges and
5 initial site preparation to provide the EPC contractor a flat and level site on
6 which to build.

7 2. AEP costs for project management, AEP engineering and construction
8 management (PM, E &C).

9 Q. What is AEP's current estimate of the Phase I activities in this application?

10 A. The Phase I actual costs through June 30, 2005 and projected costs (July 1, 2005
11 through June 30, 2006) are shown in WMJ Exhibit 4. They are approximately
12 \$23.7 million.

13 Q. Does this conclude your supplemental testimony?

14 A. Yes, it does.

**IGCC Project
Phase 1
Estimate Cash Flow
(in \$000 of Dollars)**

Category	Actuals Thru June 30, 2005	July 2005 Thru June 2006	Phase 1 Totals
Scoping Study/FEED	\$ 317	\$ 8,028	\$ 8,345
Outside Services	\$ 867	\$ 4,715	\$ 5,582
New Generation Labor	\$ 538	\$ 4,538	\$ 5,076
Engineering Services Labor	\$ 1,035	\$ 1,047	\$ 2,082
Other Internal Labor & Corporate Overhead	\$ 357	\$ 495	\$ 852
Subtotal - Internal Labor	\$ 1,930	\$ 6,080	\$ 8,010
Expenses	\$ 180	\$ 1,222	\$ 1,402
Total Generation Costs	\$ 2,110	\$ 7,302	\$ 9,412
Interconnection Costs	\$ -	\$ 400	\$ 400
Total Transmission Costs	\$ -	\$ 400	\$ 400
TOTAL COSTS	\$ 3,294	\$ 20,445	\$ 23,739

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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 Ultimate Operation of an)
Integrated Gasification Combined Cycle)
Electric Generating Facility)

Case No. 05-376-EL-UNC

PREPARED TESTIMONY

Of

MICHAEL HAUGH

ON BEHALF OF THE
OFFICE OF THE OHIO CONSUMERS' COUNSEL
10 West Broad St., Suite 1800
Columbus, Ohio 43215

DATE: July 15, 2005

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think it is necessary for the Commission and the customers (who would be required to bear the cost burden for the project) to know the details and costs of building a 600 MW IGCC plant. OCC Witness Lechner explains the problems connected with the Companies' vague proposal in greater detail.

Q15. DO YOU HAVE ANY OTHER CONCERNS REGARDING THE COMPANIES' PROPOSAL IN A STATE THAT HAS ADOPTED ELECTRIC CHOICE?

A15. Yes. I am concerned that electric distribution companies ("EDUs") are seeking to own and operate a 600 MW power plant and impose a non-bypassable distribution charge onto customers to pay for the plant. The Application states (page 4) that the incremental cost differential in the levelized cost of electricity from an IGCC versus a pulverized coal ("PC") plant is "relatively small." The Companies' witness Mudd states that "IGCC is a more economic choice than PC by \$9 million in N[et]P[resent]V[alue] terms" (witness Mudd testimony at page 20). *If the Companies believe the value of the IGCC plant is greater than that of a PC plant, then the Companies should be willing to construct an IGCC plant without the need for the additional incentives of a PUCO-approved mechanism to recover generation costs from their distribution service customers.* Moreover, it is inappropriate to structure the recovery of plant costs through a non-bypassable charge in as much as it requires customers who are obtaining generation services elsewhere to pay for something that provides no benefit. Such willingness to invest in IGCC technology has been displayed by Lima Energy, an intervener in

this case, whose IGCC proposal has been approved by the Ohio Power Siting Board (Case No. 04-1011-EL-BGA).

Q16. WHAT IS THE SIGNIFICANCE OF THE APPLICANTS' REQUEST FOR REGULATORY APPROVAL OF THEIR PROPOSED IGCC PLANT?

A16. The significance of the Companies' proposal is really not about support for a promising, emerging technology; instead it is focused on gaining a competitive advantage over other owners, or potential owners, of generation assets. CSP and OPC seek to obtain a guarantee of cost recovery for its plant by declaring a major generation facility to be a "single asset regulated utility" and charging distribution customers for its costs. Such a plan is impossible for all other market participants that may seek to provide generation service to the Companies' customers. Worse, the Companies' proposed shifting of all the risks to customers, through the regulatory guarantee, diminishes or eliminates the discipline of the market for control of the costs and rates that customers will pay. Again, Electric Choice addresses this problem by scrutinizing projects according to their value to customers in the marketplace where the lowest cost and most efficient electric producers will be rewarded and customers will benefit.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company and)	
Ohio Power Company For Authority to)	
Recover Costs Associated with the	)	Case No. 05-376-EL-UNC
Construction and Ultimate Operation of an)	
Integrated Gasification Combined Cycle)	
Electric Generating Facility)	

**DIRECT PREPARED TESTIMONY OF
JOHN BAARDSON ON BEHALF OF
BAARD GENERATION, LLC**

July 15, 2005

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DIRECT TESTIMONY OF JOHN BAARDSON

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1Q: Please state your name, title and business address:

1A: My name is John A. Baardson and I am the president of Baard Generation LLC.
My business address is 9013 NE Highway 99, Suite S, Vancouver, WA 98665.

2Q: What is your educational background and work experience.

2A: I received a degree in chemical engineering from Brigham Young University in 1979,
and a masters of business administration degree from Central Michigan University in 1984.
For the past two decades I have lead project teams building clean fuel power plants and
ethanol/biomass facilities.

3Q: Please describe Baard Generation LLC, and explain its interest in the matter at bar.

3A: Baard Generation LLC (formerly known as Nordic Power) was formed in 1989 to
build clean fuel power plants. Since its inception, Baard has developed 1,200 MW of such
generation. Currently, Baard is exploring two possible sites for an integrated gasification
combined cycle electric generation ("IGCC") facility in Ohio. At both Ohio sites Baard is
also exploring carbon dioxide sequestration. Ohio contains attractive sites for IGCC, for it
has access to high btu coal, a strong transmission system, and depleted oil and gas wells
which may be appropriate for conversion to CO2 sequestration wells.

The concern Baard has with the application is the fact that retail customers who
would take power from a Baard IGCC plant, would potentially have to pay the Phase III
IGCC rider to the American Electric Power ("AEP") operating company - even though
such customers would not be taking power from the AEP IGCC unit. This creates an extra
barrier for independent IGCC power producers like Baard to sell power to retail customers
of AEP. The extra cost to retail customers of independent IGCC power serves as a

28 deterrent to building or selling IGCC power in the AEP service area. It also is unfair to
29 customers of independent IGCC power producers who, via their power prices, are paying
30 the full development cost of the generation units they actually take power from; and thus
31 should not have to make an added payment to funding AEP's IGCC plant.

32

33 4Q: Can an independent power producer like Beard build a clean coal generation plant
34 without guarantees from captive utility customers?

35 4A: Yes, so long as the independent IGCC power producer can sign a long term sales
36 agreement, or receive significant government funding. A generator, independent or utility,
37 cannot commit hundreds of millions of dollars on a generation facility using new IGCC
38 technology without a firm purchase obligation to buy the power at a price which supports
39 the project. For independent IGCC power producers, obligations to purchase are a matter
40 of arranging contracts for future deliveries with very large retail end users or marketers.
41 The key to making such sales is the price of the generation. Hence the concern that the
42 AEP Phase III rider could effectively add to the price of independent IGCC power
43 generation.

44 Because IGCC and carbon sequestration are new technologies, they have start up
45 costs that exceed conventional coal generation plants. On the other hand, because IGCC
46 and carbon sequestration are new technologies they hold the promise of lower pollution
47 control costs in the future. Further, there are small funding grants from governmental
48 agencies available today, and potentially significant government funds in the future that
49 directly or indirectly could bring down the cost per MW of clean coal generation. On the
50 federal level, both the House and Senate versions of the pending Energy Act have set aside
51 hundreds of millions of dollars for both research, generation and loan guarantees for clean
52 coal use. This includes specific references to IGCC projects. In fact, Section 406 of HB
53 66 (the House version of the Energy Act) offers loan guarantees to IGCC units, but only if

54 the projects do not have rate payer guarantees. A copy of the clean coal section of HB 66
55 was attached as an addendum to the Baard intervention and comments. Bottom line is that
56 Baard is actively investigating both conventional and government sponsored methods of
57 financing an Ohio independent IGCC plant.

58

59 5Q: Will Baard definitely build an IGCC plant in Ohio?

60 5A: Baard will build an IGCC plant in Ohio if it is economical to do so. By that I mean
61 that if Baard through good management, prudent selection of technology, and use of
62 available government development monies can build and operate an IGCC plant with
63 carbon sequestration at generation prices sufficiently low to attract commitments to buy
64 power, Baard will build the plant. Further, Baard is just one player in a sizable
65 independent power industry, many of whom have already built conventional units in Ohio
66 and are likely to do so again.

67

68 6Q: What are your recommendation to the Commission as to the application at bar?

69 6A: AEP is one of the leading firms in terms of sophistication and financial strength in
70 the electric generation industry. If AEP believes that the proposed IGCC project is too
71 financially risky to build without a price guarantee from the captive customers, then it is
72 also too risky an investment for the captive customer. The Commission should at a
73 minimum refrain from rushing into a rate payer commitment at this time when significant
74 changes in funding are becoming available for IGCC and carbon sequestration plants that
75 could lower the price.

76 Second, if the Commission elects to grant AEP a customer guarantee, the guarantee
77 should be limited to just the customers who take power from the AEP IGCC plant. To
78 make customers of independent IGCC plants who are already paying the development
79 costs of the facilities they take power from pay for the AEP IGCC plant is unfair to the

4901:1-35-03 Filing and contents of applications.

(A) Each EDU in this state shall file an application for standard service offer and competitive bidding process by July 1, 2004 for all classes of customers where the market development period terminates at the end of year 2005. For an EDU which has a market development period terminating for certain customer classes earlier than the end of year 2005, an application for standard service offer under appendix A to this rule shall be filed at least six months prior to the end of that market development period. Such applications shall be filed with the commission in the form of an application for approval of a "standard service offer," a "competitive bidding process," or an application for approval of a "standard service offer and competitive bidding process" (xx-xxx-EL-ATA).

(B) Applications for approval of a "standard service offer and competitive bidding process" shall include:

(1) A market-based variable rate. The market-based variable rate shall be consistent with the requirements of appendix A of this rule.

(2) A market-based fixed rate. The market-based fixed rate shall be consistent with the requirements of appendix B of this rule.

(C) Applications for approval of only "standard service offer" shall include a market-based variable rate. The market-based variable rate shall be consistent with the requirements of appendix A of this rule. The filing of such an application does not relieve the EDU from filing an application pursuant to appendix B of this rule, by July 1, 2004.

(D) A complete set of work papers must be filed with the application. Work papers must include, but are not limited to, any and all documents prepared by the EDU for the application and a narrative or other support of assumptions made of working paper schedule amounts. Work papers shall be marked, organized, and indexed according to schedules to which they relate. Data contained in the work papers should be footnoted so as to identify the source document used.

(E) All schedules, tariff sheets, and work papers included in the application must be available in spreadsheet, word processing, or an electronic form compatible with personal computers. The electronic form does not have to be filed with the application but must be made available within two business days to any intervening party that requests it.

HISTORY: Eff. 5-27-04

Rule promulgated under: RC 111.15

Rule authorized by: RC 4928.06, 4928.14

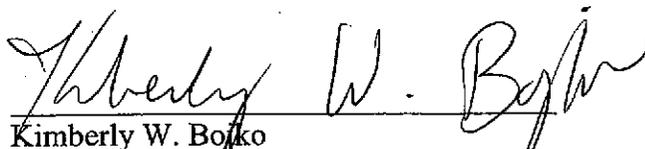
Rule amplifies: RC 4928.14

R.C. 119.032 review dates: 09/30/2008

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply Brief and Reply Appendix of The Office of the Ohio Consumers' Counsel was served upon the below-listed counsel by first class postage prepaid, U.S. Mail, this 22nd day of January, 2007.


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