

IN THE SUPREME COURT OF OHIO

CARROLL E. NEWMAN,  
Adams County Auditor

Appellant,

v.

WILLIAM W. WILKENS,  
Tax Commissioner of Ohio

Appellees.

Case No. 07-1054

On Appeal From The Ohio  
Board of Tax Appeals  
Nos. 202-P-170,171,172

COMBINED BRIEF OF APPELLANT/CROSS APPELLEE  
ADAMS COUNTY AUDITOR

DAVID C. DIMUZIO (0034428)  
David C. DiMuzio, Inc.  
1900 Kroger Building  
1014 Vine Street  
Cincinnati, Ohio 45202  
Telephone: (513) 621- 2888  
Fax: (513) 345-4449

ATTORNEY FOR APPELLANT  
ADAMS COUNTY AUDITOR

MARC DANN  
Attorney General of Ohio  
LAWRENCE D. PRATT (0021870)  
Assistant Attorney General  
Chief, Taxation Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
Telephone: (614) 466-5967  
Fax: (614) 466-8226

ATTORNEY FOR APPELLEE  
OHIO TAX COMMISSIONER

ANTHONY L. ELHER (00393304)  
Vorys, Sater, Seymour & PeaseLLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216  
Telephone: (614) 464-8282  
Fax: (614) 719-4702

ATTORNEY FOR APPELLEE  
ELECTRIC COMPANIES  
CINCINNATI GAS &  
ELECTRIC COMPANY  
THE DAYTON POWER &  
LIGHT COMPANY; AND  
COLUMBUS SOUTHERN  
POWER COMPANY

JULIE L. EZELL,  
Cinergy Services, Inc  
1000 E. Main Street  
Plainfield, Inc. 46168-1782  
Cincinnati Gas & Electric Co

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## **II. INTRODUCTION**

The combined brief will be organized so that the portions relating to the Reply Brief are clearly separated from those portions relating to the Appellee/Cross Appellant's Cross appeal. This will make it easier for Appellee to limit its Fourth Brief solely to the matters raised in relation to Appellee's Cross Appeal. Sections V and VI are the only portions of the Combined Brief relating to the Cross Appeal. When referring to the Supplements, we will refer to Appellant's Supplement as "Supp. 1" and to Appellee's Supplement as "Supp.2".

## **III. STATEMENT OF FACTS RELATING TO APPELLANT'S REPLY BRIEF**

The so-called "facts" set forth in Appellee's Merit Brief are misleading and the citations to the record in support of such facts often do not relate to the matters asserted in the Brief.

Before listing the various misleading statements in detail, it is helpful to generally explain the difference between the facts supporting Appellant's case and those "facts" asserted to support Appellee's case. Appellant provided an expert witness (Mr. Sansoucy) who meticulously studied the equipment and plant at Stuart, reviewed recognized industry texts concerning power plants such as Stuart and generated a thorough written report that analyzed the primary purpose of the various pieces of equipment that were actually installed at Stuart and whether such equipment captured waste heat or waste steam as part of its primary purpose.

Appellees did not take such an approach. Instead, they hired an expert (Mr. Coleman) who did not prepare a written report on the equipment at Stuart, and who did not analyze the equipment actually installed at Stuart. (Supp. 1, at 54). Instead, Coleman was asked to opine about equipment and plants other than those at Stuart. He was asked to assume various hypothetical types of plants and hypothetical types of configurations. (Supp. 2, at 42). He based his analysis on a model that does not exist anywhere as a base load electric generating plant such as Stuart. (Supp. 2, at 71,72). Coleman admitted that the type of plant he was giving opinions about would not be “a typical or normal electric generating operator”, his hypothetical plant could not get a permit and it would have a technology level from 1915 or even earlier. (Supp. 2, at 71,72; Supp. 1, at 65). When asked if he was aware of any stationary steam plants that were coal fired that have no condenser and generate at Stuart’s heat rate, he replied “No.” (Supp. 2, at 72). The following exchange then took place at Supp. 2, at 72:

“Q. Zero, no plants you’re aware of in the whole United States that have a ----- that achieve a typical 9,000 to 9,500 heat rate that have no condensers?

A. That’s true.

Q. Doesn’t exist in the real world, does it?

A. I don’t know. I don’t have any idea. You’ve asked me and I’ve said no.”

Coleman’s hypothetical plant would exhaust heat directly from the boiler. When asked at trial if that approach will kill everyone in the plant, he agreed that it would. (Supp. 2, at 72) He was not aware of any plants in the United States that were vented

in such a way. (Supp. 2, at 72). He admitted that the hypothetical power plant he used in his analysis would result in all of the pollution control equipment at the plant being destroyed. (Supp. 2, at 72). He admitted that an extra \$240 million would have to be spent at Stuart just to have the turbines configured the way Mr. Coleman envisioned in his hypothetical analysis. (Supp. 1, at 66). When discussing the condensers, he admitted that Stuart would have to spend \$37,000 a day just to purify the water resulting from Coleman's hypothetical failure to use condensers. (Supp. 1, at 67).

In short, Mr. Coleman's analysis is based on the assumption that a boiler is built (different from the one at Stuart) and the flue gas in the convection portion of the boiler is vented to the atmosphere. (Supp. 2, at 72). His theory is that you could, theoretically, punch a hole in the side of the boiler, and all the flue gas would escape, therefore flue gas at Stuart is waste heat!! (Supp. 2, at 72). That is analogous to saying that you could poke a hole in the gas tank of your car, and that would cause all of the gasoline to spill out and be wasted. Therefore, the false logic goes, that gas tank captures waste gasoline and the fuel line carries waste gasoline to the engine!! This, in a nutshell, is Coleman's theory.

The same non- Stuart hypothetical underlies other efforts by Appellee to support its case. In their Merit Brief, Appellees refer to the testimony of Michael Harrell, the plant manager at Stuart. Through leading questions, the attorney for the utilities tries to lead Mr. Harrell to say that the steam in the last three stages of the turbine is "waste steam". (Supp.2, at 103,104). Harrell refuses to agree with the attorney, in the context of Stuart. He insists that at Stuart the steam is still capable of generating electricity, even in the final stages of the turbine. (Supp.2, at 103,104). Only when the

condenser is removed as part of the hypothetical, does Harrell agree that waste steam exists. (Supp. 2, at 104, line 14). All of the Appellee's conclusions concerning waste heat and waste steam occur at some hypothetical plant but not at Stuart (Supp. 2, at 42, page 9,10), or at "industrial heat boilers" that are not electric generating plants, but boilers specifically designed to be used in industrial applications to capture waste heat or steam not needed in the production of the industrial product. (Supp.2 at 70,74). One of the boilers he uses in his analysis does not even use coal, but uses natural gas! (Supp.2, at74, page 10,11).

Example after example can be shown where Coleman bases his analysis on equipment and plants that are not at Stuart. He uses an "atmospheric condenser" in his hypothetical, but Stuart uses a vacuum condenser. (Supp.2, at 63). He goes on and on about waste steam when his hypothetical is a totally different type of condenser than that used at Stuart. He admits his failure to study the actual equipment at Stuart when questioned by the utilities attorney: when asked about the stages of the turbine at Stuart, he says: "At Stuart, I don't know how turbine-stages are at Stuart, but generally these number stages in the order of 18, or something like that." (Supp. 2, at 63).

In Appellee's Merit Brief, Appellee points to Appellee's Exhibit # 7 and # 8 as if they are probative evidence supporting their case. Exhibit # 7 simply shows that vacuum condensers have better output value than other types of condenser options. It has nothing to do with waste heat analysis or primary purpose analysis. Exhibit # 8 depicts another non-Stuart configuration. (It depicts an industrial heat boiler, not an electric generating plant like Stuart. Stuart's configuration is shown at Supp. 2, at

180). By now it should be clear that Appellee's so-called "facts" are not probative to Stuart and the equipment at Stuart, but are a hodgepodge of hypotheticals, what if's, and blatantly misleading industrial heat boilers, not operating base load power plants like Stuart.

Specific examples of misleading citations from Appellee's Merit Brief are as follows:

- On page 8 of Appellee's Merit Brief, Appellee cites to the record, claiming the references "all referring to exhaust flue gas as containing waste heat that can be recovered". In fact, the cited portions of the record do not support that statement:

~~-Supp.2, 184-~~ says nothing about waste heat.

~~-Supp.2, 182-~~ says nothing about waste heat.

~~-Supp. 2, 183-~~Mentions waste heat only in the context of "air heaters", which are outside the boiler. (We will discuss later in this brief the special treatment required for air heaters in this analysis.) All the equipment at issue in this appeal except the air heater and the condenser are inside the boiler at Stuart, therefore not subject to any of the references to flue gas after it leaves the boiler.

~~-Supp. 2, 112,113,128-130,131-136-~~These are references to industrial heat boilers and related equipment, not electric generator plants like Stuart.

~~-Supp. 2, 173,174-~~ No mention of waste heat.

~~-Supp.2, 175,176,177,178,179,180.-~~These refer to the “air heater” only, not to the other pieces of equipment sought for tax exemption. As noted earlier, the air heater sits outside the boiler, close to the exhaust area for the plant at Stuart.

~~-Supp. 2, 181-~~ No mention of waste heat. It does show how the “air heater” sits outside of the boiler area, much closer to the exhaust point near the stack. (The air heater is used to dry the moisture out of the coal before it is burned). The air heater is the only piece of equipment at Stuart in which any recognized industry text uses the words “waste heat” in describing a base load electric generating plant. At least some argument could be made that the air heater captures waste heat. No other piece of equipment at issue has any recognized literature that uses the term “waste heat” in the context of a base load electric generating plant. (Appellant contends that even if the air heater captures waste heat, its primary purpose is not to capture waste heat, but to dry the moisture from coal before it is burned.)

-On the bottom of page 6 of Appellee's Merit Brief, Appellees discuss the heat rate at Stuart, and imply that their expert compared Stuart's heat rate to the heat rate at other plants and concluded that the equipment at issue somehow gets all the credit for high efficiency. No such evidence was produced. The comparison chart was never discussed by Mr. Coleman, and he made no such conclusion. The chart was prepared by Mr. Sansoucy, and lists all sorts of data about various plants in the region. Appellees fail to disclose that the heat rate can be affected by the river temperature, outside temperature, quality of coal used as fuel, etc... To make speculative conclusions based on innuendo is not probative, but is unfortunately typical of Appellee's efforts in this case.

- In a similar vein, at the bottom of page 7 of Appellee's Merit Brief, Appellees use the chart to assert that some plants use 75% more coal to produce the same electricity as Stuart. They fail to adjust not only for fuel quality, river temperature, and outside temperature, but also fail to disclose the age differences in the plants-- some were built in the 1920's! No one doubts that Stuart was designed to be efficient-- most plants built in recent decades were designed to be efficient. That fact alone does not permit speculation by Appellees that particular pieces of equipment capture waste heat as their primary purpose. Newer plants should be expected to be more efficient than older plants.

- On page 10 of Appellees' Brief, they assert that, "all authorities agree that the function of an economizer is to recover waste heat..." Again, the cites provided to support that statement do not in fact support it:

-Supp.2, 57- This a portion of Coleman's testimony. He quotes from Babcock & Wilcox, with no mention of "waste heat". The other texts he quotes from refer to industrial heat boilers, not base load electric generating plants.

-Supp. 2, 112,113- These references are to industrial heat boilers, not electric generating plants.

-Supp. 2,125-127- No mention of "waste heat"; it also refers to an economizer that sits between the boiler and the stack, while at Stuart the economizer sits in the boiler.

-Supp. 2,128-130- These refer to industrial heat boilers, not electric generating plants.

-Supp.2, 134-136- Again these refer to industrial heat boilers, not electric generating plants.

- On page 13, Appellees cite to Mr. Harrell's deposition at Supp. 2, 104 as if it supports their contention on waste steam. In fact, Supp.2 at 104 contradicts Appellee's

position because Mr. Harrell refuses to call the steam waste steam unless you change the configuration of Stuart by removing the condenser.

Several of the statements in Appellees' Brief actually contradict the position they have taken that the primary purpose of the condenser is to capture waste steam. (The condenser converts steam to liquid condensate after it leaves the turbine, allowing the plant to retain the purified water for reuse. It collapses the steam into liquid by cooling the steam; this creates a vacuum that helps pull the steam through the turbine.) Appellee's Brief clearly states that the primary purpose of the condenser is not to capture waste heat or steam for thermal efficiency...; instead, it admits the following on page 14 of the Brief:

“... the Babcock & Wilson text “Steam” states that the primary function of the main vacuum condenser is to provide a low back pressure at the turbine exhaust to maximize plant thermal efficiency...”

In other words, the condenser's primary function is to create pressure, not to capture waste heat.

Later on page 14 of Appellees' brief a similar admission is made:

“... Modern Power Plant Engineering states, ‘The primary function of the condenser is to produce a vacuum or desired back pressure at the turbine exhaust for the improvement of the power plant heat rate.’”

Again, this is an admission that the primary purpose of the condenser is not to capture waste heat or waste steam, but to create a vacuum or back pressure. Mr. Coleman admitted this as well. (Supra 1,61) We see clearly that Appellees have no support in established power plant literature for their conclusion about the condenser. It is merely a rogue theory with no recognized support in power plant texts.

#### IV. ARGUMENT RELATING TO APPELLANT'S REPLY BRIEF

##### Proposition of Law No.1:

**The Tax Commissioner and Board of Tax Appeals have no jurisdiction to consider a tax exemption application that “relates to facilities upon which construction was completed on or before December 31, 1974.”**

Before attempting to respond to the first proposition, Appellees raised jurisdictional arguments of their own: that Appellant allegedly failed to raise certain issues in its BTA appeal and in its Supreme Court appeal. Such an assertion is incorrect:

-Error No. 2 of the Notice of Appeal to the Supreme Court specifically noted that the taxpayer failed to prove that the property to be exempted met each and every requirement of the exemption statute. That statute expressly requires that the “waste heat or waste steam” be recovered by the equipment, and that the equipment have as its “primary

purpose” thermal efficiency improvement. (See ORC § 5709.45). This corresponds to Proposition of Law No.2 in the instant appeal.

-Error No. 3 noted the requirement that a strict scrutiny test be used, viewing the evidence most strongly against the taxpayer. That error also relates to the waste heat and primary purpose requirements of the statute. That error corresponds to Proposition of Law No.3 in the instant appeal.

-Error No. 4 mentions waste heat directly. That corresponds to Propositions of Law No.2 and No. 3.

With regard to the appeal from the Tax Commissioner to the BTA, please note the following:

-Error No. 2 specifically mentions the primary purpose requirement. It also refers to “thermal efficiency improvement”, which is defined to include the waste heat and waste steam requirement.

-Error No. 5 specifically mentions the failure to apply the exemption most strongly against the taxpayer.

-Error No. 8 specifically refers to the findings of the engineer used by the Tax Commissioner. Those findings included specific findings relating to waste heat, waste steam and primary purpose.

Of course, when Appellant files the BTA appeal it has no way of knowing what errors the BTA might commit five or six years later when the BTA decision comes out. (In like fashion, the taxpayer appealed what it perceived to be an error made by the BTA, without ever appealing that issue to the BTA.) The appeal currently before the Supreme Court relates to the errors made by the BTA.

The case cited by Appellees relating to their jurisdictional argument is Satullo v Wilkens, (2006), 111 Ohio St. 3d 399, 2006-Ohio-5856. That case actually supports Appellant's position. Besides reiterating Appellant's position concerning the burden of the taxpayer to prove each and every element of the tax exemption request, it also requires that persons who appeal under § 5717.02 must explicitly recite the error made by the Tax Commissioner. Since Satullo did not raise the "consumer" issue below he could not appeal that issue. In our case, Appellant did specifically describe the failure of the Commissioner to apply the evidence most strongly against the taxpayer, and specifically alluded to the term "thermal efficiency improvement" which is defined in terms of the waste heat issue. The appeal to the BTA specifically used the words "primary purpose". It also specifically attacked the findings of the state's engineer, which included specific

findings on waste heat and primary purpose. Obviously, Appellant easily meets the requirements of Satullo.

With regard to Proposition of Law No. 1, Appellees' argument seems to be that the phrase "such application shall not relate to facilities" really means "such certificate shall not relate". Unfortunately for Appellees, the statute clearly refers to the word "application" when prohibiting pre-1975 equipment. When the statutory language is that clear and unambiguous, this Court has enforced it, and insisted that "We cannot ignore the statute as written." Elkum Metals Co. v. Washington Cty. Board of Revision, (1998), 81 Ohio St. 3d 683, 693 N.E. 2d 276. The initial filing to obtain tax relief must include the express requirements of the statute. Columbia Toledo Corp. v. Lucas Cty. Board of Revision, (1996), 76 Ohio St. 3d 361, 667 N.E. 2d 1180.

Appellees admit that the "core of procedural efficiency" approach is only relevant when the statutory language is not clear. (Appellee's Brief, p. 22) Since the language of § 5709.46 is very clear concerning the prohibition, the language must be enforced.

Even in cases where the word "not" does not appear, and only an affirmative duty exists, the jurisdictional bar still applies. Cleveland Elec. Illum. Co. v. Lake Cty. Board of Revision, (2002), 96 Ohio St. 3d 165, 2002-Ohio-4033; Columbia Toledo, supra; American Restaurant and Lunch Co. v. Glander, (1946), 147 Ohio St. 147, 70 N.E. 2d. 93.

Appellees' references to the so-called "stipulation" were not accurate. Appellant expressly noted that the invalidity of the application was still a jurisdictional argument. (Supp 2, at 34). In addition, there was no "withdrawal" of any equipment from the application. Mr. Ehler merely stated that the Commissioner had "improvidently allowed" the pre-1975 equipment. (Supp. 2, at 34) He did not withdraw anything from the

application. In effect, he was merely admitting that a mistake was made by the Tax Commissioner. Appellant agrees that such a mistake was made. That does not change the invalidity of the application filed by the taxpayer.

**Proposition of Law No.2:**

**A taxpayer seeking a tax exemption must affirmatively satisfy each and every requirement of the exemption statute to qualify for the exemption.**

Appellees never directly responded to the specific proposition of law that each and every requirement of the statute must be proven by the taxpayer for the exemption to be granted by the Tax Commissioner. In effect, Appellant prevails by default on this portion of the appeal. Appellee fails to demonstrate where in the record is the probative evidence for each and every piece of equipment that it captures waste heat or waste steam for the primary purpose of thermal efficiency improvement. (As noted earlier, the facts alluded to by Appellees do not relate to electric generating plants, but to “industrial heat boilers” that are attached to production lines at plants producing some industrial product such as lubricating solvents, paper, widgets ...etc. Such industrial heat boilers are exactly the type of thermal efficiency equipment intended by legislators to be exempted: they take heat or steam not needed to produce an industrial product and capture it to use in some other way. That is different from the equipment at Stuart: its primary purpose is to aid in the production process of generating electricity. Most of the equipment at issue is in the boiler of the generating plant, not downstream somewhere to capture heat as it escapes up the stack. The condenser’s primary purpose was extensively explored at the

BTA hearing and in the Briefs—every recognized text lists its purpose as producing a vacuum and back pressure so the turbine can operate. With the exception of the “airheater” (sometimes referred to as the “air preheater”), absolutely no recognized electric generating plant texts ever refer to waste heat with regard to the equipment at issue in this case. That is a powerful statement, and one that Appellees cannot overcome. Given the strict scrutiny requirement of Ohio law, how can anyone seriously contend that the economizer, the condenser and the super heater capture waste heat or waste steam when no industry text uses that term in the context of electric generating plants?

Appellees assert in their Brief that Appellants are merely asking the court to reweigh the evidence already reviewed by the BTA. That is not true. The error that the BTA committed was to utterly fail to apply the proper legal test; nowhere in the BTA’s decision does it attempt to review how each and every piece of equipment meets each and every requirement of the statute. There is some attempt to decide the waste heat issue generally, but not in the context of each piece of equipment. As we will see in the next section of the brief, that approach violates the strict scrutiny rule, and results in a very expansive view of waste heat. However, nowhere in the BTA decision does the BTA review the primary purpose of each piece of equipment in light of the statutory requirements. Weighing or reweighing evidence means little if the evidence is not applied to the proper legal test.

Appellees never directly responded to the main point raised in Appellant’s Merit Brief regarding primary purpose: this Court has already ruled that the legal test for primary purpose is whether the equipment’s function aids in the production process itself. Timken v. Lindley, (1980), 64 Ohio St. 2d 224. Intuitively, that test makes sense. If a

piece of equipment has a function in the production of the main product produced ( in this case, electricity), then it cannot have some tax exempt thermal efficiency function as its primary purpose. Other types of equipment that do not aid in the production process could have a primary purpose of capturing waste heat, such as industrial heat boilers, used in paper plants, lubricating production facilities, etc... Appellees have presented no legislative history to suggest that the legislature intended to exempt equipment that is utilized in the main production process for a plant. The purpose of tax exemption statutes is to induce taxpayers to invest in equipment that they otherwise would not invest in. There is no need to induce utilities to invest in equipment they already need to produce electricity in a modern, efficient steam generating plant.

Appellees argued in their Merit Brief that somehow Appellant is asking the Court to look to the subjective intent of the taxpayer in deciding if the primary purpose requirement was met in this case. That is not true. Nowhere in Appellant's Brief will you see the Appellant argue subjective intent. Appellant asks the court to review the existing record in this case, and ask two questions:

- 1) Did the BTA ever address the primary purpose requirement in its review of the taxpayer's requests? ; and
- 2) Did the taxpayer ever produce any probative evidence on the issue of primary purpose being the capture of waste heat or steam (as opposed to other possible functions)?

The obvious answer to both questions is "no". No reference to " subjective intent" is necessary to answer those questions. The only evidence produced by the taxpayer did

not relate to Stuart, but to hypothetical plants that could not get a permit to operate, would kill all workers in the plant, and would require \$240 million to retrofit to match the hypothetical design.

Two points need to be raised regarding the definition of “waste heat”:

- 1) The taxpayers’ own expert, Mr. Coleman, admitted under oath that the term “waste heat” has no particular industry meaning. (Supp1, 68)
- 2) The case cited by Appellees on the issue of whether a technical definition or a plain language meaning should be applied to statutory construction [*Hoffman v Ohio State Medical Board*, (2007), 113 Ohio St. 3d 376, 2007-Ohio-2201] clearly states that technical definitions should apply if the statute regulates “a specialized industry that uses terms that have acquired technical meaning in the industry...” (Id. at 381) In the case of power plants, we know from Mr. Coleman that no technical meaning is recognized in the power plant industry for waste heat. Also, the statute here applies to all commercial and industrial users, and not to any one “specialized industry” such as the medical field. Also, in *Hoffman* the state regulator had issued regulations that contained technical definitions of the terms. In our case, no such regulation definition exists. Obviously, the plain meaning of the term must be applied. *Key Services*, supra.

With regard to the reference to waste heat in *The Cincinnati Gas and Electric Co. v Kosydar*, (1974), 38 Ohio St 2d 71, there is no way of knowing where that language originated. It presumably came from a descriptive brochure prepared by the utility, but no one knows for sure. What is clear is that the term was not “at issue” in this case and was not focused on as a key element to be litigated. It appears to be mere dicta in a case that pre-dates the statute in question.

The three cases cited by Appellees on page 36 of their Merit Brief that discusses waste heat involve the industrial boiler situation that Appellants have agreed meets the statutory requirements for exemption: an industrial product (chemical, steel, lubricants) are produced in a plant in which extra heat or steam that would otherwise be wasted is captured and used by the industrial heat boilers. These industrial boilers are not what exist at Stuart. (Sup 1, 63 at 153). Lots and lots of literature exists for such industrial operations where a boiler is simply added to a production process to capture such waste heat, and the heat is often called waste heat in those types of applications. As noted earlier, such applications are not what exist at Stuart.

**Proposition of Law No.3:**

**A strict scrutiny test must be applied in which evidence is viewed most strongly against the tax exemption request.**

We could find no language in Appellees’ Brief that attempted to respond to this proposition of law. We therefore must assume that Appellees agree with Appellant that the BTA failed to apply a strict scrutiny approach to the tax exemption request.

Appellees did not even bother to cite or discuss the case of *Key Services Corp. v. Zaino*, (2002), 95 Ohio St. 3d 11, which held that tax exemption statutes must be read strictly and most strongly against the exemption. A review of the BTA decision will not reveal any attempt by the BTA to strictly scrutinize the exemption requests in this case. Not only was an expansive definition of waste heat applied, rather than a narrow definition most strongly against exemption, but no review at all was done by the BTA with regard to primary purpose. Given that every expert who testified at the BTA trial admitted that the primary function of the equipment was to aid in the production process of electricity, the BTA obviously failed to apply the statute most strongly against the exemption. It failed to even mention the legal requirements in the context of the applications filed by the taxpayer.

**V. FACTS RELATING TO APPELLEE/CROSS APPELLANT'S CROSS APPEAL**

No waste heat is captured by the circulating water system. In fact, the system is designed to cool the steam, not heat it. The circulating water system merely takes in river water at one end and discharges it back into the river after it has cooled the steam. (The vacuum discussed by Appellees is created in the condenser, not the circulating water system).

Appellees apparently contend that since the condenser needs the circulating water system to cool the steam, it is directly related and therefore should be exempt! Of course, with that theory one could argue that steam could not be captured by the

condenser unless the boiler produced the steam. Why not exempt the boiler? Such logic is false logic, and would lead to the entire plant being exempted.

## **VI ARGUMENT RELATING TO APPELLEE/CROSS APPELLANT'S CROSS APPEAL**

### **Proposition of Law No..1:**

**The BTA erred when it held that the circulating water system that maintains the vacuum in the main condenser is not a thermal efficiency improvement facility**

The condenser's primary purpose is to create back pressure so the turbine will work, and all experts and industry literature agree on that. The fact that the circulating water system cools the steam in the condenser has nothing to do with any exempt purpose or function.

The circulating water system does not capture waste heat or steam; it picks up cool river water and dumps it back into the river at a warmer temperature. No reasonable person could find an exempt purpose in such equipment, especially under a strict scrutiny approach.

## **VII. CONCLUSION**

The BTA should have dismissed the appeal on jurisdictional grounds. The BTA failed to review whether the equipment in the exemption application met each and every requirement of the statute, and failed to apply the test in a strict manner. There is no need

to remand to the BTA to perform this function because the record clearly shows that no probative evidence was provided in support of the exemption requirement.

Respectfully Submitted,



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David C. DiMuzio (0034428)  
David C. DiMuzio, Inc.  
1900 Kroger Building  
1014 Vine Street  
Cincinnati, Ohio 45202  
(513) 621-2888  
Fax No. (513) 345-4449

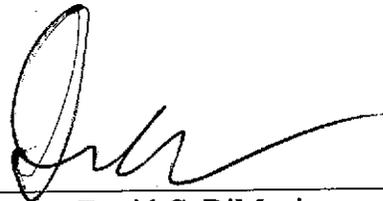
**CERIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Combined Brief of Appellant/ Cross Appellee Adams County Auditor have been served by ordinary U.S. mail this 30 day of January, 2008.

ANTHONY L. ELHER (00393304)  
Vorys, Sater, Seymour & PeaseLLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216  
Telephone:(614) 464-8282  
Fax (614) 719-4702

JULIE L. EZELL, ESQ.  
Cincinnati Gas & Electric Co  
Cinergy Services, Inc  
1000 E. Main Street  
Plainfield, Inc. 46168-1782

MARC DANN  
Attorney General of Ohio  
LAWRENCE D. PRATT (0021870)  
Assistant Attorney General  
Chief, Taxation Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
Telephone: (614) 466-5967  
Fax: (614) 466-8226



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David C. DiMuzio