

# **Bond Case Briefs**

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## **UTILITIES - INDIANA**

### **Citizens Action Coalition of Indiana, Inc. v. Southern Indiana Gas and Elec. Co.**

**Court of Appeals of Indiana - October 29, 2015 - N.E.3d - 2015 WL 6550654**

Citizens group and Office of Utility Consumer Counselor (OUCC) sought review of decision of the Indiana Utility Regulatory Commission granting the petition of public electric utility seeking approval of projects to modify current coal powered generating stations and requesting financial incentives and reimbursement from ratepayers for costs associated with the projects.

The Court of Appeals held that:

- Request for judicial review was not rendered moot by substantial work on projects;
- Portion of proposed modification was clean coal technology (CCT) that required a certificate of public convenience and necessity (CPCN);
- CPCN granted under different statutory section was insufficient;
- Commission made sufficient findings regarding whether specific unit was necessary for meeting electricity needs; and
- Commission was not required to make findings regarding utility's delay in filing petition.

Request for judicial review of decision of Indiana Utility Regulatory Commission granting petition of public electric utility seeking approval of projects to modify current coal powered generating stations and requesting financial incentives and reimbursement from ratepayers for costs associated with the projects was not rendered moot by utility's completion and use of many of projects due to objectors' failure to obtain stay pending appeal. Utility began work on projects while appeal was pending at its own risk, and appellate court had power to grant relief sought, which included remand to Commission with instructions to make additional findings.

Public electric utility's proposed modification of current coal powered generating stations so as to meet new Environmental Protection Agency (EPA) standards constituted clean coal technology (CCT) that required a certificate of public convenience and necessity (CPCN). Statutory definition of CCT applied to technologies which reduced emissions of sulfur or nitrogen based pollutants, and utility proposed two injection systems designed to mitigate sulfur emissions.

Certificate of public convenience and necessity (CPCN) granted under statutory section governing a utility seeking to recover federally mandated costs was insufficient to satisfy requirement of CPCN for approval of clean coal technology (CCT) project requested by public electric utility, where different sections governing different types of CPCNs had different requirements in order to issue CPCNs thereunder, and different sections served different purposes.

Indiana Utility Regulatory Commission made sufficient findings regarding whether specific unit was necessary for meeting electricity need of utility's customers in considering public electric utility's petition for approval of proposed modification of current coal powered generating stations so as to meet new Environmental Protection Agency (EPA) standards, where Commission specifically

addressed issue of electricity demand when it found that retiring certain facilities prematurely would have resulted in reliability risks for consumers based on capacity shortfall projections, and utility did not request approval of any project tied only to specific unit.

Indiana Utility Regulatory Commission was not required to make findings regarding whether utility's delay in filing its petition was unreasonable in considering public electric utility's petition for approval of proposed modification of current coal powered generating stations so as to meet new Environmental Protection Agency (EPA) standards, where there was no evidence that delay was effort to reduce feasibility of alternative compliance options.