

FILE

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV  
2007 JAN 16 PM 5:02  
**PUCO**

In the Matter of the Review of Chapters :  
4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23 :  
4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and :  
4901:5-37 of the Ohio Administrative Code :

Case No. 06-1201-AU-OR

**REPLY COMMENTS OF AMERICAN MUNICIPAL POWER-OHIO, INC., ON BEHALF OF  
ITSELF AND ITS OHIO MEMBER MUNICIPALITIES**

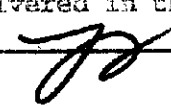
**I. INTRODUCTION**

On October 11, 2006, the Public Utilities Commission of Ohio ("PUCO" or "Commission") opened this docket to conduct its five year review of rules that govern fuel emergencies that are set forth in Ohio Administrative Code ("OAC") Chapters 4901:5-17 through 4901:5-37 (herein "Fuel Emergency Rules"). On that same date the Commission issued an Entry in this docket setting forth the Commission Staff's proposed revisions to the Fuel Emergency Rules. In a subsequent Entry extending the original filing deadlines, the Commission invited interested parties to file initial comments on the proposed revisions to the Fuel Emergency Rules by December 15, 2006, and reply comments to initial comments by January 16, 2007.

American Municipal Power-Ohio, Inc., ("AMP-Ohio") filed initial comments in the above-captioned docket on December 15, 2006. Now comes AMP-Ohio and hereby files reply comments in response to the other comments filed in this above-identified docket.

**II. COMMENTS OF AMP-OHIO**

Several members of regulated industries as well as trade groups representing those industries and other industry stakeholders filed comments to the proposed revisions to Fuel

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.  
Technician  Date Processed 1-17-07

Emergency Rules. AMP-Ohio on behalf of itself and its Ohio member municipalities submits the following reply comments.

1. **A Significant Number of Other Commentator's Concur that Commission Does Not Have Authority to Promulgate Rules to be Enforced Prior to the Declaration of an Emergency**

Several parties filed comments similar to AMP-Ohio's comments, that the proposed revisions to the Fuel Emergency rules imposing obligations prior to the declaration of an energy emergency are beyond the authority set forth in R.C. §4935.03. The Ohio Gas Marketers, the Ohio Oil and Gas Association, Marathon Petroleum, Ohio Edison, Ohio Rural Electric Cooperatives and Duke Energy all have filed comments that proposed Pre-Emergency Actions as well as other proposed obligations and duties imposed prior to the declaration of an emergency are beyond the authority granted by the Ohio Revised Code. Accordingly, AMP-Ohio agrees that the proposed revisions to the rules overreach and that the proposed rules that are to be effective prior to a declaration of emergency should be deleted.

2. **AMP-Ohio Agrees with those Comments from the Electric Industry that the Proposed Revisions to Fuel Emergency Rules Fail to Account for Federal RTO Requirements and Obligations**

AMP-Ohio also is in general agreement with the comments from many in the electric industry that the proposed revisions to the Fuel Emergency Rules do not take into account the federally mandated obligations and requirements of Regional Transmission Organizations such as PJM and MISO. The proposed revisions to the Fuel Emergency Rules also fail to acknowledge that PJM and MISO have operating requirements in place intended to address those situations where there is a shortage of electricity. AMP-Ohio concurs with Ohio Edison, DP&L, Duke Energy and AEP that the proposed revisions to the Fuel Emergency rules do not address Electric Producers obligations to either PJM or MISO or the emergency provisions that PJM or

MISO have adopted. AMP-Ohio agrees that the proposed revisions need to be further revised to acknowledge jurisdiction of RTOs, the obligations imposed upon Electric Producers by RTOs and the RTOs existing rules to address energy shortfalls.

**3. Other Comments Also Address the Need for an Industry Task Force**

Like AMP-Ohio, the Ohio Coal Association along with Duke Energy advocated for the creation of a task force of industry representatives to study the proposed revisions to the Fuel Emergency Rules to assure that any proposed revisions are workable for the stakeholders. In addition, AMP-Ohio supports the comments of the Ohio Coal Association, AEP and the Ohio Consumers' Counsel ("OCC") in their recommendation for clarity as to who is appointed to the Fuel Advisory Council. AMP-Ohio submits that the Fuel Advisory Council should include various industry representatives including a representative of municipal electric systems.

**4. AMP-Ohio Disagrees with the Comments of OCC Seeking Copies of Information that the Proposed Revisions to the Fuel Emergency Rules Require be Filed with the Commission**

AMP-Ohio disagrees with the comments filed by OCC suggesting that the proposed Fuel Emergency rules be further revised to require that information that the rules required be filed with the Commission also be filed with OCC for several reasons.

First, as AMP-Ohio stated in its initial comments, AMP-Ohio is a non-jurisdictional entity for OCC and PUCO purposes and should not be required to file much of the information at all. Likewise, OCC has no jurisdiction regarding AMP-Ohio's member municipal utilities.

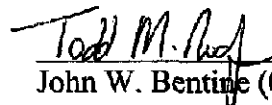
Second, the information contained in the various reports contemplated to be provided to the Commission may contain proprietary information. The risk of such protected information being inadvertently disclosed or otherwise rendered discoverable by other parties simply outweighs the benefit of OCC being provided such information.

Finally, producing such information increases the administrative expense and burden on entities subject to the rules. The Commission should not amend the proposed Fuel Emergency rules as requested by OCC.

### III. CONCLUSION

AMP-Ohio understands the need for, and the benefit of, certain rules to address availability of fuel supply during fuel emergencies or fuel shortages. However, the proposed revisions to the Fuel Emergency Rules do not reflect the Commission's statutory authority and do not reflect the actual operation of today's marketplace. For all of the reasons set forth above and in its initial comments, AMP-Ohio, on behalf of itself and its Member municipalities, request that this Commission continue to study, analyze and revise the proposed revisions to the Fuel Emergency Rules consistent with the comments set forth above and in AMP-Ohio's initial comments.

Respectfully submitted,

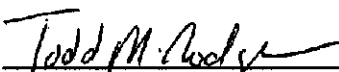


John W. Bentine (0016388)  
Todd M. Rodgers (0061554)  
Bobby Singh (0072743)  
Chester, Willcox & Saxbe, LLP  
65 E. State Street, Suite 1000  
Columbus, Ohio 43215-3413  
Phone No. 614-221-4000

Attorneys for AMP-Ohio, Inc.

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply Comments of AMP-Ohio, Inc., pertaining to the proposed revisions to the Fuel Emergency Rules was served via U.S. Regular Mail on the parties at the addresses set forth below this 16<sup>th</sup> day of January, 2007.

  
Todd M. Rodgers

April R. Bott Nathaniel S. Orosz Chester, Willcox & Saxbe LLP 65 E. State Street, Suite 1000 Columbus, Ohio 43215-3413	Dona R. Seger-Lawson Director, Regulatory Operations DP&L 1065 S. Woodman Drive Dayton, Ohio 45432
Larry S. Sauer Melissa R. Yost Office of Ohio Consumers' Counsel 10 W. Broad St., Suite 1800 Columbus, Ohio 43215-3485	Mark A. Whitt Jones Day P.O. Box 165017 Columbus, Ohio 43216-5017
Rocco D'Ascenzo Paul A. Colbert Duke Energy Ohio, Inc. 139 East Fourth Street Columbus, Ohio 43201	Samuel C. Randazzo Lisa G. McAlister Daniel J. Neilsen McNees Wallace & Nurick LLC 21 E. State Street, 17 <sup>th</sup> Floor Columbus, Ohio 43215-4228
Thomas E. Lodge Carolyn S. Flahive Thompson Hine LLP 10 W. Broad Street, Suite 700 Columbus, Ohio 43215-3435	David W. Rubadue Columbia Gas of Ohio, Inc. 200 Civic Center Drive P.O. Box 117 Columbus, Ohio 43216-0117
James W. Burk FirstEnergy Service Company 76 E. Main Street Akron, Ohio 44308	W. Jonathan Airey Gregory D. Russell Vorys, Sater, Seymour & Pease, LLP 52 E. Gay Street P.O. box 1008 Columbus, Ohio 43216-1008

M. Howard Petricoff Stephen M. Howard Vorys, Sater, Seymour & Pease, LLP 52 E. Gay Street P.O. box 1008 Columbus, Ohio 43216-1008	Steven T. Nourse Marvin I. Resnik American Electric Power Service Corporation 1 Riverside Plaza, 29 <sup>th</sup> Floor Columbus, Ohio 43215
Douglas Melin Marathon Petroleum Company 539 S. Main Street Findlay, Ohio 43215	Donald J. Marshall Eagle Energy 4465 Bridgetown Road Cincinnati, Ohio 45211
John M. Dosker Stand Energy Corp. 1072 Celestial Street, Suite 110 Cincinnati, Ohio 45202-1629	

266332.2