

**FILE**

**BEFORE THE  
OHIO POWER SITING BOARD**

RECEIVED-DOCKETING DIV  
2008 FEB -8 PM 5:21  
PUCO

In the Matter of Application of )  
American Municipal Power-Ohio, Inc., )  
for a Certificate of Environmental )  
Compatibility and Public Need for an )  
Electric Generation Station and Related )  
Facilities in Meigs County, Ohio )

Case No. 06-1358-EL-BGN

---

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

---

"When you have the facts on your side, argue the facts.  
When you have the law on your side, argue the law.  
When you have neither, holler."

-Al Gore

All the parties to this matter have heeded the advice of Mr. Gore. American Municipal Power-Ohio, Inc. ("AMP-Ohio") presented mountains of facts to support its Certificate of Environmental Compatibility and Public Need ("Certificate") Application for AMP-Ohio's proposed base load power generation station, American Municipal Power Generating Station ("AMPGS"). The Ohio Power Siting Board ("OPSB" or "Board") Staff presented significant factual data to support its substantial independent review of AMP-Ohio's Certificate Application. At hearing, both AMP-Ohio and OPSB Staff argued the facts.

AMP-Ohio presented the Certificate Application in concert with applicable Ohio law, Section 4906.10, Revised Code, along with the rules promulgated thereunder. OPSB Staff reviewed the Certificate Application and made findings consistent with Section 4906.10, Revised Code, and the Board's rules. At hearing, both AMP-Ohio and OPSB Staff argued the law.

Quite to the contrary, the Natural Resources Defense Council, Ohio Environmental Council and the Sierra Club (collectively "Activist Groups"), having neither support in the facts nor Ohio law to argue, resorted to "hollering."

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 2-11-08

## ARGUMENT

It is clear that the national Activist Groups have a national agenda and a consistent theme. While the forums, states and power generation projects change, the derailment script of the national Activist Groups remains consistent: “We know power supply, power generation options, every environmental variable, and every cost projection better than you do. We know that your project should fail.”

Ohio is just the most recent stop for the national Activist Groups; their message remains consistent:

“We” know what is best for AMP-Ohio, AMP-Ohio’s member communities and the state of Ohio. “We” know the only and best way to evaluate carbon dioxide, both from a technical and cost perspective, and “we” know how AMP-Ohio should have made its power supply choices for its membership. Further, “we” know that AMP-Ohio and its members’ multiple, well-known power sector consultants, including Sargent & Lundy, R.W. Beck and URS, must have evaluated this project incorrectly from a cost, environment and technology perspective because “we” don’t agree with it. Finally, “we” know how to interpret what Ohio law should say, rather than what it does say, because we know more than Ohio’s lawmakers, regulators and judges.

Simply put, it is clear from the Activist Groups actions and Post Hearing Brief that everyone, including the ALJs,<sup>1</sup> is wrong but them.

Unbelievably, the Activist Groups dogmatically touted this message throughout the hearing and in their Post Hearing Brief, despite the fact that it was quickly obvious that this “we” showed a fundamental and collective lack of knowledge regarding AMP-Ohio, power supply, generation choices and Ohio law.

---

<sup>1</sup> See, generally, Activist Groups’ Post Hearing Brief, p. 12, footnote 4 (ALJs’ rulings are incorrect).

<sup>3</sup> In their Post Hearing Brief, Activist Groups failed to argue any other statutory criteria beyond those contained in Sections 4906.10(A)(2) and (3), Revised Code. In addition to their failure to produce evidence supporting their positions with respect to (A)(2) and (3), as will be explained in this Reply Brief, Activist Groups wholly failed to argue in their Post Hearing Brief or provide evidence at the hearing to contest AMP-Ohio’s evidence and the Staff’s findings with respect to 4906.10(A)(1) and (A)(4) through (8). To the extent Activist Groups have failed to raise in their brief and failed to present evidence on these statutory criteria, the Board should consider these matters uncontested.

As addressed comprehensively in AMP-Ohio's Post Hearing Brief, the Activist Groups' experts, David Schlissel and Richard Furman, knew next to nothing about AMP-Ohio, AMP-Ohio's members, AMP-Ohio's generation assets, power supply in the Midwest, power supply in Ohio, AMP-Ohio's power supply needs and market purchase position. AMP-Ohio's Post Hearing Brief, pp. 15-20 (Schlissel), pp. 30-31 (Furman).

Similarly, it is clear that the Activist Groups had no interest in learning or following applicable Ohio law. For example, even though Ohio has codified and long-standing rules of evidence, Activist Groups argued several objections based upon the Federal Rules of Evidence instead. Tr. III, pp. 26-32. And, counsel for Activist Groups made it quite clear that no one else, including the ALJs, was capable of reading and applying Ohio law: "even if this court chooses to ignore the rules governing here." Tr. III, p. 26, see also Tr. III, pp. 51-52.

Ohio is not important to the national Activist Groups nor is AMP-Ohio. Attempting to destroy AMP-Ohio's ability to provide its members with reliable, low-risk, environmentally responsible base load power is important to the Activist Groups. However, as the record in this matter clearly establishes and as set forth below, the Activist Groups lack support in both the law and the facts to advance this unfortunate agenda.<sup>3</sup>

**I. Contrary the Activist Groups' Assertions, AMP-Ohio Has Met the Statutory Requirements of Section 4906.10(A)(2), Revised Code.**

Contrary to the Activist Groups' unsupported rhetoric, AMP-Ohio has identified the nature of the probable environmental impacts associated with AMPGS as required by Section 4906.10(A)(2), Revised Code.

The Activist Groups argue that both AMP-Ohio and the OPSB Staff were required to "evaluate CO<sub>2</sub> emissions and climate change impacts" in order to meet the statutory criteria of Section 4906.10(A)(2). Fundamentally, the Activist Groups' argument is without merit for two

key reasons. First, the Activist Groups failed to connect climate change/global warming to this proceeding. Second, the Activist Groups failed to demonstrate how AMP-Ohio and the OPSB Staff neglected their statutory requirements.

Consistent with their national agenda to derail all proposed fossil fuel power projects, the Activist Groups attempted to hijack this proceeding and turn it into a global warming/climate change debate.<sup>4</sup> However, the Activist Groups failed to produce any evidence or witness to support its claims that the AMPGS project would have any resulting, tangible impact on global warming or climate change. Specifically, neither Mr. Schlissel nor Mr. Furman claimed to have any knowledge or expertise regarding global climate change, nor do either have a professional background suitable to support such a claim. Activist Groups' Exhibits 1, RCF 1 and 6, DAS 1.

In the waning hours of the last day of hearing, the Activist Groups finally acknowledged that they had failed to produce any witness or other evidence to support their global warming/AMPGS impact theory, and so they asked the ALJs to allow them to present rebuttal testimony on this issue. Tr. VI, p. 93. However, upon questioning from the ALJs, counsel for the Activist Groups failed to articulate a single persuasive reason to explain why such testimony was not presented in their direct case. Tr. VI, pp. 93-102. If the Activist Groups could make a causal connection between impacts on global climate change and AMPGS they should have done so with evidence, not rhetoric. Articulating a claim over and over again, sans an iota of supporting evidence, does not make it fact.<sup>5</sup>

---

<sup>4</sup> It is important to note that two of the three members, Sierra Club and NRDC, do not support any fossil fueled power projects, including those utilizing the very Integrated Gasification Combined Cycle ("IGCC") design supported by their witness Mr. Furman. Activist Groups' Post Hearing Brief, p. 25, footnote 8, see also AMP-Ohio's Post Hearing Brief, p. 27, footnote 3.

<sup>5</sup> Interestingly, even absent any evidence in the record to support such argument, the terms "global warming," "climate change," and "CO<sub>2</sub>" appear a collective 138 times in the Activist Groups' thirty page Post Hearing Brief. In sharp contrast, the terms "Staff Report" and "Certificate Application" do not appear at all.

Next, the Activist Groups argue, but failed to prove, that AMP-Ohio and the OPSB Staff did not identify the nature of the probable environmental impacts associated with AMPGS. Specifically, the Activist Groups argue that because AMP-Ohio failed to identify or consider CO<sub>2</sub>, AMP-Ohio failed to meet its statutory obligations.<sup>6</sup> The Activist Groups are wrong—both legally and factually.

First, the Activist Groups' position is an over-reach of applicable Ohio law. Neither AMP-Ohio nor the OPSB Staff have either the legal basis or the obligation to consider the impact of unregulated substances, pursuant to Section 4906.10, Revised Code, or elsewhere in Ohio law.<sup>7</sup> As succinctly and aptly articulated by the OPSB Staff: "This case is not about laws that might be; it is about laws that are. The Board implements the law; it does not make it." OPSB Staff's Post Hearing Brief, p. 2.

Second, even assuming that the Activist Groups' position regarding CO<sub>2</sub> is correct, AMP-Ohio did provide testimony and evidence regarding the organization's consideration of CO<sub>2</sub>. This is well established by the record and supported by the OPSB Staff condition recommending the Powerspan technology requirement. Tr. II, pp. 116-118; see also Staff Exhibit 1, pp. 30-31; Staff Exhibit 2; AMPGS Certificate Application, Project Summary Section, pp. 10-11; AMP-Ohio's Post Hearing Brief, p. 33. Ohio EPA has also recognized AMP-Ohio's efforts to study CO<sub>2</sub> technologies: "I recognize and appreciate AMP-Ohio's recognition in its [PSD] permit application that it must continue to evaluate emerging CO<sub>2</sub> technology." February 7, 2008 letter from Director Korleski, attached.

<sup>6</sup> It is important to note that the Activist Groups use the terms "CO<sub>2</sub>," "climate change" and "global warming" interchangeably; however, they are not.

<sup>7</sup> Activist Groups' Post Hearing Brief attempts to provide legitimacy for its argument by presenting its interpretation of the Supreme Court's decision in *Massachusetts v. EPA*. Activist Groups' Post Hearing Brief, p. 8, footnote 2. However, Activist Groups' reading of this case is both incorrect and irrelevant to this proceeding. Ohio EPA, as discussed later, has determined that Ohio will not regulate CO<sub>2</sub> emissions from AMPGS. See, Final Air Permit to Install, Issued by Ohio EPA, February 7, 2008.

Knowing that they lack support in the record, the Activist Groups have taken the argument one step further, from “AMP-Ohio did not consider CO<sub>2</sub>” to “AMP-Ohio has made no commitment to reduce CO<sub>2</sub>,” therefore, the Certificate Application should be denied. Activist Groups’ Post Hearing Brief, p. 10. Yet again, the Activist Groups fail to see the importance of actually applying the law that is, not the law as they would like it to be. Expressly, Section 4906.10(A)(2), Revised Code does not support the Activist Groups’ assertion. In addition, as confirmed in national studies and by the Activist Groups’ own experts, no fossil-fuel fired base load power supply option exists that is capturing and/or sequestering CO<sub>2</sub>. Tr. I, pp. 54-56; AMP-Ohio Exhibit 9, The Future of Coal, p. xiii. Thus, the Activist Groups have converted “compliance with the impossible” into the statutory requirement.

AMP-Ohio would also ask the Board to take administrative notice of two February 7, 2008, Ohio EPA actions. First, Ohio EPA issued a final air permit for AMPGS. This comprehensive air permit could not have been issued unless and until Ohio EPA determined that AMPGS will comply with all applicable air pollution control laws and regulations.

Second, Ohio EPA Director Korleski issued a letter to AMP-Ohio stating that Ohio would not regulate greenhouse gasses because Ohio believes that such regulation is “tailor made for a comprehensive, well-considered and unifying federal approach, rather than a patch work of uncoordinated and potentially inconsistent state and/or regional efforts to regulate greenhouse gases.” February 7, 2008 letter from Director Korleski, attached. Similarly, we urge the Board not to engage in an uncoordinated effort to regulate greenhouse gas emissions as part of this Certificate process.

Rhetoric aside, AMP-Ohio has demonstrated, first in its Certificate Application and as confirmed by the record established and evidence admitted, that the statutory requirement to

identify the nature of all probable environmental impacts has been met. AMP-Ohio's Post Hearing Brief, pp. 22-24. Likewise, the OPSB Staff Report clearly identifies the broad scope of investigation that OPSB Staff undertook to confirm that the nature of all probable impacts were considered. Staff Exhibit 1, pp. 19-28.

**II. Contrary the Activist Groups' Assertions, AMP-Ohio Has Met the Statutory Requirements of Section 4906.10(A)(3), Revised Code.**

The Activist Groups' position here can be summarized as: "because it is hypothetically possible that some combination of some other energy sources, including other fossil-fuel alternatives, all being deployed at the same time, and under the most favorable economic and operational conditions, however unlikely, might serve as a partial base load power replacement for AMPGS, AMP-Ohio has not met Section 4906.10(A)(3), Revised Code."

The Activist Groups spin this amorphous theory into two primary contentions: (1) AMP-Ohio has underestimated CO<sub>2</sub> and construction costs; and (2) AMP-Ohio failed to consider the use of other alternatives to satisfy some or all of the energy needs that AMP-Ohio has identified. Activist Groups' Post Hearing Brief, pp. 13-29. Not only are these contentions quite remote from the actual requirements of law, the Activist Groups' own experts, along with the record, clearly do not support such arguments.

**A. AMP-Ohio has not underestimated costs.**

Ohio law does not require AMP-Ohio to undergo an exhaustive and ever-continuing evaluation of costs associated with every possible power generation alternative. In fact, Ohio law does not even require that the selected power generation option be the least cost option.

As stated by the OPSB Staff, "this case is not about whether building this plant is financially wise for the participants." OPSB Staff's Post Hearing Brief, p. 2. Rather, this case is about whether, when all variables are considered comprehensively and the OPSB Staff's

conditions of issuance are integrated, AMPGS will minimize adverse environmental impacts. Section 4906.10(A)(3), Revised Code. The Certificate Application, the testimony presented, the evidence admitted and the OPSB Staff Report and Recommended Conditions of Issuance all support a conclusion that AMPGS has met this statutory requirement. OPSB Staff Exhibits 1 and 2; AMP-Ohio's Certificate Application; AMP-Ohio's Post Hearing Brief, pp. 24-33.

Statutory requirements aside, AMP-Ohio has carefully considered, in detail, all costs associated with this project comparatively against costs associated with various other power supply options, including continued market purchasing. AMP-Ohio Exhibit 3, Testimony of Scott Kiesewetter, Q/A 21; AMP-Ohio Exhibit 4, Testimony of Ivan Clark, Q/A 22-32. These comprehensive cost analyses will continue as AMP-Ohio moves through this project, in order to refresh estimates as new information becomes available. AMP-Ohio Exhibit 16, Rebuttal Testimony of Ivan Clark, Q/A 21.

One of AMP-Ohio's core tenants, as a non-profit municipal power organization, is to provide affordable power to its members. Therefore, it is ludicrous to insinuate, as the Activist Groups have done, that AMP-Ohio would "pre-ordain" a certain technology and then intentionally or inaccurately skew cost figures to support the technology selection. This nonsense is quickly dispelled by a review of AMP-Ohio's current power supply portfolio, which includes efficiency and conservation, wind, hydroelectric, natural gas, landfill gas generation and AMP-Ohio's continued development of these power options.

In reality, costs for all forms of construction have gone up, and no power generation technology is immune from such cost increases. AMP-Ohio Exhibit 1, Testimony of Evis Couppis, Q/A 25; Tr. III, p. 149; Tr. IV, p. 155. AMP-Ohio has openly and frankly disclosed cost increases to its members in a variety of studies, which are updated periodically. AMP-Ohio



Exhibit 16, Rebuttal Testimony of Ivan Clark, Q/A 21. Just as openly, AMP-Ohio has discussed potential costs associated with CO<sub>2</sub> with its members. AMP-Ohio Exhibit 4, Testimony of Ivan Clark, Q/A 12-13. Again, no form of power, including existing generation facilities, will be immune from costs associated with CO<sub>2</sub> once a regulatory scheme is established, either by Congress or by US EPA. AMP-Ohio Exhibit 1, Testimony of Evis Couppis, Q/A 25; Tr. III, p. 149; Tr. IV, p. 155.

The Activist Groups have presented project costs as one of the marquee reasons why the Board should deny AMP-Ohio's Certificate Application. However, as articulated above and as the record clearly indicates, the law does not support such a position and the facts make it clear that, even if the law did require a "least-cost" evaluation, AMP-Ohio has nonetheless established that AMPGS is the correct selection once all the variables of Section 4906.10(A)(3), Revised Code are considered.

**B. AMP-Ohio has considered a host of generation options to meet the power supply needs of its members.**

As articulated above, it is quite clear that the Activist Groups came into this proceeding with a clear agenda and message and, as such, did not even attempt to superficially educate themselves as to the actual merits of this particular Certificate Application.<sup>8</sup> No where is this intellectual dishonesty more clear than in the Activist Groups' claim that AMP-Ohio merely went "through the motions of pretending to objectively evaluate alternatives" to AMPGS. Activist Groups' Post Hearing Brief, p. 13. Perhaps such unsupported and flimsy attacks work in other states against other electric power organizations, but not in concert with Ohio law and not

---

<sup>8</sup> Unbelievably, the Activist Groups have never once indicated that AMP-Ohio's Certificate Application was even fully reviewed by their experts, and there is no reference to it in the Activist Groups' Post Hearing Brief. Also, even after express invitation by OPSB Staff to participate in the Conditions of Issuance discussions, the Activist Groups failed to engage. Tr. V, p. 118.

against a non-profit power organization like AMP-Ohio, which has a clear track record as a renewable energy leader and environmental steward.<sup>9</sup>

Initially, it is rather curious that, throughout their Motion to Intervene, Activist Groups launched a series of assertions as to the lack of “public interest, convenience, and necessity” of the AMPGS project, yet only make mention of this statutory provision once in their Post Hearing Brief in a footnote. Compare Activist Groups Motion to Intervene, Section IV and other references to “public interest, convenience, and necessity” with Activist Groups’ Post Hearing Brief, p. 4, footnote 1. Instead, apparently recognizing that the Power Siting Board Statute does not require a showing of necessity and, in this case, that Ohio’s Constitution forbids such an inquiry, Activist Groups have repackaged their necessity-based Section 4906.10(A)(1), Revised Code, arguments into Section 4906.10(A)(3), Revised Code, arguments. These arguments are nothing more than a veiled attempt to make the argument that new generation, such as AMPGS, is not “necessary” for AMP-Ohio or its municipal members. Thus, the Board should reject these need-based arguments.

Further, it is clear, as supported by six AMP-Ohio witnesses, mountains of reports created by power industry experts and the Certificate Application itself, AMP-Ohio has, as a part of the AMPGS process, exhaustively looked at a wide array of power supply options and continues to do so. In doing so, AMP-Ohio clearly considered all relevant factors, including environmental impacts, costs, reliability, dispatchability, size, and ripeness of technology. *See, e.g., AMP-Ohio Exhibit 1, Testimony of Evis Couppis, Q/A 9 and 12-26; AMP-Ohio Exhibit 2, Testimony of Randy Meyer, Q/A 12-14, 16-18, and 25-35; AMP-Ohio Exhibit 3, Testimony of Scott Kieseewetter, Q/A 7, 14, 16, 17, 21, 22, and 24-27; AMP-Ohio Exhibit 4, Testimony of Ivan*

---

<sup>9</sup> Green Energy Ohio named AMP-Ohio its “Non-Profit of the Year” for 2006. In 2004 and 2005, AMP-Ohio received the Governor’s Award for Excellence in Energy Efficiency in Ohio for AMP-Ohio’s member wind turbine project. AMPGS Air Permit to Install Application, Vol. I, p. 3.

Clark, Q/A 8, 12-32, and 37-38. None of the other power supply options considered, either individually or collectively, provide a better option for AMP-Ohio than AMPGS.

As an overarching comment as to the lack of merit in the Activist Groups position regarding power supply alternatives to AMPGS, AMP-Ohio believes that it is, again, important to reiterate that neither of the Activist Groups' experts are qualified or knowledgeable as to the implementation of different power supply options, either in the Midwest generally or for AMP-Ohio specifically. For instance, how can Mr. Schlissel credibly offer power supply alternatives when it is clear that he does not know either the projected base load power supply deficit in this region or the deficit that AMP-Ohio's members currently face (11,000MW and 2,000MW respectively)? Tr. III, p. 124 and Tr. IV, p. 270. Similarly, how can Mr. Furman offer opinions as to the environmental benefits associated with IGCC when it is clear that the scope of Mr. Furman's alleged expertise consists, primarily, of repackaging the theories of others and looking at potential emissions from hypothetical IGCC projects? Tr. I, pp. 270-276 and Tr. VI, p. 118.

Nonetheless, the Activist Groups continue to argue that some combination of energy efficiency, wind, natural gas combined cycle and IGCC would better serve AMP-Ohio's power supply needs than AMPGS. AMP-Ohio has already summarized its evaluation, including environmental considerations, of each of these power generation alternatives, both individually and collectively, in its Post Hearing Brief. AMP-Ohio's Post Hearing Brief, pp. 13-22, 24-33, 38-40. Therefore, AMP-Ohio, in an effort to promote judicial economy, will not restate the factual details of why each option was ultimately not selected as the flagship project for AMP-Ohio. As a summary, AMP-Ohio will reiterate the key factors related to each:

1. Energy Efficiency

AMP-Ohio recognizes the importance of energy efficiency. Tr. VI, p. 47. However, as best articulated by the Activist Groups' expert, Mr. Schlissel, the best that AMP-Ohio could hope for with energy efficiency would be a one to two percent reduction in current power supply need, without factoring growth and without proven long-term sustainability. Tr. III, pp. 78-79. Thus, energy efficiency might, using Mr. Schlissel's projections, result in a very small percent change in AMP-Ohio's current base load power supply needs. Thus, AMP-Ohio still would have a power supply deficit much larger than AMPGS plus available hydroelectric and renewable generation.

2. Wind

As the hearing transcript demonstrates, AMP-Ohio knows and supports wind as a power supply resource. AMP-Ohio Exhibit 17, Testimony of Larry Marquis. But, as the operator of Ohio's only operational wind farm, AMP-Ohio also knows the practical and operational limitations of wind generation in Ohio. AMP-Ohio Exhibit 17, Testimony of Larry Marquis, Q/A 9. As the record reflects, wind cannot be used reliably as a base load power source, due to the fact that capacity factors are in the 21-23.5% range and wind is not dispatchable. AMP-Ohio Exhibit 17, Testimony of Larry Marquis, Q/A 10, 11. Nonetheless, wind is used, and will continue to be used, by AMP-Ohio. In fact, AMP-Ohio is actively pursuing at least 50 additional MW of wind generation as part of its overall power supply strategy. AMP-Ohio Exhibit 17, Testimony of Larry Marquis, Q/A 13.

3. NGCC

NGCC is also a power supply option that AMP-Ohio utilizes and will continue to seek as part of its overall power supply portfolio AMP-Ohio Exhibit 16, Testimony of Clark, Q/A 13,

14. However, the Activist Groups have alleged that AMP-Ohio incorrectly utilizes this resource for intermediate rather than base load power. Activist Groups' Post Hearing Brief, p. 23. Ironically, the Activist Groups' own expert correctly acknowledged that no one is utilizing NGCC anywhere in the Midwest as a base load power resource. Tr. III, p. 129. In addition, the higher levelized costs and high volatility of the price projects did not make NGCC the correct choice as AMP-Ohio's flagship asset. AMP-Ohio Exhibit 16, Testimony of Clark, Q/A 12.

#### 4. IGCC

IGCC, while considered by AMP-Ohio, was ultimately not selected for this flagship base load need due to a variety of critical factors, including: lower reliability and availability, lack of vendor warranties, higher cost and lack of load following ability. AMP-Ohio Exhibit 1, Testimony of Couppis, Q/A 15; Tr. II, p. 57. Further, there are no clear environmental advantages, as currently operating IGCC plants, Polk and Wabash, have air emissions similar to the levels anticipated from AMPGS. Tr. II, p. 123. While it is true that proposed new "chalkboard" IGCC plants have been permitted at lower air emission levels, Mr. Furman explained that emissions at those levels have never been demonstrated at an operating IGCC. Tr. I, p. 112.

The Activist Groups have attempted to marginalize these critical considerations, citing generic studies and Mr. Furman's written testimony. However, on cross, Mr. Furman's hearing testimony failed to support his written testimony in every key area. Interestingly, as if the hearing was incidental, the Activist Groups' Post Hearing Brief failed to acknowledge the fact that Mr. Furman's written testimony, to the extent not stricken, was clearly impeached by his verbal testimony. Specifically:

- On the issue of vendor guarantees, Mr. Furman's written testimony stated that "major vendors...will warrant that new IGCC plants will achieve greater than 90% availability with a spare gasifier." However, at the hearing, Mr. Furman revealed on cross that this statement was solely based upon an apparent conversation with an unnamed employee of General Electric and was therefore stricken as classic hearsay. Tr. I, pp. 207-209.
- On the issue of availability, Mr. Furman's written testimony stated that "IGCC plants have achieved greater than 90% availability with the use of a backup fuel." However, at the hearing, Mr. Furman conceded that this availability was only during peak conditions, as opposed to base load conditions. Mr. Furman also revealed his total lack of personal knowledge with respect to IGCC plants achieving this level of availability. Tr. I, p. 115; Tr. I, pp. 239-242.
- On the issue of fuels, Mr. Furman's written testimony indicates that an "additional advantage of an IGCC plant is that it can operate on a various fuels" and use natural gas or diesel fuel if the gasifier is out of service. Activist Groups' Exhibit 1, p. 33. However, at hearing, Mr. Furman failed to produce any testimony as to the availability of these alternative fuels, such as petcoke, in Meigs County or anywhere else in Ohio. Tr. I, pp. 144-145.

Clearly, Mr. Furman is not an expert regarding IGCC technology, has no personal knowledge of the availability or performance of IGCC facilities, and his testimony should be given no weight.

AMP-Ohio has spent, and continues to spend, significant time and resources to assure that AMPGS will operate in a manner to minimize adverse environmental impacts. Once the rhetoric is moved aside, it is clear that AMP-Ohio is planning this flagship project using the most

reliable, cost-effective and innovative way possible. Thus, AMP-Ohio has clearly met the requirements of Section 4906.10(A)(3).

### **III. Mr. Clark's Rebuttal Testimony is Entitled to Confidential Treatment**

AMP-Ohio presented rebuttal testimony of Ivan Clark, some of which contained information of independent economic value to AMP-Ohio and which AMP-Ohio has taken reasonable steps to keep confidential. Activist Groups have used their Post Hearing Brief to reargue the denial of a motion to remove the confidentiality of this information. Tr. VI, p. 14-15. Activist Groups have not presented any reason to justify a reversal of the previous denial.

First, Activist Groups claim that portions of the information contained in Mr. Clark's cost analysis have already been made public, and that therefore the entire analysis and assessment of costs cannot be confidential. This is a strange and baseless claim, as Mr. Clark's assessment and comparison of costs and projections has independent economic value from not being generally known. Just because one or more components of that analysis, standing alone, may not be confidential does not waive any claim to the overall assembly of those components and associated conclusions. Mr. Clark's new cost analysis has its own, independent economic value and own, independent claim to confidentiality.

Second, Activist Groups argue that since "similar" cost estimates were presented to city councils and the public, AMP-Ohio cannot now claim confidentiality on Mr. Clark's new cost estimate that was presented in rebuttal to Mr. Schlissel's testimony. This theory of waivers of confidentiality stretches beyond all credulity. A party may waive confidentiality, but doing so on one or more separate analyses that examine a similar subject matter does not forever waive claims to confidentiality on new assessments involving that same subject matter. AMP-Ohio is fully entitled to decide which cost analyses it chooses to release to the public and which it does

not.<sup>10</sup> AMP-Ohio has taken all reasonable and appropriate steps to maintain the confidentiality of Mr. Clark's rebuttal testimony, and the disclosure of information in the past of separate cost analyses cannot constitute a waiver of future claims of confidentiality on different information and analyses.

Third, Activist Groups do not even attempt to claim that Mr. Clark's cost analysis information does not have "independent economic value." That's because, as explained at the hearing, it clearly has enormous value to AMP-Ohio, and the release of such information could be extremely harmful to AMP-Ohio. Tr. VI, p. 13.

Further, it is offensive for the Activist Groups to attempt to maintain a future right to challenge the confidential nature of "other testimony and documents" without any specification. Again, it is clear that Activist Groups do not intend to be bound by the rules of law or procedure applicable in Ohio. AMP-Ohio urges the Board not to indulge such behavior.

### **CONCLUSION**

It is clear the Activist Groups have a national agenda. It is also clear that every project in every state, including this non-profit municipal project in Ohio, is unacceptable if it does not fit the national agenda. Both Mr. Schlissel and Mr. Furman have testified in numerous forums in numerous states, but always, incredibly, with the same message: "everyone is wrong but us."

Having clearly followed Mr. Gore's advice in this power siting matter, the Activist Groups' Post Hearing Brief, mirroring the case they presented at hearing, their evidence and the testimony of their witnesses, is quite full of high sounding "hollering" but is clearly lacking in facts, substance, evidentiary record and support in Ohio law.

---

<sup>10</sup> AMP-Ohio reiterates the concerns expressed at the hearing that confidential information may have been inadvertently disclosed, and that this inadvertent disclosure does not waive AMP-Ohio's claim to confidentiality on this information.

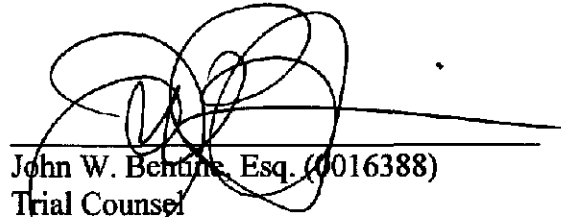


Quite to the contrary, AMP-Ohio is proud of the factual and legal record it has developed in this matter, presented to defend its AMPGS project in this Certificate Application process with the Board.

Factually, this is a very straight-forward matter. AMP-Ohio has presented a Certificate Application for its AMPGS project to the Board for its consideration. AMPGS is a critical and immediately necessary project for AMP-Ohio's members, developed in order to move AMP-Ohio's municipal members away from the significant risks of the volatile power market. AMPGS was not conceived in a vacuum by AMP-Ohio, but rather AMPGS was proposed only after a years-long, comprehensive evaluation of power supply needs of AMP-Ohio's members and a careful and thoughtful evaluation of a variety of technologies and power supply options. AMP-Ohio used significant resources and relied on various power sector experts to develop a diversified long-term power supply portfolio, including AMPGS as the flagship project, in order to satisfy the energy needs of AMP-Ohio's members in a reliable, cost-effective, environmentally compatible manner. Legally, AMP-Ohio has met and exceeded the requirements of Chapter 4906, Revised Code, as well as various other provisions of Ohio law.

Therefore, AMP-Ohio urges the Board to find there is no substance supporting the hollering of the Activist Groups and grant this Certificate.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'John W. Bentine', is written over a horizontal line.

John W. Bentine, Esq. (0016388)

Trial Counsel

E-Mail: [jbentine@cwsllaw.com](mailto:jbentine@cwsllaw.com)

Stephen C. Fitch, Esq. (0022322)

E-Mail: [sfitch@cwsllaw.com](mailto:sfitch@cwsllaw.com)

April R. Bott, Esq. (0066463)

E-Mail: [abott@cwsllaw.com](mailto:abott@cwsllaw.com)

Nathaniel S. Orosz, Esq. (0077770)

E-Mail: [norosz@cwsllaw.com](mailto:norosz@cwsllaw.com)

Matthew S. White (0082859)

E-Mail: [mwhite@cwsllaw.com](mailto:mwhite@cwsllaw.com)

Chester, Willcox & Saxbe LLP

65 East State Street, Suite 1000

Columbus, Ohio 43215-4213

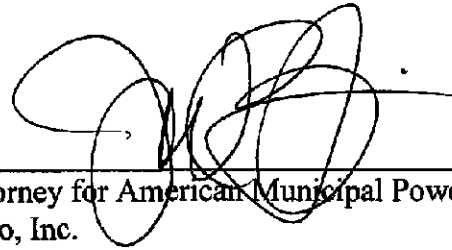
(614) 221-4000 (Main Number)

(614) 221-4012 (Facsimile)

*Attorneys for American Municipal Power-Ohio, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing American Municipal Power-Ohio, Inc.'s Post Hearing Reply Brief for Case No. 06-1358-EL-BGN was served upon the following persons via electronic mail and/or via postage prepaid U.S. Mail on February 8, 2008:



---

Attorney for American Municipal Power-Ohio, Inc.

### Service List:

William L. Wright, Esq.  
John H. Jones, Esq.  
Public Utilities Section  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, OH 43215  
[william.wright@puc.state.oh.us](mailto:william.wright@puc.state.oh.us)  
[john.jones@puc.state.oh.us](mailto:john.jones@puc.state.oh.us)  
*Counsel for Staff*

Elisa Young  
48360 Carnel Road  
Racine, OH 45771  
[Elisa@EnergyJustice.net](mailto:Elisa@EnergyJustice.net)  
*Intervenor*

Sanjay Narayan, Esq.  
Sierra Club Environmental Law Program  
85 Second Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94105  
[Sanjay.Narayan@sierraclub.org](mailto:Sanjay.Narayan@sierraclub.org)  
*Staff Attorney*

Margaret A. Malone, Esq.  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, OH 43215  
[MMalone@ag.state.oh.us](mailto:MMalone@ag.state.oh.us)  
*Counsel for Staff*

Trent Dougherty, Esq.  
Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212  
[trent@theoec.org](mailto:trent@theoec.org)  
*Staff Attorney*

Shannon Fisk, Esq.  
Natural Resources Defense Council  
101 North Wacker Drive, Suite 609  
Chicago, IL 60606  
[sfisk@nrdc.org](mailto:sfisk@nrdc.org)  
*Staff Attorney*

Anjali Jaiswal, Esq.  
111 Sutter Street, 20th Floor  
San Francisco, CA 94104  
(415)875-6100  
[ajaiswal@nrdc.org](mailto:ajaiswal@nrdc.org)  
*Staff Attorney*

Aaron Colangelo, Esq.  
1200 New York Ave., NW  
Washington D.C. 20005  
(202) 289-2376  
[acolangelo@nrdc.org](mailto:acolangelo@nrdc.org)  
*Staff Attorney*

Steven Feeney  
The Babcock & Wilcox Company  
12014 Sheldrake Court NW  
Pickerington, Ohio 43147-8622  
[sfeeney@babcock.com](mailto:sfeeney@babcock.com)



State of Ohio Environmental Protection Agency

**STREET ADDRESS:**

Lazarus Government Center  
50 W. Town St., Suite 700  
Columbus, Ohio 43215

TEL: (614) 644-3030 FAX: (614) 644-3184  
[www.epa.state.oh.us](http://www.epa.state.oh.us)

**MAILING ADDRESS:**

P.O. Box 1049  
Columbus, OH 43216-1049

February 7, 2008

Mr. Marc S. Gerken, P.E.  
President and CEO  
American Municipal Power – Ohio, Inc.  
2600 Airport Drive  
Columbus, Ohio 43219-2242

Dear Mr. Gerken,

I issued earlier today an air Permit to Install to American Municipal Power – Ohio, Inc. ("AMP-Ohio") for the construction of an electric generating station in Meigs County, Ohio.

As you will see, the permit does not in any way regulate the plant's carbon dioxide ("CO<sub>2</sub>") emissions. Nevertheless, given the increasing recognition of the importance of climate change issues here at Ohio EPA (as well as within industry and other sectors), I thought it appropriate to make plain my belief that climate change is a fast-moving issue of critical national and global importance. I believe that companies with significant CO<sub>2</sub> emissions must and will play a critical role in addressing the issue, and it is my personal belief that federal climate change legislation is not very far off. As Director of Ohio EPA, I strongly support such federal legislation, because I believe an issue of such national scope is "tailor made" for a comprehensive, well-considered, and unifying federal approach, rather than a "patchwork" of uncoordinated and potentially inconsistent state and/or regional efforts to regulate greenhouse gasses.

Notwithstanding my preference for federal legislation, it is clear that the State of Ohio cannot stand idle in the face of the climate change issue. For that reason, Ohio has become a founding and active member of *The Climate Registry*, and members of my staff have become active participants in climate change-related issues such as the carbon sequestration pilot project currently underway at another electricity generating plant in Ohio. In fact, I recently sent a letter to over one-thousand companies in Ohio (including AMP-Ohio) advising them of the formation of *The Climate Registry* and asking them to consider becoming active participants.

It is also clear to me that many companies, including AMP-Ohio, recognize the significance of the climate change issue, recognize the possibility of greenhouse gas ("GHG") regulation, and are already making and/or anticipating efforts they may have to make in the near future to reduce GHG emissions. In particular, I recognize and appreciate AMP-Ohio's recognition in its permit application that it must continue to

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korteski, Director



evaluate emerging CO<sub>2</sub> control technology. Further, I understand that AMP-Ohio sized the FGD scrubber in its application to accommodate future CO<sub>2</sub> scrubbing if necessary, and that it is using innovative Powerspan technology to control non- CO<sub>2</sub> emissions, a technology designed to have the potential to more easily capture CO<sub>2</sub> emissions. Thus, the pollution control technology that AMP-Ohio is employing should allow the plant to capture CO<sub>2</sub> if and when such requirements become applicable in the future, or if such capture is undertaken voluntarily.

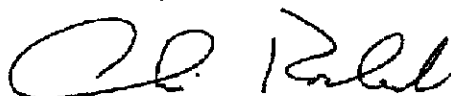
I must also recognize AMP-Ohio's membership in two organizations that have taken concrete steps to address climate change. AMP-Ohio is an Industry Partner Team member of the Midwest Regional Carbon Sequestration Partnership ("MRCSP"), one of seven regional partnerships established by the U.S. Department of Energy's National Energy Technology Laboratory to study carbon sequestration as an option to mitigating climate change. As noted above, Ohio EPA has been working with Battelle, the MRCSP's Project Lead, to permit a pilot project to sequester CO<sub>2</sub> at First Energy's Burger plant near Shadyside, Ohio. It is important to note that Powerspan technology is being used to capture CO<sub>2</sub> as part of this pilot demonstration. I hope this pilot project successfully demonstrates the viability of geological CO<sub>2</sub> sequestration in Ohio, and I appreciate AMP-Ohio's support for the project.

AMP- Ohio is also a member of the Chicago Climate Exchange ("CCX"), a GHG trading system through which companies make voluntary but legally binding commitments to meet annual GHG emission reduction targets. I understand that AMP-Ohio is the only public power entity that is a CCX member, and encourage AMP-Ohio to continue its involvement with CCX. Additionally, I am aware that AMP-Ohio voluntarily reports its GHG emissions under the Energy Information Administration's GHG emissions reporting program, created under section 1605b of the Energy Policy Act of 1992.

Finally, it is my understanding that AMP-Ohio is currently evaluating whether to join *The Climate Registry*, and I strongly encourage AMP-Ohio to do so. I can put you in touch with Ohio EPA staff involved in managing Ohio's involvement in the Registry if you have any questions about the Registry.

I am encouraged that AMP-Ohio appears to be seriously engaged in climate change issues, and I will be following closely AMP-Ohio's continued activities in the climate change area. Please let me know if you have any thoughts about how to use your leadership on how to promote awareness of climate change issues among the business community in Ohio.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Korleski", written in a cursive style.

Chris Korleski  
Director