

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the matter of the Adoption of Rules for )  
Alternative and Renewable Energy )  
Technologies and Resources, and Emission )  
Control Reporting Requirements, and )  
Amendment of Chapters 4901:5-1, 4901:5-3, )  
4901: 5-5, and 4901:5-7 of the Ohio )  
Administrative Code, pursuant to Chapter )  
4928, Revised Code, to Implement Senate )  
Bill No. 221 )

Case No. 08-888-EL-ORD

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AMERICAN MUNICIPAL POWER'S MEMORANDUM CONTRA  
APPLICATION FOR REHEARING

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Pursuant to Ohio Administrative Code ("OAC") 4901-1-35(B), American Municipal Power-Ohio, Inc. ("AMP-Ohio") submits this Memorandum Contra Application for Rehearing filed in this proceeding.

I. INTRODUCTION

On April 15, 2009, the Public Utilities Commission of Ohio ("Commission") issued an Opinion and Order ("April 15 Order") approving rules to implement the requirements of SB 221. On May 15, 2009 several interested parties in this proceeding, including AMP-Ohio, applied for rehearing on a number of rules approved by the Commission. AMP-Ohio files this Memorandum Contra in response to a number of Applications for Rehearing filed in this proceeding.

## **II. RESPONSE TO APPLICATIONS FOR REHEARING**

### **A. The definition of “fully aggregated” in proposed 4901:1-40-01 (T) and 4901:1-40-01 (CC)**

AMP-Ohio supports the request for rehearing by Industrial Energy Users-Ohio and many of the competitive electric suppliers which seek to remove the requirement that renewable energy credits (“RECs”) must be “fully aggregated.”<sup>1</sup> Similarly, AMP-Ohio requested in its Application for Rehearing that the Commission amend the definition of “fully aggregated” to allow the portion of a REC associated greenhouse gas destruction (i.e., via flaring or other combustion) to be separate from the portion of the REC associated with the generation of renewable energy.<sup>2</sup> Also, AMP-Ohio requested that the Commission allow the NOx set-aside allowances associated with a REC be separated from a REC.<sup>3</sup>

The legislation enacting the alternative energy portfolio standard does not contain a restriction that a REC must have a greenhouse gas destruction component or a NOx set-aside component. For these reasons, the Commission must treat the greenhouse gas destruction component of renewable energy, and the NOx set-aside, separate from the attribute associated with the generation of renewable energy. AMP-Ohio supports doing this either by removing “fully aggregated” from the definition of REC, or simply amending the definition of fully aggregated to exclude greenhouse gas destruction (i.e. carbon credits) and NOx set-asides from the requirement of fully aggregated. The

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<sup>1</sup> IEU Application for Rehearing at 21.

<sup>2</sup> The part of renewable energy associated with greenhouse gas destruction can often be sold as a “carbon credit” which is separate and distinct from the attribute of energy that is derived from renewable energy.

<sup>3</sup> AMP-Ohio Application for Rehearing at 5-6.

Commission must order a rehearing on this issue to amend the definitions set forth in 4901:1-40-01 (T) and/or 4901:1-40-01 (CC) accordingly.

**B. OAC 4901:1-40-04 Qualified Resources**

AMP-Ohio supports the applications for rehearing filed by IEU, FirstEnergy and the City of Hamilton, which correctly note that Ohio Revised Code (“RC”) 4928.65<sup>4</sup> does not require a renewable resource or technology be placed in service prior to 1998 in order to qualify as a facility that produces RECs (“1998 Requirement”).<sup>5</sup> Similarly, in its Application for Rehearing, AMP-Ohio requested that the Commission eliminate the 1998 Requirement in OAC 4901:1-40-04.<sup>6</sup> In order to reflect the plain meaning and legislative intent of RC 4928.65, the Commission must amend OAC 4901:1-40-04 to allow renewable energy facilities that were in service prior to 1998 to meet the definition of “qualified resource.”

**C. 4901:1-41 Greenhouse Gas Reporting and Carbon Dioxide Control Planning Rule**

AMP-Ohio supports the filings made by several parties, including IEU, Buckeye Power, AEP and FirstEnergy Solutions seeking to clarify that OAC 4901:1-41 is not applicable to entities not subject to the Commission’s jurisdiction. It is clear from RC 4928.68 that the reporting requirements set forth in OAC 4901:1-41 only apply to an electric generating facility that is “owned or operated by a public utility that is subject to the commission’s jurisdiction.” AMP-Ohio and its member municipal electric

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<sup>4</sup> RC 4928.65 authorizes the use of RECs to meet an EDUs renewable energy requirements.

<sup>5</sup> See RC 4928.65 which places no date restriction on a hydroelectric facility that generates RECs.

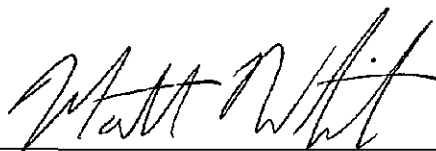
<sup>6</sup> AMP-Ohio Application for Rehearing at 6.

communities are not subject to Commission jurisdiction; therefore the Commission must make this clear in OAC 4901:1-41.

### **III. CONCLUSION**

AMP-Ohio respectfully requests that the Commission consider the matters discussed herein, if rehearing is ordered in this proceeding.

Respectfully submitted,

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

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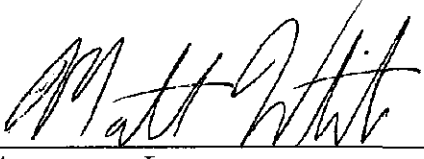
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Application for Rehearing Filed By American Municipal Power-Ohio, Inc. was served via by first-class, postage prepaid U.S. mail, and, where indicated, electronic on this 27<sup>th</sup> day of May, 2009 upon the following:

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