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August 29, 2012

Via Hand Delivery

Betty McCauley
Chief of Docketing
Public Utilities Commission of Ohio
Ohio Power Siting Board
180 East Broad Street
Columbus, Ohio 43215

RE: OPSB Case Nos. 10-2439-EL-BSB and 10-2440-EL-BTX
Issuance of Federal Energy Regulatory Commission License Amendment

Dear Ms. McCauley:

On behalf of the Applicants, the City of Hamilton and American Municipal Power, Inc., this letter is submitted for docketing to provide notice of a regulatory approval related to the 138 kV transmission line and associated substation for the Meldahl Hydroelectric Power Project ("Project"). Applicants received Certificates of Environmental Compatibility and Public Need for the Project in the above referenced matter on November 28, 2011. In accordance with the terms of the Certificates, the Ohio Power Siting Staff received, by letter dated August 28, 2012, a copy of the final Federal Energy Regulatory Commission ("FERC") license amendment for the Project issued by FERC on August 23, 2012.

Respectfully,

April R. Bott

April R. Bott, Esq.
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5126 Blazer Parkway
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Counsel for City of Hamilton

cc: Jon Pawley, Ohio Power Siting Staff
Klaus Lambeck, Ohio Power Siting Staff

140 FERC ¶ 62,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Hamilton, Ohio and
American Municipal Power, Inc.

Project No. 12667-031

ORDER AMENDING LICENSE

(Issued August 23, 2012)

1. On November 30, 2011, and supplemented on April 26, 2012, the City of Hamilton, Ohio (Hamilton) and American Municipal Power, Inc. (AMP), licensees for the Meldahl Hydroelectric Project No. 12667, filed an application to amend their license. The licensees propose to change the transmission line route authorized in the 2008 license.[1] When constructed, the project would be located at the U.S. Army Corps of Engineers' (Corps) Captain Anthony Meldahl Locks and Dam on the Ohio River, near the City of Augusta, Bracken County, Kentucky and Clermont County, Ohio. As discussed below, this order grants the amendment request.

Background

2. On June 25, 2008, the Commission issued the original license for the proposed Meldahl Project. In 2010, the license was amended to change the location of the powerhouse from the location authorized in the original license.[2] As currently authorized, the project facilities would include: (1) an 1,850-foot-long intake channel; (2) a 248-foot-long, 210-foot-wide reinforced concrete powerhouse containing three 35-megawatt (MW) turbine generating units for a total installed capacity of 105 MW; (3) an 1,850-foot-long tailrace channel; (4) an approximately 5-mile-long, 138-kilovolt (kV) transmission line connecting the powerhouse to a new switching station adjacent to East Kentucky Electric Cooperative, Inc.'s Boone-Spurlock transmission line; and (5) appurtenant facilities.

[1] 123 FERC ¶ 62,254 (2008). The project is currently under construction; however, the transmission line authorized by the 2008 license has not been constructed.

[2] 130 FERC ¶ 62,169 (2010). The 2010 amendment authorized the construction of the powerhouse approximately 310 feet south of the location authorized in the 2008 license, thereby locating the powerhouse further inland from the river.

Proposed Amendment

3. Instead of constructing an approximately 5-mile-long, 138-kV transmission line connecting the powerhouse to a new switching station adjacent to East Kentucky Electric Cooperative, Inc.'s Boone-Spurlock transmission line as authorized in the license, the licensees propose to construct an approximately 3-mile-long, 138-kV transmission line connecting the powerhouse to a new switching station at the Zimmer-Spurlock transmission line in Clermont County, Ohio. The proposed transmission line route would extend from the powerhouse in Bracken County, Kentucky, span the Ohio River into Clermont County, Ohio, and then interconnect with the transmission grid inside the PJM regional transmission organization.

Public Notice

4. On January 26, 2012, the Commission issued a public notice noting that the amendment application was accepted for filing, stating that the proposal was ready for environmental analysis, and soliciting comments, motions to intervene, recommendations, and terms and conditions. Timely comments and recommendations were filed by the U.S. Department of the Interior, Office of the Secretary (Interior) on February 23, 2012. The licensees filed reply comments on March 21, 2012.

5. The comments and recommendations have been fully considered in determining whether, and under what conditions, to issue this amendment of license.

Water Quality Certification

6. Under section 401(a)(l) of the Clean Water Act (CWA),[3] the Commission may not authorize construction or operation of a hydroelectric project unless the state water quality certifying agency either has issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license that authorizes construction or operation of the project.[4]

7. On October 27, 2011, the licensees applied to the Ohio Environmental Protection Agency (Ohio EPA) for water quality certification for the proposed transmission line amendment. On May 30, 2012, Ohio EPA issued certification for the amendment application. The certification is included as Appendix A of this order, and is made part of the license for the project by ordering paragraph (C). The certification includes: (1) best

[3] 33 U.S.C. § 1341(a)(1) (2006).

[4] 33 U.S.C. § 1341(d) (2006).

management practices; (2) wildlife protection conditions; and (3) other administrative and general conditions.

Coastal Zone Management Act

8. Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA),[5] the Commission may not issue a license for a project within or affecting a state's coastal zone unless the state CZMA agency concurs with the license applicant's certification that the project is consistent with the state's CZMA program, or the agency's concurrence is conclusively presumed by its failure to act within 180 days of receipt of the applicant's certification.

9. The Meldahl Project is located in the Ohio River drainage, outside of Ohio's designated Coastal Management Area.[6] The state of Kentucky does not have a federally approved coastal zone management program.

Threatened and Endangered Species

10. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA)[7] requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species, or result in the destruction or adverse modification of critical habitat.

11. The U.S. Fish and Wildlife Service (FWS) identified one federally listed endangered animal, the Indiana bat (*Myotis sodalis*), and one federally listed endangered plant, running buffalo clover (*Trifolium stoloniferum*), that may potentially occur within the proposed transmission line corridor and substation site. The licensees conducted surveys for the Indiana bat and running buffalo clover and no populations or suitable habitat were identified. By letter dated November 10, 2010, FWS concurred with the findings of the surveys and indicated that no further consultation related to either species is required. Several federally and state listed freshwater mussel species and fish species may also occur within the mainstem Ohio River; however, this project would not affect these species since it would not disturb any potential habitat in the Ohio River.

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[5] 16 U.S.C. § 1456(c)(3)(A) (2006).

[6] Ohio's coastal area includes the Ohio waters of Lake Erie, the islands in the lake, and lands adjacent to Lake Erie.

[7] 16 U.S.C. § 1536(a) (2006).

National Historic Preservation Act

12. Under section 106 of the National Historic Preservation Act (NHPA),[8] and its implementing regulations,[9] federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places (NRHP, defined as historic properties), and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on any undertaking. This generally requires the Commission to consult with the State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

13. Cultural resource literature reviews and field surveys were conducted by the licensees to determine if any historic properties would be affected by the proposed amendment. These surveys were conducted in both Kentucky and Ohio. One historic property, the Meldahl Locks and Dam, and one potentially eligible site were identified in Kentucky. Three archaeological sites were determined potentially eligible in Ohio. Aesthetic resources and viewsheds were also analyzed. After the licensees revised the proposed transmission line's route in Ohio to avoid impacting several archaeological sites, the licensees determined the project would have no adverse effect on historic properties or their viewsheds. In separate letters dated August 29, 2011, and September 20, 2011, the SHPOs of Ohio and Kentucky, respectively, concurred with the no adverse effects determination. The Ohio SHPO recommended the licensees install clear, bright markers around the potentially eligible sites in the field to prevent any accidental disturbance during construction. Article 415 requires the licensees to demarcate the sites prior to starting project construction.

14. Article 413 of the project license requires the licensees to consult with the Kentucky SHPO, and others, before starting any construction not already authorized in the license, and to take certain steps and measures in the event any previously unidentified historic properties are discovered during the construction, operation, and maintenance of the project. Because the licensees' amendment proposal would extend the project transmission line from Kentucky into the state of Ohio, Article 413 should be amended to include the Ohio SHPO. Therefore, ordering paragraph (E) revises Article 413.

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[8] 16 U.S.C. § 470 (2006) *et seq.*

[9] 36 C.F.R. Part 800 (2011).

Section 18 Fishway Prescriptions

15. Section 18 of the Federal Power Act (FPA)[10] provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate. No fishway prescriptions or reservations of authority were filed under section 18 of the FPA.

Recommendations Pursuant to Section 10(j) of the FPA

16. Section 10(j) of the FPA[11] requires the Commission to include license conditions based on recommendations by federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act,[12] to "adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat)" affected by the project. No section 10(j) conditions were filed for this amendment application.

Recommendations Pursuant to Section 10(a)(1) of the FPA

17. Section 10(a)(1) of the FPA[13] requires that any project for which the Commission issues a license shall be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes. Interior made recommendations that we consider under the broad public interest standard of FPA section 10(a)(1).

18. In its comments filed February 23, 2012, Interior stated it had general concerns about possible adverse effects to migratory birds and their habitat, caused by the proposed transmission lines and structures. In general, Interior recommended the licensees incorporate Avian Power Line Interaction Committee Guidelines (APLIC) for raptor protection into the project design. Article 410 of the project license already requires the licensees to design and construct project transmission lines and poles in accordance with the guidelines set forth in *Suggested Practices for Raptor Protection on*

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[10] 16 U.S.C. § 811 (2006).

[11] 16 U.S.C. § 803(j)(1) (2006).

[12] 16 U.S.C. §§ 661 (2006) *et seq*.

[13] 16 U.S.C. § 803(a)(1) (2006).

Power Lines: The State of the Art in 2006 (APLIC et al., 1996), which is the industry standard for raptor-friendly transmission lines. In addition to this general recommendation, Interior had four specific recommendations regarding migratory birds and their habitat.

19. Interior recommends as a top priority that the licensees develop a three-year monitoring plan that would be developed in consultation with Interior for assessing bird mortality from collisions with the project transmission line near the powerhouse and spanning the Ohio River. The monitoring plan would include an emphasis on species of concern, including wading birds, waterfowl and least terns, for three years post-construction. If the monitoring reveals significant take of migratory birds, remedial measures should be developed to avoid or reduce take. The licensees stated in their response to the recommendations that post-construction monitoring is unwarranted. They stated that the transmission line route is oriented parallel to typical north-south pattern used by most birds in their spring and fall migrations and therefore does not pose a threat for collisions by nocturnal migrants. They also stated that because winds are stronger at higher altitudes, migratory birds will fly well above the height of the transmission lines. In addition, they stated that raptors would use north-south trending ridgelines where thermal updrafts provide most efficient flight, which places them well away from the transmission line crossing of the Ohio River.

20. We note that the transmission line would span almost three miles, crossing a major river as well as deciduous woodlands, agricultural fields, and oldfield/pioneer areas. All of these areas provide suitable nesting and foraging habitat for a variety of avian species. We believe these species could regularly interact with the line and that establishing a three-year monitoring program, for that portion of the line that crosses the Ohio River, would help detect whether the line presents a hazard to birds at a relatively low cost and level of effort. Article 416 requires the licensees to file an Avian Mortality Monitoring Plan, for Commission approval, after consultation with FWS, the Kentucky Department of Fish and Wildlife Resources, and the Ohio Department of Natural Resources (Ohio DNR).

21. Interior also recommends that the width of the post-construction transmission corridor be limited to the absolute minimum and that woody vegetation be allowed to regrow in all cleared areas which are not necessary for continued maintenance of the line. The right-of-way (ROW) for the transmission line route has been limited by the licensees as much as possible to a width of 125 feet. In terms of woody regrowth, in order to ensure the safety and integrity of the lines, any woody vegetation that intrudes into the corridor must be maintained in accordance with federal and state safety regulations for power lines.

22. Interior also recommends that the licensees plant a diverse mixture of native emergent wetland plant species in the transmission corridor and actively manage to prevent growth of invasive species. We note that the proposed transmission line does not

impact any significant areas of emergent wetlands. Further, the licensees are already required by their approved Site Restoration and Aesthetics Plan and by their approved Planting Plan to revegetate disturbed areas at project construction sites with native plants and to monitor revegetated areas for five years to determine success.[14] Revegetating disturbed areas with native species in accordance with the approved Site Restoration and Aesthetics Plan should address Interior's recommendation.

23. Finally, Interior's last recommendation is that the licensees install bird diverters on all power lines in the segments that span the Ohio River and all other areas that have been identified as being high-use areas for migratory birds. As discussed above, pursuant to Article 410 of the project license, the transmission line would be constructed in accordance APLIC guidance. The licensees would outfit the line with orange aircraft marker balls. These marker balls are included in the APLIC guidance as a type of visibility enhancement device, and we believe that, like bird diverters, they would help reduce the risk of avian collision with transmission lines.

Environmental Review

24. The licensees consulted with interested parties and developed an environmental report on potential environmental issues relating to the proposed transmission line and substation, including threatened and endangered species, historic and cultural resource impacts, aesthetic impacts, water quality, land use, vegetation, and wildlife resources. The Commission used documentation from the environmental report, as well as information from the recent amendment approving a new powerhouse location and the recent licensing proceeding, to conduct a complete review of these issues. Since no recreational resources lie within or would be affected by the proposed amendment, recreation resources are not addressed below. Also, since no work would take place within the Ohio River, and best management practices would be used to control runoff and any construction sediment, fishery resources would not be impacted and are not discussed below.

A. Threatened and Endangered Species

25. The licensees had already conducted coordination for the original transmission line during project licensing in 2008; however, consultation had to be conducted with the FWS and Ohio DNR for the new transmission line route. As discussed above, FWS

[14] On November 10, 2009, the Commission issued an Order Modifying and Approving Site Restoration and Aesthetics Plan (129 FERC ¶ 62,116). Ordering paragraph (B) of that order requires the licensees to file, for Commission approval, a planting plan. On August 2, 2010, the Commission issued an Order Approving Planting Plan (132 FERC ¶ 62,082).

identified one federally listed endangered animal that may potentially occur within the proposed transmission line corridor and substation site, the Indiana bat (*Myotis sodalis*), and one federally listed endangered plant, running buffalo clover (*Trifolium stoloniferum*). Several federally and state-listed freshwater mussel species and fish species may also occur within the mainstem Ohio River; however, this project would not affect these species since it would not disturb any potential habitat in the Ohio River.

26. For the Indiana bat, a survey was completed along the proposed transmission line route and substation area in August 2010. No Indiana bats were documented during the survey. The area was also surveyed for suitable habitat for overwintering Indiana bats. No suitable habitat for overwintering bats was identified along the transmission line route. In a letter dated November 10, 2010, FWS concurred with the findings of the survey and indicated that no further consultation related to the Indiana bat is required.

27. For the running buffalo clover, surveys were conducted for the plant and its habitat in September 2010 and February 2011. No running buffalo clover populations were observed within the habitats surveyed. The FWS, in a letter dated May 12, 2011, stated that the surveys for running buffalo clover should be performed during May or June when the plants are flowering, which makes the plants more detectable. Since the survey was not performed during those months, the FWS requested another survey or additional information regarding the habitats surveyed to determine if running buffalo clover may be present in the project area. The licensees provided additional habitat information and photographs to the FWS in July 2011. The FWS reviewed the additional habitat information and photographs and agreed in an August 3, 2011 response letter that it is unlikely that running buffalo clover occurs within the proposed project area.

B. National Historic Preservation Act

28. Section 106 of the NHPA generally requires the Commission to consult with the SHPO, and any Indian tribes that attach religious and cultural significance to historic properties potentially affected by the proposed action, to determine whether and how the action may affect historic properties and seek ways to avoid or minimize any adverse effects. Within Kentucky, extensive archaeological surveying was previously performed in association with the February 2010 amendment approving the new powerhouse location. No significant archaeological deposits were detected within that project area. The licensees also consulted with the Kentucky Heritage Council (Kentucky SHPO) in November 2010 regarding the proposed amendment. The Kentucky SHPO stated that it was satisfied with the prior surveys conducted within Kentucky and no additional work is needed.

29. New cultural resources surveys and literature reviews were completed on the 2.2-mile-long portion of the transmission line route through Ohio. The survey included the staging area, lay-down area, substation site, and access roads. Within the survey area, nine archaeological sites (33Ct90-33Ct98) were documented. Current data suggests that

three sites (33Ct692, 33Ct694, and 33Ct695) have the potential to be eligible for inclusion in the NRHP. Due to the potential archaeological significance of these sites, the licensees adjusted the proposed transmission line route and construction areas to avoid them. No significant archeological materials were found along the adjusted route and construction areas. As such, the proposed construction activities and the proposed transmission route would not impact sites 33Ct92, 33Ct694, and 33Ct695. In addition, the proposed construction activities and preferred route would not likely impact the other six sites, which are likely not eligible for listing.

30. As discussed above, the licensees consulted with the Ohio Historic Preservation Office (Ohio SHPO) for the project. The licensees incorporated Ohio SHPO recommendations as part of the planning process for the surveys and worked with the SHPO to establish the project's Area of Potential Effect (APE) in Ohio. The licensees submitted the survey report and associated documentation to the Ohio SHPO on August 2, 2011. The Ohio SHPO in a letter dated August 29, 2011, concurred with the licensees' conclusion that the project would not have an adverse effect on historic properties, as long as the potentially eligibly archeological sites are avoided and brightly colored visual markings are installed that clearly identify and protect them from any type of disturbance during construction.[15] In addition, the Ohio SHPO stated that no further field work in Ohio is needed for the project and no further consultation would be necessary.

31. Since the transmission line would originate in Kentucky, the licensees also consulted with the Kentucky SHPO for the project. The licensees performed a cultural resource literature review and survey within the project's approved APE in Kentucky, which includes land to be disturbed by construction of an 80-foot-high transmission tower at the Meldahl Locks and Dam facility. The Kentucky SHPO reviewed the reports and responded in a letter dated September 20, 2011. The licensees in the report identified a total of fourteen historic resources, including one site, BK-435 (which is the Meldahl Locks and Dam), as eligible for listing. In its letter, the Kentucky SHPO agreed that the Meldahl Locks and Dam site is eligible, but stated that another site could be eligible (BK-432); however, additional information would be needed before eligibility can be determined. The Kentucky SHPO concurred with the licensees that the remaining sites are ineligible for listing. The Kentucky SHPO concluded that the undertaking as proposed would not affect any qualities that make BK-432 potentially eligible for listing and, in general, concurred with the overall assessment that the transmission line project would have no adverse indirect effect on historic properties.

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[15] As previously discussed, Article 415 is being added to the project license to ensure that the sites are clearly marked so as not to disturb those resources during construction.

32. Transmission lines can potentially have impacts on existing aesthetic and visual resources. For this project, the APE included areas several miles upstream and downstream of the project as well as areas located within an approximate 1-mile-radius of each tower which could be visually impacted by the proposed transmission towers and lines. Based on the surveys and visualization analysis, the licensees concluded that although the project is in the viewshed of NRHP eligible properties, the project would not have an adverse effect on the historic properties, including any viewsheds associated with those properties. The Ohio and Kentucky SHPOs concurred with the project's no adverse effects determination, as long as the conditions already noted above are incorporated. The Ohio SHPO, in particular, stated in its August 29, 2011 letter that based on available information, no significant viewsheds extend from or look towards an identified property in the project APE in Ohio.

C. Water Quality

33. Although the project does not include construction in the Ohio River, the licensees would disturb open ground and install culverts in several unnamed tributaries, both of which could temporarily impact water quality. The licensees obtained a water quality certification from the Ohio EPA on May 30, 2012, permitting nine stream crossings for constructing access roads or widening existing roads. Under the water quality certification, the licensees are required to: (1) incorporate best management practices into their design to prevent sediment from entering the streams during construction; (2) install appropriate erosion and sediment controls; (3) install and design the culverts to allow for the natural movement of aquatic organisms and bedload to form a stable bed inside the culvert; (4) restore stream bottoms to their original elevation if the crossing is temporary; (5) avoid cutting down Indiana bat habitat trees between April 1 and September 30 of any given year; and (6) provide payment to the Ohio Surface Water Improvement Fund as mitigation for the project's stream impacts. The project has no wetland impacts. In addition, the licensees have applied for modification of the project's existing CWA section 404 permit from the Corps to include the new transmission line stream impacts and would obtain any necessary stormwater permits before initiating construction.

D. Land Use

34. Land use in the immediate areas of the proposed transmission line route and substation is predominantly residential and agricultural, with scattered woodlots. The proposed substation is located entirely on one agricultural parcel, which is a cornfield. The licensees did not identify any known sensitive land uses, such as commercial or recreational, along the proposed transmission line route. The licensees concluded that the proposed transmission line and substation are consistent and compatible with local and regional development projects. Approximately 3.4 acres of land would be permanently lost to tower/structure development, while 27.4 acres would be temporarily converted to construction staging areas for both the line and substation. The licensee would return areas temporarily disturbed during construction or staging to their previous use. The

licensee would also minimize soil compaction during and after construction, replace a portion of the excavated soil for backfill around towers/structures, and haul any excess soil offsite to ensure that agricultural activity can be maintained after construction and during operation of the transmission line and substation.

E. Vegetation

35. The proposed transmission line route crosses deciduous woodlands, agricultural fields, and oldfield/pioneer areas. Construction within the proposed transmission line route would result in the clearing of approximately 14 acres of deciduous woodlands and approximately five acres of oldfield/pioneer habitat. An additional 19 acres of agricultural land would also be cleared and would not be available for farming during construction. In addition, a small area of agricultural land surrounding existing farm roads would be disturbed to accommodate expansion of existing farm roads to support construction activities. Along the proposed transmission line route in Ohio, there would be a maximum of 15 transmission towers constructed within deciduous woodland habitat, four transmission towers constructed within oldfield/pioneer habitat, and two structures located on a combination of deciduous woodland oldfield/pioneer habitat. These towers would result in a permanent loss of 0.16 acre of wooded habitat and 0.016 acre of oldfield/pioneer habitat, which is negligible in relation to the total area of wooded habitat and oldfield/pioneer habitat in the region. Any disturbed areas post-construction would be restored and revegetated as appropriate. Areas within the transmission line's ROW would be seeded with native grasses and would be continually maintained to ensure no tall trees or shrubs establish themselves as they would present a safety hazard to the lines. After restoration is complete, the licensees would inspect the transmission line ROW to identify any areas that exhibit erosion, sediment deposition, or inadequate revegetation and would address those areas in a prompt and appropriate manner.

F. Wildlife Resources

36. A variety of wildlife can be found in the project area, including coyote, opossum, raccoon, striped skunk, white-tailed deer, cottontail rabbits, northern bobwhite, wild turkey, ring-necked pheasant, red fox, gray fox, gray squirrel, big brown bat, and white-footed mouse. Raptors, such as red-tailed hawk and red-shouldered hawk, may also occur. Beaver and muskrat are common along the Ohio River, which serves as habitat for migrating and winter waterfowl as well. Areas associated with the transmission line have already been cleared and disturbed in Kentucky; however, in Ohio, construction and clearing would displace wildlife species using the habitat within the proposed transmission corridor and substation footprint, as well as the staging areas. Also, all forested habitat within the ROW would be permanently converted to herbaceous habitat. Based on the abundance of similar habitat nearby and the relatively small area of permanent conversion, the displaced wildlife would have equivalent areas to relocate to during construction and could return to the restored habitat around the lines post-construction. Ongoing operation and maintenance of the lines would temporarily disturb

some of these areas in the future, but species could return to the habitat once maintenance activities are complete. No significant, permanent loss of wildlife habitat is anticipated from the project.

Other Issues

A. Access Road

37. The proposed new substation would be located approximately 1,400 feet west of the intersection of Chilo Cemetery McKendree Chapel Road and Bear Creek Road, in close proximity to an existing dirt farm road.[16] Instead of constructing a new access road to the proposed new substation, the proposed amendment includes the improvement of the farm road for permanent access to the proposed new substation. Although the property owner of the farm road would continue to use the improved access road to enter his field, the road would serve as the Meldahl Project's access for operations and maintenance of the proposed new substation. The improved access road, which would be graded and paved with asphalt, would be maintained by the licensees from the substation location to the point where it intersects with the Chilo Cemetery McKendree Chapel Road.[17] Because the improved access road is necessary for project purposes, it should be included within the project boundary. Ordering paragraph (D) requires the licensees to file a revised Exhibit G drawing that includes a revised project boundary that encompasses the improved access road.

B. Erosion and Sediment Control Measures

38. Provisions for erosion and sediment control during project construction would be implemented pursuant to the water quality certification included as Appendix A of this order and the Soil Erosion and Sediment Control Plan required under Article 302 of the project license. Also, as discussed above in the Environmental Review section, as part of their proposed transmission line and substation modification, the licensees would restore and revegetate any disturbed areas post-construction as appropriate. Implementation of the Commission-approved Site Restoration and Aesthetics Plan and the approved Planting Plan originally required under Article 412 of the project license would also provide protection from excessive erosion in areas impacted by construction activities.[18]

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[16] The farm road is accessed via Chilo Cemetery McKendree Chapel Road.

[17] The licensees state in their April 26, 2012 supplemental filing that they have reached an agreement with the property owner concerning the necessary property rights for the access road.

[18] See 129 FERC ¶ 62,116 and 132 FERC ¶ 62,082.

Therefore, we find no need to add any erosion and sediment control requirements to the project license.

Comprehensive Plans

39. Section 10(a)(2)(A) of the FPA[19] requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.[20] Under section 10(a)(2)(A), Commission staff identified and reviewed nine comprehensive plans that are relevant to the Meldahl Project.[21] No conflicts were found.

Applicant's Plans and Capabilities

A. Conservation Efforts

40. Section 10(a)(2)(C) of the FPA requires the Commission to consider the electricity consumption improvement program of the applicant, including its plans, performance, and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of state regulatory authorities.

41. AMP, a nonprofit corporation, was founded in 1971 with the purpose of providing the generation, transmission, and distribution of electric power to its members at lower costs.[22] AMP offers a number of clean energy and conservation programs to its member

[19] 16 U.S.C. § 803(a)(2)(A) (2006).

[20] Comprehensive plans for this purpose are defined at 18 C.F.R. §2.19 (2011).

[21] The plans are: (1) Kentucky Statewide Comprehensive Outdoor Recreation Plan (SCORP), Kentucky Department for Local Government, 2008; (2) Kentucky Wild Rivers Statewide Management Plan, Kentucky Department for Natural Resources and Environmental Protection, 1979; (3) Kentucky Rivers Assessment, Kentucky Division of Water and National Park Service, 1992; (4) The Nationwide Rivers Inventory, National Park Service, 1993; (5) North American Waterfowl Management Plan, U.S. Fish and Wildlife Service and Canadian Wildlife Service, 1986; (6) Fisheries USA: The Recreational Fisheries Policy of the U.S. Fish and Wildlife Service, U.S. Fish and Wildlife Service, undated; (7) Statewide River Inventory, Ohio Department of Natural Resources, 1991; (8) Ohio Statewide Comprehensive Outdoor Recreation Plan (SCORP): A Plan for the Future, Ohio Department of Natural Resources, 2003; and (9) Boating on Ohio Waterways Plan, Ohio Department of Natural Resources, 2004.

[22] AMP currently serves 129 municipal electric system members. Hamilton is a founding member of AMP.

communities. Included in the services offered are the following: educational efforts aimed at reducing energy usage; rebates for energy-efficient products; a green pricing program that allows municipal electric system customers the option of offsetting their electric usage with renewable resources; and an online energy audit tool for use by member communities and their residential customers.

Comprehensive Development

42. Sections 4(e) and 10(a)(1) of the FPA[23] require the Commission to give equal consideration to power development purposes and to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to issue this license amendment, and the terms and conditions included herein, reflect such consideration.

43. The environmental analysis contained in this order contains background information, analysis of impacts, and support for related license articles. Staff concludes, based on the record of this proceeding, including our environmental analysis, that issuing an amendment to the license as described in this order would not constitute a major federal action significantly affecting the quality of the human environment. The project will be safe if operated and maintained in accordance with the requirements of the license.

44. Based on staff's independent review and evaluation of the project and recommendations from Interior, staff has determined the licensees' proposal, with staff-recommended measures, is best adapted to a comprehensive plan for improving or developing the Ohio River.

45. This alternative is selected because: (1) issuance of the amendment will serve to maintain a beneficial and dependable source of electric energy; (2) the required environmental measures will protect fish and wildlife resources, water quality, and any historic properties; and (3) the 105-MW of electric energy comes from a renewable resource that does not contribute to atmospheric pollution.

[23] 16 U.S.C. §§ 797(e) and 803(a)(1) (2006).

Administrative Conditions

A. Exhibit Drawings

46. The Exhibit G drawing filed with the November 30, 2011 amendment application does not conform to the Commission's regulations at 18 C.F.R. §§ 4.39 and 4.41(h). Specifically, the filed Exhibit G drawing does not show the project boundary enclosing all of the project lands necessary for project operations and maintenance, such as the proposed improved access road, as discussed above. In addition, each project boundary drawing must be stamped by a registered land surveyor. Ordering paragraph (D) requires the licensees to file a revised Exhibit G drawing.

B. Project Land Rights

47. The proposed project boundary would encompass federal and non-federal lands. As authorized in the 2008 license, when constructed, the intake channel, powerhouse, and tailrace channel will be located on approximately 81 acres of federal lands owned by the Corps. The transmission line corridor and substation, as proposed in the amendment application, would be located on non-federal lands. Standard Article 5 set forth in L-Form 6 of the license requires the licensees to acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project, within five years.

48. The licensees state in their amendment application that the proposed transmission line corridor and substation would occupy the lands of five different private property owners. As of the filing date of the application, the licensees had acquired title in fee to one private property and had executed an agreement to acquire the necessary rights of a second private property. According to their letter filed on March 21, 2012, the licensees have also reached an agreement with the remaining three property owners concerning the necessary rights to the lands within the proposed project boundary. Pursuant to the Commission's regulations at 18 C.F.R. 4.41(h), the lands within the project boundary should be identified on the revised Exhibit G drawing required under ordering paragraph (D).

C. Construction-Related Articles

49. The obligations set forth under the 300 series license articles that require the licensee to consult with the Commission's Division of Dam Safety and Inspections (D2SI) – Chicago Regional Engineer are applicable to this amendment. The licensee may not begin construction until the D2SI – Chicago Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

The Director orders:

(A) The request for amendment of the license for the Meldahl Hydroelectric Project No. 12667, filed by the City of Hamilton, Ohio and American Municipal Power, Inc. on November 30, 2011, and supplemented April 26, 2012, is approved as provided by this order, effective the day this order is issued.

(B) The project description in ordering paragraph (B)(2) of the June 25, 2008 Order Issuing Original License (Major Project)[24] is revised, in part, to read as follows:

Project works consisting of: ...(4) an approximately 3-mile-long, 138-kV transmission line connecting the powerhouse to a new switching station at the Zimmer-Spurlock transmission line in Clermont County, Ohio; and...

(C) This license is subject to the conditions of the Water Quality Certification issued by the Ohio Environmental Protection Agency on May 30, 2012, under section 401 of the Clean Water Act, as those conditions are set forth in Appendix A to this order.

(D) Article 203 of the license is revised to read as follows:

Exhibit G Drawing. Within 60 days of the issuance date of this order, the licensees shall file, for Commission approval, a revised Exhibit G drawing enclosing within the project boundary all project works necessary for operation and maintenance of the project, including the primary transmission line and the improved access road to the proposed new substation. The Exhibit G drawing must comply with sections 4.39 and 4.41(h) of the Commission's regulations.

(E) Article 413 of the license is revised to read as follows:

Historic Properties. The licensees, before starting any land-clearing or land-disturbing activities associated with project construction, other than those specifically authorized in this license, shall consult with the Kentucky State Historic Preservation Officer (Kentucky SHPO) for activities in Kentucky; the Ohio State Historic Preservation Officer (Ohio SHPO) for activities in Ohio; the Huntington District, U.S. Army Corps of Engineers (Corps); the United Keetoowah Band of Cherokee, the Miami Tribe of Oklahoma, the Peoria Tribe of Indians of Oklahoma, and the Eastern Band of Cherokee Indians (Tribes).

[24] 123 FERC ¶ 62,254 (2008).

If the licensees discover previously unidentified archeological or historic properties during the course of constructing, developing, or maintaining project works or other facilities at the project, the licensee shall stop all land-clearing and land-disturbing activities in the vicinity of the properties and consult with the Kentucky SHPO if the property is found in Kentucky, the Ohio SHPO if the property is found in Ohio, the Corps, and the Tribes.

After consultation with the appropriate SHPO, the Corps, and the Tribes, if previously unidentified archeological or historic properties are determined to be included in or eligible for inclusion in the National Register of Historic Places (i.e., whether it is an "Historic Property"), the licensees shall file, for Commission approval, a Historic Properties Management Plan (HPMP) prepared by a qualified cultural resource specialist. The HPMP shall include the following items: (1) a description of each discovered property indicating that it is included in or eligible for inclusion in the National Register of Historic Places; (2) a description of the effect potential at each Historic Property; (3) proposed measures for avoiding, lessening, or mitigating effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for avoiding, lessening, and mitigating effects, and conducting additional studies. The Commission may require changes to the plan.

The licensee shall not resume land-clearing or land-disturbing activities until informed by the Commission that the requirements of this article have been fulfilled.

(F) This license is subject to the following additional articles:

Article 415. *Demarcation of Potentially Eligible Sites*. Before initiating any ground-disturbing activities associated with project construction, the licensees shall install clear, bright protective fencing around the National Register of Historic Places' potentially eligible archaeological sites 33Ct92, 33Ct694, and 33Ct695 to prevent any disturbance to those resources during construction. To document these protective measures, the licensees shall take photographs of the three sites once the markings have been installed and again take photographs in the same place and in the same orientation of those sites after construction is completed and the fencing has been removed. No later than 30 days after construction is completed, the licensees shall file with the Commission and the Ohio State Historic Preservation Officer a letter that includes the photographs.

Article 416. *Avian Mortality Monitoring Plan*. Within 90 days of the issuance date of this order, the licensees shall file, for Commission approval, an Avian Mortality Monitoring Plan to assess bird mortality from power line collisions for the portion of the transmission line that spans the Ohio River. The plan shall include, at a minimum, a provision that the initial monitoring period shall be for three years as well as species-specific mortality thresholds to determine if the monitoring needs to continue after three years.

The licensees shall prepare the plan after consultation with the U.S. Fish and Wildlife Service, the Kentucky Department of Fish and Wildlife Resources, and the Ohio Department of Natural Resources. The licensees shall allow a minimum of 30 days for each agency to comment and make recommendations before filing the final plan with the Commission. The licensees shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to all the agencies, and specific descriptions of how each agency's comments are accommodated by the plan. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensees are notified by the Commission that the plan is approved.

(G) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, as provided in section 313(a) of the FPA, 16 U.S.C. § 825*l* (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2012). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensees' failure to file a request for rehearing shall constitute acceptance of this order.

Steve Hocking
Chief, Environmental Review Branch
Division of Hydropower Administration
and Compliance

APPENDIX A

Ohio Environmental Protection Agency
Section 401 Water Quality Certification
Issued May 30, 2012

PART I ON-SITE WATER RESOURCES AND IMPACTS

A. Watershed Setting

The watershed in which this project is located is Bear Creek-Ohio River (HUC 05090201-11-06), has an area of 55.7 square miles of which 4.1 percent is developed, 64.1 percent is forest, 20.7 percent is grass/pasture, 10.6 percent is row crops, and .05 percent is other.
Bear Creek is a warm water habitat (WWH) stream and primary contact recreation class "B" water.

Watershed Impairment Status and Causes of Impairment: Per the Ohio EPA 2010 Integrated Report, the causes of impairment are as follows:

- None Listed

The sources of impairment are as follows:

- None Listed

Attainment Status:

B. Project Description

This project is a sub-project of the Meldahl Hydroelectric Project and will provide the region with additional base load power from a renewable resource. The project is the construction of transmission lines from the Meldahl Hydroelectric Power Plant to a proposed substation and then connecting to the existing Zimmer-Spurlock Transmission Line, which is in the Pennsylvania, New Jersey, and Maryland Interconnection, LLC's regional transmission system.

C. Impacts

Under the Minimal Degradation Alternative, impacts to waters of the state are as follows:

1. Streams

A total of nine stream crossings will be constructed or widened by the placement of culverts for construction access and maintenance of the transmission lines.

Stream ID	Existing Use	Type* E, I, or P	QHEI/ HHEI Score*	Impact Type	Total Length on Site (LF)	Total Length Impacted (LF)	Percent Avoided
203	Class II	P	48	Culvert Ext.	32	30	6.7
201	Class I	E	16	Culvert	103	20	80.5
200	Class II	P	55	Culvert	392	20	94.9
HW-11	Class I	E	41	Culvert	150	20	86.7
205	Class I	E	36	Culvert	150	20	86.7
206	Class I	E	36	Culvert	150	20	86.7
HW-16	Class I	E	53	Culvert	148	20	86.5
HW-2	Class II	I	49	Culvert and Culvert Extension/Replacement	172	50	70.9
				Totals	1147	200	82.6

* As provided by applicant

2. Wetlands

Impacts to wetlands are not authorized under this permit.

3. Lakes

Impacts to lakes are not authorized under this permit.

PART II TERMS & CONDITIONS

A. Terms and conditions outlined in this section apply to project and mitigation construction as described in this permit.

B. The Permittee shall notify Ohio EPA, in writing, and in accordance with *Part IV (NOTIFICATIONS TO OHIO EPA)* of this permit, upon the start and completion of site development and mitigation construction.

C. A copy of this permit shall remain on-site for the duration of the project and mitigation construction activities.

D. Unpermitted impacts to surface water resources and/or their buffers occurring as a result of this project must be reported within 24 hours of occurrence to Ohio EPA, Division of Surface Water, Section 401/IWP Manager, (614-644-2001), for further evaluation.

E. Pesticide application(s) for the control of plants and animals shall be applied in accordance with rule 3745-1-01 of the Ohio Administrative Code, and may require a site specific application permit from Ohio EPA. Such a permit may be obtained by calling 614-644-2001 and speaking with the Toxicology Specialist.

F. Blasting shall not be done within or near waters of the state (including wetlands) without prior consultation with the Ohio Department of Natural Resources, Division of Wildlife, to determine what protective measures should be taken to minimize damage to wildlife.

G. Any authorized representative of the director shall be allowed to inspect the authorized activity at reasonable times to ensure that it is being or has been accomplished in accordance with the terms and conditions of this permit.

H. In the event that there is a conflict between the permit application, including the mitigation plan, and the conditions within this permit, the condition shall prevail unless Ohio EPA agrees, in writing, that the permit application or other provision prevails.

I. This proposal may require other permits from Ohio EPA. For information concerning application procedures, contact the Ohio EPA District Office as follows:

Ohio Environmental Protection Agency
Southwest District Office
401 East Fifth Street
Dayton, Ohio 45402
937-285-6357

Additional information regarding environmental permitting assistance at Ohio EPA can be found at http://www.epa.ohio.gov/dir/permit_assistance.aspx

J. Best Management Practices (BMPs)

1. All water resources and their buffers, which are to be avoided, shall be clearly indicated on site drawings, demarcated in the field and protected with suitable materials (e.g., silt fencing) prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process.

2. All BMPs for storm water management shall be designed and implemented in accordance with the most current edition of the Ohio Department of Natural Resources Rainwater and Land Development Manual, unless otherwise required by the National Pollutant Discharge Elimination System (NPDES) general permit for storm water discharges associated with construction activities (construction general permit), if required.

   A copy of the Rainwater and Land Development Manual is available at: http://www.dnr.state.oh.us/tabid/9186/default.aspx#Manual

   A copy of the NPDES construction general permit is available at: http://www.epa.ohio.gov/dsw/storm/construction_index.aspx#Construction%20General%20Permit

3. Straw bales shall not be used as a form of erosion/sediment control.

4. Temporary fill shall consist of suitable non-erodible material and shall be stabilized to prevent erosion.

5. Materials used for fill or bank protection shall consist of suitable material free from toxic contaminants in other than trace quantities. Broken asphalt is specifically excluded from use as fill or bank protection.

6. Concrete rubble used for fill or bank stabilization shall be a minimum size/weight of concrete in the range of 100-500 lbs. per piece or 12 inches to 18 inches in diameter; free of exposed re-bar; and, free of all debris, soil and fines.

7. Cadmium chromium arsenate (CCA) and creosote treated lumber shall not be used in structures that come into contact with waters of the state.

8. Trees removed from temporary impact areas to facilitate construction shall be replaced with appropriate tree species native to Ohio.

9. Culverts

a. Stream culverts shall be installed and designed at the streambed slope to allow for the natural movement of aquatic organisms and bedload to form a stable bed inside the culvert.

b. The culvert base or invert with the substrate shall be installed below the sediment to allow natural channel bottom to develop and to be retained.

c. The channel bottom substrate shall be similar to and contiguous with the immediate upstream and downstream reaches of the stream. The culvert shall be designed and sized to accommodate bankfull discharge and match the existing depth of flow to facilitate the passage of aquatic organisms.

d. Where culverts are installed for temporary crossings, the bottom elevations of the stream shall be restored as nearly as possible to pre-project conditions.

K. Wildlife Protection

1. In order to protect the Indiana bat during this development, bat habitat trees shall not be cut between April 1st and September 30th unless specifically approved by the U.S. Fish and Wildlife Service.

2. If native mussels and/or mussel beds, not previously identified, are encountered at any time during construction or dredging activities, work must cease immediately and the Ohio Department of Natural Resources' Division of Wildlife must be contacted for further evaluation.

PART III MITIGATION

A. Description of Required Mitigation

For 200 linear feet of stream impacts the applicant will pay 300 dollars per linear foot of impact into Ohio EPA's Surface Water Improvement Fund (SWIF). The total amount to be paid into SWIF is 60,000 dollars. The applicant must also adhere to all other types of mitigation required by the Ohio Power Siting Board.

B. Timing of Mitigation Requirements

1. The payment of $60,000 for mitigation shall be made to SWIF prior to the impacts and no later than 90 days from the date of this permit.

IV. NOTIFICATIONS TO OHIO EPA

All notifications, correspondence, and reports regarding this permit shall reference the following information:

Permittee Name: City of Hamilton
Project Name: Meldahl Hydroelectric Project Transmission Lines
Ohio EPA ID No.: 113840

and shall be sent to:

Ohio Environmental Protection Agency
Division of Surface Water, 401/IWP Unit
Lazarus Government Center
50 West Town Street
P.O. Box 1049
Columbus, Ohio 43216-1049

You are hereby notified that this action of the director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the director's action. The appeal must be accompanied by a filing fee of $70.00, made payable to "Ohio Treasurer Josh Mandel," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the director within three days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, Ohio 43215