

RECEIVED-DOCKETING DIV

2007 NOV 19 PM 4: 30

FILE



PUCU

NATURAL RESOURCES DEFENSE COUNCIL

November 16, 2007

Ohio Power Siting Board
180 East Broad Street
Columbus, Ohio 43215-3793

**RE: Reply Brief in Support of Motion to Intervene in Case No. 06-1358-EL-BGN,
In re: Application of American Municipal Power-Ohio for a Certificate of
Environmental Compatibility and Public Need for an Electric Generation
Station and Related Facilities in Meigs County, Ohio.**

Dear Ohio Power Siting Board Members:

Please find enclosed for filing with the Board an original and ten copies of the Reply Brief in Support of the Motion to Intervene and supporting documents of the Natural Resources Defense Council, Ohio Environmental Council, and Sierra Club in Case No. 06-1358-EL-BGN, American Municipal Power-Ohio's ("AMP") application for a certification for the proposed Meigs County electric generation station. Copies of the brief and exhibits have been served on all parties to the proceeding via e-mail.

Please contact me at (312) 780-7431 if you have any questions. Thank you for your time and consideration.

Sincerely,

Shannon Fisk
Staff Attorney
Natural Resources Defense Council

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 TM Date Processed 11/19/2007

**BEFORE THE
OHIO POWER SITING BOARD**

Application of American Municipal Power,)
Ohio, Inc. (AMP-Ohio) for a Certificate of)
Environmental Compatibility and Public)
For the American Municipal Power)
Generating Station in Meigs County, Ohio)

Case No. 06-1358-EL-BGN

**REPLY BRIEF IN SUPPORT OF THE MOTION TO INTERVENE OF THE
NATURAL RESOURCES DEFENSE COUNCIL, INC.,
OHIO ENVIRONMENTAL COUNCIL, AND
SIERRA CLUB**

On October 25, 2007, the Natural Resources Defense Council, Inc., Ohio Environmental Council, and Sierra Club (collectively, "Citizen Groups") moved to intervene in this proceeding. The Citizen Groups filed their motion within the time period set by the Power Siting Statute ("Statute"), Ohio Power Siting Board ("Board") regulations, and the Administrative Law Judge's ("ALJ") August 2 Order. In their motion, the Citizen Groups explained their numerous interests in this proceeding, including the interests of their members who live and recreate in Meigs County that would be directly impacted by the air and water pollution from American Municipal Power's ("AMP") proposed coal-fired power plant ("Meigs Plant"). The Citizen Groups identified a number of issues – including construction and operating costs, the costs and impacts of carbon dioxide emissions ("CO2"), cumulative impacts, and alternatives – that the Statute and Board regulations require to be evaluated in this proceeding, but which AMP largely ignored in its application. Finally, the Citizen Groups filed reports and/or expert testimony on these issues, and noted their willingness to present further evidence in an expeditious manner.

In response, AMP contends that the Citizen Groups' motion was untimely, despite the fact that it was filed within the time period established by law and the ALJ. AMP argues that the

Citizen Groups have not demonstrated an interest in the proceeding, even though each intervening organization has members living in areas that would be directly impacted by the Meigs Plant. AMP asserts that project costs and global warming are irrelevant to this proceeding, even though those issues are directly relevant to the evaluation of environmental impacts, alternatives, and the public interest required by the Statute. Finally, AMP claims that the Citizen Groups' opposition to the proposed Meigs Plant demonstrates that they will not contribute to a just and expeditious resolution of this proceeding and, instead, will cause undue delay and prejudice, even though such a conclusion would foreclose opponents of a proposal from ever intervening in a Board proceeding.

The ALJ and Board should reject AMP's arguments and grant intervention to the Citizen Groups so that a full and fair adjudication of the issues relevant to this proceeding can occur.

I. The Citizen Groups Moved To Intervene Within the Deadline Set By the Statute, Board Regulations, and the ALJ.

AMP's response is based primarily on the faulty assertion that the Citizen Groups' intervention motion is untimely. (AMP Resp. at 1, 4-5, 11-13). AMP claims that the Citizen Groups were required by O.R.C. § 4906.08(A)(2) to file their motion by September 24, which is 30 days after AMP published a notice of their application in a newspaper in Meigs County. (*Id.* at 4-5). According to AMP, the October 26 deadline set by the ALJ is contrary to this requirement of the Statute and, therefore, could not be relied on by the Citizen Groups. (*Id.* at 4-5, 10).

A. AMP's timeliness argument is waived

AMP's timeliness argument is waived for failure to raise it earlier. If AMP wanted to challenge the October 26 intervention deadline, it could have done so at the time the ALJ set it –

i.e, soon after the ALJ's August 2 Order – rather than laying in wait for the Citizen Groups to rely on it. AMP's failure to do so should not be rewarded here.

B. The October 26 deadline for intervention is consistent with the Statute

AMP's argument should also be rejected because the ALJ's October 26 deadline is consistent with the requirements of the Statute. In particular, O.R.C. § 4906.12 applies certain procedures of the Ohio Public Utilities Commission ("PUC") to the Board "in the same manner as if the board were the public utilities commission." *State ex rel. Ohio Edison Co. v. Parrott*, 73 Ohio St.3d 705, 708, 654 N.E.2d 106 (1995) (provision granting exclusive jurisdiction to the Ohio Supreme Court to review PUC decisions applies equally to Board decisions under O.R.C. § 4906.12). One such PUC procedure applied to the Board is O.R.C. § 4903.221, which provides a timely intervention deadline of either the date set by the PUC or at least five days prior to the hearing. The Board's intervention regulation, which specifically notes that it "amplifies" O.R.C. § 4903.221, also provides a timely intervention deadline of the date set by the ALJ or Board. O.A.C. 4906-7-04(A)(2)(b). As such, the ALJ was authorized by the Statute to set an October 26 deadline for timely intervention, and the Citizen Groups' compliance with that deadline means that their intervention motion is timely under the law.

AMP does not mention O.R.C. §§ 4906.12 or 4903.221 in its response, but instead relies on the mistaken assertion that "only those parties satisfying the statutory criteria set forth [sic] R.C. 4906.08 may participate as parties in OPSB proceedings." (AMP Resp. at 3). That section of the Statute, however, provides only that "parties to a certification proceeding shall include" entities that satisfy the criteria set forth in that section. The phrase "shall include" is inclusive, not exclusive. As such, nothing in O.R.C. § 4906.08(A) forecloses intervention by parties that

satisfy the deadline set by the ALJ pursuant to O.R.C. §§ 4903.221, 4906.12 and O.A.C. 4906-7-04(A)(2)(b).¹

While cited by AMP (AMP's Resp. at 5), *State of West Virginia v. State of Ohio*, 1985 WL 4158 (10th Dist. 1985), does not lead to a contrary result. That case involved a situation where an administrative board's regulations gave the board the discretion to allow intervention after the deadline set by the applicable statute. *Id.* at *4-*5. The court held that a proposed intervenor that filed after the statutory deadline could not challenge the board's refusal to allow intervention under the regulation, because the only right to intervention was under the mandatory requirements of the statute. *Id.* at *5. In the present case, of course, there is no inconsistency between the deadline set by the ALJ and the requirements of the Statute, as O.R.C. §§ 4903.221 and 4906.12 specifically allow for intervention motions to be filed by the date set by the ALJ or within five days of the hearing. As such, the *West Virginia* decision is not relevant here.

C. The Citizen Groups need not show extraordinary circumstances

AMP spends much of its response contending that the Citizen Groups failed to demonstrate the "extraordinary circumstances" needed to justify intervention under O.R.C. § 4906.08(B) and O.A.C. 4906-7-04(C). (AMP Resp. at 10-13). Those provisions, however, apply only to proposed intervenors who "failed to file a timely notice of intervention." As explained above, the Citizen Groups' intervention motion was timely and, therefore, the "extraordinary circumstances" provisions do not apply here.²

¹ Even if O.R.C. §§ 4903.221 and 4906.12 did not specifically authorize the ALJ to set an intervention deadline of five days before the hearing, the inclusive nature of O.R.C. § 4906.08(A) shows that the ALJ was not foreclosed from doing so under the Board's regulations.

² AMP cites to an order in the Board's *Woodsdale* proceeding in which the attorney examiner denied an untimely motion to intervene for failure to demonstrate extraordinary circumstances. (AMP Resp. at 11-12). While AMP suggests that the intervention motion in *Woodsdale* was untimely because it was filed outside of a 30-day statutory

In the alternative, even if the Citizen Groups' motion was untimely, reliance on the intervention deadline set forth in the ALJ's Order, which AMP never challenged, constitutes an "extraordinary circumstance" that justifies allowing intervention where, as here, good cause for intervention is otherwise shown

II. The Citizen Groups Have Demonstrated Good Cause for Intervention

AMP also erroneously contends that the Citizen Groups have failed to demonstrate good cause for intervention, as required by O.A.C. 4906-7-04(B)(1)(a)-(d). (AMP Resp. at 6-9). As the Ohio Supreme Court made clear in evaluating the intervention standard under O.R.C. § 4903.221, "intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered." *Ohio Consumers' Council v. Public Utilities Comm'n*, 111 Ohio St.3d 384, 388, 856 N.E. 2d 940, 945 (2006). Applying this liberal intervention standard, it is clear that intervention should be granted because the Citizen Groups satisfy all four factors that the ALJ and Board are to consider in evaluating whether there is good cause for intervention.

A. The Citizen Groups have direct and substantial interests in this proceeding

As the Citizen Groups explained in their intervention brief, they have three types of direct and substantial interests required by O.A.C. 4906-7-04(B)(1)(a). First, the Citizen Groups have members who would be directly impacted by the air and water pollution from the Meigs Plant. Second, the global warming that would be exacerbated by the Meigs Plant's CO2 emissions would impact all Citizen Group members. Third, each of the Citizen Groups have long standing

deadline, the attorney examiner actually identified the timely filing deadline as at least five days before the hearing. (AMP Resp. at Ex. 7 ¶2).

organizational interests in air quality, water quality, and clean energy issues at stake in this proceeding. (Ex. 1 at ¶¶9-10; Ex. 2 at ¶6; Ex. 3 at ¶¶2-3).

1. Citizen Group members would be directly impacted by the Meigs Plant

AMP incorrectly contends that the Citizen Groups' claim that they have members who would be directly impacted is inadequate. (AMP Resp. at 7). In fact, NRDC, OEC, and the Sierra Club, respectively, have 11, 3, and 9 members living in Meigs County. (Ex. 1 at ¶ 12; Ex. 2 at ¶ 5, Ex. 3 at ¶ 5). In addition, NRDC and the Sierra Club have 15 and 9 members, respectively, living in Jackson County, West Virginia (Ex. 1 at ¶12; Ex. 3 at ¶5), which is directly across the Ohio River from the proposed site for the Meigs Plant. It is beyond dispute that each one of those members breathe air into which the AMP plant would emit up to 6,820 tons of sulfur dioxide, 3,194 tons of nitrogen oxide, 1,182 tons of particulate matter, and other pollutants.

Each of these pollutants are known to impact human health, cause acid rain which damages plant species, create odors, and/or impair visibility,³ and, therefore, directly impact each of the Citizen Group members who live in Meigs County, Jackson County, and surrounding areas. For example, Citizen Group members are concerned about the impacts that increased air pollution from the Meigs Plant would have on their health and ability to breathe. (Lohse Statement, Ex. 4 at ¶4; Bannick Statement, Ex. 5 at ¶5). In addition, Citizen Group members' ability to use and enjoy natural areas in and around Meigs County for recreational purposes is adversely affected by the visibility and vegetation impacts of air pollution, and would be further impacted by the emissions from the Meigs Plant. (Lohse Statement, Ex. 4 at ¶5; Bannick

³ For example, the U.S. Court of Appeals for the D.C. Circuit has noted: "A highly reactive colorless gas smelling like rotten eggs, sulfur dioxide derives primarily from fossil fuel combustion. Best known for causing 'acid rain,' at elevated concentrations in the ambient air, SO₂ also directly impairs human health." *American Lung Ass'n v. EPA*, 134 F.3d 388, 389 (D.C. Cir. 1999).

Statement, Ex. 5 at ¶ 6-8). Plainly, the Citizen Groups have interests in this proceeding that show good cause for intervention.

2. The Statute requires an evaluation of CO2 emissions and project costs

AMP also asserts that the issues that the Citizen Groups seek to raise are irrelevant to this proceeding because they are “broad in scope,” rather than focused on “impacts to the immediate surrounding community.” (AMP’s Resp. at 7). In support, AMP cites to the Board’s *Columbus Southern Power* case,⁴ in which the ALJ denied intervention to industrial and commercial energy users seeking to raise issues regarding the need for a proposed new coal gasification plant, in part because such issues were not relevant to the impacts of the plant “on the immediately surrounding community.”⁵ According to AMP, cost and global warming issues do not fit within this limited mandate. (AMP Resp. at 7).

AMP’s argument fails because the Statute does not provide for limiting the Board’s review to only the “impacts to the immediate surrounding community.” Instead, the Statute requires the Board to “find and determine,” among other things:

- The nature of the probable environmental impact;
- That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations, and
- That the facility will serve the public interest, convenience, and necessity.

O.R.C. § 4906.10(A)(2), (3), and (6). The Board cannot accurately make these findings and determinations if it evaluates only impacts to the immediately surrounding community. The limited approach pushed by AMP, therefore, is contrary to the requirements of the Statute.

⁴ *In the Matter of Columbus Southern Power and Ohio Power Company for a Certificate of Environmental Compatibility and Public Need*, OPSB Case No. 06-0030-EL-BGN (June 14, 2006).

⁵ *Id.* at ¶ 7.

In addition, global warming will have impacts on the immediately surrounding community. While AMP labels global warming an “international issue,” it has not directly disputed the Citizen Groups’ evidence that there will be significant environmental, public health, and economic impacts on Ohio and Meigs County from global warming. (Citizen Groups Intervention Br. at §III.A.2). Nor could AMP dispute that, as there is no reason to believe that the increases in average temperature, increased incidences of extreme heat, drought, and heavy rain events, and the resulting impacts, will somehow spare Meigs County and Ohio while impacting the rest of the world. In fact, at least one local member of NRDC and the Sierra Club is concerned that she is already witnessing local impacts from global warming. (Lohse Statement, Ex. 4 at ¶6). Therefore, even under AMP’s erroneously narrow reading of the Statute, CO2 emissions and global warming must be evaluated as part of this proceeding.

3. The issues raised by the Citizen Groups must be addressed in this proceeding, rather than pawned off to some other forum

AMP also contends that the issues raised by the Citizen Groups should be ignored in this proceeding because they “will and are being more appropriately addressed elsewhere.” (AMP Resp. at 7). In support, AMP points again to *Columbus Southern Power*, where the ALJ rejected intervention by industrial and commercial energy users in part because the need and public interest issues they sought to raise were “more than adequately addressed” in the PUC proceeding regarding the proposed coal gasification plant at issue there.⁶

AMP’s argument fails because the Statute does not allow the Board to avoid evaluating an issue directly relevant to certification simply because another regulatory body might evaluate that issue. In *Columbus Southern Power*, the proposed intervenors were seeking to raise issues related to need, which the Statute does not require the Board to consider with regards to electric

⁶ Id. at ¶7.

generating plants. O.R.C. § 4906.10(A)(1); *Columbus Southern Power* at ¶5. By contrast, here it is undisputed that CO2 emissions from the Meigs Plant will contribute to the significant public health and environmental impacts caused by global warming (Citizen Groups' Intervention Br. at § III.A). Therefore such impacts must be evaluated in order for the Board to determine the "nature of the probable environmental impact of the Meigs Plant." O.R.C. 4906.10(A)(2). The impacts of CO2 emissions and the project costs are also relevant to the determination of whether the Meigs Plant "represents the minimum adverse environmental impact," the "economics of the various alternatives," and whether the "facility will serve the public interest, convenience and necessity." (Citizen Groups' Intervention Br. at §§ II, III.A, & IV). The fact that another agency might evaluate these issues does not excuse the Board from its legal duty to do so.

B. The Citizen Groups' interests are not represented by existing parties

Contrary to AMP's assertion that more explanation is needed (AMP Resp. at 8), it is self-evident that the Citizen Groups' interests are not represented in this proceeding. O.A.C. 4906-7-04(B)(1)(B). The Citizen Groups, on behalf of their membership, including local members who would be directly impacted by the emissions from the Meigs Plant, are seeking intervention to raise issues related to the costs and impacts of the project. The Citizen Groups believe that a proper evaluation of these issues will show that the plant does not represent the minimum adverse environmental impact and is not in the public interest, convenience and necessity, and that less environmentally damaging alternatives are available, feasible, and cost competitive. AMP obviously is not going to represent the interests of the Citizen Groups' members or make arguments showing that certification is not appropriate. In addition, the Board Staff has not

addressed the Citizen Groups' issues in the Staff Report or other filings. As such, the interests of the Citizen Groups are not represented in this proceeding.

C. The Citizen Groups' intervention would contribute to a just and expeditious resolution of the issues involved in the proceeding

The Citizen Groups would contribute to a just and expeditious resolution of the issues involved in the proceeding, O.A.C. 4906-7-04(B)(1)(c), as they are seeking to raise issues that are directly relevant to the statutory standards for certification, and are endeavoring to prepare their case within the time limits set by the ALJ. AMP counters that the Citizen Groups cannot satisfy the expeditious resolution standard because the Groups have publicly opposed the Meigs Plant. (AMP Resp. at 8). Public opposition or questioning of a project, however, does not foreclose an intervenor from contributing to a just and expeditious resolution. In many cases, such as the present one, denial of certification may be the just resolution, and participation by parties who are opposed or skeptical will help achieve that resolution expeditiously. AMP's argument would prevent any individual or organization that opposes a proposed project from satisfying the standards for intervening in a Board proceeding. AMP provides no support for such an overreaching position, and the ALJ and Board must reject it.

D. The Citizen Groups' intervention would not unduly delay the proceeding or unjustly prejudice AMP

Citizen Group intervention would not unduly delay the proceeding or unjustly prejudice AMP because the Groups intervened within the deadline set by the ALJ and they are prepared to present issues relevant to the standards for certification in a timely manner. AMP, however, suggests that the Citizen Groups acted in bad faith and have sought to cause undue delay and

prejudice by intervening “at the last possible moment.” (AMP Resp. at 9) According to AMP, such “delay” has “hamstrung” their ability to conduct and respond to discovery and to defend their proposal. (*Id.*)

AMP’s claims of undue delay and prejudice ring hollow. Most fundamentally, as described in Section I above, the Citizen Groups intervened within the deadline set by the ALJ. By definition, the filing date of an intervention motion that was submitted within the deadline set by the ALJ cannot be used as evidence of an attempt to cause undue delay and prejudice, especially given that AMP did not challenge the deadline when it was set. As for the ALJ’s encouragement that interested parties move to intervene as soon as possible, the Citizen Groups worked expeditiously in light of their limited resources as non-profit public interest organizations and the numerous demands on their resources. Preparation for intervention involved, among other things, obtaining and evaluating the numerous lengthy filings that AMP has presented to the Board and other governmental bodies, reviewing the relevant legal standards and decisions, identifying and retaining experts, and preparing the intervention brief and supporting evidence. As such, it is not surprising, and certainly not a sign of bad faith, that the Citizen Groups submitted their intervention papers at the end of the time period established for such filings by the ALJ.

In addition, AMP has not demonstrated any prejudice to its application as the result of the timing of the Citizen Groups’ filing. At the October 31 pre-hearing conference, AMP supported and encouraged the scheduling of the adjudicatory hearing for the week of December 10, and the establishment of a 15-day response period for discovery. If AMP now feels that schedule does not provide it adequate time to prepare its case and conduct and respond to discovery, AMP can move for a continuance of the hearing date. Such a continuance would not delay the

construction of the Meigs Plant, as AMP still has to obtain air, water, and wetlands permits before the project can proceed. In addition, if AMP was concerned about completing this proceeding in a just and expeditious manner, it should have submitted the analyses of project costs, environmental impacts and alternatives required by the Statute and Board regulations, rather than waiting for the Citizen Groups to challenge its deficient application. After filing a deficient application and urging a quick discovery and hearing schedule, AMP cannot now complain that it is prejudiced by having to quickly respond to the issues raised by the Citizen Groups.


In a supplemental brief filed the afternoon before the due date of this reply brief, AMP contends that the Citizen Groups' first discovery requests further demonstrates prejudice. The Citizen Groups' discovery requests, however, comply with the requirements of the Board's regulations and were filed within the deadlines set by the ALJ and suggested by AMP. In addition, the information sought is directly relevant to the proposed Meigs Plant and the evaluation of project costs, impacts, and alternatives that must occur in this proceeding. If AMP has objections to specific discovery requests, it can raise them in a response to those requests. It cannot use its objections to discovery, however, to exclude the participation of the Citizen Groups.

III. Conclusion

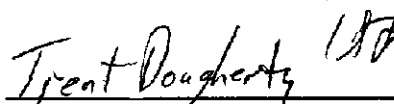
It is not surprising that AMP wants to exclude any intervenors that would question or challenge its proposal. The law, however, requires that intervention "be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered." *Ohio Consumers' Council*, 111 Ohio St.3d at 388. The Citizen Groups filed a

timely motion to intervene, have substantial and direct interests in the proceeding, are seeking to raise issues directly relevant to the statutory standards for certification, and are prepared to present their case in an expeditious manner. As such, the ALJ and Board should grant the Citizen Groups' motion and allow them to intervene as full parties in this proceeding.

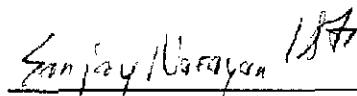
Respectfully Submitted,



Shannon Fisk
Staff Attorney
Natural Resources Defense Council
101 N. Wacker Dr., Suite 609
Chicago, Illinois 60606
(312) 780-7431 (phone)
(312) 663-9900 (fax)
sfisk@nrdc.org



Trent Dougherty
Staff Attorney
Ohio Environmental Council
1207 Grandview Ave., Suite 201
Columbus, Ohio 43212
(614) 487-7506 (phone)
(614) 487-7510 (fax)
trent@theoec.org



Sanjay Narayan
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., Second Floor
San Francisco California 94105
(415) 977-5769 (phone)
(415) 977-5793 (fax)
Sanjay.Narayan@sierraclub.org

November 16, 2007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and 10 copies of the foregoing Reply Brief in Support of the Motion to Intervene has been filed with the Ohio Power Siting Board via U.S. Postal Service Express Mail addressed to 180 E. Broad Street, Columbus, Ohio 43215 and served on the following via electronic mail at the e-mail addresses listed below on this 16th day of November, 2007. Courtesy copies of the Reply Brief have also been mailed to the addresses listed below.

April R. Bott
Chester, Wilcox & Saxbe, LLC
65 E. State Street, Suite 1000
Columbus, Ohio 43215
abott@cwslaw.com

Stephen C. Fitch
Chester, Wilcox & Saxbe, LLC
65 E. State Street, Suite 1000
Columbus, Ohio 43215
sfitch@cwslaw.com

William L. Wright
Assistant Attorney General
Public Utilities Section
180 E. Broad Street, 9th Floor
Columbus, Ohio 43215
William.wright@puc.state.oh.us

Margaret A. Malone
Assistant Attorney General
Environmental Enforcement Section
30 E. Broad Street, 25th Floor
Columbus, Ohio 43215
MMalone@atg.state.oh.us

Trent Dougherty
Staff Attorney
Ohio Environmental Council
1207 Grandview Ave., Suite 201
Columbus, Ohio 43212
Trent@theoec.org

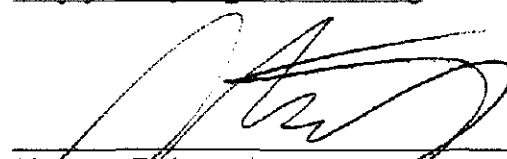
John W. Bentine
Chester, Wilcox & Saxbe, LLC
65 E. State Street, Suite 1000
Columbus, Ohio 43215
jbentine@cwslaw.com

Nathaniel S. Orosz
Chester, Wilcox & Saxbe, LLC
65 E. State Street, Suite 1000
Columbus, Ohio 43215
norosz@cwslaw.com

John H. Jones
Assistant Attorney General
Public Utilities Section
180 E. Broad Street, 9th Floor
Columbus, Ohio 43215
john.jones@puc.state.oh.us

Elisa Young
48360 Carmel Road
Racine, Ohio 45771
Elisa@EnergyJustice.net

Sanjay Narayan
Staff Attorney
Sierra Club Environmental Law Program
85 Second Street, 2nd Floor
San Francisco, California 94105
Sanjay.Narayan@sierraclub.org


Shannon Fisk

**BEFORE THE
OHIO POWER SITING BOARD**

Application of American Municipal Power,)
Ohio, Inc. (AMP-Ohio) for a Certificate of)
Environmental Compatibility and Public)
For the American Municipal Power)
Generating Station in Meigs County, Ohio)

Case No. 06-1358-EL-BGN

DECLARATION OF LINDA LOPEZ

I, Linda Lopez, hereby declare and state:

1. I am the Director of Membership and Public Education for the Natural Resources Defense Council ("NRDC"). I have been the Director of Membership and Public Education for 20 years.

2. My duties include supervising the preparation of materials that NRDC distributes to members and prospective members. Those materials describe NRDC and its work, and identify its mission. My work requires that I be familiar with NRDC's purpose, organization, and activities, as well as with the environmental interests and concerns of NRDC's members. My work also requires me to be familiar with NRDC's membership records, the manner in which those records are maintained, and the manner in which information on members can be retrieved.

3. Founded in 1970, NRDC is a New York not-for-profit membership corporation, recognized under section 501(c)(3) of the United States Internal Revenue Code. NRDC has offices in New York, Washington, D.C., Chicago, Los Angeles, San Francisco, and Beijing.

4. NRDC's certificate of incorporation states that one of NRDC's purposes is "[t]o preserve, protect and defend natural resources, wildlife and the environment against encroachment, misuse and destruction" and "[t]o take whatever legal steps may be appropriate and proper to carry out the foregoing purposes."

5. NRDC's membership database is maintained in computer format at Public Interest Data, Inc., 1800 Diagonal Road, Suite 400, Alexandria, Virginia, 22314. I and the staff of

NRDC's Membership and Public Education work at the NRDC's headquarters located at 40 West 20th Street, New York, NY 10011. The membership database is accessible by computer from the NRDC office.

6. NRDC's by-laws state that: "[u]nless otherwise directed by the Board of Trustees, a person or entity shall become a member . . . by submitting a membership application offered by the Corporation or by making a contribution to the Corporation accompanied by a statement requesting membership in the Corporation."

7. Membership in NRDC is renewed on an annual basis through payment of renewal membership dues. (*Id.*)

8. When an individual becomes a member of NRDC, that person authorizes NRDC to take legal action on his or her behalf to protect the environment and public health.

9. NRDC is actively involved in issues related to protecting air and water quality, challenging global warming, and promoting cleaner energy alternatives. For example, over the past 37 years, NRDC has helped spearhead efforts to stop acid rain by reducing sulfur dioxide emissions, create national energy efficiency standards for appliances, and to require American Electric Power to spend \$4.6 billion to reduce emissions from its coal-fired power plants in Ohio and elsewhere. NRDC is a founding member of the U.S. Climate Action Partnership, an alliance of businesses and environmental organizations calling for a cap-and-trade program to require reductions of global warming emissions from large stationary sources, transportation, and commercial and residential energy use.

10. In January 2007, NRDC opened a Midwest Office in order to increase its advocacy for cleaner energy and the protection of air and water quality in the Midwest.

11. NRDC maintains regular contact with its members, informing them of our progress on myriad environmental issues, including our efforts to promote clean energy, and protect air and water quality. NRDC members are regularly updated on issues impacting wildlife and endangered species through information available on the NRDC website, annual reports, the quarterly On Earth magazine, and other mailings.

12. NRDC has more than 1.2 million members and online activists nationwide, including 35,114 in Ohio. NRDC members live in the region that will be affected by this litigation, including 11 members in Meigs County, Ohio, and 15 members in Jackson County, West Virginia.

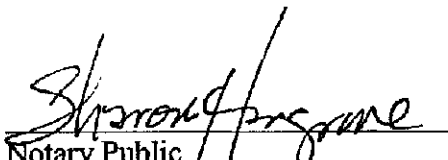
13. NRDC's intervention in the Ohio Power Siting Board proceeding regarding American Municipal Power-Ohio's proposed coal-fired power plant in Meigs County is integral to and furthers NRDC's mission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 15, 2007, at New York, New York.


LINDA LOPEZ

Sworn to and subscribed before me this 15th day of November, 2007.


Notary Public

My commission expires: _____

SHARON HARGROVE
Notary Public, State of New York
No. 01148160253
Qualified in New York County
Commission Expires Aug. 7, 2010

**BEFORE THE
OHIO POWER SITING BOARD**

Application of American Municipal Power,)
Ohio, Inc. (AMP-Ohio) for a Certificate of)
Environmental Compatibility and Public)
For the American Municipal Power)
Generating Station in Meigs County, Ohio)

Case No. 06-1358-EL-BGN

**AFFIDAVIT OF KEITH DIMOFF
IN SUPPORT OF MOTION TO INTERVENE OF THE NATURAL RESOURCES
DEFENSE COUNCIL, INC., OHIO ENVIRONMENTAL COUNCIL, AND
SIERRA CLUB**

STATE OF OHIO)
) ss.
County of Franklin)

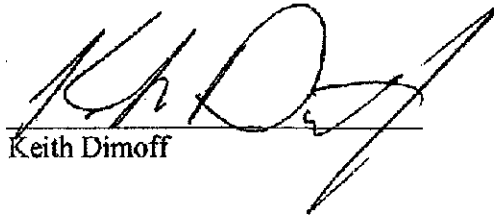
I, Keith Dimoff, declare as follows:

1. I am over the age of eighteen (18) years and suffer from no legal incapacity.

This affidavit is based on my personal knowledge, information and belief. If called upon, I would testify on the matters set forth below.
2. I submit this affidavit in support of the Motion to intervene by the Natural Resources Defense Council, Inc., Ohio Environmental Council, and Sierra Club.
3. I am a resident of Columbus, Ohio.
4. I am the Executive Director of the Ohio Environmental Council. I have served in this capacity since September 2007. I am responsible for overseeing and tracking all activities of the Ohio Environmental Council
5. The Ohio Environmental Council is an Ohio not-for-profit corporation. It is a statewide organization with approximately 2,364 individual members and 115

group members that represent thousands of citizens throughout the state of Ohio. It has approximately three (3) current members who reside in Meigs County, where AMP-Ohio's proposed facility would be located.

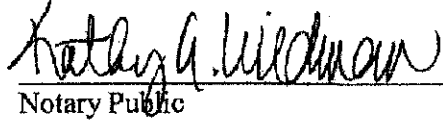
6. The purpose of the Ohio Environmental Council is to preserve and protect the environment of the state of Ohio, and to represent the interests of its thousands of members across the state regarding environmental and conservation issues. Consistent with its purpose, the Ohio Environmental Council has intervened in this proceeding to represent the interests of its members in Meigs County regarding the siting of AMP-Ohio's proposed facility, and its air quality and water quality impacts.


Keith Dimoff

On this 16th day of November, 2007, the above named Keith Dimoff appeared before me, identified himself to me, and being duly sworn and cautioned affirmed that the statements contained in the foregoing Affidavit are true.



Kathy A. Wildman
Notary Public, State of Ohio
My Commission Expires Feb. 19, 2008


Notary Public

My Commission Expires: 2/19/2008

**BEFORE THE
OHIO POWER SITING BOARD**

Application of American Municipal Power,)
Ohio, Inc. (AMP-Ohio) for a Certificate of)
Environmental Compatibility and Public)
For the American Municipal Power)
Generating Station in Meigs County, Ohio)

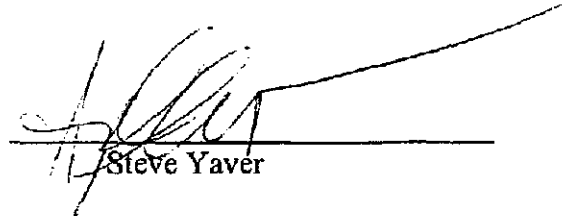
Case No. 06-1358-EL-BGN

DECLARATION OF STEVE YAVER

I, Steve Yaver, declare:

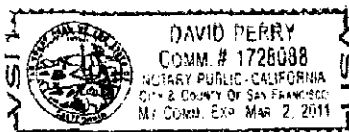
1. I am the Sierra Club's Director of Member Services. In that role, I have direct knowledge of the Sierra Club's overall membership, both nationwide and regionally.
2. The Sierra Club is a membership organization, with an overall mission seeking to explore, enjoy, and protect the wild places of the earth, to practice and promote the responsible use of the earth's ecosystems and resources, to educate and enlist humanity to protect and restore the quality of the natural and human environment, and to use all lawful means to carry out these objectives.
3. Energy, and the pollution from out-dated energy sources such as coal-fired power plants, are currently among the Sierra Club's central conservation priorities
4. The Sierra Club has over 718,400 members nationwide. 18,895 of those members reside in Ohio.
5. There are nine Sierra Club members in Meigs County, Ohio, and nine in Jackson County, West Virginia.

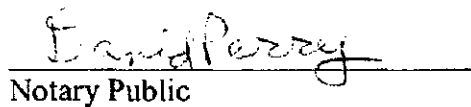
Further affiant sayeth not.



Steve Yaver

Sworn to and subscribed before me this 5th day of November, 2007.





Notary Public

My commission expires: March 2, 2011

**BEFORE THE
OHIO POWER SITING BOARD**

Application of American Municipal Power,)
Ohio, Inc. (AMP-Ohio) for a Certificate of)
Environmental Compatibility and Public)
For the American Municipal Power)
Generating Station in Meigs County, Ohio)

Case No. 06-1358-EL-BGN

STATEMENT OF INTEREST OF MARY BETH ZAK LOHSE

I, Mary Beth Zak Lohse, hereby swear and affirm under penalty of perjury the following:

1. I live at 33070 Cotterill Road, Pomeroy, Ohio 45769. I have lived at this address for the last three and a half years.
2. I have been a member of the Sierra Club for the past 29 years. I am actively involved in the Appalachian Ohio Group of the Sierra Club, serving as its newsletter editor since 2005 and on its Executive Committee in 2005 and 2006. I have been a member-at-large of the Executive Committee of the Ohio Chapter of the Sierra Club since 2006. I serve on the state Energy Committee and state Coal Subcommittee working on global warming issues. At the local level I have worked to get the city of Athens to join the Sierra Club Cool Cities campaign and pledge to reduce its global warming emissions. On the state level I have worked to influence state energy policy by promoting energy efficiency and renewable energy sources and opposing fossil fuel based energy sources such as coal that are major contributors to air pollution and global warming.
3. I have been a member of the Natural Resources Defense Council ("NRDC") for the past year.
4. I am very concerned about American Municipal Power's ("AMP") proposed Meigs County coal-fired power plant, and the impact that the air and water pollution from that plant would have on my health. As a resident of Meigs County, I breathe the air into which the AMP plant would be emitting pollutants such as sulfur dioxide, nitrogen oxides, and particulate matter. I worry about the impacts that such pollutants would have on my health and ability to breathe, especially given the four other coal-fired power plants already around the area of the Ohio River Valley where I live. My concern about the impacts of additional air pollution from the AMP plant is heightened by the fact that I suffer from a serious auto-immune disease known as systemic lupus erythematosus. While I am currently in remission, I live with the knowledge that my disease may relapse and environmental conditions are known to affect the likelihood of relapse.

5. Pollution from AMP's coal plant would also adversely impact my use and enjoyment of natural areas near where the plant would be located. I hike and garden on my land almost every day. I also frequently hike and observe nature on public lands in Athens, Meigs and Washington Counties such as the Wayne National Forest, Forked Run State Park and several nature preserves and state forests. This includes the islands of the Ohio River Islands National Wildlife Refuge, which are very near the proposed plant. I have worked as a volunteer on one of the islands, removing invasive non-natives species. Air pollution already impacts my enjoyment of these natural areas, by reducing visibility and adversely impacting the plants and animals in these areas. Additional air pollution from the AMP plant would further adversely impact my recreational enjoyment of these natural areas. When I am near the Ohio River, I often observe people fishing and I am concerned that the fish is not safe to eat because of mercury and other water pollution.
6. I am very worried about the threat to our climate posed by global warming, and the impacts that global warming is already having on our environment. I have noticed that spring wildflowers on my family's land are blooming earlier than they have in previous years. I have also noticed changes in weather patterns. Not only are summer days much warmer than usual, but also the temperature often remains into the 90s as late as eleven o'clock at night. That is something I have never experienced before in the over 50 years I have lived in Ohio. I can't help but wonder if these changes are connected to larger climate changes.
7. I strongly support the Sierra Club and NRDC's intervention in this proceeding because I am very concerned about the impact that AMP's plant, and the resulting air and water pollution, would have on Meigs County and surrounding areas.

Further affiant sayeth not.

Mary Beth Zak Lohse
Mary Beth Zak Lohse

Sworn to and subscribed before me this 19th day of November, 2007.

Danina Lawson
Notary Public

My commission expires: 10-16-08

**BEFORE THE
OHIO POWER SITING BOARD**

Application of American Municipal Power,)
Ohio, Inc. (AMP-Ohio) for a Certificate of)
Environmental Compatibility and Public)
For the American Municipal Power)
Generating Station in Meigs County, Ohio)

Case No. 06-1358-EL-BGN

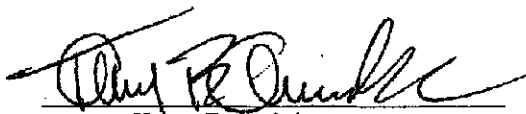
STATEMENT OF INTEREST OF TENY BANNICK

I, Teny Bannick, declare:

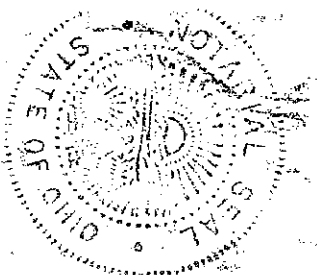
1. I live and work in Athens, Ohio. I have worked in Athens and lived in Athens County for the last year and half.
2. I have been a member of the Sierra Club since January this year. I became a member because I am very concerned about the many environmental issues that face us today and because I noticed that the Sierra Club was one of very few organizations focusing on energy efficiency and natural resource conservation to directly address those issues.
3. I am an architectural designer and a human ecologist. I have been volunteering within my own profession and as an individual since the late 1970's to affect change in resource and energy use. As an individual I am also a member of OEFFA, Ohio Ecological Food and Farm Association, and strive to meet my own needs for basic resources within my local community.
4. American Municipal Power's ("AMP") proposed Meigs County coal-fired power plant would result in air and water pollution which would, I believe, threaten the health, well being and quality of life of everyone in this region.
5. I am deeply concerned with poor air and water quality in Meigs County, as well as in nearby Athens County where I live, work, and play. The AMP Plant would emit sulfur dioxide, nitrogen oxides, and particulate matter. I have noticed that I suffer increased allergy-like sinus symptoms since I moved to this region a year and a half ago and I take special care to filter my water for use at home and at work. The air here is visibly dirtier than the air where I lived last in New Hampshire. It shows up on cars and houses. Adding pollution from the AMP Plant to the pollution emitted by the four existing coal-fired plants in this region, I believe, only adds to an already untenable situation of poor air and water quality.
6. The dirty air in this region already impacts my use and enjoyment of natural areas. Pollution from the AMP's coal plant would impact that enjoyment even more. My doctor has recommended an active physical lifestyle, for a variety of reasons including improved bone density and healthy lipid levels.


7. I am just beginning to get to know and appreciate the natural beauty of Southeast, Ohio. It has been my habit to become acquainted with natural areas in the places where I live by joining groups for hikes and walks. Recently I discovered the "Talking Forest Trail", a public hiking trail developed by Rural Action Research and Education near Rutland, Ohio in Meigs County, and I plan to return to the area in the future.
8. Air pollution already impacts my enjoyment of these natural areas, by reducing visibility and adversely impacting the plants and animals there. Because of air pollution, I avoid open spaces in favor of forested areas in which air pollution has fewer evident effects, but it is only a matter of time before we would lose the protection of our forests as we continue to burden them with air and water pollution. Pollution from the AMP plant would further adversely impact my recreational enjoyment of these natural areas.
9. I am aware of the dangers posed by human-caused global warming, both locally and around the world. I am very concerned about the additional carbon pollution that will result from the AMP Plant, and the plant's expected contribution to global warming.
10. Southeast Ohio has a long history with coal, and coal-burning and coal-mining have been polluting the air and water of this region for a very long time. This area needs to recover. The economy of this region has been dependent on coal for generations making this an economically and physically victimized and depressed region. The proposed AMP Plant would just continue that victimization and would do very little to improve the economic outlook of very few people here. I believe that mining and burning coal have adverse affects on the economy of this region and are to blame for the economic depression of this region.
11. I strongly support the Sierra Club and NRDC's intervention in this proceeding because I am very concerned about the impact that AMP's plant, and the resulting air and water pollution, would have on Meigs County and surrounding areas, and because I believe it is time to leave coal behind as an energy fuel and time to invest in cleaner renewable alternatives.

Further affiant sayeth not.


Terry Bannick

Sworn to and subscribed before me this 16 day of November, 2007.




Notary Public

My commission expires:

11/08/12