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NATURAL RESOURCES DEFENSE COUNCIL

December 31, 2007

Ohio Power Siting Board
 Docketing Division, 13th Floor
 180 East Broad Street
 Columbus, Ohio 43215-3793

**RE: Natural Resources Defense Council Inc.'s Motion to Present Rebuttal
 Testimony in Case No. 06-1358-EL-BGN**

Dear Sir or Madam:

Please find enclosed an original and 10 copies of the Natural Resources Defense Council Inc.'s Motion to Present Rebuttal Testimony for filing in Case No. 06-1358-EL-BGN, Application of American Municipal Power-Ohio for a Certification of Environmental Compatibility and Public Need for the American Municipal Power Generating Station in Meigs County, Ohio.

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
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**BEFORE THE
OHIO POWER SITING BOARD**

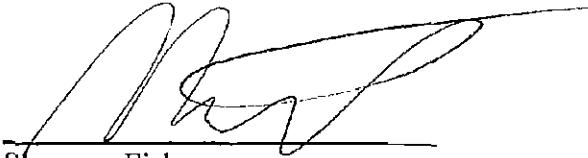
Application of American Municipal Power,)
Ohio, Inc. (AMP-Ohio) for a Certificate of)
Environmental Compatibility and Public)
Need For the American Municipal Power)
Generating Station in Meigs County, Ohio)

Case No. 06-1358-EL-BGN

**NATURAL RESOURCES DEFENSE COUNCIL, INC.'S MOTION
TO PRESENT REBUTTAL TESTIMONY**

The Natural Resources Defense Council, Inc. hereby moves to present rebuttal testimony regarding the impacts of climate change and carbon dioxide emissions from the proposed American Municipal Power Generating Station at issue in this proceeding. The basis for this motion is provided in the attached Memorandum in Support.

Respectfully Submitted,



Shannon Fisk
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December 31, 2007

**BEFORE THE
OHIO POWER SITING BOARD**

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

Case No. 06-1358-EL-BGN

**NATURAL RESOURCES DEFENSE COUNCIL, INC.'S
MEMORANDUM IN SUPPORT OF ITS
MOTION TO PRESENT REBUTTAL TESTIMONY**

Intervenor Natural Resources Defense Council, Inc. ("NRDC") moves to present testimony from a rebuttal witness regarding the environmental impacts of climate change and carbon dioxide ("CO2") emissions from AMP-Ohio's proposed American Municipal Power Generating Station ("AMPGS").¹ Such testimony would be directly responsive to the testimony of witnesses for AMP-Ohio and the Board Staff that they did not evaluate climate change and CO2 impacts in determining the environmental impacts of the AMPGS. Rebuttal testimony is also necessary to ensure that the certification decision is made on the basis of a complete record, as required by Board regulations and rulings. O.A.C. § 4906-7-09(A); *In re Jackson County Power, LLC*, Case No. 00-839-EL-BGN, 2001 WL 1530174, at *5-*6 (O.P.S.B. Sept. 17, 2001). Finally, allowing NRDC to present a rebuttal witness affords all parties equal rights and is consistent with the ALJs' December 19 ruling allowing AMP-Ohio to present three rebuttal witnesses.²

¹ NRDC files this motion after a meet and confer with counsel for AMP-Ohio in which NRDC's understanding is that AMP-Ohio opposes NRDC's right to present rebuttal testimony.

² As relates to AMP-Ohio's rebuttal witnesses, NRDC reserves the right to object to specific AMP-Ohio rebuttal testimony as beyond the scope of rebuttal or if AMP-Ohio fails to provide NRDC with all of the supporting documents and workpapers (which NRDC has not received at the time of this filing) needed to evaluate and respond to that testimony. NRDC also continues to reserve the right to present sur-rebuttal testimony in response to AMP-Ohio's rebuttal witnesses.

NRDC is entitled to present testimony regarding climate change and CO2 impacts in order to rebut AMP-Ohio and the Staff's position at the hearing regarding the environmental impacts and CO2 emissions of the AMPGS. The Power Siting Statute requires a determination of the "probable environmental impacts" of the AMPGS and that the AMPGS represents the "minimum adverse environmental impact" in light of alternatives. O.R.C. § 4906.10(A)(2), (3). Witnesses for both AMP-Ohio and the Staff contend that such statutory standards have been satisfied here (Kiesewetter Test. at Q 27; Meyer Test. at Q 25, 30, 31; Couppis Test. at Q 26; Staff Report at 28, 40), but those witnesses did not evaluate the impacts of CO2 emissions and climate change in reaching such conclusions. (Dec. 12 Hearing Tr. at 29-30, 94-95, 97, 161; Dec. 19 Hearing Tr. at 96). Therefore, testimony regarding the serious environmental impacts of CO2 emissions and climate change is directly responsive to AMP-Ohio's and the Staff's claims regarding the environmental impacts of the AMPGS and the relevance of CO2 emissions to the determination of those impacts. *In re Jackson County Power*, 2001 WL 1530174 at *6 (noting that it is "proper . . . to introduce testimony to rebut the inferences to be drawn" from witness testimony).

A rebuttal witness is also appropriate to ensure that the Board is presented with a complete record upon which to make the certification decision. As the Board has previously stated, "if the record from which this Board makes its determinations is incomplete or ambiguous, the citizens of this state are not being well served." *In re Jackson County Power*, 2001 WL 1530174 at *5-*6. The Board has noted that it is, therefore, appropriate for both an applicant and an intervenor to call rebuttal witnesses. *Id.* (rejecting intervenor's challenge to presentation of rebuttal testimony by applicant on ground that intervenor could have presented additional testimony of its own). Here, the ALJs have ruled that climate change and CO2

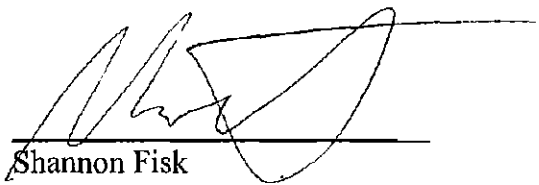
emissions are relevant to the proceeding (Dec. 5, 2007 Order at ¶ 5), but AMP-Ohio and the Staff have asserted that such issues need not be evaluated in determining the environmental impact of the AMPGS. As such, rebuttal testimony regarding the environmental impact of climate change and CO2 emissions from the AMPGS is proper to ensure that the record is complete for the Board.

Rebuttal testimony regarding CO2 and climate change impacts is also consistent with the Board's rules of evidence, which provide that the ALJ "shall admit all relevant and material evidence, except evidence that is unduly repetitious." O.A.C. § 4906-7-09(A). As already noted, the ALJs have found that climate change and CO2 impacts are relevant to this proceeding, and testimony about such impacts would not be repetitious.

Finally, allowing NRDC to present a rebuttal witness regarding the environmental impacts of climate change and CO2 emissions from the AMPGS would be consistent with the ALJs' decision to allow AMP-Ohio to present rebuttal witnesses. On December 19, the ALJs granted AMP-Ohio's motion to present rebuttal witnesses on CO2 costs and alternatives – issues that the Power Siting Statute plainly required to be evaluated as part of AMP-Ohio's application and that the Citizen Group intervenors raised in their initial intervention motion filed on October 25. In response, AMP-Ohio has presented three witnesses and 40 pages of additional testimony. Consistency and fairness requires that NRDC also be permitted to present rebuttal testimony.

For the foregoing reasons, NRDC respectfully requests that the ALJs grant this motion and allow NRDC to present rebuttal testimony from one witness regarding the environmental impacts of climate change and CO2 emissions.

Respectfully Submitted,



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December 31, 2007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and 10 copies of the foregoing Notice of Appearance has been filed with the Ohio Power Siting Board via Federal Express and served on the following via electronic mail at the e-mail addresses listed below on this 31st day of December, 2007.

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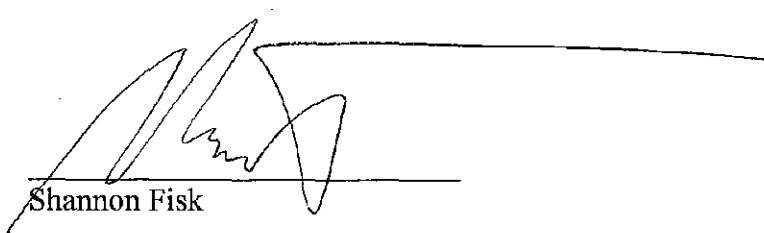
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