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BEFORE
THE OHIO POWER SITING BOARD

In the Matter of an Application by American Municipal Power-Ohio, Inc. for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Station in Meigs County, Ohio.	:	Case No. 06-1358-EL-BGN

POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF THE OHIO POWER SITING BOARD

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INTRODUCTION

Amidst all the rhetoric, this is a very simple case. Applicant, American Municipal Power-Ohio, Inc. (AMP-O) is a consortium of self-governing municipalities located across Ohio and in other states. These communities need power. To better manage their own energy needs and reduce wholesale market price risks to their members, AMP-O has applied to the Ohio Power Siting Board (Board) for authority to construct 960 megawatts (nominal) of new pulverized coal-fired generation. All risks associated with construction and operation will be borne entirely by its membership. Having been fully briefed by AMP-O about projected growth of their energy needs, the member communities have, in a largely unified and affirmative voice, voted to move forward with this project and avoid the negative consequences that delaying the decision would occasion.

This case is not about laws that might be; it is about laws that are. This case is not about addressing future regulations that may address global warming concerns. That is a matter to be taken up by appropriate legislative authorities. The Board implements the law; it does not make it. This case is not about whether building this plant is financially wise for the participants. The financial risks, whether great or small, wise or foolish, are, again, borne by those participants. Nor is this case about hypothetical applications not before this body. It is about determining that AMP-O's actual application complies with Chapter 4906 requirements. The record shows that the Board Staff conditions do exactly that. The case is not about choosing some hypothetical "best" way for AMP-O to meet its members' energy needs. AMP-O has chosen its way and the charge here is to minimize the impacts of that choice. The conditions proposed by the Staff do exactly that. A project of this scope and magnitude must be decided on relevant facts and current law, not emotional, debate. While what the future may bring is uncertain, the requirement that AMP-O comply with the law is not.

PROCEDURAL HISTORY

In May of 2007, AMP-O filed an application requesting authority from the Board to construct and operate an electric generating facility in Meigs County, Ohio. That application was further supplemented. AMP-O is a non-profit municipal public power system that provides wholesale power and services to well over 100 municipal member

systems in multiple states, most of which are in Ohio.[1] The regional generation fleet is predominantly coal-fired and aging, with few base-load facilities having been added in the last 20 years.[2]

AMP-O proposes to construct a base-load generating facility with a net demonstrated capability of 960 megawatts (summer) and a peak maximum capability of 1,020 megawatt (MW) net output.[3] The proposed site encompasses approximately 1600 acres in Letart Township adjacent to the Ohio River.[4] The pulverized coal plant will utilize Powerspan ECO-SO_2 emissions control technology that includes an ammonia FGD scrubber system.[5] This technology produces an ammonium sulfate co-product, a fertilizer that will be sold commercially, thereby reducing landfill waste. This technology improves mercury and particulate matter control, and may allow for carbon dioxide capture at a future time.[6] The project encompasses multiple components in addition to the powerhouse itself, including a barge/docking facility for coal deliveries, solid waste disposal (landfill), fuel storage, fertilizer and urea storage, cooling cells and water intake/outfall, electric switchyard and additional buildings.[7] AMP-O has estimated maxi-

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1 Staff Report of Investigation at 2.

2 Direct Test. of S. Kiesewetter at 9; see also AMP-O Ex. 12, AMP-Ohio Generating Projects, at CWS 233.

3 Staff Report of Investigation at 3.

4 *Id.* at 4.

5 *Id.* at 4-5.

6 *Id.*

7 *Id.* at 5-6.

mum coal consumption of 12,000 tons per day when the generating plant operates at full capability.[8]

Environmental and other impacts are being closely scrutinized in other fora as well. AMP-O has filed for and must obtain a number of permits including:

- Air Permit-to-Install (PTI) application, filed with Ohio EPA, May 2006;
- National Pollutant Discharge Elimination System (NPDES) Permit application filed with the Ohio EPA, May 2007;
- Residual Solid Waste Landfill Permit-to-Install (PTI) application, filed with Ohio EPA, May 2007;
- Section 10/404 Permit application, filed with the U.S. Army Corps of Engineers, May 2007;
- Section 401 Water Quality Certification application, filed with Ohio EPA, May 2007.[9]

Each of these permits will contain its own conditions. The Staff of the Ohio Power Siting Board has recommended that any certificate issued by the Board require full AMP-O compliance with all Staff-recommended conditions, including that AMP-O must obtain all permits before commencing construction on the generating facility.

Following an exhaustive review of the application and numerous field visits, some with AMP-O representatives, the Board's Staff submitted their report of investigation on October 16, 2007 outlining their findings and recommendations. On October 25, 2007, requests to intervene were filed by the Natural Resources Defense Council, Inc., Sierra Club, and Ohio Environmental Council (collectively Citizen Groups). Additionally, Elisa

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8 Staff Report of Investigation at 5.

9 *Id.* at 3.

Young, a resident of Meigs County, Ohio, intervened on her own behalf. A public hearing was held on November 1, 2007 in Pomeroy, Ohio, during which numerous persons provided statements about the proposed project.

Following extensive discovery, several days of hearings were held during the time period of December 11, 2007 – January 4, 2008 during which time substantial oral and documentary evidence was taken. As part of its case in chief, AMP-O sponsored four witnesses. In opposition, the Citizens Group sponsored two witnesses, while Ms. Young also testified and "sponsored" two additional individuals' testimonies as well. The Board Staff presented a witness to sponsor the Staff Report of Investigation. AMP-O concluded its case by sponsoring three rebuttal witnesses on the final day of the hearing. Although it was granted authority to do so, the Citizens' Groups declined to sponsor surrebuttal testimony. By entry dated January 16, 2008, the Attorney Examiner directed that initial post-hearing briefs be filed on January 28, 2008, and reply briefs on February 8, 2008.

This initial post-hearing brief is timely submitted on behalf of the Board's Staff.

THE PROJECT

As already pointed out, AMP-O seeks a certificate to construct a base-load[10] electric generation station and related facilities in Meigs County, Ohio. The regional coal fleet is aging and little base-load generation has been added in the last 20 years.[11] AMP-

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[10] Base-load generating resources are available 24 hours a day, 365 days a year, to serve AMP-O electricity load. Direct Test. of S. Kiesewetter at 2. AMP-O seeks to reduce its present, significant reliance (60% of current base-load needs) on wholesale market purchases to satisfy its members' demands. *Id.* at 3, Ex. SK-3; *see also* Tr. II at 174.

[11] Direct Test. of S. Kiesewetter at 9.

O Director of Environmental Affairs Randy Meyer sponsored testimony outlining the technology choice. AMP-O proposes construction of two pulverized coal-fired generating units (each 480 MWs) that utilize multiple emissions control technologies including Powerspan ECO technology.[12] That technology controls a number of pollutants in the flue gas stream and requires less landfill space by creating fertilizer as a byproduct.[13] It also has potential for future carbon dioxide capture and sequestration.[14] AMP-O witness Meyer explained that the proposed project will reduce AMP-O's overall emissions footprint by allowing for the retirement or repowering of older, less efficient and less controlled plants.[15] AMP-O has a diversified energy portfolio that also includes both conservation and renewable (wind and hydroelectric) energy projects.[16] AMP-O's technology choice analysis was not done in a vacuum. It considered and rejected other technologies, including integrated gasification combined cycle (IGCC), because of economic and reliability concerns.[17] Nor was its decision to move forward with this project lightly entered into. From inception to application, AMP-O's project proposal has been

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12 Direct Test. of R. Meyer at 3. AMP-O is also evaluating a super-critical boiler design that is more efficient and results in fewer emissions and other environmental impacts. *Id.* at 8.

13 *Id.* at 4.

14 *Id.*

15 *Id.* at 7-8.

16 *Id.* at 4-5; *see also* Tr. V at 17-20.

17 Direct Test. of R. Meyer at 6. Mr. Meyer indicated that the two IGCC power plants presently operating in the United States do not provide the level of operational reliability required by its members and could force AMP-O to purchase more replacement power on the wholesale market. *Id.*

subjected to and is the product of thorough review and evaluation by such respected engineering firms as Black & Veatch, R.S. Beck, and Sargent & Lundy.[18]

The Citizen Groups appear to quickly dismiss AMP-O's application as deficient, because, in their opinion, it does not adequately consider the impacts of CO_2 emissions. AMP-O has applied for an air permit to install from the Ohio Environmental Protection Agency in a separate proceeding which will evaluate air emissions under current Ohio law (Chapter 3704) requirements. In that case, AMP-O's proposal will be subjected to a rigorous BACT (best available control technology) review. This application remains pending at the time of this writing.

CITIZEN GROUPS POSITION

There is a voluminous record in this case. The Board must weigh the evidence and determine whether there are sufficient facts to support affirmative findings on each criterion enumerated in R.C. 4906.10. It is expected that the Citizen Groups will argue that AMP-O's application is deficient based upon the following points.

A. Project Costs

There is no question or dispute that AMP-O members' energy needs are growing, that more base-load generation is needed to serve projected load growth, and that AMP-O has wisely embarked on a course to reduce its level of power purchases and price risks associated with the wholesale market. The Citizen Groups have questioned whether

[18] Tr. V at 26-27.

AMP-O fully considered the potential impact of future carbon dioxide emissions regulations and the possibility of cost escalations in evaluating project cost. With an overall price tag of approximately $2.9 billion, this is an important issue for AMP-O's members to be sure.[19] And assuredly a project of this magnitude is not without risks. Decisions regarding cost, however, properly rest with the member communities that will be asked to bear the financial risks associated with the project and not the Ohio Power Siting Board which lacks any authority under Ohio law to award cost recovery or set rates for AMP-O members. The record shows that AMP-O evaluated alternative sites and the cost of alternative control technologies (including IGCC) and, in tandem with their membership, rejected them as too costly. That is what the law requires.

B. Carbon Dioxide/Global Warming

Much has been made about whether AMP-O has considered the possibility of *future* federal regulations addressing carbon dioxide emissions. Several observations are appropriate here. One, no such regulations presently exist. Two, if such regulations become a reality in the future, AMP-O will have to comply with them. The record suggests that its technology choice, Powerspan ECO, has the potential to isolate and capture carbon with appropriate future retrofits.[20] Finally, the record reflects that AMP-O has considered (and factored into project costs) the possibility of a federal "cap and trade"

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19 *See, e.g.* Tr. II at 143.

20 *See, e.g.* Tr. V at 22. AMP-O is a member of the Midwest Regional Carbon Sequestration Partnership and the Chicago Climate Exchange. Tr. II at 154.

system as a way to address carbon emissions in the future.[21] Importantly, AMP-O's control technology choice will be fully scrutinized by Ohio EPA under existing laws and regulations as part of the air permit process.

Global warming is a complex and highly contentious matter subject to rigorous, ongoing debate. Importantly, there is no requirement under Ohio law that the debated effects of global warming be considered as part of this case. AMP-O's fuel choice (coal) is not surprising given its abundance in the Midwest. The Board must decide if that choice is reasonable within the context of AMP-O's application and the requirements of R.C. 4906.10. The record does show that AMP-O has a diversified generation mix, including wind, hydroelectric, and landfill gas projects.[22] While these technologies are good secondary generation resources, they are not dispatchable and thus cannot serve as a replacement for the base-load generation that AMP-O members will need in five years.[23] Importantly, construction of this project will allow AMP-O to evaluate closure or repowering of older, less efficient, less controlled (*i.e.* dirtier) generating plants, thereby reducing AMP-O's overall environmental footprint.[24]

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21 *See, e.g.* Rebuttal Test. (Non-Confidential) of I. Clark, generally; more specific cost data is delineated in Mr. Clark's confidential rebuttal testimony and is not discussed in this brief.

22 *See* Direct Test. of S. Kiesewetter at 4-5.

23 *See, e.g.* Tr. II at 168-172; Tr. V at 17-20; Rebuttal Test. (Non-confidential) of P. Meier at 5-9; Rebuttal Test. of L. Marquis at 2-6.

24 Direct Test. of R. Meyer 7-8; Tr. II at 113.

ARGUMENT/STAFF CONDITIONS

A. The Law

The governing law is straightforward. The Ohio Power Siting Board is created by statute and its powers and duties are delineated under Chapter 4906 of the Ohio Revised Code. Simply, the Board must approve applications for certificates, either as filed or with conditions, or deny the application.[25] Thus, the role of the Board is to evaluate and decide whether what AMP-O has proposed in its application meets the statutory criteria, not what others believe AMP-O should or might have proposed. Again, the Board must render a decision based upon the record either granting or denying the application, as filed, or granting it upon such terms, conditions, and modifications as it deems appropriate.[26] R.C. 4906.10 requires that the Board must, to grant a certificate, make each of the following findings to grant a certificate:

> (1) The basis of the need for the facility if the facility is an electric transmission line or gas or natural gas transmission line;
>
> (2) The nature of the probable environmental impact;
>
> (3) 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;
>
> (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems

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25 Ohio Rev. Code Ann. § 4906.03(D) (Anderson 2008).

26 Ohio Rev. Code Ann. § 4906.10(A) (Anderson 2008).

> serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
>
> (5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.
>
> (6) That the facility will serve the public interest, convenience, and necessity;
>
> (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.
>
> (8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

The Board is asked to apply its judgment and expertise to evaluate the merits of AMP-O's application. It must interpret the criteria of R.C. 4906.10 in the context of current law and regulations. The sufficiency of the evidence is, of course, a matter for the Board's judgment. The Staff offers its analysis and recommendations to assist the Board in its deliberations. Based upon the detailed information contained in AMP-O's applica-

tion and supplements, the Staff's investigation of that information, the evidentiary record, and AMP-O's stated agreement to fully comply with all conditions contained in Staff Exhibit 2, the Staff recommends that the Board find that each criterion enumerated in R.C. 4906.10 has been met.

B. Staff Report of Investigation

The Staff Report of Investigation evaluated AMP-O's application in light of the factual findings that the Board must make.[27] A brief discussion of the Staff's analysis and conclusions on each statutory criterion follows.

1. R.C. 4906.10(A)(1) – Basis of Need[28]

With the enactment of S.B. 3 in 1999, this criterion is no longer applicable to an electric generating project. Nonetheless, AMP-O has demonstrated, and the Citizen Groups have not disputed that, based upon the projected growth in energy needs by its members, there will be a significant need for base-load generating capacity by the 2012-13 time period.[29]

2. R.C. 4906.10(A)(2) – Nature of Probable Environmental Impact[30]

This section of the staff report addresses environmental and other information submitted by AMP-O and reviewed by the Staff. Based upon its review, Staff made numer-

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27 Ohio Rev. Code Ann. § 4906.10 (Anderson 2008).

28 Staff Report of Investigation at 18.

29 *See, e.g.* Direct Test. of S. Kiesewetter generally.

30 Staff Report of Investigation at 19-28.

ous findings regarding the nature of the probable environmental impacts in its report. Staff's comprehensive findings address such varied subjects as air emissions, stack heights and FAA considerations, landfill construction and waste considerations, wetland and headwater stream impacts, threatened and endangered species, project water requirements and sources, sewage treatment, farm and agricultural impacts, Ohio River impacts associated with construction of a barge docking and unloading facilities, identification of sensitive land uses (residences and cemeteries) within proximity of the proposed plant, and noise impacts. Both AMP-O's application and the Staff Report acknowledge that the proposed generation will emit CO_2 and the potential for future regulation of such emissions. AMP-O's technology choice, Powerspan, can be retrofitted for future carbon dioxide capture and sequestration. Based upon its evaluation of AMP-O information on these and other matters, and subject to the Staff's Revised Conditions in Staff Exhibit 2, the Staff recommends a Board finding that this criterion has been met.

3. R.C. 4906.10(A)(3) – Minimum Adverse Environmental Impact[31]

The Staff evaluated AMP-O's description and analysis of environmental, ecological, social, and economic impacts that would result from construction and operation of the proposed generating facility at the proposed site. Staff reviewed the applicant's site selection study, air emissions, AMP-O's analysis of the potential of the selected Powerspan technology to capture and sequester CO_2, water intake and discharge, impacts associated with the upstream construction of a barge mooring facility, scope of stream

[31] Staff Report of Investigation at 29-40.

and wetland impacts and AMP-O's proposal to address and anticipate such impacts, landfill considerations, tree removal, scope of expected impacts to parks and preserves, and various social and other impacts, including anticipated positive economic impacts to Meigs County in terms of new temporary and permanent jobs and expanded tax base.

The magnitude of this project and the potential impacts on and around the proposed site, the implementation of mitigation and, when possible, avoidance measures are critical to minimize impacts. Based upon its analysis and subject to the Staff's Revised Conditions, the Staff recommends a Board finding that this criterion has been met.

4. R.C. 4906.10(A)(4) – Electric Grid[32]

The proposed facility will be interconnected to the regional bulk power transmission system with the addition of a new substation on an existing AEP 345 kV transmission line and construction of a new double-circuit 345 kV transmission line. These facilities will be reviewed in a separate case before the Board. Based upon independent system impacts studies, the Staff finds that the proposed generating facility, as conditioned by the Staff, is consistent with plans for the expansion of the regional power grid. Support for this finding is discussed in greater detail under the "Public Interest, Convenience, and Necessity" section that appears at pages 47-54 of the Staff Report. Based upon its analysis and subject to the Staff's Revised Conditions, Staff recommends a Board finding that this criterion has been met.

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[32] Staff Report of Investigation at 41.

5. R.C. 4906.10(A)(5) – Air, Water, and Solid Waste[33]

The Staff reviewed AMP-O's description of compliance with requirements of Ohio Revised Code Chapters 3704, 3734, and 6111. Additional critical review of these matters will be conducted in various permitting and licensing cases before state and federal agencies that are presently pending. The Staff has recommended that any certificate be conditioned upon AMP-O obtaining these permits before construction and operation of the proposed facility. Given these reviews, and subject to the Staff's Revised Recommended Conditions (Staff Ex. 2), the Staff recommends a Board finding that this criterion has been met.

6. R.C. 4906.10(A)(6) – Public Interest, Convenience, and Necessity[34]

The public interest to be served by AMP-O's project proposal is that of its own members to meet their projected and growing energy needs within the next five years and beyond. The predominance of the discussion in the Staff Report addressing this criterion again is focused upon the interconnection of the proposed facility with the existing regional transmission network. AMP-O will be required to negotiate and execute certain agreements, including an Interconnection Agreement, with transmission system operator PJM Interconnection, LLC. Studies indicate that certain system upgrades will be required to accommodate the proposed facility into the bulk power system to maintain system reliability. The Staff also noted AMP-O's analysis of noise impacts associated

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33 Staff Report of Investigation at 42-46.

34 *Id.* at 47-54.

with both operation and construction and EMF impacts that are expected to be confined to the project site.

Consistent with the Staff's analysis, AMP-O's commitments to make necessary system upgrades and Staff's Revised Recommended Conditions, the Staff recommends a Board finding that this criterion is met.

7. R.C. 4906.10(A)(7) – Agricultural Districts[35]

No agricultural districts are located within the facility boundary and none will be impacted by construction activity. Staff believes impacts upon the viability of existing farmlands and agricultural districts will be minimal. Consistent with this analysis and subject to the Staff's Revised Recommended Conditions, the Staff recommends a Board finding that this criterion is met.

8. R.C. 4906.10(A)(8) – Water Conservation Practice[36]

Water will be withdrawn from the Ohio River for process water needs. Both withdrawal and return will be subject to certain permits, and AMP-O has proposed to incorporate water conservation practices into the technology selected for the project. Potable water needs are expected to be supplied via an interconnection with a local water district. Subject to the Staff's Revised Recommended Conditions, the Staff recommends a Board finding that this criterion is met.

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35 Staff Report of Investigation at 55.

36 *Id.* at 56-57.

C. Staff Conditions

In addition to discussing each of the criteria enumerated in R.C. 4906.10, the Staff Report of Investigation contains a number of conditions recommended by the Staff. These conditions were later revised.[37] The Staff's overall recommendation is that if the Board finds sufficient evidence to support each statutory finding required under the statute, that it should require compliance with all conditions in Staff Exhibit 2 to ensure that project impacts are minimized.[38] AMP-O has agreed to comply with the more restrictive conditions contained in Staff Exhibit 2.[39] More specifically, the Staff's recommended conditions are:

(1) That the facility be installed at the Applicant's proposed site as presented in the application filed on May 4, 2007, and as further clarified by the Applicant's supplemental filings.

(2) That the Applicant shall utilize the equipment and construction practices as described in the application, and as clarified by supplemental filings, and replies to data requests. The Applicant may construct the facility utilizing either subcritical or supercritical boiler design.

(3) That the Applicant shall implement the mitigative measures described in the application, any supplemental filings, and recommendations Staff has included in this Staff Report of Investigation.

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37 *See* Staff Ex. 2.

38 *Id.* at 1; Tr. V at 47.

39 Tr. II at 74-75. One example is Staff-recommended condition 15 that minimizes ecological impacts by limiting AMP-O's landfill development of critically sensitive areas.

(4) That the Applicant shall obtain and comply with all applicable permits and authorizations as required by federal and state entities for any activities where such permit or authorization is required prior to the commencement of construction and/or operation of the facility, as appropriate. These permits would include, but not be limited to the following air, water and solid waste pollution control requirements from Ohio EPA:

(a) an air PTI and a Title V permit (also known as a Title V Operating permit, application for which must be submitted within twelve (12) months after commencing operation);

(b) a NPDES permit for process wastewater, including non-contact cooling water and cooling water blow-down, sanitary waste (to the extent not sent to a publicly owned wastewater treatment facility), and storm water discharge;

(c) a 401 Water Quality Certification for stream and wetland impacts and mitigation;

(d) general/individual NPDES storm water permit coverage for construction and operation;

(e) a permit-to-install for Class III residual waste landfill;

As well as the following other authorizations from other agencies/entities:

(f) a section 10/404 permit from the U.S. Army Corps of Engineers;

(g) any necessary approvals from the Federal Aviation Administration;

(h) a signed Interconnection Agreement with PJM Interconnection, which would include the construction, operation and maintenance of system upgrades necessary to reliably and safely integrate the proposed generating facility into the regional transmission system; and

That the Applicant shall obtain the following permits, authorizations or approvals before proceeding with construction/installation of these aspects of the project:

(i) a PTI for construction/installation of the treatment works/disposal system associated with the process wastewater;

(j) a PTI for sanitary wastewater treatment facilities construction/installation;

(k) a plan approval for potable water system connections/installation;

(l) water withdrawal registration from the Ohio Department of Natural Resources (ODNR);

(m) any other necessary permits and/or approvals to implement the project.

(5) That a copy of each permit or authorization, including a copy of the original application (if not already provided) and any associated terms and condi-

tions, shall be provided to the Board Staff within seven (7) days of receipt by the Applicant.

(6) That the Applicant shall file a separate OPSB application specific to the Carbon Capture and Storage (CCS) equipment, process, and pipeline prior to construction in the event that the Applicant elects to begin CCS for this facility.

(7) That the Applicant shall conduct a pre-construction conference prior to the start of work in each of the following three areas of project work: (1) the solid waste landfill; (2) the main power block; and, (3) the barge dock. Staff will attend each preconstruction conference. Each conference will discuss how environmental and other concerns will be addressed.

(8) That the Applicant shall perform a final geotechnical analysis of the site (including additional borings, testing and evaluation) prior to the commencement of construction. Findings and the final analysis shall be provided to Staff within seven (7) days of the completion of the geotechnical analysis, prior to the pre-construction conference.

(9) That the Applicant shall file an amendment before the OPSB and obtain approval prior to construction if it elects to use a sulfur control technology other than Powerspan.

(10) That the Applicant shall properly install and maintain erosion and sedimentation control measures at the project site in accordance with the following requirements:

(a) During construction of the facility, seed all disturbed soil, except within cultivated agricultural fields that will remain in production following project completion, within seven (7) days of final grading with a seed mixture acceptable to the appropriate County Cooperative Extension Service or ODNR's Division of Wildlife for areas within the mitigation area of the Eastern Spadefoot. Denuded areas, including spoils piles and embankments, shall be seeded, and/or mulched and stabilized within seven (7) days, if they will be undisturbed for more than twenty-one (21) days. Reseeding shall be done within seven days of emergence of seedlings as necessary until sufficient vegetation in all areas has been established. Mulching unaccompanied by seeding may only be utilized as part of temporary stabilization outside of the growing season. Areas that were temporarily stabilized without being seeded shall be seeded within seven (7) days of the commencement of the next growing season.

(b) Inspect and repair all such erosion control measures every seven (7) days and after each rainfall event of one-half of an inch or greater over a twenty-four (24) hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas.

(c) Obtain NPDES permits for storm water discharges during construction of the facility. A copy of each permit or authorization, including terms and conditions, shall be provided to the Staff within seven

(7) days of receipt. Prior to construction, the construction SWPPP shall be submitted to the Staff for review and acceptance.

(11) That the Applicant shall employ the following construction methods in proximity to any watercourses:

(a) All watercourses, including wetlands, shall be delineated by fencing, flagging, or other prominent means;

(b) All construction equipment shall avoid watercourses, including wetlands, except at specific locations where OPSB Staff has approved construction;

(c) Storage, stockpiling and/or disposal of equipment and materials in these sensitive areas shall be prohibited;

(d) Structures shall be located outside of identified watercourses, including wetlands, except at specific locations where OPSB Staff has approved construction;

(e) All storm water runoff is to be diverted away from fill slopes and other exposed surfaces to the greatest extent possible, and directed instead to appropriate catchment structures, sediment ponds, etc., using diversion berms, temporary ditches, check dams, or similar measures.

(12) That the Applicant shall employ best management practices (BMPs) while working on the project, particularly when working in the vicinity of environmentally-sensitive areas. This includes, but is not limited to, the instal-

lation of silt fencing (or similarly effective tool) prior to initiating construction near streams and wetlands. The installation shall be done in accordance with generally accepted construction methods and shall be inspected regularly.

(13) That the Applicant shall manage contaminated soil found or created on site and construction debris in accordance with Ohio EPA regulations.

(14) That the Applicant shall have an environmental inspector on site at all times that construction (including vegetation clearing) is being performed in or near a sensitive area such as a designated wetland, stream, river or in the vicinity of identified threatened/endangered species or their identified habitat. This includes all clearing of the proposed landfill site cells.

(15) That in order to minimize the ecological impact of the landfill, clearing/preparation of the landfill will only be allowed to occur on a cell-by-cell basis. That Applicant shall not utilize Cell 2A, Cell 2B, or any portion of Cell 3A that is currently proposed, as depicted in Figure 4 of the Staff Report, to drain to Pond 2. The Applicant shall file an amendment with the OPSB in the event Applicant at anytime in the future seeks to utilize the areas of the landfill currently identified as Cell 2A, Cell 2B, or any portion of Cell 3A that is currently proposed, as depicted in Figure 4 of the Staff Report, to drain to Pond 2.

(16) That the Applicant shall submit a stream and wetland mitigation plan for Staff review and acceptance prior to the completion of design. This miti-

gation plan shall be prepared in coordination with the solid waste permit-to-install and 401 Certification processes. Staff shall receive regular updates as to the status of the required mitigation activities.

(17) That the Applicant shall submit an Eastern Spadefoot mitigation plan for Staff review and acceptance prior to the completion of design. This mitigation plan shall comply with all ODNR requirements, along with identifying contingency measures in case proposed relocation activities are unsuccessful and/or if construction activities (particularly pile-driving and other earth tremor-causing activity) create problems for the relocated individuals. Staff shall receive regular updates as to the status of the required mitigation activities. The Applicant shall comply with the Eastern Spadefoot mitigation plan as accepted by the Staff. To the extent that the provisions of the mitigation plan provide more specific BMPs for management of storm water associated with development of the relocated breeding/vernal pools, and/or seeding and stabilization of all related disturbed areas the provisions of the mitigation plan shall control rather than the provisions of Condition 10 a and Condition 12. Applicant may commence the limited earthmoving associated with relocation of breeding/ vernal pools in accordance with the mitigation plan as accepted by the Staff in advance of the issuance of the other permits listed in Condition 4 and in advance of the preconstruction conference, not withstanding the provisions of Condition 4

or 7 to the contrary, once Applicant has received an individual or general NPDES permit for construction storm water.

(18) That the Applicant shall submit a terrestrial habitat mitigation plan for Staff review and acceptance prior to the completion of design. This mitigation plan shall preserve as much wooded area adjacent to the proposed landfill as practicable through deed restriction or conservation agreement. This wooded area shall be at least comparable in size to the wooded area cleared for construction of the landfill and associated facilities, and shall include as much headwater stream habitat as practicable. This preservation shall be assured prior to clearing of the landfill area. The plan shall also include implementation details for the Applicant's proposed Ohio River floodplain reforestation activity.

(19) That the Applicant only remove trees representing potential Indiana Bat habitat from the site between September 16 and April 14, unless specific pre-approval is granted by Staff.

(20) That Staff, ODNR's Division of Wildlife and United States Fish and Wildlife Service, as appropriate shall be immediately contacted if threatened or endangered species are discovered on-site during construction.

(21) That the Applicant shall not dock or stage barges at Letart Island or in its backchannel.

(22) That the Applicant shall not dispose of gravel or any other construction material during or following construction of the facility by spreading such

material on agricultural land outside of the facility boundary as depicted on Figure 2 of the Staff Report. For purposes of this condition, "gravel or any other construction material" shall not include materials spread or moved as part of mitigation activities. All construction debris shall be promptly removed and properly disposed of after completion of construction activities.

(23) Any construction work for this facility that occurs in the 100-year floodplain and floodway should be conducted in accordance with good engineering practices and in a manner consistent with the minimum flood protection criteria of the National Flood Insurance Program. Pertinent modeling and hydrologic studies will be coordinated with ODNR and Staff prior to final engineering of the facility.

(24) That if the Board certificates the facility, the Applicant will conduct further cultural resource studies to determine if any of the eight identified sites from the Phase I study are eligible for inclusion on the National Register of Historic Places. This survey shall be coordinated with the State Historic Preservation Office and submitted to Staff for review and acceptance at least ninety (90) days prior to construction. If the survey discloses a find of cultural significance that could be eligible for inclusion on the National Register of Historic Places, then the Applicant shall submit an avoidance and/or mitigation plan for Staff's acceptance. The Applicant shall consult with Staff to determine the appropriate course of action.

(25) Any permanent road closures, road restoration or road improvements necessary for construction and operation of the proposed facility shall be coordinated with the Meigs County Engineer, the Ohio Department of Transportation, local law enforcement, and health/safety officials. Additionally, the Applicant shall obtain all required highway crossing permits, including but not limited to a MR505 Road Crossing Permit, from the Ohio Department of Transportation for proposed above-grade conveyor facilities.

(26) General construction activities shall be limited to daylight hours Monday through Saturday. Impact pile driving operations shall be limited to weekday hours between 8:00 AM and 5:00 PM. Construction activities that do not involve noise increases above background levels at sensitive receptors are permitted when necessary.

(27) That the Applicant shall measure all sound levels at the most critical NSAs to assure that the sound levels emanating from the facility during operation will not increase the Ldn (sound level day/night)above 55 dBA. Where the sound levels are greater than 55 dBA and the incremental increase is greater than 3 dBA, the Applicant shall submit a mitigation plan for Staff review and approval.

(28) The Applicant shall submit a general facility landscape plan for Staff review at least sixty (60) days prior to commencement of construction. The plan shall include methods to mitigate visual and sound impacts associated with the project on Letart Falls Cemetery. The Applicant shall also main-

tain vegetative screening at the family cemetery northwest of the plant across State Route 124. The Applicant will consult with SHPO for input on screening methods and techniques appropriate to minimize impacts to the adjacent cemetery.

(29) That the Applicant provide access for the public to Letart Falls Cemetery and the family cemetery west of State Route 124.

(30) That any structures acquired by the Applicant shall be maintained or removed from the property.

(31) That at least forty-five (45) days before the pre-construction conference, the Applicant shall submit to the Staff, for review and approval, one set of detailed drawings for that portion of the proposed project so that the Staff can determine that the final project design is in compliance with the terms of the certificate.

(32) That the Applicant shall provide to the Staff the following information as it becomes known:

(a) The date on which construction will begin;

(b) The date on which construction was completed;

(c) The date on which the facility began commercial operation.

(33) That the certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five (5) years of the date of journalization of the certificate.

(34) Where information is required to be submitted for Staff acceptance or approval under these conditions, the Staff agrees that it will respond within thirty (30) days of receipt of Applicant's information unless a different time period is mutually agreed upon. After reasonable effort to informally resolve any disagreement, either the Staff or the Applicant may petition the Board for resolution.

CONCLUSION

AMP-O members have identified a need for additional base-load generation in the 2012-2013 timeframe. That need is significant and not contested. The AMP-O members will both benefit from this new base-load generation service and bear all financial risks associated with its construction and operation.

After an exhaustive investigation, the Staff has developed a number of conditions that, if adopted by the OPSB will minimize environmental and other impacts to the project site and surrounding area. Additionally, AMP-O's proposal faces close scrutiny in a host of related permitting cases that are presently pending before various federal and state agencies. It is expected that, if granted, these permits, including the air permit under review by the Ohio EPA, will result in additional conditions and requirements upon AMP-O. In short, AMP-O will be required to comply with all present and future lawful emissions requirements.

Based upon the foregoing, the Staff believes that the record in this case supports an affirmative Board finding on each of the criteria in R.C. 4906.10. The Staff recom-

mends that, if a certificate is issued to AMP-O for this project, the Board require AMP-O to comply with all conditions contained in Staff Exhibit 2.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief, submitted on behalf of the Staff of the Ohio Power Siting Board, was served by regular U.S. mail, postage prepaid, hand-delivered, or delivered via electronic mail, upon the following parties of record, this 28th day of January, 2008.

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