

## **BEFORE**

### **THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Adoption of                    )**  
**Rules for Standard Service Offer,                )**  
**Corporate Separation, Reasonable                )**  
**Arrangements, and Transmission                )**     **Case No. 08-777-EL-ORD**  
**Riders for Electric Utilities Pursuant            )**  
**to Sections 4928.14, 4928.17, and                )**  
**4905.31, Revised Code, as amended            )**  
**by Amended Substitute Senate Bill**  
**No. 221.**

### **INITIAL COMMENTS OF AMP-OHIO**

American Municipal Power – Ohio, Inc. (AMP-Ohio) is a non-profit corporation organized in 1971. AMP-Ohio owns or operates electric generating facilities; provides wholesale generation, transmission, and distribution services; and coordinates, negotiates, and develops power supply options and interconnection agreements for its 122 member municipal electric systems in 6 states ("Members"). Over eighty of AMP-Ohio's Members are located in the state of Ohio and it is on their behalf AMP-Ohio files these comments in this proceeding.

On July 7, 1999, the governor of the state of Ohio signed Amended Substitute Senate Bill No. 3 (SB3). SB3 established a starting date for competitive retail generation electric service in the state of Ohio and provided for the establishment of a market development period (MDP) to aid the transition between the prior regulatory regime and the new competitive environment. The transition to full retail competition (for generation service) was originally envisioned to have been completed by December 31, 2005.

Slow progress in the development of wholesale and retail competition subsequently led the Public Utilities Commission of Ohio (PUCO) to postpone the original end date for the MDP through the utilization of Rate Stabilization Plans (RSP) by the state's investor-owned utilities (IOUs). The rate stabilization period for Ohio's three largest IOUs was scheduled to end on December 31, 2008. Continued slow progress in the development of wholesale and retail competition led to new legislative action. This process culminated in Amended Substitute Senate Bill No. 221 (SB 221) which was signed by the governor on May 1, 2008 and amends various provisions of SB3.

As noted in the Entry accompanying the proposed rules:

"Among those amendments were changes to Section 4928.14, Revised Code, to establish a standard service offer (SSO); Section 4905.31, Revised Code, to approve reasonable arrangements and utility schedules; and Section 4928.17, Revised Code, to establish corporate separation plans. Pursuant to the amended language of Section 4928.14, Revised Code, electric utilities are required to provide consumers with an SSO, consisting of either a market-rate offer (MRO) or an electric security plan (ESP). The SSO shall serve as the electric utility's default SSO. Electric utilities may apply simultaneously under both options; however, at a minimum, the first SSO application must include an application for an ESP. The amendments to Section 4905.31, Revised Code, modify the applicability of reasonable arrangements and the amendments to Section 4928.17, Revised Code, impose additional requirements on electric utilities relating to the transfer of assets.

The staff of the Commission (PUCO Staff) has proposed a complete rewrite of Chapter 4901:1-35, O.A.C., and its incorporated appendices, which include procedural requirements for filing applications for an MRO and ESP as well as filing requirements for such applications in accordance with SB 221. The staff is also proposing Chapter 4901:1-36 to establish procedures for the implementation of transmission riders and Chapter 4901:1-38 to establish procedures for approving reasonable arrangements between the electric utility and customers. Further, the staff is proposing to rescind Rule 4901:1-20-16, O.A.C., and revise and place the existing Commission requirements in a stand-alone Chapter 4901:1-37 to address electric utility corporate separation between affiliated entities, as well as new SB 221 requirements."

AMP-Ohio is directing these comments towards the proposed PUCO Staff rules relating to the establishment of an IOU's SSO. Specifically, AMP-Ohio believes that proposed Chapter 4901:1-35, O.A.C., fails to codify a key prohibition mandated by the Ohio legislature relating to nonbypassable charges established as part of an IOU's SSO.

In the provisions relating to the establishment of a SSO via an ESP, Section 4928.143, Revised Code, provides for several nonbypassable surcharges to be passed through to the retail customers of an electric distribution utility (EDU). For example, Section 4928.143(B)(2)(c), Revised Code, provides for "The establishment of a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the electric distribution utility, was sourced through a competitive bid process...is newly used and useful on or after January 1, 2009..."

Proposed Chapter 4901:1-35, O.A.C., Appendix B seemingly deals with the filing requirements associated with these nonbypassable charges. Specifically, proposed 4901:1-35-03 (B) relates to "Divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code..." which "authorize an electric utility to include unavoidable surcharges for construction expenditures or environmental expenditures of generation resources."

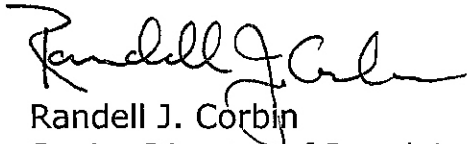
Filing requirements for such nonbypassable surcharges follow and include: (1) projected facility costs and an integrated resource plan (IRP); (2) the proposed competitive bidding process for the construction of the facility; (3) cost information relating to the proposed recovery of an allowance for construction work in progress; and, (4) a detailed description of the actual costs to be collected through such a charge.

AMP-Ohio notes with concern, however, that the detail cited above fails to specify how the utility is to deal with another key aspect of these nonbypassable charges. In particular, Section 4928.69, Revised Code, states "...an electric distribution utility shall not charge any person that is a customer of a municipal electric utility that is in existence on or before January 1, 2008, any surcharge, service termination charge, exit fee, or transition charge." In short, proposed Chapter 4901:1-35, O.A.C., Appendix B fails to codify this salient feature prohibiting the imposition of nonbypassable charges in circumstances where a customer switched to a municipal electric system.

AMP-Ohio notes that this omission can easily be rectified by capturing the language from the Revised Code noted above in the appropriate locations in Proposed Chapter 4901:1-35, O.A.C.. For example, 4901:1-35-03 (B) should include an additional provision that incorporates the language specified in Section 4928.69, Revised Code, and noted above.

AMP-Ohio requests that revisions (relating to this prohibition on the application of a utility's nonbypassable charges in its SSO) be made to Chapter 4901:1-35, O.A.C., in order to clearly capture the prohibition mandated by the Ohio legislature and forestall any future problems in which customers may be threatened with the imposition of such charges if they switch to a municipal electric system that was in existence on January 1, 2008.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randell J. Corbin". The signature is fluid and cursive, with the first name "Randell" being the most prominent part.

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Summary: Comments Initial Comments of AMP-Ohio electronically filed by Mr. Randell J Corbin on behalf of AMP-Ohio