

September 9, 2008

*Via Electronic Filing*

Ms. Reneé J. Jenkins  
Director of Administration  
Secretary of the Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215

RE: In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technologies and Resources, and Emission Control Reporting Requirements, and Amendment of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, pursuant to Chapter 4928, Revised Code, to Implement Senate Bill No. 221; PUCO Case No. 08-888-EL-ORD

Dear Ms. Jenkins:

Buckeye Power, Inc. submits its Initial Comments for electronic filing in the above-referenced matter.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,

/s/ Carolyn S. Flahive

Enclosure

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules for )  
Alternative and Renewable Energy Technologies )  
and Resources, and Emission Control Reporting )  
Requirements, and Amendment of Chapters )  
4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of ) Case No. 08-888-EL-ORD  
the Ohio Administrative Code, pursuant to )  
Chapter 4928, Revised Code, to Implement )  
Senate Bill No. 221 )

INITIAL COMMENTS OF  
BUCKEYE POWER, INC.

BUCKEYE POWER, INC. (“Buckeye”) hereby submits its Comments on the Commission’s proposed modifications to the current forecast rules contained in Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7, and the creation of three new utilities division chapters of the Ohio Administrative Code, in accordance with the Commission’s Entry of August 20, 2008 (the “Entry”).

**BACKGROUND**

Buckeye is an Ohio nonprofit corporation and the provider of wholesale electric power and energy and transmission services to the 25 electric distribution cooperatives providing retail electric service in Ohio.<sup>1</sup> Buckeye owns electric generating facilities in the State of Ohio, including Unit Nos. 2 and 3 at the Cardinal Generating Station, a coal-fired power plant located

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<sup>1</sup> The 25 members of Buckeye are Adams Rural Electric Cooperative, Inc., Buckeye Rural Electric Cooperative, Inc., Butler Rural Electric Cooperative, Inc., Carroll Electric Cooperative, Inc., Consolidated Electric Cooperative, Inc., Darke Rural Electric Cooperative, Inc., Firelands Electric Cooperative, Inc., The Frontier Power Company, Guernsey-Muskingum Electric Cooperative, Inc., Hancock-Wood Electric Cooperative, Inc., Holmes-Wayne Electric Cooperative, Inc., Licking Rural Electrification, Inc. d/b/a The Energy Cooperative, Logan County Cooperative Power and Light Association, Inc., Lorain-Medina Rural Electric Cooperative, Inc., Mid-Ohio Energy Cooperative, Inc., Midwest Electric, Inc., Midwest Energy Cooperative, North Central Electric Cooperative, Inc., North Western Electric Cooperative, Inc., Paulding-Putnam Electric Cooperative, Inc., Pioneer Rural Electric Cooperative, Inc., South Central Power Company, Tricounty Rural Electric Cooperative, Inc., Union Rural Electric Cooperative, Inc., and Washington Electric Cooperative, Inc.

near Brilliant, Ohio, and the Greenville Electric Generating Station, a natural gas-fired peaking power plant located near Greenville, Ohio. National Power Cooperative, Inc. (“National”), an Ohio nonprofit corporation and an affiliate of Buckeye, also owns the Robert P. Mone Plant, a natural gas-fired peaking power plant located near Conroy, Ohio. Buckeye and National operate their electric utilities on a non-profit cooperative basis for the mutual benefit of their member/consumers.

## **INTRODUCTION**

Attached to the Entry are proposed modifications to the current forecast rules contained in Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7, and drafts of three new utilities division chapters of the Ohio Administrative Code (the “Staff Proposal”), which have been developed in response to Amended Substitute Senate Bill No. 221 (“SB 221”). SB 221 revises state energy policy, establishes alternative energy benchmarks, provides for the use of renewable energy credits, establishes energy efficiency standards, requires greenhouse gas emission reporting and carbon dioxide control planning, authorizes energy price risk management contracts, and authorizes natural gas utilities revenue decoupling related to energy conservation and efficiency.

As will be more fully discussed below, Ohio Adm.Code Chapter 4901:1-41 as set forth in the Staff Proposal (“Rule 41”) establishes rules that unlawfully apply to Buckeye and National. Rule 41 should be modified to reflect that it only applies to public utilities that are subject to the Commission’s jurisdiction.

## **DISCUSSION**

The Commission’s authority to adopt Rule 41 is clearly set forth in Section 4928.68 of SB 221: “To the extent permitted by federal law, the public utilities commission shall adopt rules establishing greenhouse gas emission reporting requirements, including participation in the

climate registry, and carbon dioxide control planning requirements for each electric generating facility that is located in this state, **is owned or operated by a public utility that is subject to the commission's jurisdiction**, and emits greenhouse gases, including facilities in operation on the effective date of this section.” (Emphasis added.) Rule 41 as proposed exceeds the authority granted to the Commission because it imposes reporting requirements on electric utilities such as Buckeye and National that are statutorily not subject to the Commission's jurisdiction.

The obligations imposed by Rule 41 require “[a]ny person which owns or operates an electric generating facility within Ohio” to comply with certain reporting requirements. As defined in Rule 41, “person” has the meaning set forth in sections 4906.01 and 4935.04 of the Ohio Revised Code. The meaning of “person” in sections 4906.01 and 4935.04 of the Ohio Revised Code is “an individual, corporation, business trust, association, estate, trust, or partnership or any officer, board, commission, department, division, or bureau of the state or a political subdivision of the state, or any other entity.” As such, Buckeye and National would purportedly be subject to the requirements of Rule 41.

However, Section 4928.68 of SB 221 explicitly requires that any such adopted rules establishing greenhouse gas emission reporting requirements be limited to electric generating facilities owned or operated by a public utility subject to Commission jurisdiction. It is well settled that the Commission, “as a creature of statute, has and can exercise only the authority conferred upon it by the General Assembly.”<sup>2</sup> Ohio Revised Code Section 4905.04 establishes the Commission's power and jurisdiction to supervise and regulate “public utilities.” The definition of “public utility” set forth in R.C. §4905.02 explicitly exempts from Commission jurisdiction electric light companies that operate their utilities not for profit. Therefore, Buckeye

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<sup>2</sup> *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87, 88.

and National, which operate not for profit, are not subject to the Commission’s jurisdiction and should not be subject to Rule 41.

Ohio Adm.Code Chapter 4901:1-41 of the Staff Proposal must be revised as follows in order to properly exclude Buckeye and National from the associated reporting obligations:

**Rule 4901:1-41-01 Definitions** – Replace the definition of “Person” in subsection (F) with the following definition of “Public Utility”:

(F) “Public Utility” has the meaning set forth in section 4905.02 of the Revised Code.

**AND**

**Rule 4901:1-41-02 Greenhouse gas reporting and carbon dioxide control planning** –

Revise subsections (A) and (B) as follows:

(A) Any Public Utility that~~person which~~ owns or operates an electric generating facility within Ohio shall become a participating member in the climate registry for at least scope 1 (direct) greenhouse gas emissions, and shall report greenhouse gas emissions according to the protocols approved by the climate registry, or as otherwise directed by the commission.

(B) Any Public Utility that~~person which~~ owns or operates an electric generating facility within Ohio shall file with the commission by April fifteenth of each calendar year an environmental control plan, including carbon dioxide control planning. A copy of such plan shall be provided to the director of the Ohio environmental protection agency, or his designee.

## **CONCLUSION**

For the foregoing reasons, Buckeye Power, Inc. urges the Commission to modify Chapter 4901:1-41 of the Ohio Administrative Code as set forth in the Staff Proposal in accordance with the foregoing.

Respectfully submitted,

BUCKEYE POWER, INC.

By: /s/ Carolyn S. Flahive

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Summary: Comments Initial Comments electronically filed by Carolyn S Flahive on behalf of Buckeye Power, Inc.