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 the Ohio Administrative Code, pursuant to Chapter 4928, Revised Code, to Implement Senate Bill No. 221.	))))))))	**Case No. 08-888-EL-ORD**

RULEMAKING COMMENTS OF
AMERICAN MUNICIPAL POWER –OHIO, INC.

American Municipal Power – Ohio, Inc. ("AMP-Ohio") is a not-for-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 123 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.

On July 6, 1999, the Governor of the state of Ohio signed Amended Substitute Senate Bill No. 3 ("SB 3"). SB 3 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 SB 3.

On August 20, 2008, the PUCO issued an Entry in the above captioned proceeding ("Entry") which contained the PUCO Staff's ("Staff") proposed rules designed to address various aspects of SB 221. Specifically the Staff proposed various modifications to the forecast rules contained in Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, (O.A.C.), and the creation of three new utilities division chapters including OAC Chapters:

> 4901:1-39 Energy Efficiency and Demand Reduction Benchmarks
> 4901:1-40 Alternative Energy Portfolio Standard
> 4901:1-41 Greenhouse Gas Reporting and Carbon Dioxide Control Planning"

Entry, p. 1.

In general, AMP-Ohio is directing these comments towards the proposed PUCO Staff rules relating to certain aspects of all three of the proposed new utilities division chapters. AMP-Ohio provides the following comments on individual chapters, titles, and sections.

New Chapter 4901:1-39: Energy Efficiency and Demand Reduction Benchmarks
Applicable Ohio Revised Code Sections: 4928.65 and 4928.66

4901:1-39-01 Definitions

The use of the term "fully aggregated" as part of the definition of "renewable energy credit" ("REC") in 4901:1-39-01(F) is problematic. The definition of REC should be amended to ensure that RECs may be divided so as to separate the portion of the attribute that is derived from greenhouse gas ("GHG") *destruction* (i.e., via flaring or other combustion), which can then be counted as a "carbon credit," from the portion of the attribute that is derived from the *generation* of renewable electricity, which can be counted as a REC. This would apply only to RECs that are derived from technologies that generate electricity using landfill gas, other biogas, or any other

renewable energy resource that contains methane or other GHGs (see comments below regarding 4901:1-40-01 Definitions for further explanation).

New Chapter 4901:1-40:
Alternative Energy Portfolio Standard
Applicable Ohio Revised Code Sections: 4928.64 and 4928.65

4901:1-40-01 Definitions

Language to the definition of "double counting" in 4901:1-40-01(M) should be added to clarify that the term does not refer to the practice of combining energy and RECs into a bundled energy product. Appropriate tracking and reporting procedures of REC transactions should be able to effectively address the double-counting issue (see comments below in 4901:1-40-04, Qualified Resources).

In 4901:1-40-01(DD) the definition of RECs requires that RECs be fully aggregated. According to 4901:1-40-1(U) fully aggregated means that the REC "shall retain all of its attributes . . . and that specific attributes are not separated from the renewable energy credit and sold individually." While AMP Ohio agrees that generally RECs should be fully aggregated, this principle should not apply to the "carbon credit" portion of the attribute. Carbon credits that are attributable to the *destruction* of GHGs are recognized and traded as separate commodities and should be allowed to be sold separately from the renewable energy portion of the attribute. Further, the remaining renewable energy portion of the attribute, absent the carbon credit, should still be considered a REC for the purposes of this Chapter.

Accordingly, the definition of RECs in 4901:1-40-01(DD) should be amended to ensure that included in the definition are non-fully aggregated RECs that are derived from technologies that generate electricity using landfill gas, other biogas, and any other renewable energy resource that contains methane or other GHGs. Also, language should be added to the definition to clarify that such RECs may be divided so as to separate the portion of the attribute that is derived from *GHG destruction* (i.e., via flaring or other combustion), which can then be counted as a "carbon credit," from the portion of the attribute that is derived from the *generation* of renewable electricity, which can be counted as a REC.

Along with modifying the definition of REC, language should be added to the definition of "fully aggregated" to clarify that while generally RECs must retain all of their attributes, a

REC need not retain the carbon credit portion of its attributes in order to be considered "fully aggregated." Also, the definition of "fully aggregated" should specifically not include any NOx set-aside allowances that may have been awarded by the Ohio Environmental Protection Agency (OEPA) to any renewable energy generating facility in recognition of that facility's offsetting of NOx emissions from other facilities.

The definition of "solar thermal" in 4901:1-40-01(HH) is unnecessarily narrow. While this definition appears to limit solar thermal energy only to energy produced through a generation turbine, solar thermal energy is often utilized through other methods including hot water and pool heating. Therefore, the definition of "solar thermal" in 4901:1-40-01(HH) should be amended to either add the word "generation" as a part of the defined term (i.e., so that the definition would apply just to "solar thermal generation") or to include as part of the definition the use of the sun's energy to provide heat without generating electricity (e.g., hot water, pool heating, etc.).

4901:1-40-03 Requirements

In Subsection (A)(2)(a) of this section it should be clarified that the phrase "generated by facilities located in this state" should include "qualifying hydroelectric facilities," which by definition may be located "within or bordering this state or within or bordering an adjacent state" (i.e., the proposed definition of "renewable energy resource" and "hydroelectric facility" set forth in division (A)(35) of section 4928.01 of the Revised Code).

4901:1-40-04 Qualified resources

Subsection (D)(2) through (D)(5) of this Section addresses the need to track and verify the origin and subsequent use of RECs as part of the Alternative Energy Portfolio Standard ("AEPS") compliance mechanism available to electric utilities and electric service companies. However, we believe the proposed rules should be clarified so that RECs themselves are tracked through PJM-GATS, MRETS, or other similar (generation attribute tracking) systems, which is not required under the proposed rules. Registration of the electric utility or electric service company in one or more of these systems will not, in and of itself, result in its REC transactions being reported and tracked, which will subsequently introduce a lack of buyer and seller confidence into Ohio's AEPS compliance.

Additionally, subsection A of this section requires that technologies used to meet the renewable energy resource benchmark must have been placed in service after January 1, 1998. For purposes of meeting the renewable energy resource requirement outlined in R.C. 4928.64 (B) (2), electric distribution utilities or electric services companies may use renewable energy credits as spelled out in R.C. 4928.65. Nothing in 4928.65 requires that the renewable energy resource must be placed in service after January 1, 1998. Presumably, Staff included the 1998 deadline, because R.C. 4928.64 requires that the renewable energy resource be placed in service after January 1, 1998 in order to be considered an "alternative energy resource." However, nothing in R.C. 4928.65 requires that the renewable energy resource be an "alternative energy resource" as defined R.C. 4928.64 and therefore the 1998 deadline does not apply to 4928.65. Additionally, the legislative intent when drafting 4928.65 was for all alternative energy processes to qualify as sources to meet alternative energy benchmarks, and an amendment was added to specifically include a "hydroelectric generating facility" that is defined in 4928.65 as "located at a dam on a river, or on any water discharged to a river, that is within or bordering this state or within or bordering an adjoining state." Therefore, AMP-Ohio proposes to eliminate the requirement that the renewable energy source must be placed in service after January 1, 1998.

4901:1-40-07 Cost cap

Language should be included in this section that specifically indicates that if the cost cap is determined to be in effect, it does not free the electric utility or electric service company from its obligations under any contractual arrangement pertaining to the AEPS, including the purchase of RECs.

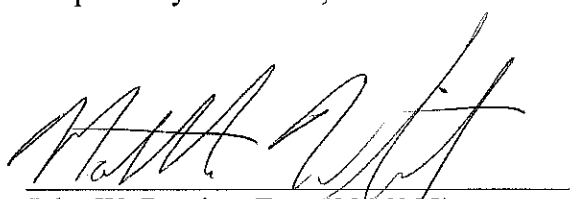
New Chapter 4901:1-41: Greenhouse Gas Reporting and Carbon Dioxide Control Planning Rule

This section should be amended to clarify that entities that are not subject to PUCO jurisdiction are not covered by this section. Ohio R.C. 4928.68 specifically states that GHG reporting provisions are applicable to "each electric generating facility that is located in this state, is owned and operated by a public utility that is subject to the commission's jurisdiction, and emits greenhouse gases..." AMP-Ohio's Members are not subject to the PUCO's jurisdiction and thus should not be included in these GHG reporting provisions.

CONCLUSION

AMP-Ohio respectfully requests that the Commission consider these comments and incorporate the revisions discussed herein into the proposed rules.

Respectfully submitted,



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Summary: Comments AMP-Ohio Comments electronically filed by Ms. Barbara L Morris on behalf of American Municipal Power-Ohio, Inc.