

September 26, 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 Reply 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)	

REPLY COMMENTS OF
BUCKEYE POWER, INC.

BUCKEYE POWER, INC. (“Buckeye”) hereby submits its Reply Comments in this proceeding. Buckeye and its affiliate, National Power Cooperative, Inc. (“National”), operate their electric utilities on a non-profit cooperative basis for the mutual benefit of their members/consumers and own electric generating facilities in the State of Ohio. Buckeye urges the Commission to adopt the suggested revisions set forth in Buckeye’s Initial Comments and to make any other revisions consistent with the Reply Comments contained herein.

DISCUSSION

Buckeye responds herein to the Initial Comments of other interested parties relating to Ohio Adm.Code Chapter 4901:1-41 as set forth in the Staff Proposal (“Rule 41”). As other interested parties have commented, Rule 41 unlawfully applies to “persons” outside of the Commission’s jurisdiction, which is inconsistent with new Section 4928.68 of the Ohio Revised Code as authorized and created by Amended Substitute Senate Bill No. 221 (“SB 221”).

The Commission’s authority to adopt Rule 41 is clearly set forth in new Section 4928.68 of the Ohio Revised Code: “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.)

1. The Staff Proposal relative to Rule 41 must be modified to exclude electric utilities that are not subject to the Commission’s jurisdiction.

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. Buckeye’s comments to Rule 41 are supported by the comments of the Industrial Energy Users – Ohio, American Municipal Power – Ohio, Inc., Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company. To the extent those parties have proposed additional revisions to Rule 41, Buckeye offers no comment other than that those revisions should be considered only in conjunction with those proposed by Buckeye.

Buckeye urges the Commission to adopt its proposed revisions to Rule 41, which would properly limit the rule to electric generating facilities owned or operated by a public utility subject to the Commission’s jurisdiction. For the Commission’s convenience, Buckeye reiterates its proposed revisions to the rule:

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.

2. The Commission should reject OCC's proposed definition of "person" in Rule 41.

In its Initial Comments, the Office of the Ohio Consumers' Counsel ("OCC") and Environmental Advocates propose revisions to the definition of "Person" that incorporate the specific language from sections 4906.01 and 4935.04 of the Revised Code. As Buckeye more thoroughly discussed in its Initial Comments, to define "Person" through reference to Rev. Code sections 4906.01 and 4935.04 would be to unlawfully extend Rule 41 to companies not subject to the Commission's jurisdiction. The Commission should reject OCC's recommended definition of "person" and instead adopt Buckeye's proposed revisions to Rule 41.

To the extent other interested parties have provided comments to Rule 41, Buckeye urges the Commission to consider those comments only in conjunction with the revisions that are required to properly exclude electric utilities not subject to the Commission's jurisdiction.

CONCLUSION

For the foregoing reasons, Buckeye Power, Inc. respectfully requests the Commission to amend Chapter 4901:1-41 of the Ohio Administrative Code as set forth in the Staff Proposal consistent with Buckeye's Initial Comments and Reply Comments.

Respectfully submitted,

BUCKEYE POWER, INC.

By: /s/ Thomas E. Lodge

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Reply Comments filed on behalf of Buckeye Power, Inc. was served by first-class, postage prepaid U.S. mail or electronic mail upon the individuals listed on this 26th day of September 2008.

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/s/ Sarah Porter

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/26/2008 8:36:49 AM

in

Case No(s). 08-0888-EL-ORD

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