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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

Case No. 08-888-EL-ORD

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)

**REQUEST FOR REHEARING
OF THE
THE CITY OF HAMILTON, OHIO**

The City of Hamilton, Ohio respectfully files this request for rehearing of the Commission's final rules adopted on April 15, 2009 in the captioned proceeding. The rules implement SB 221 and address, among other things, energy efficiency and alternative energy resources, renewable energy credits, clean coal technology and environmental regulations. Hamilton appreciates the effort extended by PUCO Staff ("Staff") to develop and issue the rules given the complexity of the subject matter and the aggressive timeframe within which to implement the rules. Hamilton respectfully submits rehearing on two limited but important issues pertaining to hydroelectric facilities.

Hamilton is a home-rule city organized and existing under the Constitution and laws of the State of Ohio and the Hamilton City Charter. The City owns and operates a not-for-profit municipal electric system that includes electric generating facilities, and provides generation, transmission, and distribution services to its retail customers within the City and to certain other customers. Among Hamilton's generation resources are three hydroelectric generating facilities, one of which is currently under development with American Municipal Power - Ohio. Today, approximately 42% of the energy supplied by Hamilton to its customers is generated by hydroelectric facilities. When the new hydroelectric generating facility now being developed comes on line in approximately

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four years, Hamilton estimates that over 60% of the energy supplied by Hamilton to its customers will be generated from hydroelectric facilities. Granting Hamilton's request for rehearing will ensure that Hamilton's existing hydro facilities are recognized and qualify for participation in the renewable energy credits market, and therefore qualify to assist utilities in meeting the alternative energy portfolio requirements.

A. 4901:1-40-03 should be clarified to include the phrase "qualifying hydroelectric facilities."

Subsection 40-03(A)(2)(a) should be clarified to include "qualifying hydroelectric facilities," which by definition provides that the facility may be located "within or bordering this state or within or bordering an adjacent state" (*see*, the proposed definition of "renewable energy resource" and "hydroelectric facility" set forth in division (A)(35) of section 4928.01 of the Revised Code).

Clarification is necessary because certain hydroelectric facilities owned and operated for the benefit of Ohio citizens are located at locks and dams of the United States Army Corps of Engineers ("USACE") on the Ohio River between the state of Ohio and bordering states. For certain of these projects, the lock is located on the Ohio side of the river, with the hydroelectric facility located on the opposite side of the lock, nominally within the bordering state. The definition of "qualifying hydroelectric facilities" recognizes these circumstances. Accordingly, greater certainty can be accomplished by using the term "qualifying hydroelectric facilities" or using the same language as used in the definition of "qualifying hydroelectric facilities."

B. 4901:1-40-04 should be clarified to ensure that hydroelectric generating facilities are recognized as renewable energy credits, regardless of the "in-service date," consistent with R.C. 4928.65.

Section 40-04 identifies resources that will be recognized as meeting the renewable energy resource benchmarks. Subsection A requires that the resource be placed in service on or 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. However, nothing in R.C. 4928.65 requires that the renewable energy resource be in place on or after January 1, 1998. Hamilton respectfully submits that Staff may have misapprehended the legislative intent by including an in service date for a "renewable energy resource," thus improperly eliminating certain hydroelectric generating facilities from qualifying as renewable energy credits.

Staff may have included the 1998 "in service" date in Subsection A because R.C. 4928.64 requires that a renewable energy resource be in service before January 1, 1998, in order to be considered an "alternative energy resource." However, "alternative energy resource" should not be interchanged with "renewable energy resource." Nothing in R.C. 4928.65 requires that a renewable energy resource be an "alternative energy resource" as defined in R.C. 4928.64. Therefore, the 1998 deadline (in R.C. 4928.64) seemingly does not apply to R.C. 4928.65.

Hamilton asserts that the legislative intent behind R.C. 4928.65 was for all designated alternative energy processes to qualify as sources to meet alternative energy benchmarks. An amendment was added (to R.C. 4928.65) during the legislative process to specifically include a "hydroelectric generating facility" as a qualified resource. That language defined a "hydroelectric generating facility" as a facility "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." This language does not include any date limitation or restriction, and its absence must be given significance.

The legislative intent is further clarified later in R.C. 4928.65, where it states that the system of registering RECs "shall allow a hydroelectric generating facility to be eligible for obtaining renewable energy credits." Recognizing hydroelectric resources placed in service prior to January 1, 1998 is not only consistent with the legislative intent, it serves the public interest by making renewable energy credits available to utilities as they strive to meet their renewable energy resource requirements. Hamilton therefore requests that the requirement that the resource be in service on or after January 1, 1998 be removed from this provision.

CONCLUSION

For the foregoing reasons, Hamilton respectfully requests that the Commission grant its request for rehearing on the identified issues in the proposed final rules.

Respectfully submitted this 15th day of May, 2009.


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Request for Rehearing of The City of Hamilton, Ohio was served via by first-class, postage prepaid U.S. mail, and, where indicated, electronic on this 15th day of May, 2009 upon the following:

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