FILE

13

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**

APPLICATION FOR REHEARING
FILED BY
AMERICAN MUNICIPAL POWER – OHIO, INC.

I. APPLICATION FOR REHEARING

Pursuant to Ohio Revised Code ("RC") § 4903.10 and Ohio Administrative Code ("OAC") 4901-1-35, American Municipal Power – Ohio, Inc. ("AMP-Ohio") respectfully submits this Application for Rehearing of the Finding and Order ("Application for Rehearing") issued by the Public Utilities Commission of Ohio ("Commission") on April 14, 2009 ("April 14 Order"). AMP-Ohio requests rehearing on following rules adopted by the Commission in the April 14 Order:

- The definition of "fully aggregated" in proposed 4901:1-40-01(T);
- The definition of "renewable energy credits (RECs)" in proposed 4901:1-40-01(CC);
- 4901:1-40-04 must be amended so that RECs can be obtained from hydroelectric generating facilities, regardless of the placed-in-service date, consistent with R.C. 4928.65; and

- Clarification that non-jurisdictional entities are not subject to GHG reporting requirements in proposed 4901:1-41.

AMP-Ohio submits that the Commission erred by approving certain rules that are unreasonable and unlawful. For the reasons more fully set forth in its Memorandum in Support, AMP-Ohio respectfully asks that the Commission grant its Application for Rehearing on the issues listed above.

II. MEMORANDUM IN SUPPORT

AMP-Ohio is a not-for-profit corporation organized in 1971. AMP-Ohio owns and operates electric generating facilities; provides wholesale generation, transmission, and distribution services; and coordinates, negotiates, and develops power supply options and interconnection agreements for its 126 member municipal electric systems in six states ("Members"). Eighty-one of AMP-Ohio's Members are located in the state of Ohio, and it is on their behalf that AMP-Ohio files these reply comments.

On August 20, 2008, the Commission issued an Entry in the above captioned proceeding ("Entry") which contained the Commission Staff's ("Staff") proposed rules designed to implement 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 ("OAC") 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; and, 4901:1-41 Greenhouse Gas Reporting and Carbon Dioxide Control Planning. AMP-Ohio commends the Commission Staff for their efforts to develop the

proposed rules under a very aggressive time frame. The issues that are addressed by these rules are, in many respects, entirely new to both regulators and industry alike.

AMP-Ohio and various other parties ("Parties") in this proceeding submitted initial rulemaking comments on September 9, 2008. The initial rulemaking comments of AMP-Ohio focused on certain aspects of all three of the proposed new utilities division chapters. Specifically, AMP-Ohio sought to:

- Amend the definition of "fully aggregated" in proposed 4901:1-39-01(F) to better reflect the "carbon credit" portion of the attribute;
- Clarify the definition of "double counting" in proposed 4901:1-40-01(M) to assure that the term did not refer to the practice of combining energy and renewable energy credits (RECs) into a bundled energy product;
- Amend the definition of RECs in proposed 4901:1-40-01(DD) to ensure that non-fully aggregated RECs (i.e., those credits derived from technologies that generate electricity using landfill gas, other biogas, and any other renewable energy resource that contains methane or other greenhouse gases ("GHGs")) are included;
- Broaden the definition of "solar thermal" contained in 4901:1-40-01(HH);
- Ensure that "qualifying hydroelectric facilities" are included in the phrase "generated by facilities located in this state" in proposed 4901:1-40-03(A)(2)(a);
- Clarify that RECs themselves need to be tracked (i.e., versus registration of the electric utility or electric service company) in proposed 4901:1-40-04;

- Amend the proposed rules to clearly reflect that RECs from renewable energy resources in service prior to January 1, 1998 are not excluded by R.C. 4928.65;
- Clarify that application of the cost cap contained in proposed 4901:1-40-07 does not free an electric utility or electric service company from its contractual obligations relating to REC purchases; and
- Clarify that non-jurisdictional entities are not subject to GHG reporting requirements in proposed 4901:1-41.

In reply comments filed on September 26, 2008, AMP-Ohio reiterated our positions from our initial comments and expressed our concerns regarding a number of the initial positions offered by other Parties in this proceeding. AMP-Ohio's reply comments covered the following general categories: 1) renewable energy credits ("RECs") and REC markets; 2) clean coal technology; 3) greenhouse gas ("GHG") reporting; and, 4) miscellaneous provisions. While some of the concerns raised in both our initial and reply comments have been addressed by the proposed final rules released by Commission on April 15, 2009, we have a number of remaining concerns and are therefore requesting rehearing on the proposed rules discussed below:

4901:1-40-01 Definitions

The use of the term "fully aggregated", both in proposed 4901:1-40-01(T) and as part of the definition of "renewable energy credit" ("REC") in proposed 4901:1-40-01(CC), must be amended. According to proposed Rule 4901:1-40-1(T) "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 currently recognized and traded worldwide 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. The proposed definition of a 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 proposed disaggregation 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.

Along with modifying the definition of a 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 does not need to retain the carbon credit portion of its attributes in order to be considered "fully aggregated."

Finally, 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 OEPA "NOx set-

aside" program is designed to reward renewable energy projects; if the environmental benefits that are attributable to NOx set-aside allowances cannot be separated from the renewable energy attributes, participation in the NOx set-aside program will likely cease, as renewable energy projects will be forced to choose between the two possible benefits.

4901:1-40-03 Requirements

Subsection (A)(2)(a) should be amended to clarify that the phrase "generated by facilities located in this state" includes "qualifying hydroelectric facilities," which by definition may be located "within or bordering this state or within or bordering an adjacent state." This definition is the definition used for "hydroelectric facility" set forth in division (A)(35) of section 4928.01 of the Revised Code.[1]

4901:1-40-04 Qualified Resources

Proposed Subsection A requires that renewable technologies used to meet the 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 in accordance with R.C. 4928.65. R.C. 4928.65 does not require that the renewable energy resource be in service after January 1, 1998, to meet the definition of a renewable energy resource. Presumably, Staff included the 1998 deadline in proposed 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

[1] *See* R.C. 4928.65(A)(35) "'hydroelectric facility' means a hydroelectric generating facility that is located at a dam on a river, or on any water discharged to a river, that is within or bordering this state."

resource." However, R.C. 4928.65 does not require 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 should not apply to R.C. 4928.65.

Additionally, the legislative intent when drafting R.C. 4928.65 was for all designated alternative energy processes to qualify as sources to meet alternative energy benchmarks. Indeed, 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." The cited language does not include any limitation on the date a facility must be in place to be considered a hydroelectric facility. 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."

For these reasons, the proposed rules must eliminate the requirement that the renewable energy source must be placed in service after January 1, 1998. To do otherwise would contravene the plain meaning of R.C. 4928.65 and legislative intent.

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

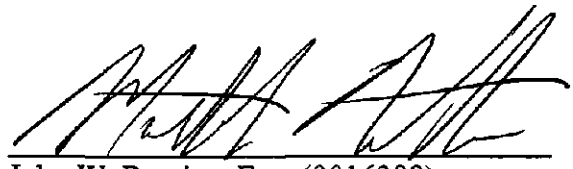
This section should be amended to clarify that this section is not applicable to entities that are not subject to the Commission's jurisdiction. Ohio R.C. 4928.68 specifically states that GHG reporting provisions are applicable to "each electric

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 Commission's jurisdiction and thus should not be included in these GHG reporting provisions.

III. CONCLUSION

For the reasons set forth above, AMP-Ohio respectfully requests the Commission grant this Application for Rehearing. Upon rehearing, AMP-Ohio requests that the Commission make the changes to its proposed rules as discussed herein.

Respectfully submitted,



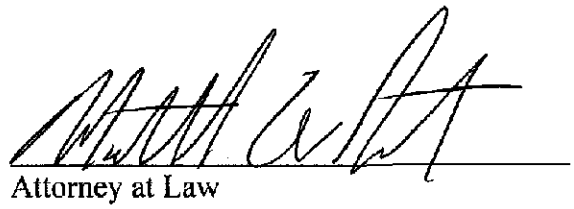
John W. Bentine, Esq. (0016388)
E-Mail: jbentine@cwslaw.com
Direct Dial: (614) 334-6121
Matthew S. White, Esq. (0082859)
E-Mail: mwhite@cwslaw.com
Direct Dial: (614) 334-6172
Chester, Willcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215-4213
(614) 221-4000 (Main Number)
(614) 221-4012 (Facsimile)

Attorneys for American Municipal Power-Ohio, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Application for Rehearing Filed By American Municipal Power-Ohio, Inc. 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:

SEE ATTACHED LIST



Attorney at Law

SERVICE LIST

Kenneth R. Alfred, Executive Director
Ohio Fuel Cell Coalition
737 Bolivar Road
Cleveland, OH 44115

Langdon D. Bell
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215
Lbell33@aol.com
Attorney for Norton Energy Storage

Mary W. Christensen
Christensen Christensen Donchatz
Kettlewell & Owens, LLP
100 East Campus View Blvd., Suite 360
Columbus, OH 43235
mchristensen@columbuslaw.org
Attorney for Great Lakes Energy Development Task Force

Dale R. Arnold, Director, Energy Services
Ohio Farm Bureau Federation
280 North High St.
P.O. Box 182383
Columbus, OH 43218
darnold@ofbf.org

David Caldwell, Legislative Coordinator
United Steelworkers, District 1
777 Dearborn Park Lane - J
Columbus, OH 43085

Joseph M. Clark
Lisa G. McAlister
McNees Wallace & Nurick, LLC
21 East State Street, 17th Floor
Columbus, OH 43215
jclark@mwncmh.com
lmcalister@mwncmh.com
Attorneys for Industrial Energy Users-Ohio

Paul A. Colbert, Associate General Counsel
Elizabeth H. Watts, Assistant General Counsel
Rocco O. D'Ascenzo, Senior Counsel
Amy B. Spiller, Associate General Counsel
Duke Energy Ohio, Inc.
139 East Fourth Street
P.O. Box 960
Cincinnati, OH 45201

Mark S. Fleiner, President
Rolls-Royce Fuel Cell Systems, Inc.
6065 Ship Avenue NW
North Canton, OH 44720

Amy Gomberg, Program Director
Environment Ohio
203 East Broad Street, Ste 3
Columbus, OH 43215

Mark A. Hayden
Firstenergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com
Attorney for Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company

Chester Jourdman, Jr., Executive Director
Erin Miller, Director, Center for Energy & Environment
Mid-Ohio Regional Planning Commission
111 Library Street, Suite 100
Columbus, OH 43215
emiller@morpc.org

Christine M. Falco
PJM Interconnection, LLC
965 Jefferson Avenue
Norristown, PA 19403
falcoc@pjm.com

P. Flem, President
Retco Molded Products
4425 Appleton St.
Cincinnati, OH 45209

Gary S. Guzy, General Counsel
John Melby, President
APX, Inc.
5201 Great America Parkway #522
Santa Clara, CA 95054
gguzy@apx.com
jmelby@apx.com

Jon A. Husted
Speaker, Ohio House of Representatives
77 South High Street
Columbus, OH 43215
District37@ohr.state.oh.us

Rodger A. Kershner
Howard & Howard Attorneys PC
39400 Woodward Avenue, Suite 100
Bloomfield Hills, MI 48304
rak@h2law.com
Attorney for LS Power Associates, LP

Joseph P. Koncelik
Frantz Ward LLP
2500 Key Center
127 Public Square
Cleveland, OH 44114
jkoncelik@frantzward.com
Attorney for Vertus Technologies Industrial, LLC

Steve Lankenau
American Ag Fuels
815 Greenler Street
Defiance, OH 43512

Michael K. Lavanga
Garrett A. Stone
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington D.C. 20007
mkl@bbrslaw.com
gas@bbrslaw.com
Attorneys for Nucor Steel Marion, Inc.

David Marchese
Haddington Ventures, LLC
2603 Augusta, Suite 900
Houston, TX 77057

Steve Millard, President and Executive Director
The Council of Smaller Enterprises
The Higbee Building
100 Public Square, Suite 210
Cleveland, OH 44113

Michael L. Kurtz
David F. Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
mkurtz@BKLlawfirm.com
dboehm@BLKlawfirm.com
Attorneys for Ohio Energy Group

Connie L. Lausten
New Generation Biofuels
4308 Brandywine St. NW
Washington, D.C. 20016
cllausten@newgenerationbiofuels.com

Dwight N. Lockwood, Group Vice President
Global Energy, Inc.
312 Walnut Street, Suite 2300
Cincinnati, OH 45202
dnlockwood@globalenergyinc.com

Ann McCabe, Midwest Regional Director
The Climate Registry
1543 W. School St
Chicago, IL 60657
ann@theclimateregistry.org

Jennifer Miller, Conservation Program Coordinator
Sierra Club Ohio Chapter
131 N. High St., Ste 605
Columbus, OH 43215

Nolan Moser
Trent A. Dougherty
The Ohio Environmental Council
1207 Grandview Ave., Suite 201
Columbus, OH 43212
nmoser@theOEC.org
tdougherty@theOEC.org

Thomas J. O'Brien
Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215
tobrien@bricker.com
Attorneys for Northeast Ohio Public Energy Council

Vincent A. Parisi
5020 Bradenton Ave.
Dublin, OH 43017
vparisi@igsenergy.com
Attorney for Interstate Gas Supply, Inc.

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215
BarthRoyer@aol.com
Attorney for Ohio Environmental Council

Kenneth D. Schisler
EnerNOC, Inc.
75 Federal St., Suite 300
Boston, MA 02110
kschisler@enernoc.com

Steven T. Nourse
Marvin I. Resnik
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
stnourse@aep.com
miresnick@aep.com
Attorneys for Columbus Southern Power Company and Ohio Power Company

Terrence O'Donnell
Sally W. Bloomfield
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
todonnell@bricker.com
sbloomfield@bricker.com
mwarnock@bricker.com
Attorneys for the American Wind Energy Association, Ohio Advanced Energy, Wind on the Wires, and Environment Ohio

M. Howard Petricoff
Vorys, Sater, Seymour and Pease, LLP
52 East Gay St.
P.O. Box 1008
Columbus, OH 43216
mhpetricoff@vorys.com
Attorney for Constellation NewEnergy, Inc., Direct Energy Services, LLC, and Integrys Energy Services, Inc.

Neil Sater, CEO
Greenfield Steam & Electric
6618 Morningside Drive
Brecksville, OH 44141

Linda Sekura
Conservation Committee Chan-
Northeast Ohio Sierra Club
20508 Watson Road
Maple Heights, OH 44137
LSekura@aol.com

Jeffrey L. Small, Counsel of Record
Office of the Ohio Consumers' Counsel
10 W. Broad St., Suite 1800
Columbus, OH 43215
small@occ.state.oh.us

Robert J. Triozzi
Steven L. Beeler
City of Cleveland
Cleveland City Hall
601 Lakeside Avenue, Room 206
Cleveland, OH 44114
RTriozzi@city.cleveland.oh.us
SBeeler@city.cleveland.oh.us
Attorneys for the City of Cleveland

Charles S. Young, Acting City Manager
City of Hamilton, Ohio
345 High Street
Hamilton, OH 45011
youngc@ci.hamilton.oh.us

Judi L. Sobecki
Randall V. Griffin
Dayton Power and Light Company
1065 Woodman Dr.
Dayton, OH 45432
judi.sobecki@DPLinc.com
randall.griffin@DPLinc.com

Mark A. Whitt
Andrew J. Campbell
Jones Day
325 John H. McConnell Blvd, Suite 600
P.O. Box 165017
Columbus, OH 43216
mawhitt@jonesday.com
ajcampbell@jonesday.com
Attorneys for East Ohio Gas Company d/b/a
Dominion East Ohio

Thomas E. Lodge
Carolyn S. Flahive
Kurt P. Helfrich
Sarah P. Chambers
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, Ohio 43215-6101
Carolyn.Flahive@thompsonhine.com
Attorneys for Buckeye Power, Inc.

ND: 4849-2935-5523, v. 4