

NC

FILE

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application For Waiver of  
O.A.C. 4901:1-41-03.

)  
)  
) Case No. 10-3103 -EL-ACP  
)  
)

5  
RECEIVED-DOCKETING DIV  
2010 DEC 21 PM 5:10  
PUCO

APPLICATION

1. Applicants are public utilities as defined in R.C. § 4905.02, and own and operate electric generating facilities located in Ohio that emit greenhouse gases. AEP Ohio is thus required by O.A.C. 4901:1-41-03 to become a participating member in The Climate Registry and report greenhouse gas ("GHG") emissions according to the protocols approved by The Climate Registry (the "Commission's GHG Rule").

2. Pursuant to O.A.C. 4901:1-41-02(B), O.A.C. 4901:1-41-03(A), and the Commission's April 15, 2009 Opinion and Order and June 17, 2009 Entry on Rehearing in Case No. 08-888-EL-ORD, Columbus Southern Power Company and Ohio Power Company ("AEP Ohio" or "Applicants") request that the Commission waive the requirement of O.A.C. 4901:1-41-03 that Applicant become a participating member in The Climate Registry and report GHG emissions according to the Commission's GHG Rule, in light of the recent, mandatory federal GHG reporting requirements.

3. On December 10, 2010, FirstEnergy Solutions Corp., another Ohio entity subject to the Commission's GHG Rule, filed a request for waiver in Docket 10-2985-EL-ACP, for reasons AEP Ohio adopts and incorporates herein.

## **Background**

4. In July 2008, the General Assembly enacted Am. Sub. S.B. 221 and R.C. § 4928.68, which directed the Commission to establish rules “establishing greenhouse gas emission reporting requirements” for electric generating facilities that are located in Ohio, owned or operated by a public utility subject to the Commission’s jurisdiction, and emit greenhouse gases.

5. Beginning in August 2008, the Commission solicited comments in Case No. 08-888-EL-ORD regarding proposed rules for the GHG emission reporting requirements and other facets of S.B. 221. The Commission received comments from a wide-range of interested parties.

6. At that time, the United States Environmental Protection Agency (“USEPA”) was developing its own mandatory rules and requirements for the reporting of GHG emissions.

7. The possibly conflicting and/or duplicative requirements of the Commission’s and USEPA’s rules were the subject of several comments submitted by parties to Case No. 08-888-EL-ORD.

8. In April 2009 – prior to the enactment of any federal requirement – the Commission issued its Opinion and Order in Case No. 08-888-EL-ORD, setting forth the Commission’s final GHG Rule.<sup>1</sup>

9. However, in its Opinion and Order, and a subsequent Entry on Rehearing, the Commission recognized that it would consider the USEPA rules, when and if enacted: “At such time as the USEPA completes its process and provides the necessary clarity and direction in

---

<sup>1</sup> The Commission’s April 2009 Opinion and Order (and the GHG Rule) are subject to the amendments made in the Commission’s subsequent Entries on Rehearing and Entries Nunc Pro Tunc, which were issued in June and October 2009 in Case No. 08-888-EL-ORD.

reporting requirements of greenhouse gases, the Commission will consider any necessary changes to its rules.”<sup>2</sup>

10. On October 30, 2009, the USEPA issued its Mandatory GHG Reporting Rule (the “Federal GHG Rule”), which became effective on January 1, 2010.

11. The Commission’s Rules permit a waiver of any regulatory requirement set forth in Chapter 4901:1-41 for GHG reporting,<sup>3</sup> and a waiver of O.A.C. 4901:1-41-03 in lieu of compliance with the now-effective Federal GHG Rule is appropriate.

### **The Bases For A Waiver**

12. The requirements of the Federal GHG Rule are rigorous and comprehensive, and provide an efficient mechanism for the Commission to monitor GHG emissions from Ohio electric generating facilities.

13. The Federal GHG Rule reporting requirements were developed based on extensive discussions with interested parties and other federal and state regulators, and are designed to implement a consolidated information collection effort.

14. The reporting required by the Federal GHG Rule is estimated to include approximately 85% of the GHG emissions nationwide,<sup>4</sup> and will include an even higher percentage of AEP Ohio’s GHG emissions.

---

<sup>2</sup> June 17, 2009 Entry on Rehearing, Case No. 08-888-EL-ORD, at p. 40; *see also* Opinion and Order, Case No. 08-888-EL-ORD, at p. 39, 40 (“[W]e believe Ohio should move forward with this [GHG Rule] and will revisit this issue at such time as a national [GHG emission] reporting program becomes viable.”).

<sup>3</sup> O.A.C. 4901:1-41-02(B) (“The Commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.”); *see also* O.A.C. 4901:1-41-03(A) (“Unless otherwise directed by the commission.....”). Other states also have considered a replacement of their reporting requirements with the Federal GHG Rule. For example, Florida recently removed its explicit statutory requirement for reporting to The Climate Registry in recognition of the GHG Rule. *See* Fla. Stat. § 403.44 (amended 2010).

<sup>4</sup> USEPA Fact Sheet on “Mandatory Reporting of Greenhouse Gases (40 CFR part 98),” available at: [www.epa.gov/climatechange/emissions/downloads09/FactSheet.pdf](http://www.epa.gov/climatechange/emissions/downloads09/FactSheet.pdf) (last accessed Dec. 5, 2010).

15. Under the Federal GHG Rule, reporting entities, including Applicants, must provide extensive facility-level data on GHG emissions through annual reports submitted to the USEPA.<sup>5</sup>

16. Reporting facilities, including Applicants, have been collecting data pursuant to the Federal GHG Rule since January 1, 2010, and the first annual report, which reflects 2010 emissions, must be submitted by March 31, 2011.<sup>6</sup>

17. The reporting requirements of The Climate Registry are both inconsistent with and duplicative of the Federal GHG Rule. Therefore, to require reporting to The Climate Registry in addition to the comprehensive mandates of the Federal GHG Rule may lead to confusion regarding compliance with the numerous requirements. The Climate Registry also carries a membership fee and expensive auditing requirements, which unnecessarily increase AEP Ohio's administrative costs.

18. Further, the USEPA has included significant enforcement mechanisms into the Federal GHG Rule, including administrative, civil, and criminal penalties.<sup>7</sup> These penalties can be levied for failure to collect the proper data, failure to report the data, failure to monitor and test emissions as required, and failure to maintain the proper records in support of the Federal GHG Rule requirements. The USEPA also is authorized to compel compliance.

19. The breadth of the reporting required by the Federal GHG Rule and the significance of the USEPA's enforcement authority, in connection with the administrative efficiencies gained by consolidated reporting, justify the Commission's reliance on the Federal GHG Rule requirements in lieu of the predecessor requirements of the Commission's GHG Rule.

---

<sup>5</sup> See 40 C.F.R. parts 75, 98, including §§ 98.3, 98.46.

<sup>6</sup> Mandatory Reporting of Greenhouse Gases; Final Rule, 74 Fed. Reg. at 56,267 (Oct. 30, 2009).

<sup>7</sup> See *id.* at 56,360.

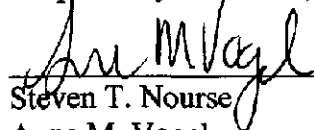
## Conclusion

20. Use of the Federal GHG Rule serves the Commission and electric generating facilities and their customers in monitoring GHG emissions and compiling valuable data for future policy efforts in the most cost-efficient and effective manner.

21. As set forth herein, AEP Ohio requests that the Commission approve this Application and issue an Opinion and Order that: (i) grants to Applicants a waiver of the requirements of O.A.C. 4901:1-41-03(A); and (ii) allows Applicants to satisfy the reporting requirements anticipated by R.C. § 4928.68 through compliance with the Federal GHG Rule until otherwise ordered by the Commission.

22. Applicants further request that the Commission approve the Application and issue its Opinion and Order on or before February 1, 2011, due to the imminent reporting deadlines and the time and expense required to meet them.

Respectfully submitted,



Steven T. Nourse

Anne M. Vogel

American Electric Power Service Corp.

1 Riverside Plaza, 29<sup>th</sup> Floor

Columbus, OH 43215

Tel: (614) 716-1915

Email: [stnourse@aep.com](mailto:stnourse@aep.com)

[amvogel@aep.com](mailto:amvogel@aep.com)

Attorneys for Columbus Southern Power Company  
and Ohio Power Company