

**BEFORE  
THE OHIO POWER SITING BOARD**

In the matter of the Application of American	)	Case No. 06-1358-EL-BGN
Municipal Power-Ohio, Inc. for a Certificate	)	
of Environmental Compatibility And Public	)	
Need for an Electric Power Generating	)	
Station and Related Facilities.	)	

---

**MEMORANDUM CONTRA TO MOTION TO EXTEND THE DURATION OF  
AMERICAN MUNICIPAL POWER’S CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY  
BY THE  
OHIO ENVIRONMENTAL COUNCIL AND SIERRA CLUB**

---

**I. INTRODUCTION**

On March 3, 2008, American Municipal Power – Ohio, Inc. (“AMP”) was granted a Certificate of Environmental Compatibility and Public Need by the Board for a 960-MW coal fired power plant at a site near Letart Falls, Ohio in Meigs County. Said Order contained a condition that the Certificate shall become invalid if AMP has not commenced construction of the proposed facility within five years of the date of journalization of the Certificate.<sup>1</sup>

On November 16, 2012, AMP filed a Motion to Extend the Duration of American Municipal Power’s Certificate of Environmental Compatibility for its Certificate of Environmental Compatibility and Public Need. In its Motion, AMP suggests that it has commenced and is involved in a continuous course of construction for the facility, and, to prevent further delays in construction, requests an additional eighteen months of Certification.

However, as the recent record in this case shows, and AMP’s motion attests, AMP is no longer pursuing the certified coal generation facility, and is purportedly constructing a

---

<sup>1</sup> Order in OPSB Case No 09-1358-EL-BGN at page 39 (March 3, 2008).

natural gas combined cycle plant. This plant currently being constructed is neither one applied for by AMP nor certified by the Board. Therefore, AMP has not shown good cause for why the Board should extend its Certification, and has in fact shown that the Certified Facility has been abandoned and any further construction necessitates a new certificate with full Board deliberation.

Thus, Ohio Environmental Council (OEC) and Sierra Club hereby submit the following memorandum contra to AMP's motion for extension of its Certificate.

## **II. ARGUMENT**

### **a. AMP has not shown good cause for extending the Certification**

While AMP does not cite to the Board's rules on extension of time, we would presume that this motion is to be considered under Ohio Administrative Code ("OAC") §4906-1-05. However, OAC 4906-1-05 only allows the Board to extend a time limit for "good cause shown."<sup>2</sup> AMP has not shown good cause. On the contrary, AMP asserts that it abandoned its plans under the Certification and has been conducting "continuous construction" on a generating facility that is different from that applied for and certified in 2008, that it is now requesting the extension of a certificate for a coal-fired generating facility that it admits will not be constructed.

Paragraph IV(33) of the Board's March 3, 2008 Order states that the Certificate shall become invalid if AMP has not commenced construction of the proposed facility within five years of the date of journalization of the Certificate.<sup>3</sup> Although AMP provides ample evidence that it has performed construction at the Letart Falls site, AMP's motion goes into great detail

---

<sup>2</sup> OAC 4906-1-05

<sup>3</sup> Order in OPSB Case No 09-1358-EL-BGN at page 39 (March 3, 2008).

to explain that it is allegedly “continuous construction” is now for a plant unlike the certified facility.

In Paragraph 10 of its Memorandum in Support, AMP concedes that it is not constructing its “proposed facility,” but an intermediate natural gas combined cycle generation rather than a baseload coal fired project.”<sup>4</sup> Furthermore, the record in this case since early 2010, along with the statements in its motion, show a complete abandonment of the coal fired power plant to which the Board issued the Certificate in this case. AMP’s January 11, 2010 Report to the Board explicitly supplied the initial notice to the Board of AMP’s intent to abandon the certified facility.<sup>5</sup> The report’s lead paragraph begins with the statement: “On November 26, 2009, the participants in the AMPGS project determined that the AMPGS facility would not proceed as a pulverized coal electric generation facility.”<sup>6</sup> Subsequently, AMP provided evidence of the furtherance of its abandonment by filing, in the docket of this case, two documents of revocation of its Ohio EPA granted permit-to-install and NPDES permit, on August 19, 2010<sup>7</sup> and September 9, 2010<sup>8</sup> respectively.

AMP, in its memorandum admits it has acquired a number of generation assets since abandoning the proposed coal plant in 2010, including natural gas generation. With no supporting evidence or further discussion, AMP, however, suggests that after acquiring those assets it still needs (and its members need) natural gas generation. However, during weeks of hearing and post-hearing briefing in this case, AMP went to great effort to provide evidence

---

<sup>4</sup> AMP Memorandum in Support at page 4.

<sup>5</sup> See “2009 Construction/Mitigation Activities Report,” filed in OPSB Case No 09-1358-EL-BGN (January 11, 2010).

<sup>6</sup> *Id.*

<sup>7</sup> Notice of American Municipal Power Inc.’s receipt of final permit-to-install revocations related to the American Municipal Power Generation Station, filed in OPSB Case No 09-1358-EL-BGN (August 19, 2010).

<sup>8</sup> Receipt of NPDES Permit Revocation related to the American Municipal Power Generating Station filed in OPSB Case No 09-1358-EL-BGN (September 9, 2010).

that it had reviewed and analyzed all possible alternatives, including natural gas generation, and concluded that a coal generating facility was the best and most cost effective.

**b. AMP's request for extension is unsupported by law**

AMP relies solely on ORC § 4906.03 (D) to justify an extraordinary extension request.<sup>9</sup> That section, however, is inapplicable and inappropriate for the action for which AMP is moving the Board. ORC § 4906.03 (D) states that Board has the power to “[a]pprove, disapprove, or modify and approve applications for certificates,” As supported by later sections of the code, the term “modify” imputes that the Board can adjust what is in an application for a certificate before approving the certificate.<sup>10</sup> The Board cannot grant the modification of the permit based on the Motion to Extend the Duration of the Certificate.

There is a process for amending an already granted certificate for major utility facilities within the regulations of the Power Siting Board,<sup>11</sup> and the memorandum submitted by AMP acknowledges this process. OAC § 4906-5-10 (B) allows for amendments to completed certificates and states that they “shall be submitted in the same manner as if they were applications for a certificate.”<sup>12</sup> The application for amendment is to be reviewed by the board as stated in OAC § 4906-5-05. The only exception to this requirement is unless it is found by the board, its executive director or an ALJ that the change would not result in “any significant adverse environmental impact” or “a substantial change in the location of all or a portion of such certified facility.”<sup>13</sup> AMP however, has not provided sufficient evidence to

---

<sup>9</sup> AMP Memorandum in Support at page

<sup>10</sup> See ORC § 4906.10.

<sup>11</sup> See OAC § 4906-5-10.

<sup>12</sup> OAC § 4906-5-10 (B)

<sup>13</sup> *Id.*

support such a ruling, and its memorandum reveals factual questions about the extent of construction and the environmental impact of its new type of generation facility.

**c. The Board should instead require AMP to submit a full application for its new generation facility**

As stated previously, AMP concedes that it is not constructing its “proposed facility,” but an intermediate natural gas combined cycle generation rather than a baseload coal fired project.”<sup>14</sup> Further, it concedes that “a natural gas generating unit is significantly different from the project initially proposed by AMP and upon which the Certificate was conditioned . . .,” and that in order to move forward, “significant amendments to the Certificate that are similar in scope to a new application will be necessary.”<sup>15</sup>

Because AMP asserts that it has continued construction on a generating facility that is not the facility it applied for and received certification, it should not be unjustly awarded an additional year and a half to continue any such construction without proper certification. The Board should instead require AMP to submit a new application for certification for its proposed Natural Gas Generating Facility, and the Board should certify further construction only after full public hearings and Board deliberations.

**III. CONCLUSION**

For the foregoing reasons, AMP has not shown good cause as to why it should be granted an extraordinary extension of its certification in this matter. OEC and Sierra Club respectfully requests that the Board deny AMP’s motion for extension of its Certificate.

---

<sup>14</sup> AMP Memorandum in Support at page 4.

<sup>15</sup> AMP Memorandum in Support at page 10.

Respectfully Submitted,

/s/ Trent A. Dougherty\*

Trent A. Dougherty  
Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212-3449  
(614) 487-7506 - Telephone  
(614) 487-7510 - Fax  
[trent@theoec.org](mailto:trent@theoec.org)

**Attorney for the OEC**

**\*Signing also on behalf of Sierra Club  
via e-mail approval.**

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class and/or electronic mail this 3rd day of December, 2012.

/s/ Trent A. Dougherty

John W. Bentine  
Lisa G. McAlister  
1111 Schrock Road, Suite 100  
Columbus, OH 43229  
[jbentine@amppartners.org](mailto:jbentine@amppartners.org)  
[lmcalister@amppartners.org](mailto:lmcalister@amppartners.org)

**On Behalf of American Municipal Power,  
Inc.**

William L. Wright  
John H. Jones  
Assistant Attorneys General  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, OH 43215  
[John.jones@puc.state.oh.us](mailto:John.jones@puc.state.oh.us)  
[William.wright@puc.state.oh.us](mailto:William.wright@puc.state.oh.us)

Margaret A. Malone  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, OH 43215  
[mmalone@ag.state.oh.us](mailto:mmalone@ag.state.oh.us)

**On Behalf of the OPSB**

Shannon Fisk  
Natural Resources Defense Council  
2 North Riverside Plaza, Suite 2250  
Chicago, IL 60606

**On Behalf of NRDC**

Elisa Young  
48360 Carmel Road  
Racine, OH 45771

**On Behalf of Intervenor**

Kim Wissman  
Jon Pawley  
Klaus Lambeck  
Ohio Power Siting Board  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, OH 43215  
[Kim.wissman@puc.state.oh.us](mailto:Kim.wissman@puc.state.oh.us)  
[Jonathan.pawley@puc.state.oh.us](mailto:Jonathan.pawley@puc.state.oh.us)  
[Klaus.lambeck@puc.state.oh.us](mailto:Klaus.lambeck@puc.state.oh.us)

**Staff of OPSB**

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**12/3/2012 4:50:55 PM**

**in**

**Case No(s). 06-1358-EL-BGN**

Summary: Memorandum MEMORANDUM CONTRA TO MOTION TO EXTEND THE DURATION OF AMERICAN MUNICIPAL POWER'S CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY BY THE OHIO ENVIRONMENTAL COUNCIL AND SIERRA CLUB electronically filed by Mr. Trent A Dougherty on behalf of Ohio Environmental Council