

**BEFORE
THE OHIO POWER SITING BOARD**

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

**REPLY OF AMERICAN MUNICIPAL POWER, INC. TO SIERRA CLUB
AND OHIO ENVIRONMENTAL COUNCIL'S JOINT MEMORANDUM CONTRA
MOTION TO EXTEND THE CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED**

I. Introduction

On November 16, 2012, American Municipal Power, Inc. ("AMP") filed a Motion to Extend the Duration of the Certificate of Environmental Compatibility and Public Need ("Certificate") issued on March 3, 2008, by the Ohio Power Siting Board ("Board") for AMP's generating facility near Letart Falls, in Meigs County, Ohio (hereinafter, "Motion for Extension").

On December 3, 2012, the Ohio Environmental Council ("OEC") and Sierra Club filed a joint memorandum contra AMP's Motion to Extend (hereinafter "Memo Contra"). In the Memo Contra, OEC and Sierra Club raised three arguments: 1) AMP has not shown good cause for its requested extension; 2) AMP's request is not supported by law; and, 3) the Board should require AMP to file a new application for the natural gas plant. AMP responds to each argument raised in the Memo Contra below and respectfully requests that the Board approve AMP's requested extension.

II. Argument

A. There is good cause for the limited extension.

OEC/Sierra Club state that, in its initial application and during the hearing, AMP provided evidence that it had reviewed and analyzed all possible alternatives and concluded that a coal generating facility was the best and most cost effective, but that the facility now being contemplated is a natural gas generating plant. Memo Contra at 3-4. AMP admits both allegations. However, OEC/Sierra Club have not provided any legal support for the conclusion that a change in the type of generating facility is cause for denial of a limited certificate extension. Memo Contra at 3. In fact, the circumstances that have resulted in AMP's current consideration of a natural gas plant at the Meigs site are good cause for the requested extension in and of themselves.

Although AMP did determine and provide evidence that a coal generating facility was the best and most cost effective plant to serve the needs of AMP's members at the time of its initial application and hearing, the hearing in this case took place approximately five years ago. AMP's reasons for cancelling the project as a coal fired facility, after actual physical construction had begun have been publically announced and are the subject of litigation. See, *American Municipal Power, Inc. v. Bechtel Power Corp.*, Case No. 2:11-CV-131, U.S. District Court, Southern District of Ohio, Eastern Division. In its Motion for Extension, AMP explained that the cause for delay and the shift from a coal plant to a gas plant resulted from numerous factors beyond AMP's control including an unexpected capital cost increase projection for the coal facility and, with regard to the facility as a natural gas plant, drawn out PJM interconnection process. AMP Motion for Extension at 4-7. OEC/Sierra Club do not contest or even address

these facts. Rather, OEC/Sierra Club argue only that the plant now contemplated has changed. As AMP acknowledged, the shift from a coal fired plant to a natural gas fired plant is significant,¹ resulted from numerous factors beyond AMP's control, and is good cause that warrants a modest extension of the Certificate.

Additionally, in spite of these obstacles, OEC/Sierra Club agreed that AMP has provided "ample evidence that it has performed construction at the Letart Falls site...." Memo Contra at 2. As AMP made clear in its Motion for Extension, the construction AMP has undertaken includes mitigation activities, initial site preparation and physical construction activities. Finally, as AMP also identified, it has continually and actively engaged in the PJM interconnection process. OEC/Sierra Club disregarded this evidence demonstrating a continuous course of construction regarding generation at this site.

Finally, AMP agrees (and stated as much in its Motion for Extension) that if and when it moves forward with a natural gas facility, it must and fully intends to file a significant amendment to its Certificate. Motion for Extension at 10. AMP asserts that if and when such an amendment is warranted, AMP will comply with the requirements of Ohio law and the Board's rules, which include a Staff investigation and report and opportunities for public participation. In other words, OEC/Sierra Club and others will be afforded due process through an amendment process. OEC/Sierra Club have provided no basis for why such amendment process is prejudicial to their interests or why the amendment process is in any way deficient.

¹ From an environmental perspective, OEC/Sierra Club did not, and cannot, argue that the change results in a greater impact on the environment than the proposed coal facility.

However, as AMP has made clear in its Motion for Extension and otherwise, any project at the Letart Falls site remains contingent upon successful final negotiation of appropriate tax abatements, economic and infrastructure incentives, construction contracts and pricing, as well as a successful effort by AMP to subscribe the project to its member municipal electric systems. The limited extension is necessary in order to allow discussions with potential partners on this project and other project development tasks and financing necessary to move forward with this project. Accordingly, good cause exists for the limited extension.

B. AMP's request is supported by law and Board precedent.

OEC/Sierra Club argue that the only alternative for changes to a Certificate, including extensions of time limits, is through an amendment process pursuant to Rule 4906-5-10(B), Ohio Administrative Code, which requires amendments to be submitted in the same manner as if they were new applications for a certificate. Memo Contra at 4. OEC/Sierra Club are simply incorrect.

As OEC/Sierra Club correctly identify, the Board or the administrative law judge has the authority to extend any time limit prescribed or allowed by Chapters 4906-1 to 4906-17, Ohio Administrative Code, except where precluded by statute, for good cause shown. Memo Contra at 2. As discussed above and in its Motion for Extension, AMP demonstrated good cause.

Board precedent also demonstrates that the Board has granted extensions of complete certificates upon motion of the applicant. For example, the Board granted a thirty (30) month extension upon motion of Lima Energy Company ("Lima"). *In the Matter of the Application of Lima Energy Company for a Certificate of Environmental*

Compatibility and Public Need to Construct a Power Plant in Allen County, Ohio, Case No. 00-513-EL-BGN *et al.*, Entry (July 30, 2012)(hereinafter “*Lima Case*”). Similarly, in *In the Matter of the Application of Norton Energy Storage, LLC for a Certificate of Environmental Compatibility and Public Need for an Electric Power Generating Facility in Norton, Ohio*, Case No. 99-1626-EL-BGN (hereinafter “*Norton Case*”), the Board granted two separate thirty (30) month extensions upon motion of Norton Energy Storage, LLC (“Norton”). Specifically, on March 20, 2006, the Board granted an extension of the certificate from May 21, 2006, through November 21, 2008 and on June 2, 2008, the Board granted a second thirty (30) month extension.

The bases for the extensions on the Norton and Lima projects are very similar to those identified by AMP. For example, Norton stated that it was still in the process of securing financing and that its initial equipment supplier had pulled out of the local market, which required Norton to select another generation equipment supplier and make conceptual design changes. Norton even identified that such changes would likely require it to seek an amendment to its certificate, much like the changes anticipated by AMP will necessitate an amendment process. Nonetheless, the Board held that Norton’s “request to modify the time limitation of the certificate is reasonable” and granted Norton’s motion. *Norton Case*, Entry at 2 (June 2, 2008). Lima argued that the delays on the project were the result of the withdrawal of financial support for gasification technology since the economic downturn of 2007. *Lima Case*, Entry at 2 (July 30, 2012).

AMP’s Motion for Extension is in line with Board precedent and provides bases for the request similar to those that the Board found reasonable in other motions for

extensions. Moreover, AMP's request is for a significantly shorter time than what has been requested and granted in other cases. Accordingly, AMP's Motion for Extension is supported by law and Board precedent, is reasonable and should be granted.

C. The Board should not require AMP to file prior to the expiration of an eighteen month extension.

OEC/Sierra Club request that the Board require AMP to submit a new application for certification for its proposed natural gas generating facility. Memo Contra at 5. OEC/Sierra Club again fail to provide any legal basis for the request. Moreover, AMP has already acknowledged that an amendment to the Certificate that is not dissimilar in scope to a new application will be necessary. However, a new application, rather than a significant amendment, is not required by law, is inconsistent with Board precedent, and is unreasonable, particularly at this time.


OEC/Sierra Club are aware that Rule 4906-5-10(B), Ohio Administrative Code, sets forth a process for amending existing certificates. Thus, an entirely new application is not required. Moreover, the Board has permitted applicants to utilize the amendment process for material changes to the facility upon which a certificate was granted, rather than requiring the applicants to start over. *See, for example, Norton Case*, Entry at 2 (June 2, 2008). Finally, as AMP has stated, there is value and efficiency in maintaining the continuity of the existing process, including an amendment of the existing certificate, rather than submitting a new application inasmuch as an amendment would: 1) permit the Board to review and approve material changes to the AMPGS project without having to reconsider elements of the project that will not change; and, 2) avoid the disruption of discussions with potential partners on this project and other project development tasks and financing necessary to move forward with this project. Thus, requiring AMP to file a

new application at this point, rather than an amendment at the conclusion of the limited extension, would be unreasonable and inconsistent with the Board's rules and precedent.

III. CONCLUSION

For the reasons set forth herein and the good cause demonstrated, AMP respectfully requests that the Board deny OEC/Sierra Club's request to require AMP to file a new application and extend the Certificate for a period of eighteen (18) months until September 3, 2013.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to Sierra Club and Ohio Environmental Council's Memorandum Contra Motion to Extend was served upon the following parties of record or as a courtesy, via electronic deliver and/or postage prepaid U.S. Mail, on December 7, 2012.


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Summary: Reply American Municipal Power, Inc. Reply to Sierra Club and Ohio Environmental Council's Joint Memorandum Contra Motion to Extend the Certificate of Environmental Compatibility and Public Need electronically filed by Mrs. Barbara E Johnson on behalf of American Municipal Power, Inc.