

126 FERC ¶ 61,197  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

American Municipal Power - Ohio, Inc.	Project Nos. 6641-087 10228-058
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City of New Martinsville, West Virginia	Project No. 6902-074
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ORDER GRANTING APPROVAL UNDER SECTION 22  
OF THE FEDERAL POWER ACT

(Issued March 4, 2009)

1. On January 12, 2009, American Municipal Power - Ohio, Inc. (AMP-Ohio), licensee for the Smithland Project No. 6641 and Cannelton Project No. 10228, filed pursuant to section 22 of the Federal Power Act (FPA),<sup>1</sup> an application for approval of a proposed contract that would provide for the sale of power from AMP-Ohio's Smithland and Cannelton Projects and the City of New Martinsville, West Virginia's (New Martinsville) licensed Willow Island Project No. 6902, to municipalities from several states, for a period extending beyond the expiration of the existing licenses for the three projects. For the reasons discussed below, we grant the application.

**Background**

2. AMP-Ohio is a non-profit, wholesale power and services provider for approximately 126 municipalities that own and operate electric systems in Ohio, Pennsylvania, West Virginia, Michigan, Kentucky, and Virginia.

3. AMP-Ohio's 80-megawatt (MW) Smithland Project is located at the United States Army Corps of Engineers' (Corps') existing Smithland Locks and Dam on the Ohio River in Livingston County, Kentucky. The Commission issued an original license for the project on June 30, 1988, for a term of 50 years, expiring May 31, 2038.

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<sup>1</sup> 16 U.S.C. § 815 (2006).

4. AMP-Ohio's 80-MW Cannelton Project is located at the Corps' existing Cannelton Locks and Dam on the Ohio River in Hancock County, Kentucky. The project was originally licensed in 1976<sup>2</sup> and relicensed in 1991 for a 50-year term, to expire May 31, 2041.<sup>3</sup>

5. New Martinsville's 35-MW Willow Island Project is located at the Corps' existing Willow Island Locks and Dam on the Ohio River in Pleasants County, West Virginia and Washington County, Ohio. New Martinsville was issued an original license for the project on September 27, 1989, for a period of 50 years, expiring August 31, 2039. New Martinsville filed on August 8, 2008, and supplemented on November 11, 2008, an application to transfer the license to AMP-Ohio, which is New Martinsville's agent for purposes of completing construction of the Willow Island Project and entering into a contract for the sale of power from the project. The Commission issued an order approving the license transfer on February 17, 2009.<sup>4</sup>

### **The Power Sales Contract**

6. AMP-Ohio plans to contract with over 70 municipalities for the delivery of project power from the Smithland, Cannelton, and Willow Island Projects. Under the proposed power sales contract, each participating municipality would have a right to a specified share of the combined power and energy from all three projects, and each participant would pay AMP-Ohio demand charges that are to be pledged from the participant's system revenues to secure the repayment of bonds issued by AMP-Ohio. In order to ensure the economic attractiveness of the projects over the long-term, AMP-Ohio expects the terms of the bonds to exceed, or have amortization schedules that exceed, the years remaining for the license terms of the projects. The contract has no fixed expiration date in order to help ensure that the participants have continued access to the project energy at cost, once the bonds are retired. The contract would remain in effect until December 31, 2057, and thereafter until all the bonds are paid off and seventy-five percent of the participants recommend contract termination. AMP-Ohio requests approval of the proposed power sales contract for a period extending approximately 19 years beyond the 2038 expiration date of the Smithland license, 16 years beyond the 2041 expiration date

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<sup>2</sup> *City of Vanceburg, Kentucky*, 55 FPC 1432 (1976). The City of Vanceburg, Kentucky surrendered its 50-year license in 1986. See *City of Vanceburg, Kentucky*, 35 FERC ¶ 62,113 (1986).

<sup>3</sup> *City of Marion, Kentucky and Smithland Hydroelectric Partners*, 43 FERC ¶ 62,387 (1988).

<sup>4</sup> *City of New Martinsville, West Virginia and American Municipal Power - Ohio*, 126 FERC ¶ 62,122 (2009).

of the Cannelton license, and 18 years beyond the 2039 expiration date of the Willow Island license.<sup>5</sup>

7. On January 16, 2009, the Commission issued public notice of AMP-Ohio's request for section 22 approval, and established a deadline of February 17, 2009, for comments and motions to intervene. The Commission received no filings in response to the notice.

### **Discussion**

8. Section 22 of the FPA provides in pertinent part:

That whenever the public interest requires or justifies the execution by the licensee of contracts for the sale and delivery of power for periods extending beyond the date of termination of the license, such contracts may be entered into upon the joint approval of the Commission and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made, ... and thereafter, in the event of failure to issue a new license to the original licensee at the termination of the license, the United States or the new licensee, as the case may be, shall assume and fulfill all such contracts.<sup>6</sup>

9. The legislative history of section 22, which is not extensive, indicates that the Commission is to use its sound discretion in approving contracts extending beyond the term of the license.<sup>7</sup> The Commission has previously approved applications under section 22 to accommodate situations where, in the absence of a power sales contract

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<sup>5</sup> AMP-Ohio asks that the Commission approve its request subject to a reservation of Commission authority to approve any extension beyond December 31, 2057, in any new license issued to AMP-Ohio following expiration of the current licenses. The Commission is empowered to approve any further extension, upon request, without a specific reservation of authority.

<sup>6</sup> 16 U.S.C. § 815 (2006). Section 14 of the FPA, 16 U.S.C. § 807 (2006), provides that the United States shall have the right upon or after the expiration of any license to take over a project, upon payment of the licensee's net investment therein.

<sup>7</sup> *See* the debate on H.R. 3184, which was introduced in the 66<sup>th</sup> Congress by Representative Esch and became the Federal Water Power Act of 1920. 58 Cong. Rec. 2240-41 (July 1, 1919).

extending beyond the license termination date, the licensee would be unable to sell the project power and thereby finance the project.<sup>8</sup>

10. AMP-Ohio states that the power sales contract will serve three purposes: accommodate a situation in which the licensee otherwise would be unable to sell the project power and thereby secure project financing; help ensure debt recovery and lock in long-term sales of power from the existing projects; and ensure the availability of funds for project maintenance and provide a long-term, reliable power supply to the licensee's customers. AMP-Ohio also states that the power sales contract will enhance its ability to maintain a high bond rating and obtain future bond financing for modernizing the three projects, covering relicensing costs, and other expenses.

11. In light of the above, we find it appropriate and in the public interest to approve AMP-Ohio's proposal to enter into a contract for the sale of power from the Smithland Project No. 6641, Willow Island Project No. 6902, and Cannelton Project No. 10228, for a period extending beyond the terms of the project licenses.

The Commission orders:

(A) American Municipal Power - Ohio, Inc.'s proposal to execute a contract with political subdivisions operating electric systems in Ohio, Michigan, Pennsylvania, Virginia, and West Virginia, for the sale of power from the Smithland Project No. 6641, Willow Island Project No. 6902, and Cannelton Project No. 10228, for a period terminating December 31, 2057, or until all revenue bonds issued to secure project financing are paid off and seventy-five percent of the participants recommend contract termination, is approved.

(B) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts, valuation, estimates or

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<sup>8</sup> See, e.g., *Brazos River Authority*, 124 FERC ¶ 61,251(2008); *Public Utility District No. 1 of Chelan County, Washington*, 124 FERC ¶ 61,250 (2008); *Public Utility District No. 1 of Pend Oreille County, Washington*, 87 FERC ¶ 61,095 (1999); *Public Utility District No. 1 of Douglas County, Washington*, 83 FERC ¶ 61,126 (1998); *Public Utility District No. 2 of Grant County, Washington*, 81 FERC ¶ 61,363 (1997); *Kings River Conservation District*, 9 FERC ¶ 61,340 (1979); *Sabine River Authority of Texas and Sabine River Authority, State of Louisiana*, 31 FPC 885 (1964), *reh'g denied*, 32 FPC 1288 (1964); and *Susquehanna Power Company and Philadelphia Electric Power Company*, 32 FPC 826 (1964). *But see Swift Creek Power Company, Inc.*, 61 FERC ¶ 61,227 (1992)(finding it not in the public interest to grant section 22 approval of a power sales contract for a 35-year period to facilitate project financing at a time when the license term was about to expire and the project site would soon be up for relicensing).

determinations of costs, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body.

By the Commission. Commissioner Kelliher is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.