

ORDINANCE NO. 09- 96 AC CMS

**AN ORDINANCE APPROVING THE FORM AND
AUTHORIZING THE EXECUTION OF POWER SALES CONTRACTS WITH
AMERICAN MUNICIPAL POWER, INC. AND TAKING OTHER ACTIONS IN
CONNECTION THEREWITH REGARDING MELDAHL AND GREENUP
HYDROELECTRIC PROJECT PARTICIPATION**

WHEREAS, the City of Oberlin, Ohio (“ Municipality”) owns and operates an electric utility system for the sale of electric power and associated energy for the benefit of its citizens and taxpayers; and

WHEREAS, in order to satisfy the electric power and energy requirements of its electric utility system, Municipality has heretofore purchased, or desires to purchase in the future, economical and reliable power and energy from, or arranged by, American Municipal Power, Inc. (“AMP”), of which Municipality is a member; and

WHEREAS, AMP is an Ohio nonprofit corporation, organized to own and operate facilities, or to provide otherwise for the generation, transmission or distribution of electric power and energy, or any combination thereof, and to furnish technical services on a cooperative, nonprofit basis for the mutual benefit of AMP members (“Members”), such Members, including Municipality, being, as of the date hereof, political subdivisions that operate municipal electric utility systems in Ohio, Kentucky, Michigan, Pennsylvania, Virginia and West Virginia; and

WHEREAS, Municipality, acting individually and through AMP with other political subdivisions of this and other states that own and operate electric utility systems, jointly, endeavors to arrange for reliable, reasonably priced supplies of electric power and energy for ultimate delivery to its customers; and

WHEREAS, it is efficient and economical to act jointly in such regard; and

WHEREAS, certain Members, including the Municipality (“Participants”), have determined they require additional, very long-term sources of reliable and environmentally sound base load electric power and energy at reasonable costs and have requested that AMP arrange for

the same by developing or otherwise acquiring interests in certain hydroelectric facilities located at locks and dams along the Ohio River; and

WHEREAS, in furtherance of this purpose, AMP and the City of Hamilton (“Hamilton”) have entered into agreements under the terms of which: (i) AMP is to own, finance and construct and Hamilton is to operate the Meldahl Hydroelectric Project, FERC License No. 12667 (“Meldahl Project”), projected to have a net rated electric generating capacity of one hundred five megawatts (105 MW); and (ii) AMP has agreed to purchase from Hamilton, contingent on the Meldahl Project being declared in Commercial Operation, a forty-eight and six-tenths percent (48.6%) undivided ownership interest in the currently operating Greenup Hydroelectric Project, FERC License No. 2614, with a net rated electric generating capacity of seventy and two-tenths megawatts (70.2 MW) (the “Greenup Project” and, collectively with the Meldahl Project, the “Hydroelectric Projects”); and

WHEREAS, because AMP’s acquisition of an ownership interest in the Greenup Project is contingent upon the Meldahl Project being declared in Commercial Operation, AMP has determined to make available the Hydroelectric Projects as a package such that each Participant will participate in both the Meldahl Project and Greenup Project, although the Participant will execute separate power sales contracts for each project (individually the “Greenup PSC” and “Meldahl PSC” and, collectively, “Project PSCs”); and

WHEREAS, Members now have the right, but not the obligation, by the enactment of this Ordinance: (i) to authorize and request AMP to own, finance, construct and provide for the operation of the Meldahl Project; (ii) to authorize and request AMP to purchase an undivided ownership interest in the Greenup Project from Hamilton and to own, finance and provide for the operation of the Greenup Project; and (iii) to execute the Project PSCs authorized below; and

WHEREAS, prior to the adoption of this Ordinance, AMP has; (i) informed the Municipality regarding the Meldahl developmental process and efforts undertaken by AMP to further its interests in the Hydroelectric Projects; (ii) provided the Municipality with a Feasibility Report regarding the Hydroelectric Projects; and (iii) afforded representatives of the Municipality the opportunity to ask such questions, review such data and reports, conduct such

inspections and otherwise perform such investigations with respect to, as applicable, the planning, engineering, acquisition, construction and operation of the Hydroelectric Projects and the terms and conditions of the Project PSCs authorized below as the Municipality deems necessary or appropriate in connection herewith; and

WHEREAS, after consideration of the potential risks and benefits of participating in Hydroelectric Projects and the respective Project PSCs authorized below, the Municipality has determined it is reasonable and in its best interests to proceed as authorized herein and hereby requests and authorizes AMP: (i) to own, finance, construct and provide for the operation of the Meldahl Project, on behalf of the Municipality and the other Participants in accordance with the Meldahl PSC authorized below and in conjunction with similar authorizations by other AMP Members, as Participants and; (ii) to purchase from Hamilton a 48.6% undivided ownership interest in the Greenup Project, the closing of such purchase being contingent upon the Meldahl Project's being declared in Commercial Operation, and to own such interest and finance such purchase and improvements to the Greenup Project on behalf of the Municipality and the other Participants in accordance with the Greenup PSC authorized below and in conjunction with similar authorizations by other AMP Members, as Participants.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, and State of Ohio, a majority of all members elected thereto concurring:

SECTION 1. That the Project PSCs between Municipality and AMP, substantially in the form on file with the Clerk, including Appendices thereto, are approved, and the City Manager of Municipality is hereby authorized to execute and deliver the Project PSCs, with such changes as the City Manager may approve as neither inconsistent with this Ordinance nor materially detrimental to the Municipality, his execution of the PSCs to be conclusive evidence of such approval.

SECTION 2. That the City Manager is hereby authorized to acquire on behalf of the Municipality, as a Participant, as defined in the Project PSCs, a right to, respectively, a Meldahl Project Share, as defined in the Meldahl PSC, and a Greenup Project Share, as defined in the

Greenup PSC, without bid, from AMP and to execute and deliver any and all documents necessary to become a Participant in the Hydroelectric Projects pursuant to the conditions set forth herein and in the respective Project PSCs and to carry out its obligations under each.

SECTION 3. That it is further acknowledged and understood that because the Participants will determine the precise number of Meldahl and Greenup Project Shares, expressed as percentages, totaling 100%, of all such Meldahl and Greenup Project Shares to be acquired by each Participant electing to enter into the Project PSCs, after all such Participants execute and deliver the Project PSCs, the City Manager, in connection with the execution and delivery of the Project PSCs, is authorized and directed to determine and acquire Municipality's Meldahl and Greenup Project Shares, of up to a combined total nominal amount of 1,000 kilowatts and expressed as a percentage of all such Shares and allocated approximately 60% to the Meldahl Project and 40% to the Greenup Project ("Total Combined Project Shares"), after consultation with AMP and the other Participants regarding the respective Project Shares available, credit concerns and other appropriate matters, such Project Shares to be set forth in Appendix A of the respective Project PSCs, such determination as to such Project Shares being conclusively evidenced by the adoption of Appendix A to the respective Project PSCs, as authorized therein.

SECTION 4. That in accordance with the acquisition of Municipality's respective Project Shares authorized in Section 3, Municipality's Total Combined Project Shares shall equal its Greenup Project Share, plus its Meldahl Project Share, with the Meldahl Project Share comprising approximately sixty percent (60%) of the Total Combined Project Shares and the Greenup Project Share comprising approximately forty percent (40%) of the Total Combined Project Shares authorized in Section 3.

SECTION 5. That the City Manager of this Municipality, as a part of such officer's official duties, is hereby appointed as Municipality's representative for any meetings or determinations of the Participants or the Participants Committee pursuant to the respective Project PSCs and is authorized and directed, acting for, in the name of and on behalf of this

Municipality, to vote Municipality's respective Project Share with regard to any determinations regarding the Hydroelectric Projects as set forth in the Project PSCs.

SECTION 6. That the City Manager may appoint, in writing from time to time as convenient or necessary, another appropriate representative of the Municipality as his or her alternate to carry out the duties set forth in Section 5 hereof.

SECTION 7. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in conformance with applicable open meetings laws and that all deliberations of this Council and of any committees that resulted in those formal actions were in compliance with all legal requirements including any applicable open meetings requirements.

SECTION 8. If any section, subsection, paragraph, clause or provision or any part thereof of this Ordinance shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Ordinance shall be unaffected by such adjudication and all the remaining provisions of this Ordinance shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

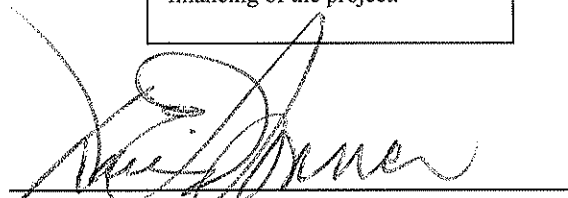
SECTION 9. That this Ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading – December 21, 2009(E)
2nd Reading –
3rd Reading –

... in order to take advantage of current favorable market conditions concerning the financing of the project.

ATTEST:


Belinda B. Anderson
CLERK OF COUNCIL


David E. Sonner
PRESIDENT OF COUNCIL

POSTED: 12/22/2009

EFFECTIVE DATE: 12/21/2009

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