

BEFORE THE WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

AMERICAN MUNICIPAL POWER, INC.

Appellant,

v.

Appeal No. 24-07-EQB

**JEREMY W. BANDY, DIRECTOR
DIVISION OF WATER AND WASTE MANAGEMENT,
WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Appellee.

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**Environmental Quality
Board**

MOTION FOR STAY

COMES NOW Appellant American Municipal Power, Inc. (“AMP” or “Appellant”) pursuant to W.Va. Code § 22B-1-7(d) and Rule 5.3 of the Board’s Procedural Rules, and hereby moves the Board for a stay of certain portions of NPDES Water Pollution Control Permit No. WV0116424 issued by Jeremy W. Bandy, Director of the Division of Water and Waste Management (“the Department”) on June 11, 2024, and made effective August 1, 2024 (“the Permit”). Specifically, Appellant seeks a stay of the numeric water quality-based effluent limitations for Total Recoverable Iron included in the Permit. In support of its Motion, Appellant states the following:

1. By this appeal, AMP is challenging the inclusion for the first time of numeric water quality-based effluent limitations for Total Recoverable Iron (“effluent limits”) in the NPDES Water Pollution Control Permit issued for its Willow Island Hydroelectric Facility located on the Ohio River near St. Mary’s (“the Facility”), which has been in operation since 2016.

2. As noted in the Notice of Appeal, the Permit permits AMP to operate and maintain a treatment and disposal system for the direct discharge of wastewaters from one outfall (Outlet 001) into the Ohio River. The wastewater is comprised almost entirely of Ohio River water that infiltrates the Facility's basement as a result of small, unavoidable leaks around the turbine wicket gates and weeps of river water through the Facility's concrete walls. The volume of flow through Outlet 001 is extremely low – approximately 1,500 gallons per day (gpd) – particularly in comparison to the extremely high flow rate of the Ohio River, into which it discharges.

3. The Ohio River is already impaired for Iron. Treating the Ohio River water that enters the Facility before it is discharged back into the Ohio River will have *no measurable impact* on the high concentrations of Iron in the Ohio River – especially given the extremely small flow volume from Outlet 001 compared to the extremely high flow volume (and Iron loads) of the Ohio River.

4. As explained in the Notice of Appeal, the Department included these effluent limits without regard to the fact that Iron is already present in the Ohio River water that enters the Facility, the water entering the Facility and subsequently passing through Outlet 001 does not come into contact with any source of Iron that could become dissolved or otherwise entrained in the infiltrating water, and that there is not any material source of Iron in the other, minor flows that contribute to Outlet 001. Nor did the Department consider that AMP's treatment of the water to comply with the effluent limits would have no discernable impact on the quality of the water downstream from the Facility. As a result, the Department's inclusion of these effluent limits in the Permit was arbitrary, capricious, and an abuse of discretion; was clearly wrong in view of the

entire record; and was affected by other error of law within the meaning of W.Va. Code § 29A-5-4(g) and should be removed.

5. In the absence of a stay, the effluent limits of the Permit will become effective on August 1, 2024. *See* NPDES Permit, p. 1.

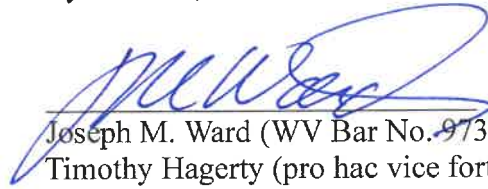
6. Should the effluent limits become effective before the Board has had an opportunity to consider and rule on AMP's appeal, AMP will be required to expend substantial resources that it would not otherwise have been required to devote to that purpose, while this Board may determine that such requirements should have not been imposed in the first instance. Specifically, AMP will be forced to incur extremely high costs to install treatment equipment that is not necessary to remove any pollutant contributed by the Facility and that will simply be treating Iron-laden water that enters the Facility from the Ohio River and is discharged right back to the Ohio River. The monitoring, reporting, analysis and treatment required to comply with the effluent limits would be expensive and burdensome to AMP. Therefore, should the Board rule in favor of AMP and grant its requested relief, AMP will have incurred these expenses and suffered these burdens without valid cause and without any means of recompense. This would constitute an "undue hardship" warranting the issuance of a stay of the effluent limits under W.Va. Code § 22B-1-7(d).

WHEREFORE the Appellant asks that the Board issue an Order that grants a stay of stay of the numeric water quality-based effluent limitations for Total Recoverable Iron included in NPDES Water Pollution Control Permit No. WV0116424, until such time as the Board issues a final order on this appeal.

Respectfully submitted,

AMERICAN MUNICIPAL POWER, INC.

By Counsel,



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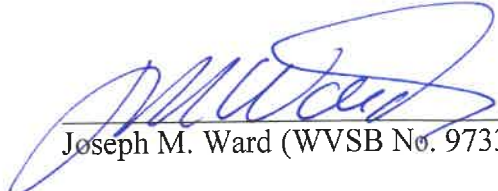
CERTIFICATE OF SERVICE

I, Joseph M. Ward, counsel for American Municipal Power, Inc., do hereby certify that the foregoing **Notice of Appeal, Objections to the Department's Actions, and Motion for Stay** have been served upon the following, this 12th day of July 2024, via email and first-class United States mail, postage pre-paid to the following:

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Joseph M. Ward (WVSB No. 9733)