

ORDINANCE NO. 85-46 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO  
A SUPPLEMENTAL AGREEMENT BETWEEN THE CITY OF OBERLIN  
AND AMERICAN MUNICIPAL POWER-OHIO, INC.

WHEREAS, the City of Oberlin, Ohio and American Municipal Power-Ohio, Inc., (AMP-Ohio) have entered into a "load management agreement" through which the parties intend to reduce the costs associated with the purchase and production of electrical energy, and,

WHEREAS, said "load management agreement" does not specifically determine and allocate the responsibility for discharging certain costs and expenses associated therewith, and

WHEREAS, the City of Oberlin, Ohio, and AMP-Ohio desire to specifically set forth said costs and expenses and allocate the responsibility for same,

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


SECTION 1. That the proposed Supplemental Agreement between the City of Oberlin and AMP-Ohio, a copy of which is attached hereto and incorporated herein by reference, is hereby approved and the City Manager is hereby authorized and directed to execute same on behalf of the City.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of the Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading - June 17, 1985  
2nd Reading - July 1, 1985  
3rd Reading - August 19, 1985 (Emergency)

ATTEST:

  
Clerk of Council

  
Chairman of Council

POSTED: August 20, 1985

SUPPLEMENTAL CITY - AMP-O AGREEMENT

This AGREEMENT, made, entered into and effective as of the 20th day of August, 1985, by and between the City of Oberlin Ohio [hereinafter called the "City"], a political subdivision existing under the Constitution and laws of the State of Ohio and American Municipal Power-Ohio, Inc., an Ohio corporation not for profit [hereinafter called "AMP-O"].

WITNESSETH:

WHEREAS, AMP-O is an Ohio corporation not for profit, organized to own and operate facilities, or to otherwise provide for the generation, transmission and/or distribution of electric power and energy and to furnish technical services on a cooperative, non-profit basis for the mutual benefit of its patrons, such patrons being, and to be, electric systems owned and operated by municipal corporations in the State of Ohio; and

WHEREAS, AMP-O and City entered into an agreement on the 1st day of February, 19 84, entitled "City - AMP-O Agreement" for the purpose of selling electric power and energy to the City; and,

WHEREAS, AMP-O has entered into a contract with Ohio Edison Company, effective as of October 1, 1983 and being effective through September 30, 1988, in order to coordinate and develop power supply and interchange arrangements and to purchase electric power and energy for resale to a group of municipalities collectively referred to as WCOE in said contract and herein; and,

WHEREAS, the City is a member of the group of municipalities collectively referred to as WCOE in the above referenced contract between AMP-O and Ohio Edison [hereinafter called the Wholesale Agreement]; and,

WHEREAS, the Wholesale Agreement between AMP-O and Ohio Edison looks to the monthly maximum coincident demand of the members of WCOE [hereinafter referred to as the WCOE Coincident Demand] for purposes of establishing demand charges; and,

WHEREAS, a reduction in the WCOE Coincident Demand can be achieved by employing the City of Oberlin's capability to generate electricity to serve its native load; and,

WHEREAS, AMP-O has entered into a contract with the City of Oberlin, [hereinafter referred to as the Load Management Agreement] also a member of WCOE, providing for the use of the City of Oberlin's capability to generate electricity to serve the City of Oberlin's native load in conjunction with AMP-O's purchase of power and energy for the benefit of WCOE to the extent said capability can be usefully

employed so as to reduce the cost of electric power and energy to the members of WCOE and, at the same time, provide benefits to the City of Oberlin; and,

WHEREAS, AMP-O will expend time, effort and money to effect a reduction in the WCOE Coincident Demand and thereby reduce the level of payments made by AMP-O to Ohio Edison under the Wholesale Agreement and by City To AMP-O under the City - AMP-O Agreement; and,

WHEREAS, the above referenced City - AMP-O Agreement does not specifically provide for the recovery of the cost associated with AMP-O's efforts to effect a reduction in the WCOE Coincident Demand and the level of such payments; and,

NOW THEREFORE, in consideration of the conditions, terms and covenants hereinafter contained, the parties hereto hereby mutually agree as follows.

#### ARTICLE I

##### TERMS

SECTION A - TERM: This Agreement shall be deemed effective as of August 20, 1985 and continue in effect until the above referenced Load Management Agreement between AMP-O and the City of Oberlin is terminated.

ARTICLE II  
COST RECOVERY AND BILLING

SECTION A - COST DEFINITION: It is understood and agreed that the cost subject to recovery from City under this Agreement shall include:

1. All costs incurred or payments made by AMP-0 pursuant to the Load Management Agreement;
2. The cost experienced by AMP-0, including any interest expense actually incurred, to operate, maintain and administer the contracts or the supervisory and data aquisition systems and to provide schedules and data to the City, Oberlin or WCOE as required or contemplated by the Load Management Agreement; and,
3. All costs of equipment, facilities or labor which are capitalized pursuant to the record keeping requirement specified in Article IV, Section A, of this Agreement.

The combined total of the cost identified in subparagraphs 1, 2 and 3 of this Article II, shall be referred to as the Project Cost.

SECTION B - RECOVERY OF NON-CAPITALIZED COSTS: It is understood and agreed that AMP-0 shall determine and bill to City each month an amount sufficient to pay for City's share of the costs defined in subparagraphs 1 and 2 of Section A of this Article II.

SECTION C - RECOVERY OF CAPITALIZED COSTS: It is understood and agreed that all costs which are capitalized pursuant to Article IV,

Section A, of this Agreement shall be recovered by including up to twenty five percent (25%) of said costs in the monthly total Project Cost subject to recovery from the members of WCOE pursuant to this Agreement provided that said inclusion of such capitalized costs shall not cause the Effective Regulation Demand Charge per kilowatt (identified on AMP-O's invoice to the City and defined below) to exceed the Effective Regulation Demand Charge (per kilowatt) which would have resulted if the activities contemplated in the Load Management Agreement had not taken place or if the Load Management Agreement had not been entered into. Said capitalized costs shall be included in such Project Cost, subject to the limitation noted herein, until such time as the total capitalized costs are recovered. It is understood that the capitalized costs incurred to initiate the activities contemplated by this Agreement and the Load Management Agreement as well as capitalized cost incurred by AMP-O in the future pursuant to the directions of the Executive Committee of WCOE shall be recovered from the members of WCOE and City pursuant to the procedure specified herein.

SECTION D - COST CLASSIFICATION AND DISTRIBUTION TO CITY: It is understood and agreed that the total monthly Project Cost defined herein shall be added to the total monthly charges (including any adjustments for losses, taxes and delivery voltage) for Regulation Capacity purchased under the Wholesale Agreement as such charges are determined pursuant to Article V of the City - AMP-O Agreement (which is incorporated herein by reference) to determine the total cost of Regulation Capacity subject to recovery from the members of WCOE. Said total cost shall be divided by the sum of the total Regulation

Demand, expressed in kilowatts as billed to AMP-0 under the Wholesale Agreement for the members of WCOE plus the Dispatched Capacity, adjusted for voltage and expressed in kilowatts, in order to determine the monthly Effective Regulation Demand Charge, expressed in kilowatts, which shall be employed by AMP-0 to invoice the members of WCOE in order to recover both the Project Cost, defined above, and the cost of Regulation Capacity purchased under said Wholesale Agreement. Said calculation maybe expressed as shown in Table 1.

Table 1

RC = Total cost of Regulation Capacity for WCOE

PC = Project Cost defined above

TC = Total of RC + PC

RD = Total Regulation Demand of WCOE (kW)

DC = Dispatched Capacity (kW) adjusted for voltage

ERDC = Effective Regulation Demand Charge

$$\frac{TC}{RD + DC} = ERDC$$

It is understood and agreed that the term "Dispatched Capacity" shall mean the monthly amount of Scheduled Capacity, which Oberlin actually provides during the monthly WCOE Coincident Peak as defined in Article I of the Load Management Agreement which is incorporated herein by reference.

It is understood and agreed that the Effective Regulation Demand Charge expressed on a per kilowatt basis and determined each month pursuant to the above stated calculation shall be applied to the City's Regulation Capacity, also expressed in kw and as defined in Article I of the above mentioned City - AMP-O Agreement, to determine the portion of cost subject to recovery each month from the City as its effective total monthly cost of Regulation Capacity.

It is understood and agreed that all cost subject to recovery pursuant to this Agreement shall be recovered from the City on the same terms and conditions specified in Article VI of the above mentioned City - AMP-O Agreement said Article being incorporated herein by reference.

SECTION E - DETERMINATION OF OBERLIN'S DEMAND AND ENERGY: For purposes of establishing the City of Oberlin's Monthly Maximum Coincident Demand, as said term is defined in the City - AMP-O Agreement, coincident with the WCOE Coincident Peak and in order to establish responsibility for the cost subject to recovery under this Agreement for each member of WCOE and City, it is understood and agreed that the City of Oberlin's demand coincident with the WCOE Coincident Peak shall be determined by adding the City of Oberlin's actual monthly metered demand at the time of the WCOE Coincident Demand to the monthly amount of Dispatched Capacity referenced above. It is further understood that the City of Oberlin's energy usage shall be based upon actual meter readings from the metering point currently employed to establish cost responsibility for energy purchased by the City of Oberlin from AMP-O.



ARTICLE III  
CHANGES IN CAPACITY REQUIREMENTS AND  
INFORMATION REGARDING CAPACITY REQUIREMENTS

SECTION A - CHANGES IN CAPACITY REQUIREMENTS: It is understood that AMP-O's ability to reduce or mitigate the power and energy costs of the members of WCOE is dependent, in great part, upon its ability to project the times when the members of WCOE will experience their coincident peaks during each month. Accordingly, City undertakes as an affirmative obligation, the duty to notify AMP-O of any condition or event which would operate to affect its capacity requirements or the shape of its monthly demand curve as expeditiously as is reasonably possible under the circumstances. Such notice shall be confirmed in writing pursuant to Article IV, Section D. It is specifically understood that City shall be required to advise AMP-O of any intent to engage in load management, load shedding or other load alteration practices and provide AMP-O with any information which AMP-O shall request regarding such intended practices.

SECTION B - INFORMATION REGARDING CAPACITY REQUIREMENTS: City hereby agrees to provide AMP-O with any available information regarding its power or energy requirements upon request and hereby consents to permit AMP-O to request any supplier of power or energy, such as Ohio Edison Company, to provide such information or install equipment reasonably required to gather power or energy related data. City shall, without charge, provide to AMP-O any space necessary to install or maintain such equipment.

#### ARTICLE IV

##### UTILIZATION OF FACILITIES OR EQUIPMENT

##### BY OTHER MUNICIPAL ELECTRIC SYSTEMS

SECTION A - UTILIZATION OF FACILITIES OR EQUIPMENT: It is understood and agreed that none of the equipment or facilities purchased or leased by AMP-0 to carry out the tasks contemplated by this Agreement or the Load Management Agreement shall be utilized for any other purpose or for the benefit of any political subdivision not a member of WCOE until such time as the WCOE Executive Committee has consented and an agreement to compensate the membership of WCOE for such use has been entered into. For purposes of complying with this Section, AMP-0 shall maintain records showing the total capitalized cost of any equipment, facilities or labor incurred to carry out such tasks.

#### ARTICLE V

##### GENERAL

SECTION A - EVENTS BEYOND CONTROL: No party shall be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of any cause beyond its reasonable control, including without limitation strikes and labor disputes. A party unable to fulfill any obligation by reason of any cause beyond its control shall use diligence to remove such disability with reasonable dispatch.

SECTION B - ARBITRATION: Except for non-payment of undisputed amounts, any controversy, claim, counterclaim, defense, dispute,

difference or misunderstanding arising out of or relating to this Agreement or breach thereof, shall be settled by arbitration before three arbitrators; one of whom shall be named by AMP-O, one of whom shall be named by City and the third of whom shall be named by the two arbitrators appointed by AMP-O and City, respectively, or the American Arbitration Association if they cannot agree. The arbitration shall be conducted in accordance with rules of the American Arbitration Association then in effect and judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. This provision shall survive the termination of this Agreement. The parties expressly agree that this provision shall constitute a condition precedent to the institution of any proceedings in any court relating to the subject matter thereof.

SECTION C - WAIVER: Any waiver at any time of any rights as to any default or other matter arising hereunder shall not be deemed a waiver as to any subsequent default or matter. Any delay, short of the statutory period of limitation, in asserting or enforcing any right hereunder shall not be deemed a waiver of such right.

SECTION D - NOTICES: It is understood and agreed that all notices, except initial notices required under Article III, Section A, given by the parties under this Agreement shall be made by Certified Mail. Notices to AMP-O shall be directed to American Municipal Power-Ohio, Inc., Attention: President, P. O. Box 549, Westerville, Ohio 43081. Notices given by AMP-Ohio to City shall be directed to: Director, Oberlin Municipal Light & Power, 289 S. Professor Street, Oberlin, Ohio 44074.

SECTION E - ASSIGNMENT: This Agreement shall not be assigned by either party without the written consent of the other, which consent

shall not be unreasonably withheld.

SECTION F - RECORDS: The parties hereto shall keep such records as may be needed to afford a clear history of all transactions under this Agreement. The originals of all such records shall be retained by the party keeping the records for a minimum of two (2) years plus the current year and copies shall be delivered to other parties of this Agreement upon request.

SECTION G - OPERATING PRACTICES: Each party shall have facilities or contractual arrangements adequate to perform under this Agreement and shall exercise reasonable care to design, construct, maintain and operate its facilities, in accordance with good utility operating practice.

SECTION H - EMPLOYEES: It is understood that City shall maintain all direction and control over its employees, representatives and agents and City shall conform to all applicable laws and regulations in the performance of its obligations under this Agreement and shall comply with all provisions of the worker compensation laws. The parties agree to indemnify, defend and save harmless the other from any loss, damage, claim, suit or liability arising in any way out of each party's performance of any obligations arising out of this Agreement.

SECTION I - APPLICABLE LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

SECTION J - MODIFICATIONS: It is understood by the parties hereto that changes or modifications in the Wholesale Agreement between AMP-0 and Ohio Edison and the Load Management Agreement between AMP-0 and the City of Oberlin may necessitate modifications or changes in this Agreement. In the event that such a modification in the above

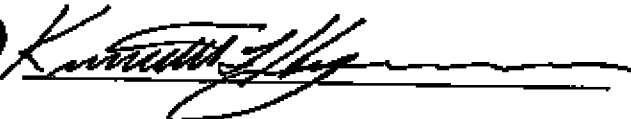
referenced Agreements occurs in the judgment of either party hereto, the City and AMP-O agree that the terms and conditions of this Agreement shall be subject to renegotiation and that both shall negotiate in good faith.

SECTION K - CITY - AMP-O AGREEMENT: Unless specifically modified herein, the City - AMP-O Agreement continues to be effective.

IN TESTIMONY WHEREOF, witness signature for AMP-O in the presence of the undersigned competent witnesses as of the day and date first above mentioned.

WITNESSES:

AMERICAN MUNICIPAL POWER-OHIO, INC.

  
Barbara C. Johnson

By   
Richard H. Gorsuch, President

IN TESTIMONY WHEREOF, witness signature of the City in the presence of the undersigned competent witnesses as of the day and date first above mentioned as authorized by Ordinance No. 85-46 enacted August 19, 1985 attached hereto and made a part hereof.

WITNESSES:

CITY OF Oberlin

Michele I. Streatow

Baren I. Smith

By

Dale S. Siegelman  
City Manager

APPROVED AS TO FORM

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