



## Legislation Text

---

**File #:** 1403-2010, **Version:** 1

---

**BACKGROUND:** This legislation authorizes the Director of Public Utilities to modify an existing Master Services Agreement (MSA) with American Municipal Power, Inc. (AMP) for purposes of partial participation in the energy efficiency program to be known as the Efficiency Smart Power Plant (ESPP), substantially in the form of the ESPP Schedule hereto attached and to take any action necessary for the City of Columbus to fulfill its obligation under the ESPP Schedule in an amount not to exceed \$1,249,500.00 plus interest if one of two deferral options is selected. The City's participation in the energy efficiency program will provide technical services on a cooperative basis that will benefit our electricity customers by reducing energy costs and mitigating any impact on rates.

Emergency action is requested in order to meet the critical mass date for critical mass participation requirements.

**FISCAL IMPACT:** There is no impact on the 2010 Electricity Operating Budget as there will be no funds appropriated or expended in 2010. The costs to begin in 2011 have been incorporated into purchase power costs estimates in the 2011 budget.

AMP is a non-profit organization and their Contract Compliance Number is 310943223, expires 12/15/2011.

The company is not debarred according to the Excluded Party Listing System of the Federal Government or prohibited from being awarded a contract according to the Auditor of State Unresolved Findings for Recovery Certified Search.

To authorize the Director of Public Utilities to modify the existing Master Services Agreement with American Municipal Power, Inc. for the purposes of partial participation in the Efficiency Smart Power Plant (ESPP) and to take any action necessary for the City of Columbus to fulfill its obligation under the ESPP Schedule and to declare an emergency .

WHEREAS, the City of Columbus, Ohio ("Columbus") 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, American Municipal Power, Inc. ("AMP") and formerly known as AMP-Ohio) 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 Columbus, 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, AMP and Columbus have entered into a Master Services Agreement ("MSA"), AMP Contract No. C-11-2005-4408, pursuant to which AMP provides certain services to Columbus as set forth in various schedules to the Master Services Agreement (the "Schedules"); and

WHEREAS, AMP and Columbus entered into a Power Sales Contract, dated as of January 1, 1988, relating to the Richard H. Gorsuch Generation Station Project ("Gorsuch Project") under which Columbus has been receiving a share of the power and energy from the Gorsuch Project and has paid for its share of the costs thereof; and

WHEREAS, on April 1, 2009 AMP was served with a Notice of Violation ("NOV") from the U.S. EPA alleging AMP and the previous owner of the Gorsuch Project had violated the Clean Air Act by performing certain work performed at the Gorsuch Project in 1981 - 1986 (before AMP had an interest in the Gorsuch Project) and again in 1988 - 1991 should have triggered "New Source Review"; and

WHEREAS, similar NOV's were issued to nearly all regional utilities with coal fired generation in the past; and

WHEREAS, with the approval of the Gorsuch Project participating municipalities' representatives and its Board, AMP has entered into a "Consent Decree" with the U.S. EPA which has been filed with the U.S. District Court for the Southern District of Ohio; and

WHEREAS, the Consent Decree requires, among other things, AMP to implement an energy efficiency program that encompasses the participating Gorsuch Project municipalities as well as other participating non-Gorsuch AMP members that will cost not less than \$15 Million and which is expected to provide approximately twice that amount in power and energy cost savings; and

WHEREAS, AMP and the Vermont Energy Investment Corporation ("VEIC") have negotiated a relationship regarding the implementation of an energy efficiency program for AMP to be known as the Efficiency Smart Power Plant ("ESPP"); and

WHEREAS, in furtherance thereof AMP and VEIC entered into an ESPP agreement ("ESPP Agreement") for AMP to pay VEIC to provide a comprehensive set of energy efficiency services ("ESPP Services") designed to comply with the Consent Decree and lower the total need for higher cost electric generation facilities and/or purchased power and thereby reduce Columbus's customers' bills (the "ESPP Services"), to be offered to Gorsuch participants as well as other AMP members contingent upon the attainment of specific subscription levels of AMP member municipalities referred to in the ESPP Agreement as "Critical Mass Participation"; and

WHEREAS, AMP has provided Columbus with copies of the Consent Decree and ESPP Agreement; and

WHEREAS, AMP and Columbus desire to enter into a Schedule ("ESPP Schedule"), under the MSA, which provides that AMP will obtain and sell to Columbus, and Columbus will agree to take and pay for, a share of the ESPP Services which AMP has contracted to acquire in the ESPP Agreement; and,

WHEREAS, as set forth in the ESPP Schedule, AMP's sale, and Columbus's purchase, of the ESPP Services is contingent on achieving Critical Mass Participation by the Critical Mass Date (as defined in the ESPP Agreement); and

WHEREAS, Columbus has the option to defer payments under the ESPP Schedule to better match the expenditures with the energy and cost savings thereunder; and

WHEREAS, an emergency exists in the usual daily operation of the Department of Public Utilities, Division of Power and Water, in that it is necessary to modify contracts with American Municipal Power, Inc. for the partial participation in the energy efficiency program to be known as ESPP for the immediate preservation of the public health, peace, property, safety and welfare; now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS, OHIO:**

SECTION 1. That the ESPP Schedule between Columbus and AMP, substantially in the form attached hereto or on file with the Clerk, including Appendices thereto, are approved, and the Director of the Department of Public Utilities (the "Director") is hereby authorized to execute and deliver the ESPP Schedule, with such changes as the Director may approve as neither inconsistent with this Ordinance nor materially detrimental to Columbus, her execution of the ESPP Schedule to be conclusive evidence of such approval.

SECTION 2. That the Director is hereby authorized to take any action necessary for Columbus to fulfill its obligations under the ESPP Schedule in an amount not to exceed \$1,249,500.00 plus interest if one of two deferral options is selected and to be a Partial Participant and, in order to provide the greatest cost savings to Columbus's electric consumers and to mitigate any impact on rates the Director is authorized to elect for Columbus to defer payments as set forth in the ESPP Schedule.

SECTION 3. That it is 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 4. 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 5. That for the reasons stated in the preamble hereto, which is hereby made a part hereof, this ordinance is declared to be an emergency measure and shall take effect and be in force from and after its passage and approval by the Mayor, or ten days after

passage if the Mayor neither approves nor vetoes the same.