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October 31, 2016

EPA Docket Center (EPA/DC)  
U.S. Environmental Protection Agency  
Mail Code: 28221T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OAR-2016-0033

Re: Clean Energy Incentive Program ("CEIP") Design Details  
81 Fed. Reg. 42940 (June 30, 2016)

Dear Administrator McCarthy and Staff:

In response to the above-referenced docket, American Municipal Power, Inc. ("AMP") and the Ohio Municipal Electric Association ("OMEA") respectfully submit the following comments for the record.

#### I. Background on AMP/OMEA.

AMP is a non-profit wholesale power supplier and service provider for 135 members, including 134-member municipal electric systems in the states of Ohio, Pennsylvania, Michigan, Virginia, Kentucky, West Virginia, Indiana, and Maryland. It also represents the Delaware Municipal Electric Corporation, a joint action agency with nine members headquartered in Smyrna, Delaware. Combined, these member utilities serve more than 650,000 customers. AMP's core mission is to be public power's leader in wholesale energy supply and value-added member services. It offers member municipal electric systems the benefits of scale and expertise in providing and managing energy services.

The OMEA was formed in 1962 and represents the state and federal legislative interests of AMP and 80 Ohio municipal electric systems. The OMEA is closely aligned with AMP and shares AMP's concerns and comments outlined herein.

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**MARYLAND** • BERLIN **MICHIGAN** • CLINTON • COLDWATER • HILLSDALE • MARSHALL • UNION CITY • WYANDOTTE **OHIO** • AMHERST • ARCADIA • ARCANUM • BEACH CITY  
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AMP's diverse energy portfolio makes the organization a progressive leader in deploying renewable and advanced power assets that include a variety of base load, intermediate, and distributed peaking generation using hydropower, wind, landfill gas, solar, and fossil fuels, as well as a robust energy efficiency program. In recent years, AMP has undertaken a strategic generation asset development effort with new resources in four states. On average, these projects will reduce our members' energy market exposure to about 36 percent of their portfolio and will result in a portfolio that is more than 20 percent renewable in the next year. Our fossil fuel assets today consist of a 368 MW ownership share of the 1,600 MW coal-fired Prairie State Generating Co. (PSGC) located in Lively Grove, Illinois, as well as the 707 MW (fired) natural gas combined cycle (NGCC) AMP Fremont Energy Center (AFEC) in Fremont, Ohio. AMP assets also include nine natural gas and 51 diesel peaking units and 22 emergency generation units located throughout Ohio communities. Our renewable resources include more than 400 MW of hydropower between new and existing assets, as well as wind, solar and landfill gas. AMP also has partnered with the Vermont Energy Investment Corporation to run Efficiency Smart, a robust energy efficiency program available to our members that has resulted in more than 180,000 MWh of savings since 2011.

Because of AMP's structure as a non-profit wholesale power provider, it closely follows regulatory initiatives that may impact the costs and reliability of our members' energy and capacity supply. Ultimately, the policies that impact our members directly impact their residential, commercial, and industrial customers. To that end, AMP's comments on the design elements of the CEIP are predicated on the predicted impacts of the program on AMP and AMP member generation assets, energy efficiency programs, and power supply through wholesale market purchases.

AMP is a member of several national and regional trade organizations with an interest in the Clean Power Plan ("CPP") and the CEIP. AMP incorporates by reference the comments on the CEIP Design Details filed by the American Public Power Association ("APPA") and the National Hydropower Association ("NHA").

## **II. AMP's Comments on the Proposed CEIP Design Details.**

### **a. Inclusion of Hydropower within CEIP Eligible Renewable Energy Projects.**

Proposal: The final CPP limited renewable energy projects eligible for CEIP participation to solar and wind resources. EPA proposes in the CEIP design details that eligible CEIP renewable energy projects also include hydropower (as well as geothermal) resources.<sup>1</sup>

Comment: AMP appreciates the opportunity to comment on the inclusion of hydropower as a qualifying resource in the proposed CEIP and AMP is encouraged that EPA's proposed CEIP reflect AMP's proposed Clean Power Plan comments explaining that all

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<sup>1</sup> 81 Fed. Reg. at 42,963. See proposed 40 C.F.R. 60.5737(d)(4); 62.16245(c)(2)(i)(D); and 62.16435(d)(2)(i)(D).

renewable technologies should be "...treated equally and given the same opportunities to reduce carbon emissions and participate in incentive programs such as the CEIP". As EPA emphasized in the proposal, hydropower is truly a zero-emitting renewable technology that meets the criteria and intent of CEIP eligibility. The Department of Energy's ("DOE") recently published Hydropower Vision Report recognizes and reinforces hydropower's advantages relative to other alternative energy options and its alignment with EPA goals: "*Hydropower has provided clean, affordable, reliable, and renewable electricity in the United States and supported development of the U.S. Power grid and the nation's industrial growth for more than a century.*"<sup>2</sup> Hydropower plants are a proven renewable resource, with zero air emissions (including greenhouse gas emissions), and they maintain an operational lifespan of 70 - 100 years, which is far longer than other low-emitting energy resources. Hydroelectric facilities are renowned for predictable performance capacity factors over the life of the resource, and they are a reliable source of power with minimal capacity degradation over the life of the resource, especially when compared to other renewable energy sources. Hydroelectric power is an ideal energy resource to incentivize in the CEIP and beyond. Recognizing that hydropower is a growing component of AMP's energy portfolio, we strongly support EPA's proposal to include hydropower resources as eligible CEIP renewable energy projects. AMP hopes to contribute both its hydropower resources under development and any new projects to help achieve the emissions reduction targets mandated by the CPP through the CEIP.

**b. Inclusion of Solar Resources within CEIP Eligible Low-Income Community Projects.**

Proposal: The final CPP only included demand-side energy efficiency projects as potential CEIP eligible low-income community projects. EPA now proposes expanding the scope of low-income community projects eligible for CEIP credits to encompass renewable energy projects. And specifically, EPA has proposed solar resources as potential renewable energy projects eligible for CEIP as low-income community projects.<sup>3</sup>

EPA stated that it imagined roof-top solar and community-owned solar projects as qualifying projects, but it solicited comment on other types of solar technologies and programs that could be eligible for low-income community projects. The agency indicated that its intent with this proposed action was to extend the scope of low-income community projects to projects that provide direct electricity bill benefits to low-income ratepayers.<sup>4</sup>

Comment: As a multistate public power agency, AMP has a membership base comprised completely of political subdivisions that own and/or operate municipal electric utility systems. AMP's primary purpose is to assist its member communities, and their customers, in meeting electric and energy needs in a reliable and economic fashion. This

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<sup>2</sup> DOE, "Hydropower Vision: A New Chapter for America's 1st Renewable Electricity Source," July 26, 2016, p. 33.

<sup>3</sup> 81 Fed. Reg. at 42,965 - 42,967; see proposed 40 C.F.R. 60.5737(e)(8); 62.16245(c)(2)(ii)(H); and 62.16345(d)(2)(ii)(H).

<sup>4</sup> 81 Fed. Reg. at 42,966 - 42,967.

purpose is served in a number of ways, including through the financing and ownership of electric generating facilities, and through power supply and transmission arrangements that AMP makes with third parties at the request of, and on behalf of, its members. AMP's flexible approach to project development and financing provides the framework for communities to mitigate barriers to renewable development including the high up-front capital expense of development and long-term financing hurdles.

As an example, in 2015, AMP initiated feasibility and due diligence studies for behind-the-meter solar projects across the AMP footprint and plans to subscribe 80 MW or more for construction in a number of member communities. Since the projects are designed as behind-the-meter generation, participating members will benefit from avoided transmission and capacity costs in addition to the peak energy solar resources provide. In early 2016, AMP executed a power purchase agreement with DG AMP Solar, LLC, a wholly owned subsidiary of NextEra Energy Resources, as the project developer, owner and operator.

AMP and AMP members work diligently to establish generation and delivery of affordable power to customers, including many who qualify as low-income. These efforts are focused on minimizing risk to rate-payers and providing electricity bill savings to residents. AMP therefore supports EPA's proposal, and encourages an expansion of eligibility under the low-income community projects description eligible for the two-to-one credit to further incentivize the important role that municipalities play in financing, developing, and operating renewable energy projects.

### **c. Defining "Low-Income Communities."**

Proposal: EPA solicits input in how "low-income community" should be defined. The agency recognizes that current federal, state, and municipal definitions may be presumptively approvable and that states can expand the definition at their discretion. EPA also recognizes that the term "community" can be defined both geographically and as a group who "experiences common conditions of environmental exposure or effect."<sup>5</sup>

Comment: As explained above, AMP is composed of member municipalities that each have an inherent interest in providing reliable, low-cost energy. AMP's membership encompasses diverse communities that are considered rural and urban, high density and low density, and many share the "common conditions of environmental exposure or effect." Many AMP members manage energy efficiency, energy management services and/or energy focused programs for their customers. AMP notes that the various programs administered by local utilities are each uniquely designed to assist their customers with needed assistance and, when applicable, they use established federal or state guidelines for defining "low income". As an example the "very low", "low" and "moderate" definitions as defined by the U.S. Department of Housing and Urban Development are commonly used and should be recognized in the CEIP as "low income". To summarize, AMP fully supports EPA's proposal

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<sup>5</sup> See 81 Fed. Reg. at 42,960 – 42,962; proposed 40 C.F.R. 60.5737(b)(8).

to accept existing definitions of “low-income communities” administered by federal, state, and local governments as presumptively approvable.

**d. Retirement of Unused Matching Allowances and ERCs.**

Proposal: The CEIP as proposed would retire the matching allowances or ERCs of states that decline to participate in the CEIP or that fail to have an approved CEIP plan. Accordingly, the proposed CEIP lacks provisions that would allow for reappportioning matching allowances and ERCs among the states that successfully participate in the CEIP. EPA solicited comment on this portion of the proposal and whether reappportionment provisions should be included.<sup>6</sup>

Comment: For several reasons, AMP disagrees with EPA’s proposal to retire the matching allowances or ERCs of states that decline to participate in the CEIP or that fail to have an approved CEIP plan. Matching allowances and ERCs from non-CEIP-participating states should be reappportioned among the states actively participating in the CEIP.

First, AMP is concerned about a deficiency of credits available under the CEIP as it is currently designed. States actively participating in the CEIP may have an excess of qualifying projects relative to the available matching allowances or ERCs to which they are assigned. Reappportioning unused matching allowances or ERCs would demonstrate EPA’s commitment to the program and encourage efforts beyond the narrow allotment provided initially. AMP anticipates strong demand for both the renewable and low-income aspects of the program among its membership.

Second, allowing matching allowances or ERCs to be reappportioned would incentivize participation by states and low-emitting energy resources in the CEIP, thereby spurring greater renewable energy development and improving market competition. States that decide to implement this program and communicate their commitment to implementing the program will gain a competitive advantage through potential acquisition of reappportioned allowances or ERCs.

Third, EPA’s arguments for not supporting reappportionment--that reappportionment would create perverse incentives and raise administrative challenges--are not tenable. AMP suggests that EPA adopt provisions that ensure states actively participate in awarding matching allowances or ERCs after they opt-in to the CEIP. This will eliminate the likelihood that a state will opt in to the CEIP but stockpile matching allowances or ERCs. In addition, AMP believes that EPA’s concerns about administrative challenges are overstated. The only “element of uncertainty” associated with unused CEIP credits are for states that have unapproved CEIP plans. EPA can address this with timely and constructive feedback to states on potential deficiencies in submitted CEIP plans.

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<sup>6</sup> 81 Fed. Reg. at 42,955 – 42,956.

Accordingly, AMP strongly recommends that EPA reconsider its proposal on this issue and adopt CEIP provisions that would allow the reapportionment of unissued allowances or ERCs. As EPA suggested in the preamble, reapportionment should be prioritized among the states according to the reduction obligations of each participating state.

**e. Inclusion of CEIP Eligible Projects that Benefit CEIP States.**

Proposal: EPA consistently proposes that eligible CEIP renewable energy and low-income community projects are those that are either “located in a state participating in the CEIP” or that “benefit a state” participating in the CEIP. Accordingly, a project located outside of a CEIP-participate state could still receive allowances or ERCs if it benefits a state that is participating in the CEIP.<sup>7</sup>

Comment: AMP agrees with EPA’s recognition that eligible CEIP renewable energy projects can have multiple beneficiaries in multiple states. The CEIP, as proposed, recognizes this fact and EPA has made clear that it intends to allow beneficiaries in one state to earn CEIP credit regardless of the project location. However, incorporating multistate projects with the CEIP’s current structure is extremely complicated. For example, how are CEIP eligible resources with beneficiaries in multiple states drawing credits or allowances from multiple state pools? If a recipient of out of state CEIP project energy resides in a state whose CEIP budget is exhausted, can the recipient allow the project to claim CEIP credit in the state where it is located, or must the CEIP value be lost to the beneficiary in the state with the exhausted credit pool? How is conflicting eligibility criteria handled across multiple eligible states? To help address these ambiguities, AMP strongly recommends that the CEIP allow maximum flexibility in these situations and program design so the CEIP does not operate as a disincentive for clean energy projects.

**f. CEIP Timing.**

Proposal: The agency has made several proposals regarding the timing of the CEIP. First, EPA recognized that the timing elements of the CEIP may need to be adjusted as the CPP legal challenge works its way through the courts. Second, EPA established the start date for project eligibility as September 6, 2018, for demand-side energy efficiency projects implemented in low-income communities. Third, EPA proposed a start date of January 1, 2010 for eligible renewable energy projects.<sup>8</sup>

Comment: AMP supports EPA’s recognition that the timeframes imposed by the CEIP will likely need to be adjusted depending on the timing of the litigation. There is tremendous uncertainty among the regulated community concerning the legal validity of the CPP, and therefore the CEIP. Currently, presumptively qualifying projects now need to assess whether to delay or initiate a project without knowing if they will qualify for

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<sup>7</sup> See discussion at 81 Fed. Reg. at 42,968 and 42,953; see, e.g., proposed 40 C.F.R. 60.5737(d)(2)(i)-(ii) and 60.5737(e)(2)(i)-(ii).

<sup>8</sup> 81 Fed. Reg. at 42964.

allowances or ERCs. This has resulted in EPA inadvertently dis-incentivizing renewable energy and energy efficiency projects until clarity is restored. AMP understands, encourages and fully expects that these dates will be adjusted. However, a broader timeframe than two years, or EPA recognition of projects that meet the original timeframe, would nullify this uncertainty.

**g. Production Tax Credit (PTC) consideration.**

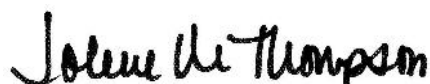
Proposal: The agency has requested comments on whether the existence of PTCs during the CEIP eligibility period create a double incentive for specific types of renewable development.

Comment: AMP appreciates EPA's recognition that the PTC potentially creates a stacked incentive for eligible developers and questions the fairness of this unintended consequence. As non-profit entities, AMP and AMP members are not eligible for the PTC. Therefore, if EPA intends to incorporate the relative value of the PTC as it distributes CEIP credits, AMP respectfully requests that CEIP credits earned by not-for-profit entities are not discounted or devalued in any way.

**III. Conclusion**

While by no means exhaustive, the comments provided represent issues of most concern to AMP/OMEA regarding the CEIP. We thank EPA for the opportunity to comment on this proposal which is very important to AMP and its members. If you need any additional information, please do not hesitate to contact us.

Respectfully submitted,



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