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December 15, 2016

Attn: Docket ID No. EPA-HQ-OAR-2015-0355

Re: Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for GHG Emissions Under the PSD Program

81 Fed. Reg. 68,110 (October 3, 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.

AMP's diverse energy portfolio makes the organization a progressive leader in deploying renewable and advanced power assets that include a variety of baseload, 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

**DELAWARE** DELAWARE MUNICIPAL ELECTRIC CORPORATION **INDIANA** CANNELTON **KENTUCKY** BENHAM • BERA • PADUCAH • PARIS • PRINCETON • WILLIAMSTOWN  
**MARYLAND** BERLIN **MICHIGAN** CLINTON • COLDWATER • HILLSDALE • MARSHALL • UNION CITY • WYANDOTTE **OHIO** AMHERST • ARCADIA • ARCANUM • BEACH CITY • BLANCHESTER  
BLOOMDALE • BOWLING GREEN • BRADNER • BREWSTER • BRYAN • CAREY • CELINA • CLEVELAND • CLYDE • COLUMBIANA • COLUMBUS • CUSTAR • CUYAHOGA FALLS • CYGNET • DELTA DESHLER  
• DOVER • EDGERTON • ELDORADO • ELMORE • GALION • GENOA • GEORGETOWN • GLOUSTER • GRAFTON • GREENWICH • HAMILTON • HASKINS • HOLIDAY CITY • HUBBARD • HUDSON • HURON  
• JACKSON • JACKSON CENTER • LAKEVIEW • LEBANON • LODI • LUCAS • MARSHALLVILLE • MENDON • MILAN • MINSTER • MONROEVILLE • MONTPELIER • NAPOLEON • NEW BREMEN • NEW  
KNOXVILLE • NEWTON FALLS • NILES • OAK HARBOR • OBERLIN • OHIO CITY • ORRVILLE • PAINESVILLE • PEMBERVILLE • PIONEER • PIQUA • PLYMOUTH • PROSPECT REPUBLIC • SEVILLE • SHELBY  
• SHILOH • SOUTH VIENNA • ST. CLAIRSVILLE • ST. MARYS • SYCAMORE • TIPP CITY • TOLEDO • TONTOGANY • VERSAILLES • WADSWORTH • WAPAKONETA WAYNESFIELD • WELLINGTON •  
WESTERVILLE • WHARTON • WOODSFIELD • WOODVILLE • YELLOW SPRINGS **PENNSYLVANIA** BERLIN • BLAKELY • CATAWISSA • DUNCANNON EAST CONEMAUGH • ELLWOOD CITY  
• EPHRATA • GIRARD • GOLDSBORO • GROVE CITY • HATFIELD • HOOVERSVILLE • KUTZTOWN • LANSDALE • LEHIGHTON • LEWISBERRY • MIFFLINBURG • NEW WILMINGTON • PERKASIE •  
QUAKERTOWN • ROYALTON • SAINT CLAIR • SCHUYLKILL HAVEN • SMETHPORT • SUMMERHILL • WAMPUM • WATSONTOWN • WEATHERLY • ZELIENOPLE **VIRGINIA** BEDFORD •  
DANVILLE • FRONT ROYAL • MARTINSVILLE • RICHLANDS **WEST VIRGINIA** NEW MARTINSVILLE • PHILIPPI

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 existing and new assets, as well as wind, solar and landfill gas. AMP also has partnered with the Vermont Energy Investment Corporation (VEIC) to run Efficiency Smart, an energy efficiency program available to our members that has resulted in more than 150,000 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 revisions to the PSD and Title V permitting regulations are predicated on the predicted impacts of the revisions to AMP and AMP member assets, energy efficiency programs and power supply. AMP is also a member of several national and regional trade organizations with an interest in the proposed rulemaking.

## II. AMP's Comments on the Revisions to the PSD and Title V GHG Permitting Regulations and Establishment of a SER for GHG Emissions Under the PSD Program.

### a. SER for GHGs at 75,000 tpy CO<sub>2</sub>e.

Proposal: GHG emissions can trigger a Best Available Control Technology (BACT) review when the source of GHGs has been classified as a major stationary source or a major modification for another, traditionally regulated NSR pollutant (sources known as "anyway sources"). The Supreme Court in *Utility Air Regulatory Group v. Environmental Protection Agency* upheld EPA's authority to limit such BACT reviews to situations where a source has the potential to emit "more than a de minimis amount" of GHGs.<sup>1</sup> Here, EPA has identified this *de minimis* threshold below which a GHG BACT review is not necessary, or Significant Emissions Rate, at 75,000 tons per year (tpy) CO<sub>2</sub>e.<sup>2</sup>

While EPA stated in the proposal that it was not considering a GHG SER greater than 75,000 tpy CO<sub>2</sub>e,<sup>3</sup> it did solicit comment "on the extent to which our proposed GHG SER level of 75,000 tpy CO<sub>2</sub>e reflects a level below which the burdens of applying the BACT requirement to GHGs would "yield a gain of trivial or no value" and thus would be a "pointless expenditure of effort" when applied to all of the affected units and sources."<sup>4</sup>

Comment: AMP believe that a GHG SER of 75,000 tpy CO<sub>2</sub>e is far too low and that the agency should reconsider its position on this issue.

In the proposed rule, EPA relies upon the D.C. Circuit's decision in *Alabama Power v. Costle*, for the proposition that assessing *de minimis* thresholds in PSD requires determining when emissions reductions would result in a "gain of trivial value" and a "pointless expenditure of effort."<sup>5</sup> For criteria pollutants, EPA has previously developed an SER based on ambient air impacts (typically between 2 to 4% of the primary NAAQS). But for non-criteria pollutants subject to PSD, EPA has developed an SER based on the percent of emission rates embodied in existing applicable federal rules. Specifically, "the *de minimis* emissions rates were generally based on 20 percent of the NSPS or 10 percent of the NESHAP that imposed limits on their emissions."<sup>6</sup>

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<sup>1</sup> 134 S.Ct. 2427, 2449 (2014).

<sup>2</sup> 81 Fed. Reg. at 68,120 – 68,124.

<sup>3</sup> *Id.* at 68,113.

<sup>4</sup> *Id.* at 68,137 – 68,138.

<sup>5</sup> *Id.* at 68,120 (quoting *Alabama Power Co.*, 636 F.2d 323, 360–61 (D.C. Cir. 1979)).

<sup>6</sup> *Id.* at 68,122 – 68,123.

New electric generating units (EGUs) are subject to an NSPS, and as EPA noted in the proposal, applying a 20% threshold leads to a *de minimis* value for new EGUs at roughly 320,000 tpy CO<sub>2</sub>e (when applied to a traditional 600 MW natural gas combined cycle electricity generating plant).<sup>7</sup> However, EPA seems to discard this emissions threshold simply because it is higher than the current interim GHG BACT applicability level of 75,000 tons CO<sub>2</sub>e. EPA explains that the justification for using 75,000 tpy CO<sub>2</sub>e rather than 320,000 tpy CO<sub>2</sub>e is that EPA has observed “meaningful GHG reductions,” some of which would not have been recognized if the threshold was higher than 75,000 tpy CO<sub>2</sub>e.<sup>8</sup> AMP respectfully disagrees with this conclusion and its justification, for several reasons.

First, this justification contradicts other portions of the proposal where EPA explains that “meaningful GHG reductions” is not the rubric by which the *de minimis* level should be established. Rather, EPA is expected to consider the administrative and implementation burdens, and the gains achieved from regulating the activities below a certain level as a “trivial” or a “pointless expenditure of effort,” as required by the *Alabama Power* decision.<sup>9</sup> EPA provides no real explanation for establishing a *de minimis* level at 75,000 tpy CO<sub>2</sub>e beyond saying that “some” reductions may not have been recognized if the *de minimis* threshold were higher.<sup>10</sup>

Second, as owners of generation facilities, AMP and our member communities will be directly impacted by establishment of a SER for GHG “anyway sources” under the PSD program. The burden placed on AMP, AMP members and other generation facilities should not be disproportionately heavy compared to the SER’s emission reduction gains. AMP encourages EPA to reexamine the gains, and administrative and implementation burdens shouldered by permittees who exceed the proposed *de minimis* threshold, and establish an SER consistent with existing precedent for NSPS or NESHAP non-criteria source categories, rather than the proposed *de minimis* threshold resulting in gains “of trivial value.”

#### **b. GHG BACT review cost.**

Proposal: EPA estimates the cost of GHG BACT review and incorporation of this analysis into a PSD application to be \$24,000 for an individual source, considering “the permitting application, supporting analyses and various other aspects of the review and submission of the permit application as it pertains to GHGs.”<sup>11</sup>

Comment: AMP believe that EPA has greatly underestimated the cost of a GHG BACT review. The \$24,000 estimate does not comport with the required unit-specific engineering study and PSD permit application modification process described in the proposal. AMP believes this engineering study would, at the very least, need to include: inventory of energy consuming components including all pumps and fans; rated and recognized capacities of each piece of equipment; operational conditions; a comparison of each component with market available replacements; current and future dispatch of the power plant and units as baseload, load following or peaking; condition of components; life expectancy of components; duct assessment for leaks or air infiltration; associated physical changes necessary to accommodate any equipment replacements including ductwork, support structures, maintenance schedules; water and/or cooling adjustments; flue gas changes that impact control equipment including temperature, volumetric flow rate, etc. In addition, NSR impacts would need to be assessed due to the potential for debottlenecking because of modified operational characteristics and non-like kind replacements.

AMP estimate this type of assessment could not be conducted for less than \$100,000, and that the \$24,000 EPA estimate may be an appropriate cost estimate for the work associated with the additional GHG aspects of an existing application only. Given that a more realistic cost estimate for

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<sup>7</sup> *Id.* at 68,123.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 68,120 – 68,121.

<sup>10</sup> *Id.* at 68,123.

<sup>11</sup> *Id.* at 68,136.

GHG BACT review and incorporation into a PSD application exceeds \$124,000, the costs of a *de minimis* threshold of 75,000 tpy CO<sub>2</sub>e are significant compared to the trivial benefits. Thus, AMP recommends that EPA reassess its cost estimates prior to finalizing a SER so it can obtain a more realistic understanding of the expectations embedded in the proposal.

**c. The role of energy efficiency measures in GHG BACT analyses.**

Proposal: EPA concludes that energy efficiency (EE) measures will be the most common BACT strategy for “anyway source” PSD projects, due to a lack of alternative control technologies.<sup>12</sup> However, the agency does not delineate limitations on the required GHG BACT EE analysis.

Comment: Traditional BACT reviews assess available bolt-on control technology by evaluating emissions reduction control efficiency, site feasibility and cost through a top-down analysis to select an appropriate control method. In this proposal, EPA envisions that a PSD BACT review for GHG emissions will include a detailed, unit specific engineering reassessment to identify EE measures and associated costs.<sup>13</sup> However, EPA has provided no evaluation or guidance on which appropriate measures should be adopted or incorporated, nor has it provided evaluation metrics for regulatory agencies. Without more clarity, EPA’s proposal could be interpreted to give EPA the authority to require a complete rebuild to recognize additional efficiency measures to reduce CO<sub>2</sub>e emissions. AMP does not believe this is EPA’s intent and recommends additional clarifying language or guidance be provided.

Additionally, this proposal provides state and/or federal EPA permit review staff overly broad latitude to require unreasonable and expensive CO<sub>2</sub>e reduction measures at their discretion. EPA’s proposed rule outlines several specific EE measures and recognizes that “...the benefits varied based on the site-specific configurations and operational conditions of the unit.”<sup>14</sup> Nonetheless, EPA fails to limit itself to an “inside the fenceline” evaluation. Indeed, it is reasonable to assume that “beyond the fenceline” BACT evaluations required by EPA staff include, or even require, an analysis of other sources of power beyond those currently covered in this proposed rule, similar to the logic used in the Clean Power Plan’s assessment of “best system of emission reduction.”

As discussed above, AMP recommends that EPA adopt a *de minimis* level far higher than the one proposed in this rulemaking to regulate GHGs under the PSD and Title V programs. However, just as importantly, if EPA proceeds with GHG BACT reviews for sources above a designated emissions level, a prescriptive assessment should be established that provides boundaries and limitations that preserve the original intent of the energy efficiency analysis described in the proposal.

**d. SER for GHGs at between 30,000 and 75,000 tpy CO<sub>2</sub>e.**

Proposal: EPA has solicited comment on setting the SER for a GHG BACT Review for “anyway sources” at between 30,000 and 75,000 tpy CO<sub>2</sub>e.<sup>15</sup>

Comment: AMP concur with EPA’s technical inquiry that setting the SER below 75,000 tpy CO<sub>2</sub>e would have minimal emissions reduction benefits, but impose significant burdens on regulated entities.

A *de minimis* level below 75,000 tpy CO<sub>2</sub>e would needlessly impose BACT reviews resulting in little to no value in GHG reduction. For example, EPA estimated that the maximum reduction potential from energy efficiency measures for boilers is 7 percent, but that this percentage would not be achievable at smaller units.<sup>16</sup> AMP agree with EPA’s conclusions that there would be relatively few

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<sup>12</sup> *Id.* at 68,134 – 68,135.

<sup>13</sup> *Id.* at 68,134 – 68,135.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 68,137 – 68,138.

<sup>16</sup> *Id.* at 68,128.

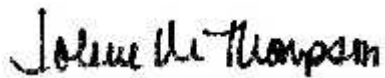
incidences of sources in the 30,000 - 75,000 tpy CO<sub>2</sub>e range, that both overall program and project-specific emissions reductions would be limited but the administrative burdens to evaluating case-by-case BACT analysis at these small projects would be high – the negligible gain is simply not worth the effort.

AMP further agrees with EPA's assessment that below the 75,000 tpy CO<sub>2</sub>e level, the gains of further regulation dwindle but the burdens on the regulated entities grow such that a *de minimis* level below 75,000 tpy CO<sub>2</sub>e fails to strike the balance required by *Alabama Power*. Given EPA's analysis and conclusion, it is not clear why EPA is even entertaining comments on setting the SER for GHG anyway sources at any level below 75,000 tpy CO<sub>2</sub>e. AMP recommends that for the reasons described by EPA, EPA should give little to no weight to any comments supporting a SER level below 75,000 tpy CO<sub>2</sub>e.

### III. Conclusion

While they are no means exhaustive, these comments represent issues of the greatest concern to AMP/OMEA regarding the proposed revisions to the PSD and Title V GHG permitting regulations. We thank EPA for the opportunity to comment on this proposal, which is very important to AMP/OMEA and its members. If any additional information is needed, please do not hesitate to contact us.

Respectfully submitted,



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