



October 26, 2018

Mr. Benjamin Cirker  
Ohio Environmental Protection Agency, DAPC  
Lazarus Government Center  
P.O. Box 1049 Columbus, Ohio 43216-1049

**RE: Request for Comment**  
Draft Business Impact Analysis Document  
Ohio Administrative Code (OAC) Rules 3745-31-34 and 3745-77-11

Mr. Cirker:

In response to the above-referenced request for comment, American Municipal Power, Inc. (AMP) and the Ohio Municipal Electric Association (OMEA) hereby provide the following for the record. We do not believe that the DRAFT Business Impact Analysis Document includes the necessary evaluation of subsequent court decisions and federal rulemaking to justify “no change” reissuance of these rules.

**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. AMP’s members collectively serve more than 650,000 residential, commercial, and industrial customers and have a system peak of more than 3,400 megawatts (MW). AMP’s core mission is to be public power’s leader in wholesale energy supply and value-added member services. AMP offers its member municipal electric systems the benefits of scale and expertise in providing and managing energy services.

AMP’s diverse energy portfolio makes the organization a progressive leader in the deployment and procurement of 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. AMP has actively worked over the past decade to diversify our power supply portfolio, to the point that our owned assets were approximately 21% renewable in 2017. AMP owns or operates on behalf of members, the 707 MW (fired) natural gas combined cycle AMP Fremont Energy Center in Fremont along with diesel-fired generators and single cycle natural gas-fired turbines used for peak shaving at numerous sites across Ohio. The OMEA represents the state and federal legislative interests of AMP and member Ohio municipal electric systems.

**DELAWARE** DELAWARE MUNICIPAL ELECTRIC CORPORATION **INDIANA** CANNELTON **KENTUCKY** BENTHAM • BEREA • 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 • CALION • CENOA • CEORGETOWN • CLOUSTER • CRAFTON • GREENWICH • HAMILTON • HASKINS • HOLIDAY CITY • HUBBARD  
HUDSON • HURON • JACKSON • JACKSON CENTER • LAKEVIEW • LEBANON • LODI • LUCAS • MARSHALLVILLE • MENDON • MILAN • MINSTER • MONROEVILLE • MONTEPELLIER • NAPOLEON  
NEW BREMEN • NEW KNOXVILLE • NEWTON FALLS • NILES • OAK HARBOR • OBERLIN • OHIO CITY • ORRVILLE • PAINESVILLE • PEMBERVILLE • PIONEER • PIQUA • PLYMOUTH • PROSPECT  
REPUBLIC • SEVILLE • SHELBY • SUILOH • SOUTH VIENNA • ST. CLAIRSVILLE • ST. MARYS • SYCAMORE • TIPP CITY • TOLEDO • TONTOGANY • VERSAILLES • WADSWORTH • WAPAKONETA  
WAYNESFIELD • WELLINGTON • WESTERVILLE • WILARTON • WOODSFIELD • WOODVILLE • YELLOW SPRINGS **PENNSYLVANIA** BERLIN • BLAKELY • CATAWISSA • DUNCANNON  
EAST CONEMAUGH • FILWOOD CITY • EPHRAATA • GIRARD • GOLDSBORO • GROVE CITY • HATFIELD • HOOVERSVILLE • KUTZTOWN • LANSDALE • LEHIGHTON • LEWISBERRY • MUEHLINBURG  
NEW WILMINGTON • PERKASIE • QUAKERTOWN • ROYALTON • SAINT CLAIR • SCHUYLKILL HAVEN • SWEITHPORT • SUMMERHILL • WAMPUM • WATSONTOWN • WEATHERLY • ZELIENOPLE  
**VIRGINIA** BEDFORD • DANVILLE • FRONT ROYAL • MARTINSVILLE • RICHLANDS **WEST VIRGINIA** NEW MARTINSVILLE • PHILIPPI

Because of AMP's structure as a non-profit wholesale power provider, we closely follow regulatory initiatives that have the potential to impact the operation of AMP and member owned assets, and the costs and reliability of our members' energy and capacity supply. Because of the type and nature of AMP and member generating assets across Ohio, this rule has a potential direct impact on AMP.

AMP appreciates the opportunity to provide comments on this proposed action. We believe that greenhouse gas (GHG) regulatory requirements that reflect the most recent court decisions provide regulatory clarity and increased certainty for AMP and our member communities. Our comments here are an effort to ensure that clarity.

### **Permits-to-install for greenhouse gas emitting facilities**

Ohio Administrative Code (OAC) 3745-31-34 was issued in 2012 with no changes during the intervening years. Between 2012 and 2018, the United States Supreme Court decided *Utility Air Regulatory Group v. Environmental Protection Agency* (134 S. Ct. 2427 (2014) or "*UARG v. EPA*"). This decision vacated portions of the GHG tailoring rule, holding that EPA cannot treat GHG emissions as air pollutants in order to determine whether a source is major and consequently required to obtain a PSD permit. Further, the effects of this ruling were memorialized in Ohio Environmental Protection Agency (Ohio EPA) Engineering Guide #85.

Neither the Supreme Court decision nor the policies and determinations in Engineering Guide #85 appear to be reflected in the proposed "no change" revision to OAC 3745-31-34 rule. In addition, the Ohio EPA did not discuss these changes in the September 21, 2018, DRAFT Business Impact Analysis (BIA).

AMP requests that the DRAFT BIA and rule be revised to clearly reflect the changes to the federal Prevention of Significant Deterioration (PSD) regulations stemming from the *UARG v. EPA* decision (see 40 Code of Federal Regulations (CFR) Part 52.166(b)(48)(iv)(a) and (b)). Alternatively, this rule should be determined to no longer be in effect due to the automatic rescission language in 3745-31-34(C)(2) and accordingly withdrawn from the OAC.

### **Title V permits for major sources emitting greenhouse gases**

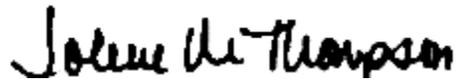
Similar to the above-referenced rule, OAC 3745-77-11 was issued in 2012 with no changes during the intervening years. Between 2012 and 2018, the United States Supreme Court decided *UARG v. EPA*. This decision vacated portions of the GHG tailoring rule, holding that EPA cannot treat GHG emissions as air pollutants for the purposes of determining whether a source is major with respect to the Title V permit program. Similar to the situation discussed above, the effects of this ruling were memorialized in Ohio EPA Engineering Guide #85.

Neither the Supreme Court decision nor the policies and determinations in Engineering Guide #85 appear to be reflected in the proposed "no change" revision to the rule. In addition, Ohio EPA did not discuss these changes in the September 20, 2018, DRAFT BIA.

AMP requests that the DRAFT BIA and rule be revised to clearly reflect the changes to Ohio's Title V permitting program stemming from the *UARG v. EPA* decision. Alternatively, this rule should be determined to no longer be in effect due to the automatic rescission language in 3745-77-11(D)(2) and accordingly withdrawn from the OAC.

We thank Ohio EPA for this opportunity to provide input to the agency on these important matters. Please let us know if you need any additional information.

Respectfully Submitted,

A handwritten signature in black ink that reads "Jolene M. Thompson". The signature is written in a cursive, flowing style.

Jolene M. Thompson  
AMP Executive Vice President  
& OMEA Executive Director  
jthompson@amppartners.org  
614.540.1111