



Via Electronic Delivery

July 7, 2020

The Honorable Paul D. Tonko
Chairman, Subcommittee on Environment & Climate Change
House Committee on Energy & Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable John Shimkus
Ranking Member, Subcommittee on Environment & Climate Change
House Committee on Energy & Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Tonko and Ranking Member Shimkus,

In response to the request for comments on the proposed Climate Leadership and Environmental Action for our Nation’s (CLEAN) Future Act (CFA), American Municipal Power, Inc. (AMP) and the Ohio Municipal Electric Association (OMEA) hereby provide the following comments for the record.

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 and 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 members the benefits of scale and expertise in providing and managing energy services.

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MARYLAND BERLIN MICHIGAN CLINTON • COLDWATER • ELMSDALE • MARSHALL • UNION CITY • WYANDOTTE OHIO AMHERST • ARGADIA • ARCANUM • BATAVIA • BEACH CITY
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BLAKEY • GALWISSA • DUNCANNON • EAST CONEMAUGH • ELWOOD CITY • EPHRATA • GIRARD • GOLDSBORO • GROVE CITY • HATHLETY • HOOVERVILLE • KULZOWNS • LANSDALE
LEHIGHTON • LEVISTOWN • MILLERSBURG • NEW AMMINGTON • PIRGASIE • QUAKERBOWN • ROYALTON • SAINT CLAIR • SCHUYLKILL TOWNSHIP • SAMEHOPE • SUMMERSVILLE
WAMPUM • WATSONTOWNS • WEATHERS • ZELLENOPLE VIRGINIA BEDFORD • DANVILLE • FRONT ROYAL • MARTINSVILLE • RICHMOND WEST VIRGINIA NEW MARBLESVILLE • PHILIPPI



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 and managed assets, and contracted power were approximately 19% renewable in 2019. Our fossil fuel assets currently include 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 AMP Fremont Energy Center in Fremont, Ohio. Most of AMP's members are in the PJM Interconnection, LLC regional transmission organization (RTO) footprint, while some members are located within the Midcontinent Independent System Operator, Inc. (MISO) footprint. The OMEA represents the Ohio and federal legislative interests of AMP and member Ohio municipal electric systems. Subsequent "AMP" references herein also represent the interests and comments of OMEA.

Because of AMP's structure as a non-profit wholesale power provider, we closely follow regulatory initiatives that have the potential to impact the costs and reliability of our members' energy and capacity supply. To that end, AMP's past public comments related to the Clean Power Plan (CPP) and Affordable Clean Energy (ACE) reflected expected impacts of those standards on AMP and member generating assets, as well as to other generators in the region from which AMP members might acquire varying portions of their power supply through wholesale market purchases.

Due to the multi-state nature of AMP's membership and power supply portfolio, along with the various types of electricity markets within which we operate, proposed greenhouse gas (GHG) rulemaking such as this action, has real impacts on not only our member communities but their residential, commercial, and industrial customers. AMP closely follows legislative initiatives that could place the future operation of member and AMP generating assets in jeopardy, as well as our ability to retire the debt service on those assets, all while maintaining reliable, low-cost public power.

In recognition of our unique position as both a wholesale power supplier and services provider, as well as the owner and operator of electric generating assets, AMP offers the following comments and concerns on the CLEAN Future Act proposal for your consideration.

Single Regulatory Framework

The CFA includes a Clean Energy Standard (CES) that creates a credit-based compliance scheme at the retail supplier level with increasingly stringent compliance obligations through 2050. The proposal also creates a new Title VII of the Clean Air Act (CAA) that directs the EPA to develop model state plans and states to develop compliance plans with interim GHG reduction targets in 2030 and 2040, designed to achieve net zero economy-wide GHG emissions by 2050. Finally, the proposal includes a new directive that federal agencies use all existing authorities to meet the 2050 net zero goal. The proposal fails to address how these new compliance programs interact with one another, or address existing CAA obligations, such as the Affordable Clean Energy (ACE) Rule. This creates an overlapping framework of statutory and regulatory requirements, each with similar goals but different implementation timelines and compliance requirements.

AMP supports comments submitted by the Prairie State Generating Campus wherein they recommend a single regulatory approach for the power sector. If power sector emissions are subject to a clean energy standard (CES), then that sector should be exempted from other proposed regulatory programs. These would include, but not be limited to state climate plans, a FERC or Regional Transmission Organization (RTO) carbon pricing regime, and/or additional unspecified federal regulations. Becoming subject to a patchwork of overlapping state and federal regulations directed at reducing the same CO₂ emissions creates an unnecessarily complicated regulatory scheme.

AMP is also concerned that the CFA does not recognize or address existing and ongoing efforts by the power sector to reduce greenhouse gas emissions. We recognize that the Clean Power Plan (CPP) was repealed in 2019 prior to implementation, however, the power sector changed dramatically, and at great expense, in anticipation of the rule. As a result, the electricity sector has reduced GHG emissions by 33%, surpassing the 2030 reduction goal established in the CPP by eleven years.¹ In addition, states are just beginning rule implementation and plan development for the ACE Rule but the CFA does not recognize this effort to develop achievable GHG reductions. Finally, as noted above, the CFA fails to recognize prior efforts of public power electric entities to reduce GHG reductions through renewable generation projects and power purchase agreements.

AMP is also concerned that any federal CES with allowances for “equivalent” state plans sets the stage for a patchwork of regulatory standards across AMP’s nine state footprint. It is not clear how developing multiple compliance programs with disparate requirements and implementation timelines is the most effective or efficient method to reduce greenhouse gas emissions. A unified federal CES would be more effective by providing certainty and transparency to state public utility commissions, elected officials, customers and the power sector.

Public Power Exemption

Notwithstanding the above-recommended changes and comments on the CFA contained in this letter, for the reasons set forth below, AMP recommends that future revisions to the CFA, or subsequent actions, incorporate an exemption for public power.

By statutory and regulatory design, AMP and our members are largely not regulated by state public utility commissions, including state clean energy standards. State home rule constitutional and statutory provisions are well established and critical underpinnings to the effectiveness of municipal electric systems operation. Irrespective of the limited application of state CESs to municipal electric systems, AMP and its members are regulated at the local level by municipal government authorities and, at the direction of local regulators, have established clean energy programs that, in most cases, meet or exceed what is required of investor-owned utilities by the states. For example, in Ohio, IOUs are required to provide 8.5% renewable power to their customers. For comparison and as mentioned previously, in 2019, AMP owned and managed assets, and contracted power were approximately 19% renewable in 2019. In addition, AMP already offers a voluntary “green” power program to our member communities even though most states do not mandate such a program for IOUs.

¹ Charles Komanoff, “The Good News Trump Couldn’t Kill: The Clean Electricity Boom Is Doing More Than Fracking To Decarbonize America’s Power Sector”, Carbon Tax Center, May 2020 last visited June 3, 2020 (http://www.komanoff.net/fossil/The_Good_News_Trump_Couldn't_Kill.pdf)

AMP encourages the Committee to respect and preserve these carefully crafted state frameworks given the unique position of municipal electric systems, and not subject them to an overarching federal or state CES.

Moreover, the mandate for reducing carbon emissions, as outlined in the CFA, may initiate early closure of power generating plants, resulting in immediate and lasting impacts on the finances of non-profit and municipal utility owners as well as a devastating impact on the economy, employees and companies supporting the plant in Southern Illinois.

As an important example, AMP and our members, along with other non-profit municipal utilities and electric cooperatives, own the Prairie State Energy Campus. The owners invested in this plant to supply low-cost electricity generated by one of the most modern, efficient, state-of-the-art coal-fired power plants in the country. AMP members support their portion of operating and debt service costs in accordance with a complex contractual and legal framework managed by AMP on their behalf.

In light of this as well as the independent performance of clean energy programs by municipal electric entities, AMP recommends the CFA include an exemption for non-profit municipal utilities and electric cooperatives in recognition of the unique nature of public power utilities and the potential impacts the CFA would have on them. This would enable organizations like AMP to continue investing in renewable energy projects, while providing assurance to our members that their investments in efficient, low-cost public power are protected and valued.

Clean Energy Standard

Qualified Energy

The CFA establishes an annual carbon intensity of 0.82 as the ceiling for qualified energy generation. *See* Section 202(12). Achieving this level of performance is unrealistic for existing coal plants. The only example of a coal plant that is capable of achieving this carbon intensity is an ultra-supercritical plant in Arkansas:

“For example, the 600-MW John W. Turk, Jr. Power Plant — located in southwestern Arkansas and majority-owned by Southwestern Electric Power Company, a subsidiary of American Electric Power (AEP) — is the first USC [ultra supercritical] plant built in the United States, with both main and reheat steam temperatures exceeding 593°C (1100°F). Based on monthly data filed with the U.S. Department of Energy (DOE), the Turk plant’s average CO2 emission rate was 823 kg/MWh gross (1811 lb/MWh) [carbon intensity of 0.823] during 2013 and 802 kg/MWh gross (1765 lb/MWh) [carbon intensity of 0.802] during 2014.”

From: Phillips, Jeffery, (2015). “Can Future Coal Power Plants Meet CO2 Emission Standards Without Carbon Capture & Storage?” Electric Power Research Institute

Establishing the carbon intensity ceiling at 0.82 will negatively impact coal-fired generation with no consideration as to the age, efficiency or pollution controls of different facilities. As an example, the Prairie State Energy Campus is one of the most modern, efficient,

state-of-the-art coal-fired power plants in the country, and yet cannot meet the CFA's proposed annual carbon intensity ceiling of 0.82 for generating qualified energy.

As AMP highlighted earlier in our comments, the CFA mandate to reduce carbon emissions may initiate early plant closures that will have ripple effects, with immediate and lasting impacts on the finances of non-profit and municipal utility owners, and devastating impacts on the local economies. The CFA could mitigate these effects to some degree by providing a "glidepath" that provides compliance flexibility. Additionally, the CFA should include technical and financial assistance to communities and workers that depend economically on fossil-fuel fired power plants, and utilities that own or purchase power from such plants. The CFA should also ensure that not-for-profit utilities with existing debt on fossil-fuel fired power plants are not economically harmed if those plants are required to scale back production or retire before their bonds are paid off.

"Generator" Definition – Section 202

AMP supports this definition's applicability to the owner or operator, which affords flexibility in the party receiving the clean energy credits for AMP member-owned, AMP-operated facilities. For example, AMP operates the natural gas combined cycle Fremont Energy Center in Fremont, Ohio on behalf of our members. This facility would produce qualified energy under the current definitions in the CFA, but tracking and managing these credits would be an additional burden on our members. This burden can be limited by allowing AMP, as the operator, to manage clean energy credits on their behalf.

Hydropower – Section 205

The CFA proposes to adjust clean energy credits issued to hydropower facilities lowering the amount of credits scaled to the amount of methane emissions predicted or modeled from the impoundment associated with that facility.

AMP requests that the CFA provide an exception from this "hydropower adjustment" for facilities constructed at existing dams or navigational structures, since the impoundments associated with those existing dams or navigational structures would have been present regardless of the hydropower project.

As an example, AMP owns and operates several run-of-river hydroelectric plants constructed at existing Army Corps of Engineers navigational locks and dams on the Ohio River. These navigation locks and dams were pre-existing, and therefore the impoundment associated with the navigation pool was and would be present with or without our hydropower facilities.

Assignment of Compliance Obligations

AMP requests inclusion of provisions for retail electric suppliers to contract with an agent to assist them with tracking and managing clean energy credit obligations. Enabling our members to contract with AMP to implement this program on their behalf would ameliorate some anticipated implementation challenges, since AMP already manages Acid Rain Program and Cross-State Air Pollution Rule compliance requirements for jointly held assets. This recommendation is similar, but not identical, to the provision in found in the Clean Energy Innovation and Distribution Act (CEIDA) Subtitle II, Sec. 202(a)(2) (Feb. 20, 2020 DRAFT):

“VOLUNTARY ASSIGNMENT OF COMPLIANCE OBLIGATION.—Any retail electricity supplier that is a State or any political subdivision of a State, or an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), may elect to assign any reporting and compliance obligation under this Act to another political subdivision of a State or an electric cooperative that has an obligation to serve such retail electricity supplier.”

AMP suggests that, if included, this provision be expanded to include assignment to joint action agencies and non-profit corporations managed by one or more political subdivisions of a State.

Baseline Qualified Energy Percentage – Section 203

The “Baseline qualified energy percentage” definition should be modified to allow the average of calendar years 2017, 2018, or 2019 or some combination to be used as an alternative to a three-year average. This change would allow for AMP and our members to account for recent investments in renewable generation and other low-emitting sources of electricity. The benefit of these early investments will be diminished if the baseline average includes prior years that were not representative of the actual qualified energy percentage going forward. The baseline level also affects the magnitude of annual increases in qualified energy procurement for the next 28 years, so the ability to exclude unrepresentative data is critically important.

Clean Energy Trading Program – Section 204

AMP does not believe that the clean energy credit trading market should be open to any entity that registers to participate in the program (see Sec. 204(c)(1)(B)). Participation should be limited only to those parties generating clean energy credits and those required to surrender clean energy credits (and their authorized agents). AMP is concerned that speculation in the clean energy market could artificially and unnecessarily drive up compliance cost.

AMP also believes the CFA should provide allowances or credits for early action, which would include credits for clean generation and energy efficiency projects. Including a credit program such as this would recognize the significant investments AMP and our members have made over time, such as the construction and operation of our hydropower fleet.

State Climate Action Plans

If the power sector is subject to a federal CES then that sector should not be subject to duplicative state plan requirements that would create additional uncertainty and potentially conflicting obligations for AMP and our members. AMP recommends explicitly exempting facilities or sectors covered by the CES from the proposed new Title VII of the CAA.

State Plans - Energy Efficiency Control Strategies

AMP supports energy efficiency measures as a carbon emissions mitigation strategy including demand response programs, load controls, financial incentives for adopting energy-saving technologies, and retrofitting existing buildings. AMP recommends ensuring that these compliance measures are included and broadly available.

Opportunities for Federal Funding and Assistance

There are a number of funding opportunities nested in the CFA, and AMP appreciates the efforts of the Committee to provide grants and other forms of support for the economy-wide transition envisioned by the discussion draft. AMP requests that the programs available to electric cooperatives and municipal electric systems also be open to joint action agencies and non-profit corporations managed by one or more political subdivisions of a state. This would allow AMP to provide support and economies of scale to our members when participating in the various loan and grant programs proposed in the CFA.

AMP supports the CFA providing funding opportunities that benefit our members, including but not limited to the Carbon Mitigation Program, Rural Grants, Grid Storage, Energy Efficient Transformer Rebate Program, DOE and EPA Support to Repower Communities, Low-income and Underserved Solar Loans and Grants, and electric vehicle supply equipment rebate program. It is important to ensure access to financing tools and incentives for public power communities to develop long-term integrated resource plans and make associated investments in grid modernization.

AMP also encourages including reforms to the Investment Tax Credit (ITC) and Production Tax Credit (PTC). Public power entities serve more than 27% of the nation's retail electric customers, but do not directly benefit from the ITC or the PTC as tax-exempt units of state and local government. Omitting tax-exempt entities from energy-related tax incentives makes it more costly for public power utilities to make investments in renewable resources needed to reduce greenhouse gas emissions. AMP supports common-sense measures to address this issue, such as amending current laws to allow the transfer of such tax benefits to others, to make tax credits "refundable" beyond the amount of taxes paid, or to allow the issuance of special purpose municipal bonds to finance qualifying facilities.

AMP does caution, however, against changes after funding and assistance programs are enacted by Congress. Specifically, in 2018, AMP completed a multi-year effort to construct and invest more than \$6 billion in electric generation infrastructure in the Midwest. AMP's projects were financed using a combination of tax-exempt and tax-advantaged bonds, including a significant use of the now expired Build America Bonds (BABs) and New Clean Renewable Energy Bonds (New CREBs) programs.

Unfortunately, mandatory sequestration went into effect in March 2013. Originally imposed through FY 2021, the budget sequester has been extended 5 times and now runs through 2029, resulting in an estimated reduction of more than \$76 million by 2029. In addition to lost dollars promised to local communities, this creates troubling implications for future investment. The imposition and multiple extensions of sequestration to BABs and New CREBs payments provide an excellent example of the shortfalls of these alternative financing options.

AMP requests that Congress restore full BABs and New CREBs payments by either shielding these credit payments from sequestration or restoring the cut payments through an annual "gross-up" payment. AMP also requests that Congress take action to reclassify BABs and New CREBs so that they will not be subject to future sequestration.

Treatment of Hydropower under Federal Law – Section 244

The licensing process in the Federal Power Act, primarily with respect to environmental reviews in accordance with the National Environmental Policy Act, can add significant costs and delays to projects due to overly broad or duplicative requirements. Project owners must navigate multiple federal regulatory programs and permitting processes, each with their own decision-making processes and authorities. As such, AMP supports the proposed changes to the Federal Power Act that will serve to streamline the review projects, especially with respect to relicensing existing projects. Additional certainty in the licensing timeline, use of existing studies, and expedited relicensing procedures for existing projects all directly impact AMP and our members given our investments in hydropower.

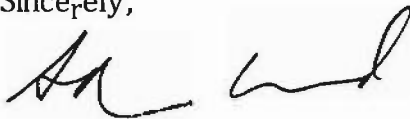
AMP supports the inclusion of hydropower in the definition of “renewable energy resource” in Section 241. However, the CFA should also revise the definition of “renewable energy source” in PURPA (7 U.S.C. 918c(a)) to include hydropower. Currently only “incremental hydropower” is included in the PURPA definition, and thus, the new broader definition of renewable energy resource in Section 241 creates a conflict with the more limited PURPA definition. The PURPA definition has the further negative effect of excluding AMP member hydropower assets from this program.

Conclusion

As AMP stated at the outset, we support policy activity and legislation to reduce carbon emissions if done in such a way as to maintain a reliable electric grid, affordable electric rates for retail customers, and provide consistency, fairness and equitable treatment of public power.

In closing, thank you for taking the time to solicit and review comments on this proposed legislation. If my staff or I can provide any additional information, please do not hesitate to contact us.

Sincerely,



Adam Ward
Senior Vice President Member Services & External Affairs
American Municipal Power, Inc.



Michael Beirne
Executive Director
Ohio Municipal Electric Association