



February 21, 2011

Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Municipal Advisors (File No. S7-45-10)

American Municipal Power, Inc. (“AMP” or the “Corporation”) submits this letter in response to your request for comments on the proposed rule as published in SEC Release No. 34-63576 available at <http://www.sec.gov/rules/proposed/2010/34-63576.pdf> (the “Proposed Rule”) under The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”). The Dodd-Frank Act, among other things, requires “municipal advisors” to register with the United States Securities and Exchange Commission (“SEC”). The Proposed Rule includes, among other things, a far-reaching interpretation of activity that constitutes the business of being a municipal advisor. The principal objective of this letter is to obtain a clarification of the definition of “municipal advisor” such that it does not apply to the representatives of AMP’s member municipal corporations that are Trustees of AMP or to AMP’s General Counsel.

**AMP.** AMP was formed in 1971 as a nonprofit, membership corporation under Ohio Revised Code Chapter 1702. Under applicable law, AMP has perpetual existence and the duration of its existence is not otherwise limited by its certificate of incorporation or otherwise. AMP must file, however, at certain times, Statements of Continued Existence with the Ohio Secretary of State pursuant to Ohio Revised Code § 1702.59. AMP has made all such required filings and is in good standing.

**Members.** AMP has 128 members – 82 municipalities in Ohio, 30 boroughs in Pennsylvania, six cities in Michigan, five municipalities in Virginia, three cities in Kentucky and two cities in West Virginia, all but one of which owns and operates electric distribution systems and a few of which own and operate generating assets. The remaining member is in the process of creating a municipal electric distribution system.

KENTUCKY • PADUCAH • PRINCETON • WILLIAMSTOWN

MICHIGAN • CLINTON • COLDWATER • DOWAGIAC • 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 • DESHLER • DOVER • EDGERTON • ELDORADO • ELMORE • GALION • GENOA • GLOUSTER  
GRAPTON • 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 • 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 • HOOVERVILLE  
KUTZTOWN • LANSDALE • LEHIGHTON • LEWISBERRY • MIDDLETOWN • MIFFLINBURG • NEW WILMINGTON • PERKASIE • QUAKERTOWN • ROYALTON • SAINT CLAIR • SCHUYLKILL HAVEN  
SMETHPORT • SUMMERHILL • WAMPLUM • WATSONTOWN • WEATHERLY • ZELIENOPLE

VIRGINIA • BEDFORD • DANVILLE • FRONT ROYAL • MARTINSVILLE • RICHLANDS

WEST VIRGINIA • NEW MARTINSVILLE • PHILIPPI

**Federal Tax Status.** AMP obtained a determination letter from the Internal Revenue Service on July 31, 1980, supplemented by ruling letters dated January 18, 1981 and December 12, 1987, determining that AMP qualifies as a Section 501(c)(12) corporation under the Internal Revenue Code of 1986, as amended (the “Code”), provided that at least 85% of AMP’s total revenue consists of amounts collected from its members for the sole purpose of meeting losses and expenses (which include debt service). AMP believes that it has met the requirements for maintenance of its Section 501(c)(12) status each year since it received the initial letter. As a Section 501(c)(12) corporation, AMP’s income is not subject to federal income tax.

AMP has also received IRS private letter rulings to the effect that it may issue, on behalf of its members, obligations the interest on which is excludible from the gross income of holders thereof for federal income tax purposes and that it is a wholly owned instrumentality of its members with the consequence that use of tax-exempt financed facilities by AMP will not result in private use under the Code.

**Governance.** AMP is governed by a Board of Trustees comprised of 19 of its member communities, each of which designates a representative to the Board. The current member Trustees (located in Ohio unless otherwise noted) and their representatives are shown below:

<b>Trustee</b>	<b>Representative</b>	<b>Employment</b>
Bowling Green	Kevin Maynard	Director of Utilities, City of Bowling Green
Bryan	Steve Casebere	Director of Utilities, Bryan Municipal Utilities
Celina	Rick Bachelor	Safety Services Director, City of Celina
Carey	Roy Johnson	Village Administrator, Village of Carey
Cleveland	Ivan Henderson	Commissioner, Cleveland Public Power
Coldwater, MI	Paul Beckhusen	Director, Coldwater Board of Public Utilities
Cuyahoga Falls	Jeff McHugh	Assistant Superintendent, Cuyahoga Falls Electric Dep’t
Ephrata, PA	Gary Nace	Borough Manager, Borough of Ephrata
Front Royal, VA	Joe Waltz	Director, Energy Resource Management, Town of Front Royal
Hamilton	Charles Young	Deputy City Manager/Managing Dir. of Operations, City of Hamilton
Montpelier	Pam Lucas, Secretary	Village Manager, Village of Montpelier
Napoleon	Jon Bisher, Chairman	City Manager, City of Napoleon
Newton Falls	Tracy Reimbold, Treasurer	Finance Director, City of Newton Falls
Oberlin	Steve Dupee, Vice-Chairman	Director, Oberlin Municipal Light & Power System
Orrville	Jeff Brediger	Director of Utilities, City of Orrville
Piqua	Ed Krieger	Power System Director, City of Piqua
Princeton, KY	John Humphries	General Manager, Princeton Electric Plant Board
Wadsworth	Chris Easton	Director of Public Service/City Engineer, City of Wadsworth
Westerville	Andrew Boatright	Manager, Westerville Electric Division

Eleven of these Trustee communities are selected by their fellow public power communities in each of AMP’s eleven member service groups, which assures representation by at least one community from each state that has five or more members. The other eight are elected at large. The officers of AMP are: Chair of the Board, Vice Chair, Secretary, Treasurer, President and General Counsel. The President and General Counsel are appointed by the Board of Trustees and are *ex officio* members of the Board.

**Projects.** Prior to 1988, AMP owned no generating assets and its members had a few small generating units that served a portion of their load. Historically, AMP and its members have been “on the market” for the bulk of the electric power requirements of the AMP members. Beginning in 1988, AMP has developed and financed for its members, or arranged for the financing for its members of, several, small electric generating projects including the Richard H. Gorsuch Generating Station (1988-2010), the Belleville hydroelectric facility (1993-present), and gas-fired and diesel distributive generation facilities (2001-present) and has financed, and has under development and construction now, four additional hydroelectric facilities on the Ohio River. AMP also has a 23.26% ownership interest in the Prairie State Energy Campus Project, currently under construction, which is a supercritical, coal-fired, mine mouth generating facility.

All such properties were financed through the issuance of municipal bonds. As of February 16, 2011, AMP had approximately \$4.581 billion of bonds outstanding. AMP expects to issue additional municipal bonds in the future to reduce its costs through refunding or to finance additional projects for the benefit of its members. In the near future, AMP also expects to develop for its members (i) additional hydroelectric facilities for which one of them or AMP has or expects to obtain the necessary license and (ii) a combined cycle electric generating facility for the purchase of which AMP has executed a non-binding memorandum of understanding and is currently negotiating the definitive purchase agreement.

**AMP’s Office.** AMP’s are located at 1111 Schrock Road, Columbus, Ohio 43229-1178; its telephone number is (614) 540-1111.

**AMP and each of its Members is a “Municipal Entity.”** Under Section 15B(e)(8) of the Securities Exchange Act of 1934, as amended (the “Securities Exchange Act”), a “municipal entity” includes “any State, political subdivision of a state or municipal corporate instrumentality of a State, including . . . (C) any other issuer of municipal securities.”

AMP issues municipal securities.<sup>1</sup> Therefore, AMP is a “municipal entity.”

Each of the 128 members of AMP, including each of the 19 Trustees of AMP elected by its members from among its members, is a “municipal corporate instrumentality of a State” such that each of AMP’s members, and each of its Trustees elected from among AMP’s members, is a “municipal entity.”

**Each of the representatives of AMP’s Trustees and its General Counsel may be a “municipal advisor.”** Absent Dodd-Frank and the Proposed Rule interpreting its provisions, it would not have occurred to AMP that the representatives of its member municipal corporations who are the Trustees of AMP would be “municipal advisors.” The Dodd-Frank definition of “municipal advisor” as

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<sup>1</sup> Securities Exchange Act, Section 3(a)(29). “Municipal securities” are “... obligations guaranteed as to principal and interest by . . . any political subdivision [of a State] or any municipal corporate instrumentality of any one or more States. . . .”

a person (not a municipal entity or an employee of a municipal entity) that - (i) provides advice to or on behalf of a ‘municipal entity’ or an ‘obligated person’ with respect to financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues. . . .”<sup>2</sup>

would not cause anxiety to AMP or the representatives of its Trustees absent the indication in the Proposed Rule that suggests that appointed members of a municipal entity’s governing body are municipal advisors if and to the extent they provide “advice to or on behalf of” (i) AMP or (ii) a member that is an “obligated person,” in each case, as to “municipal derivatives, guaranteed investment contracts, and investment strategies or the issuance of municipal securities, including advice with respect to the municipal financial products or the issuance municipal securities.”

Over 80 of AMP’s member municipal corporations are “obligated persons” within the meaning of Section 15B(e)(10)<sup>3</sup> under the Securities Exchange Act in that they are obligated to AMP on power sales contracts by the terms of which they are entitled to receive a percentage of the output of an AMP project in exchange for their assumption of the obligation to pay a like percentage of AMP’s debt service associated with the project. These percentages range from over 50% in one case to 0.05% in the case of AMP’s smaller members taking small amounts of power from its projects. Regardless of the diminutive percentage of the total payment obligation an AMP member may have, under Section 15B(e)(10), the member is nonetheless an “obligated person.”

In contrast, in each of its capital markets financings, AMP designates only those members participating in the project being financed that have a significant percentage of the financial obligation that supports the debt service on AMP’s bonds to be “obligated persons” under the materiality standard of Rule 15c2-12<sup>4</sup> under the Securities Exchange Act.

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<sup>2</sup> Securities Exchange Act, Section 15B(e)(8).

<sup>3</sup> “. . . [A]ny person . . . who is . . . through an enterprise fund . . . committed by contract. . . to support the payment of . . . part of the obligations on the municipal securities to be sold in an offering of municipal securities.

<sup>4</sup> The definition of “obligated person” in Rule 15c2-12(f)(10) is the same as in Section 15B(e)(10) as that definition would be modified by the proposed rules to exclude bond insurers and banks providing letters and lines of credit. The key difference is that provisions of Rule 15c2-12 apply only to obligated persons for whom financial information or operating data are presented in an official statement, a determination made by the issuer or conduit borrower under the terms of SEC Release No. 34-34961. Several of AMP’s member municipal corporations have been designated obligated persons on one or more of the financings for one or more of AMP’s and its members’ projects. Their percentage of the total obligations of the participating members to support the debt service on AMP’s bonds ranges upwards from 5%.

Thus, to the extent that AMP's employees or its General Counsel are called upon and extend "advice" to any member or any employee of a member, that AMP employee, who is not an employee of the member, or its General Counsel may be a municipal advisor if the subject of the advice is an AMP bond issue or investment of the proceeds of a bond issue on which the member is or may become an obligated person.

Each of the Trustees is "a municipal corporate entity of a State" and thus excluded from the definition of "municipal advisor." Since, however, each of the representatives of the Trustees is appointed by the Trustee it represents, he or she may be required to register unless (i) the SEC construes the term "municipal employee" to include employees of the appointing Trustee and not just employees of AMP or (ii) the SEC clarifies what "advice" encompasses such that the involved representative asking questions of the Board's counsel, consultants and advisors and thereafter expressing an opinion to his or her fellow representatives with respect to an issue of municipal securities does not thereby become a municipal advisor.

The President and Chief Executive Officer of AMP is an employee of AMP and presumptively exempt from being deemed a "municipal advisor." The General Counsel of AMP, like the President and Chief Executive Officer an *ex officio* member of the Board of Trustees, is apparently exempt only if he exercises restraint and limits any advice he provides to legal advice and not his observations, prejudices and opinions about the "municipal derivatives, guaranteed investment contracts, and investment strategies or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues."

The employees of AMP, from the Chief Executive Officer and Chief Financial Officer on down the chain of command, may be municipal advisors to AMP's members that are obligated persons by virtue of their interface with AMP's members and their employees, an interface that occurs routinely in the scope of their employment by AMP.

If, however, employees of AMP, the conduit issuer, are "employees" for purposes of the exemption even when advising members and their employees and if employees of the members that are Trustees are the representatives of the member Trustees and are "employees" for purposes of the exemption even when advising AMP, then these persons will be outside the definition of municipal advisor.

#### AMP Member Boards of Public Affairs (BPAs)

AMP Member BPAs, many of whom are appointed to their seat on those BPAs, may from time to time review as part of their duties, capital market financings for capital projects and system improvements to their electric utility. BPAs are formed by AMP's members in order to facilitate improved decision making regarding the operation of a municipal electric utility. Absent the indication in the Proposed Rule that suggests that appointed members of a municipal entity's governing body are municipal advisors if and to the extent that they provide "advice to or on behalf of, as to "municipal derivatives, guaranteed investment contracts, and investment strategies or the issuance of municipal securities, including advice with respect to the municipal

financial products or the issuance municipal securities, AMP would not consider the AMP Member BPAs to be municipal advisors.

AMP contends that, although appointed, BPA members should not fall under the statutory definition of “municipal advisor” as the “spirit” of the definition “includes distinct groups of professionals that offer different services and compete in distinct market.” The three principal types of municipal advisors are: (1) Financial advisors, including, but not limited to, broker-dealers already registered with the Commission, that provide advice to municipal entities with respect to their issuance of municipal securities and their use of municipal financial products; (2) investment advisers that advise municipal pension funds and other municipal entities on the investment of funds held by or on behalf of municipal entities (subject to certain exclusions from the definition of a “municipal investment advisor”); and (3) third-party marketers and solicitors.

Clearly, BPAs members are not appointed for such advice and purpose and therefore should be excluded from the definition, if broadly interpreted to include “....special purpose enterprises having appointed members.”

**Policy.** AMP is best served if all representatives of its Trustees and both *ex officio* members may speak freely with respect to all matters before the Board of Trustees, including issues relating to the issuance of municipal securities and the use of financial products.

Understandably, the appointed representatives of the 19 municipal corporations that are Trustees may feel constrained by concerns that the representatives cannot give advice with respect to financial matters before the Board without subjecting themselves to the registration requirements applicable to “municipal advisors.” Since AMP encourages its members to appoint representatives knowledgeable about the electric utility industry including financial matters, it would be unfortunate, for example, for a Trustee municipal corporation to decline to appoint its director of finance to represent it as a Trustee on the AMP Board for fear that he or she will have to register as a municipal advisor if he or she were to express informed opinions as to financial matters before the Board, exhort the Board to take or not take related actions and thereby make an optimum contribution to the deliberations of the Board.

Similarly, AMP has the benefit of a long-serving General Counsel. AMP will be the poorer if its General Counsel must restrain his advice to purely legal matters and withhold his informed opinions with respect to financial matters.

**In Practice.** For each of its major projects, AMP has historically retained an independent financial advisor to provide its advice as to bond issue structures, market timing, rating agency presentations and bond pricing.

AMP also retains an independent financial products advisor and has done so since 2008. The financial products advisor counsels AMP, its officers, and its Board primarily with respect to the investment of the proceeds of AMP's bonds and the use of hedges against interest rate risk.

On its major projects, such as its five hydroelectric projects, AMP retains additional independent consultants to advise the Board. For example, in connection with both of its hydroelectric projects for which AMP, in December 2010, issued municipal securities and utilized financial products, AMP employed bond counsel, special federal tax counsel, a financial advisor (a broker-dealer), a financial products advisor and two consulting engineering firms. Each, within its sphere of expertise, provided to AMP written legal opinions, feasibility and beneficial use reports, fairness opinions and/or advice with respect to pricing of the municipal securities, investments of the proceeds of the municipal securities, interest rate hedges, and the like.

AMP objects to the provisions of the Proposed Rule that would make its outside counsel a municipal advisor if he or she were to cross a fine line and express a view that could be considered something other than legal advice or its consulting engineers municipal advisors because they were to suggest an avenue of financing better calculated to obtain a desired result. In AMP's experience, the roles of outside counsel, financial advisor, financial products (swap and investments) advisor and consulting engineer are not neatly compartmentalized. While each primarily provides AMP with the service consistent with its title, AMP benefits from suggestions from its counsel and engineers that may fairly be characterized as financial advice. To the extent that the Proposed Rule would discourage the advisors from extending these suggestions, the Proposed Rule is counter productive and misguided

AMP's Board of Trustees receives presentations from these advisors in connection with each AMP bond issue and the representatives of the Trustees, the two *ex officio* members and AMP staff quiz and challenge the advice they receive from these advisors. AMP's Board of Trustees benefits from the advice of its independent counsel and advisors. Where the Board seeks such advice, representatives of the Trustees and the General Counsel should not be deemed to be acting as municipal advisors merely because they participate in discussions with, and challenge the advice of, AMP's independent advisors.

In these circumstances where AMP has retained independent professionals to provide their advice as to AMP's bond issue and use of financial products, AMP requests that the SEC clarify the definition of municipal advisor to exclude (i) the representatives of AMP's Trustees, (ii) AMP's General Counsel, (iii) AMP's employees to the extent that within the scope of their employment by AMP they advise members on financial matters, and (iv) AMP's members' employees to the extent that within the scope of their employment they advise AMP on financial matters.

Not every financial matter or bond issue that comes before the Board of Trustees comes with an independent advisor in tow. AMP, as a conduit for its members, issues one-year bond anticipation notes for their benefit and without benefit of a financial advisor or financial products advisor. In these cases, the AMP Chief Financial Officer takes responsibility for advising the Board on such issues, structures the issues, and negotiates their sale to an underwriter or direct purchaser. In these cases, too, the representatives of AMP's Trustees question various facets of the proposed financing and express their opinions as to its merits, whether it should be endorsed by the Board or not. AMP maintains that even in the absence of independent financial advisor and independent financial products advisor, the representatives for the Trustees are not acting as municipal advisors in the discharge of their duties.

AMP appreciates the opportunity to express its views on the Proposed Rule. Please feel free to call the undersigned with any questions.

AMERICAN MUNICIPAL POWER, INC.  
on behalf of its members

By: Robert W. Trippe  
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