

Resolution 10-2024
Passed April 2, 2024

A RESOLUTION TO APPROVE THE PRAIRIE STATE ENERGY CAMPUS PROJECT PARTICIPANT CERTIFICATE BETWEEN THE VILLAGE AND AMERICAN MUNICIPAL POWER, INC. (AMP), AND DECLARING AN EMERGENCY.

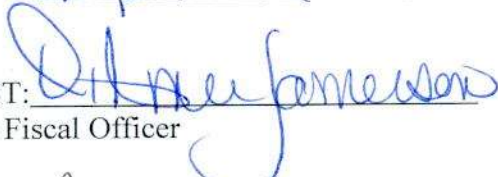
WHEREAS, the Prairie State Energy Campus Project requires a Participant Certificate that the Village will cooperate with AMP and will not operate as a private user of energy services and funds.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF PLYMOUTH, COUNTY OF RICHLAND/HURON, STATE OF OHIO:

1. THAT the Village Administrator is authorized to sign the Prairie State Energy Campus Project Participant Certificate with American Municipal Power, Inc.
2. THAT it is hereby determined that this Resolution is an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the residents of this Village and for the further reason that the signed Certificate is necessary to continue the operation of the Village's electric system, and this Resolution shall therefore go into immediate effect provided it receives a two-thirds (2/3) vote of all members elected to this Council, otherwise it shall go into effect in thirty (30) days if passed by a majority vote of Council.

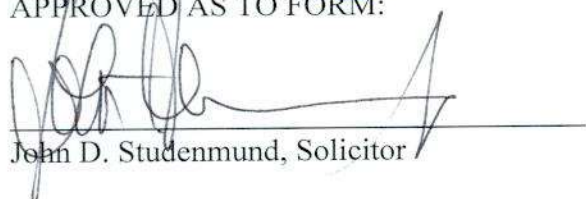
PASSED: April 2, 2024


Mayor

ATTEST: 
Village Fiscal Officer

April 2, 2024
Date

APPROVED AS TO FORM:


John D. Studenmund, Solicitor

**INSTRUCTIONS
FOR
PARTICIPANT'S CERTIFICATE**

PRAIRIE STATE ENERGY CAMPUS PROJECT

American Municipal Power, Inc. ("AMP") has and will continue to issue bonds and other obligations to finance or refinance a portion of the cost of AMP's 23.26% undivided ownership interest (the "AMP 23.26% Ownership Interest") in Prairie State Energy Campus (the "Prairie State Energy Campus Project").

The AMP Member (the "Participant") that executes the attached certificate (the "Certificate") owns and operates its own electric system (the "Electric System") and has entered into a Power Sales Contact (the "Power Sales Contract") with AMP and other AMP participants, dated as of November 1, 2007. Under the terms of the Power Sales Contract, the Participant has agreed to pay for its share of power sales contract resources (a "PSCR Share"), including its share of electric power and energy from the Prairie State Energy Campus Project.

Based upon, among other things, applicable federal income tax law and market conditions at the date of sale, AMP has and will continue to finance or refinance the Prairie State Energy Campus Project with a combination of interim and permanent bonds and other obligations intended to provide low cost financing that does not expose AMP and the Participants to undue interest rate risk. Included in the mix of bonds and obligations may be those that are eligible to receive direct and indirect federal subsidies and credits ("Tax-Advantaged Obligations") that provide a low cost to AMP, and thus to the Participants, of financing the Prairie State Energy Campus Project, including:

- Tax-Exempt Obligations the interest on which AMP has and will continue to represent to be excluded from gross income for federal income tax purposes; and*
- Build America Bonds or similar bonds the interest on which is taxable but for which AMP will receive a direct federal subsidy equal to a percentage of each interest payment AMP owes on such bond.*

The Internal Revenue Code of 1986, as amended, the Treasury Regulations (including final, temporary and proposed regulations) promulgated thereunder and the rulings with respect thereto, set forth conditions on the use of the property financed with the proceeds of the Tax-Advantaged Obligations that must be satisfied on a continuous basis for as long as the Tax-Advantaged Obligations are outstanding in order to maintain the status of the Tax-Advantaged Obligations. If one or more Participants fail to comply with the requirements set forth in the Certificate, the tax status of Tax-Advantaged Obligations issued by AMP could be jeopardized and result in the loss of the related Federal subsidy.

AMP requests that each Participant execute the appended "Certificate" to support the certifications that AMP has made and will make in connection with its issuance of Tax-Advantaged Obligations to finance or refinance the Prairie State Energy Campus Project and to assist AMP to provide assurance with regard to maintaining the tax status of the Tax-Advantaged Obligations.

In delivering the appended Certificate, the Participant should understand that AMP will rely on the representations and certifications made by the Participant in its appended Certificate in providing AMP's tax certificates on which, in turn, Norton Rose Fulbright US LLP, AMP's Federal Tax Counsel, will rely in rendering its opinion respecting the qualification under federal law of the Tax-Advantaged Obligations issued to finance or refinance the Prairie State Energy Campus Project.

*In the event that the Participant has any questions regarding these instructions or requires guidance regarding its compliance with the Certificate, the Participant may contact the Senior Vice President and General Counsel for Corporate Affairs of AMP (the "**AMP Representative**"). As of November 1, 2023, the Senior Vice President and General Counsel for Corporate Affairs of AMP was Rachel Gerrick and her phone number was 614-540-6379.*

PRAIRIE STATE ENERGY CAMPUS PROJECT
PARTICIPANT CERTIFICATE

The undersigned Member municipality (a “**Participant**”) of American Municipal Power, Inc. (“**AMP**”), an Ohio non-profit corporation, having read the foregoing Instructions, DOES HEREBY CERTIFY to AMP, as follows:

Section 1. Definitions. Capitalized terms used herein, unless otherwise defined, shall have the same meaning as set forth in the Instructions to which this Certificate is attached and in Exhibit A.

Section 2. Governmental Use of Proceeds. The Participant represents, warrants and covenants that it will use its PSCR Share for the Governmental Purposes of such Participant. The Participant reasonably expects to use its PSCR Share for Governmental Purposes, and it does not expect to sell or otherwise dispose of its PSCR, in whole or in part, while the Prairie State Energy Campus Project is in operation and as long as any Tax Advantaged Obligations of AMP are outstanding with respect to the Prairie State Energy Campus Project. Such expectation notwithstanding, the Participant understands that any sale or transfer of any portion of its PSCR Share will be subject to the provisions of Section 3(d) below.

Section 3. Representations, Warranties and Covenants Regarding Private Business Tests. So long as any Tax-Advantaged Obligations of AMP are outstanding with respect to the Prairie State Energy Campus Project and the Participant owns a PSCR Share, the Participant represents, warrants and covenants as follows:

(a) Private Business Use. None of the Participant’s PSCR Share will be used for any activities that constitute a “**Private Use**” (as such term is defined in Exhibit A attached hereto).

(b) Private Security or Payment. None of the Participant’s obligations for payments to AMP under the Power Sales Contract, under the terms thereof or any underlying arrangement, will be secured by or derived from payments with respect to a Private Use.

(c) Output Contracts. The Participant will not enter into any Output Contract (described more fully in Exhibit A attached hereto) that results in Private Use with respect to its PSCR Share. In the event that the Participant is currently a party to any contract with a nongovernmental person that may be such an Output Contract, the Participant agrees to furnish a copy to the AMP Representative with this Certificate. In the event that the Participant proposes to enter into any new Output Contract, the Participant agrees to furnish a copy to the AMP Representative and, if AMP advises that such contract will or may breach any representation, warranty or covenant that AMP has made with respect to its Tax-Advantaged Obligations, the Participant agrees not to enter into such contract.

(d) Covenant Regarding Transfers. Participant will not sell or transfer any portion of its PSCR Share unless (i) the purchaser/transferee is an AMP Member (the “**Alternate Participant**”), (ii) such Alternate Participant delivers an executed certificate substantially the same as this Certificate in order to meet the continuing requirements for Tax-Exempt Obligations, **and** (iii) the Participant obtains the prior written consent of AMP to such sale or transfer. This covenant is in addition to the requirements relating to transfers of PSCR Shares contained in the Power Sales Contract.

(e) Covenant Regarding Cooperation. Participant agrees to cooperate with AMP regarding any matters related to its PSCR Share to the extent needed to maintain the tax status of the Tax-Advantaged Obligations.

(f) Effect on Prior Certificates. The Certificate is intended to supplement the certificates previously provided by the Participant in connection with the issuance of tax-exempt obligations or tax-advantaged obligations previously issued by AMP (the “**Prior Certificates**”) and does not in any way supersede such Prior Certificates. When taken together, the representations, warrants, and covenants made by the Participant in the Prior Certificates with respect to its use of the shares described in such Prior Certificates are not inconsistent with the representations, warrants and covenants made by the Participant in this Certificate, and the representations, warrants, and covenants made by the Participant in the Prior Certificates with respect to its use of the shares described in such Prior Certificates continue to be true and correct.

DEFINITIONS

Governmental Purposes. The term “**Governmental Purposes**” means the authorized purposes of a state or local governmental unit that do not involve any Private Use (defined below).

Private Use. The term “**Private Use**” means any activity that constitutes a trade or business that is carried on by persons or entities other than state or local governmental entities (“**nongovernmental persons**”). Any activity carried on by a person other than a natural person is treated as a trade or business. For purposes of the Certificate, the United States (i.e., the federal government) is not deemed a state or local governmental unit. The Participant is a local governmental unit.

In most cases, Private Use will occur if a nongovernmental person has a “**special legal entitlement**” to use the power associated with the Participant’s PSCR Share under an arrangement with the Participant. Such a special legal entitlement would include ownership or actual or beneficial use pursuant to a lease, management or incentive payment contract, output contract, research agreement or similar arrangement. Private Use may be also established solely on the basis of a special economic benefit to one or more nongovernmental persons.

Output Contracts. AMP will sell the PSCR Share to the Participant. Such sale does not result in Private Use. If a Participant enters into an “**Output Contract**” (i.e., a contract under which it agrees to sell electricity to a nongovernmental person), such Output Contract may be deemed to result in Private Use if the contract has the effect of transferring the benefits of the bond-financed property (i.e., the Participant’s PSCR Shares) and the burdens of paying the debt service on AMP’s Tax-Advantaged Obligations to a nongovernmental person.

(a) **General Rule.** Any Output Contract that does not qualify for one of the Exceptions to Private Use set forth below will be treated as resulting in Private Use unless the Participant obtains the written advice of AMP that such Output Contract does not result in Private Use.

(b) **Exceptions to Private Use.** An Output Contract that satisfies one of the following exceptions will **not** result in Private Use.

(i) **Certain Retail Requirements Contracts.** A “**Retail Requirements Contract**” is an Output Contract under which a nongovernmental person agrees to purchase from the seller all or a part of its electric requirements for its own use and not for resale. A Retail Requirements Contract will **not** result in Private Use if the customer is (A) not required to have any minimum requirements to take delivery of power from the Participant and (B) not obligated to make payments even if it does not take any output. This exception is not applicable, however, if the customer enters into additional contractual obligations with the Participant or another governmental unit not to cease operations.

For purposes of this exception, a retail requirements contract will **not** result in Private Use by reason of a provision that (A) requires a purchaser to pay reasonable and customary damages (including liquidated damages) in the event of a default or (B) permits the purchaser to pay a specified amount to terminate the contract while the purchaser has requirements, provided, in each case, that the amount of the payment is reasonably related to the purchaser’s obligation to buy requirements

The undersigned is authorized to sign this Certificate for and on behalf of the Participant. To the best of the knowledge and belief of the undersigned, the expectations set forth herein are reasonable and there are no other facts, estimates or circumstances that would materially change the expectations set forth herein.

WITNESS my hand as of the 2 day of April, 2024.

Village of Plymouth

By: James Burton

Name: James Burton

Title: Administrator

that is discharged by the payment.

(ii) Short-term Output Contracts. An Output Contract will **not** result in Private Use if (A) the term of the contract, including all renewal options, does not exceed 3 years, (B) either the contract is a negotiated arm's-length arrangement that provides for compensation at fair market value, or is based on generally applicable and uniformly applied rates, and (C) the Participant is not acquiring the PSCR Share for a principal purpose of providing output under such contract.

(iii) Small Purchases of Output. An Output Contract will **not** result in Private Use if the average annual payments to be made under the contract do not exceed 1% of the average annual debt service on all outstanding Tax-Advantaged Obligations issued to finance the subject output facility, determined as of the effective date of the contract (the "**Small Purchase Exception**"). The Participant covenants to obtain the written consent of AMP prior to utilizing the Small Purchase Exception from Private Use.