

Resolution No. _____

Passed _____

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RESOLUTION NO. 46 - 11

A RESOLUTION TO APPROVE THE FORM AND AUTHORIZE THE EXECUTION OF A BIOGAS ENERGY SCHEDULE WITH AMERICAN MUNICIPAL POWER, INC. AND TAKING OTHER ACTIONS IN CONNECTION THEREWITH REGARDING BIOGAS ELECTRIC GENERATION AND DELCARING AN EMERGENCY.

WHEREAS, the City of Orrville, Ohio ("Municipality") owns and operates an electric utility system for the sale of electric capacity and associated energy for the benefit of its citizens and taxpayers; and

WHEREAS, in order to satisfy the electric capacity and energy requirements of its electric utility system, Municipality has heretofore purchased, or desires to purchase in the future, economical, reliable and environmentally sound capacity and energy and related services from, or arranged by, American Municipal Power, Inc. ("AMP"), of which Municipality is a member; and

WHEREAS, it is efficient and economical to act jointly in such regard; and

WHEREAS, AMP is an Ohio nonprofit corporation, organized to own and operate facilities, or to provide otherwise, for the generation, transmission or distribution of electric capacity and energy, or any combination thereof, and to furnish technical services on a cooperative, nonprofit basis, for the mutual benefit of AMP members ("Members"), such Members, including Municipality, being political subdivisions that operate municipal electric utility systems in, Delaware, Kentucky, Michigan, Pennsylvania, Ohio, Virginia and West Virginia; and

WHEREAS, each of the Members owns and operates its electric system for the benefit of its customers or members; and

WHEREAS, Municipality, acting individually and through AMP with other political subdivisions of other states that own and operate electric utility systems, jointly, endeavors to arrange for reliable, environmentally sound and reasonably priced supplies of electric capacity and energy and related services for ultimate delivery to its customers; and

WHEREAS, Municipality has previously entered into a Master Services Agreement with AMP, AMP Contract No. C-1-2006-4739, which contemplates that Municipality shall enter into various Schedules for the provision of capacity and associated energy and related services from AMP to Municipality; and

WHEREAS, the Municipality has determined that it can utilize additional sources of reliable and environmentally sound "green" electric capacity and energy on a long term basis at reasonable costs, and have requested that AMP arrange for the same; and

WHEREAS, in furtherance of this purpose, AMP and Napoleon Biogas, LLC ("Napoleon Biogas"), have entered into a Confidential Non-Binding Summary of Principal Commercial Terms ("Napoleon Biogas Term Sheet") under the terms of which AMP is to purchase and Napoleon Biogas is to supply and sell up to 2.4 MW of capacity and associated energy from renewable energy generating biogas facilities ("Biogas Facilities") to be constructed and connected to AMP Member City of Napoleon's electric utility system for a period of fifteen (15) years (a copy of which is on file with the clerk or otherwise available to Municipality); and

WHEREAS, it is necessary and desirable for Municipality to enter into the Napoleon Biogas Energy Schedule to Municipality's Master Services Agreement with AMP to

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provide for an additional source of capacity and energy; and

WHEREAS, Members now have the right, but not the obligation, to acquire biogas capacity and energy from the Biogas Facilities by approval and execution of the Napoleon Biogas Energy Schedule authorized below; and

WHEREAS, after due consideration, the Municipality has determined it is reasonable and in its best interests to proceed as authorized herein below.

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC UTILITIES BOARD OF THE CITY OF ORRVILLE, OHIO:

Section 1: That the Napoleon Biogas Energy Schedule between the Municipality and AMP, substantially in the form attached hereto or on file with the Clerk, including Exhibits thereto, are approved, and the Director of Utilities of Municipality is hereby authorized to execute and deliver the Napoleon Biogas Energy Schedule with such changes as the Director of Utilities may approve as neither inconsistent with this Resolution nor materially detrimental to the Municipality, his or her execution of the Napoleon Biogas Energy Schedule to be conclusive evidence of such approval.

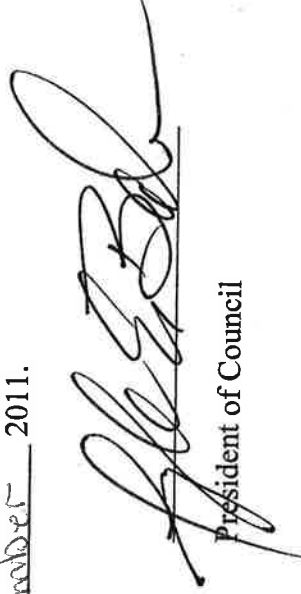
Section 2: That the Director of Utilities is hereby authorized to (i) acquire under the Napoleon Biogas Energy Schedule, authorized above, a Contract Amount of up to 300 kW, and (ii) make any determinations and approvals required thereunder, if any, as the Director of Utilities shall deem necessary and advisable.

Section 3: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in conformance with applicable open meetings laws and that all deliberations of this Council and of any committees that resulted in those formal actions were in compliance with all legal requirements including any applicable open meetings requirements.

Section 4: If any section, subsection, paragraph, clause or provision or any part thereof of this Resolution shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Resolution shall be unaffected by such adjudication and all the remaining provisions of this Resolution shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

Section 5: That this Resolution is declared an emergency measure necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Orrville, and for the further reason it is necessary to provide for a continuous and predictable source of power for the customers of municipal utilities and, therefore, this Resolution shall be in effect immediately after its passage and approval by the Mayor.

Passed this 5th day of December 2011.



President of Council

RECORD OF RESOLUTIONS

0199

Dayton Legal Blank, Inc., Form No. 30045

Resolution No. _____

Passed _____, 20____

Attest:

T. Peppard
Clerk of Council

Approved:

David J. Farnsworth
Mayor

Date 12/5/11

**CITY OF ORRVILLE, OHIO
NAPOLEON BIOGAS ENERGY SCHEDULE
TO
AMERICAN MUNICIPAL POWER, INC.
AND
CITY OF ORRVILLE, OHIO
MASTER SERVICES AGREEMENT
AMP CONTRACT NO. C-1-2006-4739**

WHEREAS, the City of Orrville, Ohio (“Municipality”) and American Municipal Power, Inc., formerly American Municipal Power-Ohio, Inc. (“AMP”) (individually a “Party” and collectively “Parties”) have entered into a Master Services Agreement (AMP Contract No. C-1-2006-4739 hereinafter, “MSA”) under which certain services may be provided, pursuant to Schedules entered into between Municipality and AMP; and

WHEREAS, AMP has negotiated and executed the Napoleon Biogas “Confidential Non-Binding Summary of Principal Commercial Terms” (AMP Contract No. C-8-2011-8593), dated July 27, 2011 between AMP and Napoleon Biogas, LLC (“Napoleon Biogas”), for the purchase of up to 2.4 MW of biogas electric capacity and associated energy (the “Napoleon Biogas Term Sheet”) from biogas electric facilities to be located in Napoleon, Ohio (“Napoleon Facility”) a copy of which has been made available to the Municipality; and

WHEREAS, the Napoleon Biogas Term Sheet provides, among other things, significant opportunities for the Municipality to receive from AMP reliable, economic, renewable “green energy” through this Schedule to the MSA (the “Napoleon Biogas Energy Schedule”) and has been made available to the Municipality.

SECTION 1 – TERM

The term of this Napoleon Biogas Energy Schedule shall be effective as of July 1, 2012 and shall thereafter be coterminous with the agreement entered into between AMP and Napoleon Biogas containing the terms set forth in the Napoleon Biogas Term Sheet collectively (“Napoleon Biogas Terms”), ending no later than July 1, 2027; provided, however, that Municipality’s obligation to purchase and AMP’s obligation to deliver capacity and energy pursuant to this Schedule are both contingent on Napoleon Biogas’ performance pursuant to the Napoleon Biogas Terms.

Municipality shall have the option to extend the term of this Napoleon Biogas Energy Schedule for an additional term by mutual written agreement of Municipality and AMP. The exercise of this option to extend the term is specifically and expressly conditioned upon AMP’s ability to mutually extend the term of the Napoleon Terms for a term equal in length to the term for which Municipality seeks to extend the term of this Schedule with AMP.

SECTION 2 - SERVICES

AMP agrees to procure as Seller, pursuant to (and its obligations hereunder are specifically dependent upon) the Napoleon Biogas Terms, all output up to 2.4 megawatt (“MW”) of capacity and associated energy (“MWh”) for the benefit of the Municipality (the “Contract Amount”) and other participating AMP members. Municipality agrees to take and pay for up to 300 kW of such capacity and energy where and as available from time to time, pursuant to the Napoleon Biogas Terms.

AMP may also procure, from time to time, excess biogas capacity from Napoleon Biogas, over and above the specified amounts to be provided pursuant to the Napoleon Biogas Terms. Municipality shall have a right of first refusal to purchase such excess biogas capacity, if Municipality requires such capacity, upon such commercially reasonable terms to be determined between Municipality and AMP should such excess biogas capacity become available.

SECTION 3 - DELIVERY POINTS

The Delivery Point, pursuant to this Napoleon Biogas Energy Schedule shall be that set forth on Exhibit C unless the same is modified in writing by the Parties. Municipality may change the Delivery Point set forth on Exhibit C with AMP's consent, such consent not to be unreasonably withheld, provided that transmission to any modified or secondary delivery point shall be pursuant to appropriate FERC tariffs at Municipality's expense, including the costs of any/all required ancillary services.

SECTION 4 - SCHEDULING

- A. AMP shall cooperate with the Municipality to schedule the capacity and energy to a Delivery Point as required to benefit the Municipality in conformance with Prudent Utility Practice.
- B. Notwithstanding any other provision of this Napoleon Biogas Energy Schedule and the MSA, Municipality shall, when available, take and pay for all biogas capacity and energy available hereunder.

SECTION 5 - DEPENDENCE ON BIOGAS TERMS

Municipality recognizes that AMP's ability to supply biogas capacity and energy under this Schedule is dependent upon AMP's ability to arrange for the same pursuant to the Napoleon Biogas Terms. Additionally, Municipality recognizes that AMP entered into the Napoleon Biogas Terms primarily for the benefit of Municipality and that AMP, pursuant to the Napoleon Biogas Terms, has certain rights as well as certain obligations. Accordingly, Municipality warrants to cooperate with AMP in such a manner as to facilitate AMP's performance of its obligations thereunder, and releases AMP from any liability due to Napoleon Biogas' failure to perform.

Further, as set forth in Section 1, any requested extension to the term of this Napoleon Biogas Energy Schedule shall be expressly conditioned and dependent upon AMP's ability to extend the terms of the Napoleon Biogas Terms for an equivalent period of time.

SECTION 6 - RATES, CHARGES AND BILLING

- A. Capacity and energy made available pursuant to this Napoleon Biogas Energy Schedule shall be charged for at the base rates specified in the Napoleon Biogas Terms (the initial rates under which are set forth in Exhibit A hereto) and shall include an adder for an appropriate allocation of all costs incurred hereunder and the costs set forth in Sections 6 B and C hereof, and shall be charged and billed pursuant to Exhibit A, Capacity and Energy Rate Schedule as the same may be modified by AMP from time to time and pursuant to the billing provisions herein and in the MSA;
- B. All transmission costs including ancillary services, energy control center cost, taxes and other charges not otherwise recovered that are incurred to provide and deliver capacity and energy pursuant to this Napoleon Biogas Energy Schedule shall be charged and billed to Municipality; and
- C. In addition to the other compensation to be paid to AMP pursuant to this Napoleon Biogas Energy Schedule, Municipality shall also pay AMP the Service Fee specified in the MSA.

SECTION 7 – INSTALLED CAPACITY CREDIT

Municipality will receive the net Installed Capacity/RPM credits/charges (if any) from the RTO where each of the Biogas Facilities are located.

SECTION 8 – RENEWABLE ENERGY CREDITS

No renewable energy credits or like environmental credits (RECs) are available to AMP or Municipality under the Napoleon Biogas Terms at the price quoted in Exhibit A hereto. RECs are available as an option at a price increment of \$2.00 per MWh, also escalated at two percent (2%) per year beginning in 2014. Should Municipality desire the REC, it should so indicate by initialing the REC option below:

Yes, Municipality desires the associated RECs at the additional price indicated. _____

CITY OF ORRVILLE, OHIO

By: _____

Name: Jeff A. Brediger

Title: Director of Utilities

Date: _____

APPROVED AS TO FORM:

Timothy R. VanSickle
Municipality's Legal Counsel

AMERICAN MUNICIPAL POWER, INC.

By: _____

Marc S. Gerken, P.E.
President/CEO

Date: _____

APPROVED AS TO FORM:

John W. Bentine
General Counsel

EXHIBIT A

RATE SCHEDULE for NAPOLEON BIOGAS POWER

ENERGY PAYMENT.

- Energy --
 - On-Peak Energy Rate = \$ 68.23 / MWh
 - Off-Peak Energy Rate = \$ 29.00 / MWh
- On-Peak shall be the hours between Hour Ending (HE) 0800 Eastern Prevailing Time (EPT) and HE 2300 EPT Monday through Saturday (excluding Holidays).
- Off-Peak shall be all hours not included as On-Peak.

Holidays shall be the following days:

- New Year's Day (January 1 or January 2 if January 1 is a Sunday)
- Memorial Day
- Independence Day (July 4 or July 5 if July 4 is a Sunday)
- Labor Day
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Day (December 25 or December 26 if December 25 is a Sunday)

- Capacity - \$1.00 per megawatt (MW) per year, invoiced annually in February, based upon the average MW per hour delivered hereunder for the previous calendar year.

Annual Rate Escalator:

2% beginning with the 2014 calendar. Rate will be adjusted on January 1 of each year. First Increase to take place on January 1, 2014.

No Change in Prices:

The prices stated in Exhibit A will not be increased or reduced in respect of the availability, lack of availability, extension of, institution of, or withdrawal of: (i) Section 45(k) Federal Non-conventional Fuel Source Credits, or (ii) regulations that permit the sale by Seller or Buyer of tradable emissions credits relating to the generation of electricity from the Napoleon Facility, including, but not limited to, renewable energy credits, mercury emissions credits, carbon/greenhouse gas emissions credits, Environmental Credits or other environmental attributes.

EXHIBIT B

SERVICES

	MW	%
Amount Of Total Capacity Under Napoleon Biogas Term Sheet (up to)	2.4	100%
Contract Amount Of Municipality's Capacity (up to)	.3	0.09%

EXHIBIT C

DELIVERY POINT

Participant	RTO/Zone	Delivery Point	Secondary Delivery Point (LMP)	Secondary Delivery Point Voltage
Napoleon, OH	PJM	Napoleon Distribution System	None	N/A
Other AMP Members	PJM/—	Napoleon Distribution System	Member LMP	— kV

4811-2075-4190, v. 34811-2075-4190, v. 2.