

January 21, 2016

The Honorable Gina McCarthy
Administrator, United States Environmental Protection Agency
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Submitted via a-and-r-Docket@epa.gov

Joint Comments to EPA on EPA's Draft Federal Plan and Model Rule under the Clean Power Plan

Thank you for the opportunity to comment on the proposed Clean Power Plan (CPP) Model Trading Rules and the proposed Federal Plan. Our organizations commend the U.S. Environmental Protection Agency (EPA) for including broad flexibility and the explicit recognition of energy efficiency as a permissible state compliance approach in the CPP. Energy efficiency is a least-cost, zero-emission energy resource that should be equally maximized to ensure direct benefits to consumers under any Federal Plan structure, be it mass-based or rate-based. While we appreciate the overarching encouragement of energy efficiency in the CPP, we remain concerned that the benefits of energy efficiency will not be realized in practice unless EPA provides a clear signal that it will incorporate energy efficiency in the Federal Plan and provides more specific guidance in the Model Trading Rules on how states may incorporate energy efficiency in their own plans.

Specifically, we request that EPA make it clear to states that energy efficiency is an acceptable, even a preferred, compliance option, regardless of whether that plan is mass-based or rate-based. We further request that EPA provide additional guidance in a number of areas to ensure maximum use of energy efficiency as a least-cost means of compliance.

As EPA has acknowledged during development of the CPP, energy efficiency provides emission reductions quickly and at a lower cost to ratepayers than any other compliance option by reducing the need for central power generation. State energy efficiency policies and actions—including those that set energy savings targets, reduce business and industrial energy use, and implement residential energy efficiency upgrade programs—can be the quickest and cheapest means to reduce generation from fossil fuel-fired power plants. Moreover, energy efficiency brings significant ancillary benefits, such as improving air quality, improving inhabitant comfort, and saving consumers money. Additionally, energy efficiency stimulates new investments and creates diverse, high-quality jobs across the construction, engineering, financial, environmental, manufacturing, and industrial supply chains.

The business, non-governmental organizations and other signatories to these comments respectfully request that EPA clarify the following items in the proposed Federal Plan, proposed Model Trading Rules, Clean Energy Incentive Program (CEIP), and draft Evaluation, Measurement, and Verification (EM&V) Guidance:

- Clarify that energy efficiency is both acceptable and encouraged as a compliance mechanism;
- Support a national energy efficiency registry;
- Provide further details for states on utilizing energy efficiency in a rate-based plan;
- Provide guidance for states on utilizing energy efficiency in a mass-based plan;

- Improve incentives for early investment in energy efficiency under the CEIP; and
- Set transparent, rigorous, and practical EM&V requirements.

Clarify that Energy Efficiency is both Acceptable and Encouraged as a Compliance Mechanism

While EPA incorporated efficiency as a compliance mechanism when it estimated the costs of the CPP in its Regulatory Impact Analysis, the agency proposes not to directly credit or support energy efficiency in either the rate-based or mass-based Federal Plan. EPA should commit to including energy efficiency in a Federal Plan regardless of whether it is mass- or rate-based.

In addition, and partially because energy efficiency is not directly included in the proposed Federal Plan, states require clarity about *whether* and *how* to incorporate energy efficiency as a compliance mechanism. Many states are hearing conflicting information about the approvability, effectiveness, and ease of incorporating energy efficiency into their compliance plans. In our experience working with states, we have seen four state responses to energy efficiency: 1) some states do not believe they can use efficiency to comply at all, 2) some believe they can use utility-delivered energy efficiency only, 3) others wish to use energy efficiency but are unclear how it can be included, and 4) only a few feel secure in delivering efficiency savings in both the utility sector and beyond for compliance. We believe that the suggestions in this letter would assist EPA in transitioning the remainder of states into the last category. In order to do so, we strongly urge EPA to provide specific examples of acceptable programs, policies and projects, including at least one, though preferably multiple, acceptable EM&V protocols for each of them. This can be done in guidance, assuming that guidance can be given soon enough to inform state submittals.

Finally, we recommend that EPA clarify that federal support for an energy efficiency project, program, or measure—whether by direct federal funding such as through the Weatherization Assistance Program, eligibility for federal tax credits such as the Section 45Q industrial efficiency credit, federal contracting such as energy service performance contracts at federal buildings; or other means—would not in itself preclude the resulting energy savings from earning ERCs or allowances under a compliance plan or as part of the CEIP. Whether and what proportion of funding a project, program, or measure receives from the federal government should not be a relevant factor in determining compliance eligibility, so long as the measure produces energy savings (beyond a baseline). That some programs are well-established is also not germane. The CPP rule specifically allows measures undertaken subsequent to December 31, 2012, pursuant to existing programs or policies, to “count” so long as emission reductions occur during the interim or final compliance period.

Support a National Energy Efficiency Registry

A robust system that supports transparent tracking of energy efficiency initiatives and that reduces administrative costs and the risk of double counting is critical to success. Although a broad, national energy efficiency registry does not exist today, many of the fundamental elements for such a registry are already in place as a result of states’ experience with renewable portfolio standards and renewable energy certificates (RECs) tracking. A number of states are collaborating on the development of governance rules for use in creating a national energy efficiency registry that could be used for a wide

variety of state and private purposes, including tracking emissions reductions resulting from energy efficiency projects.

Such a registry will allow states to track energy efficiency initiatives and demonstrate CPP compliance by:

- Providing a consistent, robust framework for energy efficiency to be included as an “eligible resource” in federal and/or state plans;
- Demonstrating the eligibility and verification of energy efficiency projects according to eligibility standards proposed by individual states, groups of states or U.S. EPA; and,
- Facilitating inter- and intrastate trading under individual state plans, multi-state plans or the Federal Plan, as states so opt.

We ask EPA to follow up on its proposal to support or contribute to the development of an energy efficiency project registry.

Provide Further Details on Using Energy Efficiency in a Rate-Based Plan

As the proposed rate-based Federal Plan is currently structured, demand-side energy efficiency may not earn emission rate credits (ERCs). Under the proposed rate-based Model Trading Rule, EPA allows all quantified and verified demand-side energy efficiency measures to earn ERCs. EPA should harmonize the treatment of demand-side energy efficiency across these two otherwise similar proposals, which will aid in creating a broad trading market among rate-based Federal Plan and non-Federal Plan states

Specifically, if EPA implements a rate-based Federal Plan in a state, it should ensure that energy efficiency providers and projects are eligible to generate ERCs. Eligible energy savings measures should include those that result from demand-side management programs, the implementation of building codes, the use of energy savings performance contracting (ESPC), and the installation of combined heat and power systems (CHP) at institutional and industrial facilities, among others.

In addition, EPA should provide simple and straightforward guidance on how states can take credit for energy efficiency programs and policies in a rate-based plan. We believe that ensuring the environmental integrity of the rate-based pathway is contingent on an ERC administration process that is streamlined, intuitive and readily understood by energy efficiency actors. We urge EPA to provide specific examples of energy efficiency programs and projects that would be presumptively approvable in the rate-based Model Trading Rule. We recommend the following presumptively approvable energy savings programs, projects and measures: ratepayer-funded energy efficiency programs administered by utilities or by third parties on behalf of utilities or states; building energy codes; privately provided energy services such as ESPCs; CHP; low-income state efficiency programs such as weatherization programs; and state appliance efficiency standards. We request that EPA properly value the energy saving contribution of CHP by allowing credit to be based on avoided electric generation.

Identifying presumptively approvable energy efficiency measure types and methods by which states can incorporate these energy savings measures will give states the confidence to include energy efficiency in their plans. This is particularly important for states that are not already deeply invested in energy

efficiency. It is also important that EPA provide a process for new programs, measures and policies to be pre-approved or pre-certified for ERCs.

Provide Guidance on Using Energy Efficiency in a Mass-based Plan

As proposed, the mass-based Model Trading Rule does not explicitly recognize the emission reduction contributions of energy efficiency. This is in contrast to the treatment of energy efficiency in the rate-based Model Trading Rule, which deems energy efficiency eligible to generate ERCs. Without an analogous means of directly recognizing the emission reduction contribution of energy efficiency, energy efficiency will not be incentivized to the extent needed.

To that end, EPA should provide guidance on how states could implement complementary energy efficiency programs and incentivize energy efficiency in a mass-based plan. This should include explicit model language for multiple allowance distribution methodologies that states can consider.

One option is the design and implementation of an auction with reinvestments in energy efficiency. This method is well established with the Regional Greenhouse Gas Initiative. A similar but broader model would make a portion of funds available to efficiency and clean energy providers through a public bidding process for investment by the private sector, reaching beyond state- and utility-run incentive programs. In this second scenario, the best projects (considering cost and comprehensiveness) with qualifying EM&V could be awarded. We would suggest EPA guidance around this process.

Additional approaches should include:

- direct allocation of allowances to quantified and verified energy efficiency; and
- use of a resource-neutral, output-based allocation approach that would allocate allowances based on each resource's carbon contribution to the grid.

For more detailed thoughts on this subject we suggest consideration of the comments submitted by the South-central Partnership for Energy Efficiency as a Resource (SPEER), et al. that was signed by many of our groups.

Improve Incentives for Early Investment in Energy Efficiency under the CEIP

We commend EPA for including a CEIP to encourage the early implementation of energy efficiency measures in low-income communities through the issuance of matching ERCs or allowances to participating states.

In order to fulfill the purposes of the CEIP—encouraging early action by states and continuing progress already made—the energy efficiency eligibility requirements should be similar to those for solar and wind energy, as both are emission free compliance strategies. All early energy efficiency should be eligible to receive ERCs or allowances. We support a larger match for projects and programs that provide energy efficiency to low-income households or communities; other energy efficiency projects and programs should be eligible to receive a match consistent with that provided to renewable energy.

EPA should also consider additional tools and support to help states realize the early energy efficiency incentive in low income communities.

To avoid becoming a disincentive to early action, we suggest that the CEIP be expanded to reward early action beginning as soon as state compliance plans are finalized for states opting to participate in the CEIP.

EPA should use existing definitions of “low-income,” using both geographic and household bases. Existing federal definitions include the U.S. Department of Housing and Urban Development’s 80% of median income definition, the U.S. Internal Revenue Service’s definition of a low-income community under the New Market Tax Credit (NMTTC) Program and the Community Reinvestment Act.

Encourage Transparent, Rigorous and Practical EM&V Requirements

We fully support the need for robust EM&V to assure that energy savings are quantifiable, verifiable, enforceable, non-duplicative, and permanent, particularly under rate-based compliance plans and for the issuance of ERCs or allowances under the CEIP. However, EM&V requirements should not be so burdensome or expensive so as to dissuade participation. The desire for rigor must be balanced with the recognition of states’ existing EM&V protocols already in practice; upsetting the multi-year process of EM&V protocol development within states would be unnecessarily costly and cumbersome, impede energy efficiency investments and inadvertently shift a state toward greater reliance on fossil fuel-fired supply-side compliance options.

As a general matter, we agree with the principles for energy efficiency EM&V articulated in the proposed Model Trading Rules and the draft EM&V Guidance: EM&V should (1) ensure that savings from energy efficiency are quantifiable and verifiable; (2) balance the accuracy and reliability of results with the associated costs of EM&V; (3) avoid excessive interference with existing practices that are robust, transparent and effective; and (4) recognize that EM&V is routinely evolving to reflect changes in markets, technologies and data availability. These and additional principles are elaborated upon by joint comments specifically on EM&V issues that were signed by many of our groups.

In order to ensure that EM&V requirements do not hinder the use of energy efficiency as a compliance strategy, we encourage EPA to provide simple and straightforward guidance on how states can take credit for energy efficiency programs and policies in a rate-based plan. We also request that EPA provide guidance to states on possible approaches for handling EM&V in a mass-based plan.

Thank you for the opportunity to comment on ensuring energy efficiency as a compliance mechanism.

Sincerely,

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**Demand side energy efficiency referred herein encompasses programs, policies and projects delivered by a utility, government or private entity. Programs include utility-run or procured energy efficiency programs, procurement of energy savings performance contracts (ESPCs), adoption of building energy codes, above-code green building certification, residential retrofit programs and financing, industrial energy efficiency, and investment in combined heat and power (CHP).*

