

MIDCONTINENT STATES ENVIRONMENTAL AND ENERGY REGULATORS

January 20, 2016

The Honorable Gina McCarthy
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Midcontinent States' Environmental and Energy Regulators' Comments on the Clean Power Plan Model Rules and Federal Plan

Dear Administrator McCarthy:

Participation in this letter should not be interpreted as conveying support or opposition to EPA rulemaking under Section 111(d) of the Clean Air Act, nor does it necessarily represent the views of our respective states.

The Midcontinent States Environmental and Energy Regulators (MSEER) group brings together state air and public utility regulators from 13 states¹ to explore and assess implementation options to meet proposed federal carbon dioxide emissions targets as set forth in the Clean Power Plan (as published in 80 Fed. Reg. 64966, October 23, 2015). MSEER writes to provide comments on the proposed model rules and the federal plan released at the same time as the final CPP rule.

The MSEER states have not yet made decisions on whether or how states might accomplish Clean Power Plan (CPP) implementation. We nevertheless provide the following comments in an effort to provide states with as much information and flexibility as possible as they contemplate their options.

¹ To date, MSEER discussions have brought together representatives from Arkansas, Illinois, Indiana, Iowa, Kentucky (observer only), Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, South Dakota and Wisconsin (observer only).

A. Proposed Model Rules

1. **Timing of Finalization.** States are working now to determine whether and how to respond to the CPP. And, while states may avail themselves of the option to file for an extension in September 2016, it would be very helpful if EPA would finalize the model rules as quickly as possible in order to inform the September 2016 filing. There are states that have long timelines for either legislative and/or regulatory action necessary to implement their CPP plan. These states, even if filing for an extension in 2016, may need to set their pathway in motion by that time. Understanding what is presumptively approvable through the model rules would therefore be very helpful.
2. **Clean Energy Incentive Program (CEIP).** Because the CEIP was not included in the proposed rule, states are in the position of needing additional guidance in the interpretation of this program. While the states understand that the existence of the CEIP is not something that can be commented upon, whether a state chooses to utilize the CEIP may depend in part on a better understanding of its provisions.

The States have previously submitted detailed comments to the Administrator on the CEIP (letter to Administrator McCarthy, dated December 15, 2015). The comments included in that letter are incorporated by reference in this comment letter. For reference, a copy of that letter is attached to this document.

B. Proposed Federal Plan

1. **Rate-based versus Mass-based.** The proposed federal plan indicates that either a rate-based or mass-based option will be chosen by EPA for states that are subject to the federal plan, and that a decision on rate or mass will not be made until a state is subjected to a federal plan. This raises two questions for the states.

First, the states believe it would be helpful to know prior to the September 2016 filing deadline which option is likely to be chosen. It may help to inform a state's decision on their own path, either because they may become subject to a federal plan, or a neighboring state may be. As states weigh options, understanding all of the options with greater clarity would be extremely helpful.

Second, having asked for that clarity, the states are inquiring whether federal plans need to be all rate or all mass. If a state is in an RTO that is all rate-based, but a federal plan imposes a mass-based standard (or vice-versa), that may negatively affect all of the states in the region, not just the state subject to the federal plan.

- 2. Allowances for Retired Units.** Under the proposed federal plan, a retired plant will not receive an allocation if it has not operated for two consecutive calendar years when the allocations are made seven months before the start of a compliance period. The states believe that this could result in plants that would otherwise retire remaining in operation for a longer period of time. If true, this would potentially make state compliance more difficult, and undermine the purpose of the CPP.

Thank you very much for your consideration.

Sincerely,

MSEER Steering Committee



Nancy Lange
Commissioner
Minnesota Public Service Commission



Ted Thomas
Chairman
Arkansas Public Service Commission



Vince Hellwig
Senior Air Policy Advisor
Michigan Agency for Energy



Chad LaFontaine
Air Division
Mississippi Department of Environmental
Quality



David Thornton
Assistant Commissioner
Minnesota Pollution Control Agency

Attachment:

MIDCONTINENT STATES ENVIRONMENTAL AND ENERGY REGULATORS

December 15, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

**RE: Midcontinent States Environmental and Energy Regulators' Comments on
the Proposed Clean Energy Incentive Program**

Dear Administrator McCarthy:

Participation in this letter should not be interpreted as conveying support or opposition to EPA rulemaking under Section 111(d) of the Clean Air Act, nor does it necessarily represent the views of our respective states.

The Midcontinent States Environmental and Energy Regulators (MSEER) group brings together state air and public utility regulators from 13 states to explore and assess implementation options to meet proposed federal carbon dioxide emissions targets as set forth in the Clean Power Plan (as published in 80 Fed. Reg. 64966, October 23, 2015). Further, MSEER states are interested in the Clean Energy Incentive Program (CEIP) that is part of the Clean Power Plan (CPP) (Docket ID: EPA-HQ-OAR-2015-0734).

While the MSEER states have not yet made any formal decisions on whether or how states might approach CPP implementation, we nevertheless provide the

following comments concerning the CEIP, in the interest of better understanding the CEIP, and in the hope of providing the greatest flexibility to states in their plan development.

In a document entitled “Clean Energy Incentive Program Next Steps”, dated October 21, 2015, your Agency listed a number of CEIP provisions on which you were seeking comment. These comments will respond to some of the areas indicated by that document.

- 1. “Criteria for eligible projects, including those for EE projects implemented in low-income communities,” and “Definition of ‘low-income community’ for eligible projects”.** In the CEIP, EPA uses the term “low-income communities” instead of “low-income individuals” to describe for whom the CEIP allowances/credits will be awarded. We assume that this means that EPA is not seeking individual income verification for those impacted by energy efficiency programs, and support that reading. We understand that there are numerous ways to qualify for low-income provisions under myriad federal programs, but to individually qualify beneficiaries of energy efficiency programs for the CEIP could be too burdensome for states, and may negatively affect the cost-benefit analysis of these programs. EPA could take a number of different approaches to qualifying programs for allowances/credits under the CEIP, and the MSEER states recommend the broadest possible definition, to allow for wider implementation of such programs. These measures could include:
 - a.** A definition of low-income communities that has a geographic basis on as broad a scale as possible (no smaller than a census tract), and a presumptive qualification based on existing income data, or qualification with a minimal showing that energy efficiency programs in a particular area would disproportionately benefit low-income residents;
 - b.** As broad a definition of “low-income” as possible. We know that there are various income thresholds in different federal programs, and a broader definition would allow for maximization of energy efficiency programs under the CEIP;
 - c.** An allowance for existing energy efficiency programs in states that already target low-income residents. For these programs, a minimal showing that the program is meeting its goals should be required;

d. Coordination with existing federal programs that serve low-income communities, such as LIHEAP, FRPL, Head Start, Home Investment Partnership, Supplemental Nutrition Assistance, and many others. Programs that are serving geographic areas under these programs should also result in a presumptive qualification for these areas under the low-income provisions of the CEIP.

2. “Definitions for ‘commence construction’ of an eligible RE project and ‘commence operations’ of an eligible low-income EE project” and “The date from which a project may be deemed eligible to qualify for the CEIP”.

The MSEER states believe that the earliest possible trigger date should be allowed for this definition, and would suggest no later than September 6, 2016, as the date by which states are required to submit either a state plan or a request for extension under the CPP. This would allow states to begin the planning process for these programs now, would strengthen the non-binding commitment of the states to utilize the CEIP that is required in September of 2016, and would send an immediate signal for those who wish to work on energy efficiency (EE) and renewable energy (RE) projects.

3. “EM&V requirements for eligible projects, requirements for M&V reports of quantified MWh, and requirements for verification reports from an independent verifier.” EPA has been part of efforts to establish best practices for evaluation, measurement and verification (EM&V), and should incorporate those best practices to the greatest extent possible, to give states a clearer idea of what would be acceptable. EPA could adopt a default set of EM&V criteria to further this goal. In addition, the states recommend that EPA accept results from utility-funded programs evaluated by qualified third-party verifiers that substantially rely on the International Performance Measurement and Verification Protocol (IPMVP), or which rely on protocols developed by the DOE Uniform Methods Project, or similarly recognized protocols. States should be provided clear guidance about the acceptable protocols for independent EM&V. The CEIP should also allow enough flexibility to recognize protocols that come into acceptance between now and 2022.

4. **“Mechanism for reviewing project submittals and issuing early action allowances/ERCs”, and “Timing of allocation of matching allowances/ERCs to a state by the EPA as well as timing for awards from these allocations to eligible project providers.”** The MSEER states seek greater clarity on this item, as it is unclear how the issuance of allowances/credits will be accomplished. EPA should provide to the states clear protocols for implementation so states know what will be required of them, and project developers and states will be able to identify whether there are potential barriers to implementation or projects that require further consultation with EPA.

5. **“Size of the two matching allowance/ERC reserves under the CEIP—one for low-income EE projects, one for wind and solar projects.”** While the MSEER states do not take a specific position as to how the 300 million tons of allowances/ERCs should be divided, we do feel that the allocation should allow for flexibility to adjust, in order that all 300 million tons are utilized. It is impossible to know at this point, and even during implementation of a program, the exact amount of qualifying credits a project may earn, and the EPA should give flexibility to shift between RE and EE to fully utilize the pool of allowances/credits.

Thank you very much for your consideration of these comments.

Sincerely,

Members of the MSEER Steering Committee

A handwritten signature in black ink that reads "Nancy Lange". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Nancy Lange

Commissioner

Minnesota Public Utilities Commission



Vince Hellwig

Senior Air Policy Advisor

Michigan Agency for Energy



David Thornton

Assistant Commissioner

Minnesota Pollution Control Agency



Ted Thomas

Chairman

Arkansas Public Service Commission



Chad LaFontaine

Air Division

Mississippi Department of Environmental Quality

(1) To date, MSEER discussions have brought together representatives from Arkansas, Illinois, Indiana, Iowa, Kentucky (observer only), Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, South Dakota and Wisconsin (observer only).