

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.

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).