

Western States' 111(d) Comments to EPA

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Environmental Protection Agency

40 CFR Part 60

Carbon Pollution Emission Guidelines for Existing Stationary Sources:
Electric Utility Generating Units; Proposed Rule

Note: This comment letter was completed by Western states shortly before EPA's October 28, 2014 Notice of Data Availability (NODA) and Supplemental Proposal for Existing EGUs in Indian Country. Western states will review the issues raised by EPA in the NODA and the Supplemental Proposal and may submit additional comments.

I. Introduction

Thirteen Western states¹ are engaged in a dialogue convened by the Center for the New Energy Economy at Colorado State University on EPA's Proposed Rule for Carbon Pollution Emission Guidelines for Existing Electric Utility Generating Units. Across the West there are many divergent opinions on the Proposed Rule. Apart from those divergent opinions, including support and opposition, this document reflects a general agreement among our states on issues that affect the West as a region.

In general, we recommend that the final rule:

- Allow for a range of planning options, including those that support flexible, multistate compliance options without necessarily requiring states to enter into a single regional plan;
- Allow for flexible interim compliance targets that provide room for a range of effective emissions reduction strategies; and
- Coordinate action on tribal sources with compliance planning in the Western region.

We also recognize a number of elements in the proposed rule that EPA should retain, including those that:

¹ Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

- Allow regional coordination, while at the same time allowing states to submit individual plans if they choose to do so;
- Provide states multiple options for capturing the benefits of state energy efficiency and renewable energy programs;
- Allow states to take either a rate-based or mass-based approach to achieving state goals; and
- Preserve the states' role as primary implementers of the section 111(d) performance standards.

II. State Planning, State Flexibility, and the EPA Approval Process

Western states have long been responsible for developing air quality plans under the Clean Air Act. Based on our experience, we know that the 111(d) planning process will place a significant administrative burden on both state agency and EPA staff. Therefore, it is critical that EPA and the states work efficiently together and that EPA exercise as much flexibility as possible when reviewing and approving state 111(d) plans.

Western states have air quality programs whose resources are already committed to implementing other federal and state programs. While we understand the Administration is seeking reallocation of funds from the United States Congress for state air quality planning in the FY2015 budget², it is important for EPA to provide states with additional assistance wherever possible to help state air agencies meet deadlines under 111(d).

It is also important to our states that the 111(d) process does not cause EPA to fall behind on its approval of other state air quality plans. The best practices section of the *"Commitments and Best Practices for Addressing the SIP Backlog"* developed by the NACAA-ECOS-EPA SIP Reform Workgroup provides a good model for how states and EPA should approach the 111(d) planning and approval process.³

Some Western states may need to obtain additional authority through legislation before finalizing and implementing their 111(d) plans. With the final rule slated for June 2015, states will not be ready to go to their state legislatures any earlier than 2016 for any additional authority needed for 111(d) plans. Five Western states, however, will not

² The President's proposed FY 2015 budget would allocate \$19.8M to air grants for state work in support of the Climate Action Plan including development of state plans.

<http://www.4cleanair.org/happening-in-congress/page/fy-2015-budget-and-congressional-appropriations>
<http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/budget.pdf>

³ <http://4cleanair.org/Documents/State-EPA-Commitments-revisions-2-4-142.pdf>

convene a legislative session or will have a budget-only session in 2016⁴. EPA should recognize that some states may face significant timing challenges when it comes to finalizing their 111(d) plans.

EPA must also carefully consider the interrelationship of this rule with utility commission and system operator responsibilities to assess the cost effectiveness of utility decisions and the reliability of the Western grid. Utility commission docket timelines may present another timing challenge for states.

Another critical planning issue for our states is that EPA should allow states to modify their plans if they wish to do so. We expect that some states may wish to amend their plans so they can continue achieving the most cost-effective emissions reductions possible, especially if new technologies become economically viable during the implementation period.

We appreciate EPA's outreach and engagement to date and we encourage the Agency to continue actively engaging with states and stakeholders in the West throughout the process. This includes ensuring that the EPA regional offices coordinate closely in cases where there are multi-state plans that span more than one EPA region, and that the regional offices have the ability to approve plans that are not identical across all states.

We are specifically requesting an opportunity to meet with EPA in the West to discuss these comments soon after they are submitted, and we look forward to that opportunity. We also request that EPA communicate as much information as possible regarding likely changes to the proposed rule so that we can continue to prepare while we wait for the final rule to be published.

III. Western Context

Western regional discussions and a Western regional perspective on the Proposed Rule are important due to a number of differences between the West and other regions of the country. This section describes a number of issues and factors that are important for EPA to consider regarding the regulation of existing electric utility generating units in the West. We make specific recommendations related to some of these issues later in this letter.

- 1) Any regulatory approach must recognize that Western states are served by an interconnected power grid through which power plants in one state often serve customers in another state. Unlike other parts of the country, there is no RTO or ISO in the West outside of California and the Dakotas, and the 38 electricity balancing areas responsible for managing the Western grid do not conform to state lines. This means that 111(d) compliance approaches in one state can impact neighboring

⁴ Center for the New Energy Economy, 2014. <http://www.westernstate111dplans.com/wp-content/uploads/2014/07/StateLegislativeSessionsLegislativeApprovalSIPs.pdf>

states. This is particularly important in the West because many of the less populous states generate electricity that is delivered to large population centers in other states. In these cases, the policy decisions in the importing states can have a significant impact on the generation in the exporting states. Likewise, decisions made in exporting states can have a significant impact on electricity rates in importing states.

- 2) Each Western state has a very different profile when it comes to electricity production. Some states rely heavily on hydropower and natural gas generation, while others generate electricity mostly from coal. This fact translates to significant differentiation among states in terms of which compliance pathways are available to them and to what degree.
- 3) As Western states and companies make plans to meet future demand for electricity, they are dealing with substantial variation in the availability of hydropower. This includes variability caused by changes in snowpack, shifts in rain fall, changes in the timing of peak river flows, and ongoing drought. This variation also presents a variety of challenges for states when it comes to 111(d) because it impacts both EPA's baseline assumptions and the future generation mix that will determine compliance in 2020 and beyond.
- 4) The Southwestern U.S. is served by a number of large tribal generation sources that are not subject to state jurisdiction. These tribal sources in the West are few in number, but significant in size. In 2013, three tribal, coal-fired power plants were responsible for 11% of CO₂ emissions from the electricity sector in the 11 states that comprise the Western grid. Some of these tribal sources are scheduled for full or partial shutdown over the next 15 years. Understanding how these tribal sources will operate in the future is important to electricity planning in the Southwest.
- 5) There is substantial variation in how power is governed in the West. More so than in other parts of the country, public power utilities in the West (i.e., rural electric cooperatives, municipal utilities, and public utility districts) often have large service territories, significant customer bases, or both. These public power companies are not generally regulated by state utilities commissions, which means that achieving cost-effective solutions will require active collaboration and coordination among a range of companies and state authorities.
- 6) Many Western utilities own generation assets that deliver power across state lines, highlighting the complexities involved in implementing state and regional plans. These complexities will have to be addressed by utilities commissions, environmental regulators, and, in some cases, state legislatures.

- 7) A defining characteristic of the West is that federal lands cover vast portions of many Western states⁵. These federal lands are one key to future clean energy generation and transmission that will enable Western states and companies to achieve the goals of EPA's Clean Power Plan. Therefore, it is important for the EPA to allow the time needed for planning and permitting new energy and transmission projects on federal land. We recognize that there are several ongoing efforts of federal land managers to address these issues in conjunction with Western states and we reiterate our willingness to continue working with EPA and other federal agencies on these important issues.

IV. Issues that Western states suggest EPA address in the final rule

A. Multi-State and Regional Approaches

It is important that EPA recognize in the final rule that regional plans may take many different forms. Not all states will want, or be able, to enter into joint plans covering every aspect of their programs. But many states may be interested in plans which, at a minimum, allow more efficient accounting, and credit, for the effects of renewable energy and/or energy efficiency across state lines.

The wide diversity in state energy mixes in the West, and the strong import/export relationships, makes proper tracking of renewable energy and energy efficiency particularly important if we are to achieve the most cost effective carbon reduction opportunities within the Western electricity market. Some degree of RE and EE credit trading among states may support compliance, even in the absence of a comprehensive regional plan. Therefore, EPA should support approaches which allow states flexibility to allocate credit for these zero-carbon resources, along with approaches which allow states to reach agreements on the allocation of carbon liabilities. This includes ensuring that existing tracking mechanisms for renewable energy in the West, such as the Western Renewable Energy Generation Information System (WREGIS), are compatible with the final proposal.

EPA should clarify that states can cooperate regionally without blending state goals, whether rate-based or mass-based, into a regional goal for which all cooperating states are jointly liable. This should include ensuring that only the state that fails to meet its obligation is penalized under a multi-state approach, and not the other states participating in the program.

Additionally, the final rule should make it clear that a state qualifies for the available extension as long as they are committed to coordinating action with other states. This should include allowing states to pursue a dual-track approach – continuing to evaluate

⁵ According to the Bureau of Land Management (2010), the Federal Government owns 52% of the land area in the Western U.S. In Nevada, 83.1% of the land area is federally owned. Utah is 64.5%, Idaho is 62.5% and Oregon is 52.6% federally owned.

both multi-state options and single-state options. Finally, EPA should provide greater clarity on the documentation requirements and compliance options for multi-state and regional plans, including for states to participate in more than one multi-state program.

B. 2020 Goal and Interim Performance Period

Under the current schedule, final EPA approval of state plans will not occur until sometime between mid-2017 for single-state plans and mid-2019 for multi-state plans⁶. Yet the proposed targets for many Western states require large reductions by 2020, primarily due to the assumptions in Block 2 related to switching from coal to natural gas generation. Some states will find it difficult to meet their interim goal in 2020 and are concerned that such steep reductions early in the program could preclude opportunities to implement more cost effective strategies that require more time to ramp up, such as expansion of renewable energy and energy efficiency programs.

Therefore, states need more latitude for establishing a path to the 2030 targets. We encourage EPA to continue to work with our states to explore how more flexible and different milestones might better support the transition to a less carbon intensive electricity sector in the West by allowing adequate time for implementation of a wider range of strategies and programs that can be tailored to a state's unique circumstances.

Also, many Western states are concerned with the administrative burden associated with the annual reporting requirements during the interim performance period. We urge EPA to consider what frequency of reporting is necessary to ensure that states are achieving their plan goals, and to recognize that different reporting frequencies may be appropriate for different plan designs (i.e., a plan that imposes direct emissions limits with regular emissions monitoring might be treated differently than a plan that relies heavily on higher-level emissions reductions commitments at the state level). When warranted, EPA should tailor the reporting burden to the plan design. For some plans, this could mean replacing annual reports with a requirement for less frequent reports and finding ways to make the reporting requirements less burdensome. Such changes to the reporting requirements, if made with attention to how a particular plan is designed, would not diminish the integrity of the rule or the achievement of emission reduction milestones, but it would ease the administrative burden on the states and EPA.

C. Treatment of Renewable Generation

In the case of renewable energy, EPA proposed one set of assumptions when setting state goals (based on applying a regional growth rate to in-state generation levels) and then proposed a variety of approaches (that are not necessarily limited to in-state generation) for crediting renewable generation in state compliance plans. Western states are mixed on how EPA should credit renewable generation, but agree EPA should ensure the final rule is clear on how renewable generation is used in demonstrating compliance.

⁶ EPA Fact Sheet: Clean Power Plan. Flexible Approach to Cutting Carbon Pollution
<http://www2.epa.gov/sites/production/files/2014-05/documents/20140602fs-plan-flexibility.pdf>

D. Energy Efficiency

Energy efficiency is largely administered through utility, or third party, demand side management programs in the West. In the case of investor-owned utilities, these programs typically fall under the regulatory oversight of state utilities commissions when it comes to evaluation of cost effectiveness, compliance with state Energy Efficiency Resource Standard mandates/goals and other public policy objectives. State regulators use different Evaluation, Measurement and Verification (EM&V) protocols for these programs across the West depending upon their individual state statutes and regulatory rules.

In the case of public power utilities in the West, a wide variety of entities are involved with implementing energy efficiency programs. These entities are typically not subject to state regulation, a challenge which should be acknowledged by EPA in its final rule.

Western states agree that there is a need for greater standardization when it comes to EM&V and program administration related to energy efficiency savings and crediting in the context of 111(d) compliance. EPA should work with states to provide clarity when it comes to energy efficiency crediting, including helping to harmonize EM&V protocols across states when used to comply with federal standards.

E. Federal Enforcement of State Programs

States understand that EPA will enforce commitments made under 111(d) should states fail to meet those commitments in a timely manner. EPA should balance its need for enforceability with the states' need for flexibility as they deliver emission reductions under 111(d). EPA should also provide options, such as the state commitment option approach described in the preamble, under which state energy efficiency and renewable energy programs implemented or expanded for purposes of 111(d) compliance would not themselves be directly enforceable by EPA.

F. Tribal Sources

Affected Western states want to work with EPA and the tribes to understand how the 111(d) compliance plans for tribal sources will work with state compliance plans. Will EPA, on behalf of the tribes, develop 111(d) plans for tribal sources in time for them to be coordinated with state plans? We look forward to reviewing EPA's supplemental proposal addressing tribal sources, and expect EPA to finalize the tribal section of 111(d) simultaneously with the rest of the rule.

G. Baseline

Western states recognize that any baseline approach will have advantages and disadvantages. Final state baselines should be representative and not penalize states or companies that have taken early action. It is also important that in setting the final baseline, EPA carefully consider large year-to-year fluctuations that occur. EPA should consider whether anomalies, such as variations in hydropower and plant outages, had an undue influence on the proposed baseline in certain states and, if so, should work with those states to make appropriate adjustments in the final rule.

V. Conclusion

In conclusion, the states represented in this letter believe there are a number of unifying characteristics that define Western energy policy. We have discussed the issues outlined in this letter and request that EPA follow our recommendations.



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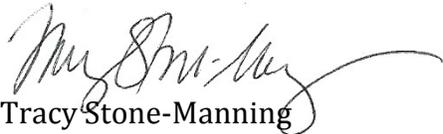
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