



December 14, 2015

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
EPA Docket Center, Mail Code: 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460
via www.regulations.gov

Comments of the National Association of State Energy Officials (NASEO) to the U.S. Environmental Protection Agency's (EPA) to provide feedback on the design and implementation of the Clean Energy Incentive Program (CEIP) under the Clean Power Plan (CPP), **Docket No. EPA-HQ-OAR-2015-0734**

Dear Administrator McCarthy,

The National Association of State Energy Officials (NASEO) appreciates the opportunity to provide the following comments for consideration by the EPA in relation to design and implementation of the CEIP under the CPP.

NASEO and our 56 governor-designated State and Territory Energy Office members have a history of working with their governors and legislatures to develop energy policies and programs that promote energy system reliability, spur economic development, diversify fuel mixes, provide economic benefits to consumers and businesses, and limit environmental impacts. NASEO has also facilitated collaboration among State Energy Offices, public utility commissions, and environmental agencies (including air regulators) regarding the intersection of energy policies and programs and clean air efforts since the 1980s. The agreement reached on energy efficiency in May of 2014 by NASEO, the National Association of Regulatory Utility Commissioners (NARUC) and the National Association of Clean Air Agencies (NACAA) should be a useful guidepost to EPA.¹

While NASEO has taken no position on the merits or legality of the CPP, we believe it is important for states that choose to create compliance plans for consideration by EPA to have flexibility and the opportunity to craft least-cost compliance options that can support other

¹ NASEO, NACAA and NARUC, 2014, "Principles for Including Energy Efficiency in 111(d) of the Clean Air Act" http://www.naseo.org/Data/Sites/1/principles_3n_2014.pdf

state energy imperatives, including assuring energy reliability and affordability and supporting state economic objectives. We believe that end-use energy efficiency will often provide lower-cost or least-cost compliance opportunities that support such objectives. Further, we believe that the CEIP may offer an important opportunity to enhance recognition and provide additional support (via issuance of incentive emission allowances or emission rate credits (ERCs)) for end-use energy efficiency serving low-income communities.

We anticipate providing additional comment on the proposed Federal Plan and Model Trading Rules under Docket No. EPA-HQ-OAR-2015-0199. However, under the earlier deadline of December 15, 2015 for Docket No. EPA-HQ-OAR-2015-0734, we hereby provide more succinct comments focused on five major points.

1. Definitions of “low-income community”:

Definitions of “low-income community” for purposes of the CEIP should include both a geographically-based definition that allows non-household end-use efficiency investments to qualify and household-based definitions to allow energy efficiency investments in low-income households in non-low-income neighborhoods to qualify.

NASEO supports use of a geographically-based definition of low-income community in order to allow CEIP eligibility of energy efficiency programs, projects and measures beyond individual households and also to allow qualification of such activities while reducing administrative costs and burdens of having to document income and assets of individuals, households and enterprises.

A geographically-based definition would allow eligibility of projects and measures that support low-income communities beyond residential energy efficiency investment. For example, using a geographic definition would allow energy efficiency investments in schools, public libraries, clinics and hospitals, community and senior centers, municipal infrastructure (e.g., street lamps, pump stations), etc. to qualify. Commercial and industrial facilities should also qualify, offering opportunities to advance economic development (job opportunities) as well as CPP emission objectives. We understand that there are number of existing federal geographically-based definitions and criteria. One example is the U.S. Internal Revenue Service’s definition of a low-income community under the New Market Tax Credit (NMTC) Program.² Another useful example is provided by the Community Reinvestment Act which incorporates both individual and geographically-based definitions of low income.³

² <https://www.irs.gov/Businesses/New-Markets-Tax-Credit--1> “A “low-income community” is defined as any population census tract where the poverty rate for such tract is at least 20% or in the case of a tract not located within a metropolitan area, median family income for such tract does not exceed 80% of statewide median family income, or in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80% of the greater of statewide median family income or the metropolitan area median family income.”

³ 12 CFR 228.12(m)(1) “**Low-income**, which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.”

We also support the use of household-based low-income definitions *in addition to* geographically-based definitions to allow energy efficiency projects and measures benefiting low-income households located in neighborhoods not defined as low-income under the geographic definition to qualify. Qualification criteria for the federal Weatherization Assistance Program (WAP) or Low Income Home Energy Assistance Program (LIHEAP) (including categorical definitions LIHEAP grantees may use by law: Temporary Assistance for Needy Families, Supplemental Security Income, Supplemental Nutrition Assistance Program and certain need-tested Veterans Benefits) could be used.⁴

Further, EPA should allow states to opt for Low Income Housing Tax Credit program qualification as an acceptable criterion for determining CEIP eligibility of housing energy efficiency projects.

2. Eligibility of federally funded and supported energy efficiency activities:

Federally funded and supported energy efficiency activities, such as (but not limited to) low-income weatherization and energy efficiency investments in public and assisted housing should qualify for the CEIP and EPA should say so explicitly.

We recommend that EPA clearly state that federally supported (whether by funding, tax credit, or other means) energy efficiency programs, projects and measures can count for issuance of emission rate credits (ERCs) generally under the CPP (in rate-based states) and that those meeting CEIP low-income and other pertinent criteria be deemed eligible for ERCs or allowances (as appropriate) under the CEIP.

There has been some confusion as to the eligibility of federally supported programs (such as the low-income Weatherization Assistance Program that blends federal with non-federal funding) under the CEIP and CPP generally. Some have claimed that federal support precludes states counting emission reductions.

Whether and what proportion of funding is federal should not be relevant so long as emissions reductions beyond a baseline occurs. These emissions reductions would automatically be measured at covered electric generating unit stacks under the mass basis, so these emissions reductions should also “count” under the mass basis. Assuming that mass and rate goals should be reasonably commensurate then that should count under rate plans as well.

If federal support was deemed to matter and to disqualify programs and measures from “counting” then arguably that would apply to production and investment tax credits for renewable energy projects or even tax preferences given to utilities for both energy supply and efficiency expenditures. This approach is not the intent of the rule and it presents impractical implementation barriers for states.

⁴ <http://www.benefits.gov/benefits/benefit-details/623>

That the federally supported Weatherization Assistance Program is well-established should also not be pertinent to eligibility nor result in exclusion of associated energy savings and resulting emissions reductions. The 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 compliance period under the CPP. They should likewise count under the CEIP. The rule and CEIP do not disqualify emissions avoidance under existing energy efficiency resource standard (EERS) and renewable portfolio standard (RPS) programs. The same premise applies to weatherization and other programs.

Further, we note that for the CPP, EPA purposely avoided the Clean Air Act Section 110 term “additional” in the list of requirements for creditable/countable emission reductions, instead using the term “non-duplicative,” which is defined as not having more than one state count the same emission reduction.

Our reading of the rule and the law, agreed to by some EPA officials in discussions, is that there is nothing in the rule that precludes federally supported measures (energy efficiency, renewable energy or others) from being issued ERCs in the CPP. This should also apply to ERCs or allowances issued under the CEIP.

3. Eligibility of combined heat and power (CHP) and waste-heat-to-power (WHP):

Combined heat and power (CHP) and waste-heat-to-power (WHP) should be CEIP-eligible energy efficiency approaches.

The CEIP applies to solar and wind power generation and to end-use energy efficiency benefitting low-income communities. CHP provides energy efficiency benefits at or near the site of energy demand but is, instead, construed as low-emission power generation rather than being a form of end-use energy efficiency. These definitional matters can have adverse impacts on opportunities for enhancing energy efficiency in low-income communities in support of the CEIP’s objectives and in support of other benefits, such as improved energy reliability.

The EPA acknowledges and supports the implementation of CHP to benefit low-income communities while reducing emissions. For example, EPA cites the 2012 installation of a 400 kW CHP system at Glenside Homes by the Reading (Pennsylvania) Housing Authority as well as examples from the New Bedford and Watertown (Massachusetts) Housing Authorities.⁵ Beyond housing, there are various examples of CHP being implemented at hospitals,

⁵ EPA, 2014, “Combined Heat and Power: A Guide to Developing and Implementing Greenhouse Gas Reduction Programs,” pp. 6, 18 <http://www3.epa.gov/statelocalclimate/documents/pdf/CHPguide508.pdf>

schools, municipal facilities, and other installations to provide economic, energy reliability and resilience,⁶ and emission reduction benefits.

We urge EPA to include CHP and WHP serving low-income communities as CEIP-eligible approaches under the end-use efficiency category.

4. Eligibility of other renewable energy categories

We recognize that the CPP final rule's description of the CEIP provides eligibility for renewable energy projects that "[g]enerate metered MWh from any type of wind or solar resources" (40 CFR §60.5737(a)(3)). However, we believe that the broader set of renewable electricity generation forms and technologies, such as geothermal, hydrokinetic (hydroelectric, wave and tidal power) and biomass, should also be eligible for the CEIP. Like wind and solar, these other renewable energy forms also provide emissions reductions from covered electric generating units in accord with CPP and CEIP objectives.

5. Evaluation, measurement, and verification (EM&V) requirements:

Evaluation, measurement and verification (EM&V) requirements under the CEIP should not be overly burdensome or expensive so as to dissuade participation.

To the extent possible EPA should allow states to rely on their existing EM&V processes⁷ and procedures under the CEIP, including use of existing Technical Reference Manuals, the International Performance Monitoring and Verification Protocol (IPMVP), and deemed savings resources. EM&V matters are addressed in the CPP rule, the proposed Federal Plan and Model Trading Rules, and in draft EM&V Guidance. More detailed comments on EM&V will ensue for the Federal Plan and Model Trading Rules proposal and for the draft EM&V Guidance.

We understand the need to assure that energy savings are real, particularly under rate-based CPP compliance and for issuance of incentive ERCs or allowances under the CEIP. However, the desire for rigor must be balanced with the need to avoid costly and cumbersome processes that can impede energy efficiency investments and may militate toward greater use of emitting supply side compliance options. We recall that under the NOx SIP Call a number of states created energy efficiency/renewable energy (EE/RE) NOx set-aside allowances which in most cases were hardly utilized because transaction costs (EM&V and administrative requirements) were high relative to the value of the allowances. We fear a "perfect being the enemy of the good" scenario if EM&V and related processes are too cumbersome under the CEIP and the CPP generally.

⁶ There is a lengthy literature of CHP providing energy and power reliability benefits, including during Superstorm Sandy. One example is U.S. DOE, HUD and EPA, 2013, "Guide to Using Combined Heat and Power for Enhancing Reliability and Resiliency in Buildings,"

http://www1.eere.energy.gov/manufacturing/distributedenergy/pdfs/chp_for_reliability_guidance.pdf

⁷ See note 1.

We are also concerned that states that opt for mass-based targets and, thus, do not need to include EM&V in their state compliance plans, may be required to demonstrate to EPA their establishment of EM&V processes and systems at the level required for rate-based compliance pathways in order to participate in a mere two-year program.

So, we recommend that EPA allow states to employ existing EM&V processes and practices, including existing Technical Reference Manuals, the IPMVP and deemed savings resources under the CEIP.

NASEO greatly appreciates the opportunity to provide our comments on the design and implementation of the CEIP for EPA's consideration. We look forward to continuing our dialogue with EPA and the states in the coming months.

Best regards,

A handwritten signature in blue ink, appearing to read "D. Terry", with a stylized flourish underneath.

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