



January 21, 2016

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

RE: Docket ID Number EPA-HQ-OAR-2015-0199

**Comments to the EPA and States on the EPA's Draft Federal Plan and Model Rule under the Clean Power Plan Regulating Existing Power Plants under Section 111(d) of the Clean Air Act**

**Submitted via** [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov)

Dear Administrator McCarthy:

The Business Council for Sustainable Energy (BCSE or the Council) appreciates the opportunity to provide the Environmental Protection Agency (EPA) with comments on the proposed Federal Plan and Model Trading Rule under the Clean Power Plan (CPP). The Council offers its views with the aim of shaping the final Federal Plan and Model Rule and to assist states as they begin the process of implementation planning.

BCSE is a coalition of companies and trade associations from the energy efficiency, natural gas, propane, and renewable energy sectors, and also includes independent electric power producers, investor-owned utilities, public power, commercial end-users, and environmental and energy market service providers. Founded in 1992, the Council advocates for policies at the state, national, and international levels that increase the use of commercially-available clean energy technologies, products, and services. The coalition's broad-based business membership is united around the revitalization of the economy and the creation of a secure and sustainable energy future for America.

BCSE believes that a properly designed Federal Plan can help those states that are not able to submit a compliance plan to move toward a more diverse, affordable, and clean energy portfolio that meets the Clean Power Plan's emissions reduction targets. In addition, the Federal Plan can serve as guidance to states in developing their own plans, and as a temporary or partial plan where state plan development may be delayed or may not address all issues.

The Federal Plan, like any state plan, can best achieve the goals of the Clean Power Plan by harnessing the vast potential of the wide range of clean energy technologies – renewable energy,<sup>1</sup> energy

---

<sup>1</sup> The portfolio of renewable energy should include: biopower, geothermal, hydropower (including freeflow), marine energy, solar (concentrated solar power, photovoltaics, solar thermal, and solar daylighting), and wind (including small-scale). Definitions should include renewable hybrid systems composed of the above technologies.

efficiency, natural gas, and propane – to improve reliability, increase flexibility, and produce energy savings, as well as reduce emissions.

Of note, as a diverse coalition, not all members take positions or endorse all the issues discussed in this submission.

## **Federal Plan and Model Rule**

### **BCSE Recommendations for the Federal Plan and Model Rule**

In considering compliance options for both the final rule and the proposed Federal Plan, it is important to evaluate them based on the emissions profile of the state or region where the investment is being made.

BCSE would like to offer the following recommendations for the Federal Plan:

- The Federal Plan should adopt a “trade ready” approach in either a mass-based or rate-based plan, and should consider market-based elements to ensure cost effective compliance.
- The Federal Plan should allow the full portfolio of clean energy technologies and resources to be utilized for compliance planning.
  - This includes rate-payer and non-rate payer programs and actions, including third party delivered energy efficiency, whether implemented in mass-based complementary programs or integrated rate-based compliance programs.
- Further, if the Federal Plan allocates or auctions allowances under its plan, it should provide allowance value to clean energy technologies and resources to spur further investment and provide clean energy market signals.
- The Federal Plan and the draft Model Plan should consider how set-asides or other mechanisms can be used to foster increased deployment of energy efficiency and renewable energy.
- EPA should allow the same range of compliance options under the Federal Plan that are available to states developing their own plans.

### **Trade Ready Approach**

In order to enable lower-cost compliance, EPA should ensure adoption of a “trade ready” approach that permits transfers of emissions allowances (mass-based) or Emission Reduction Credits (ERCs) (rate-based) between states in both the Federal Plan and Model Rules. Clean energy technologies in the energy efficiency, natural gas, propane, and renewable energy sectors can be deployed under either a mass-based or rate-based approach. However, the structure that underpins either approach is critical. BCSE offers its perspectives on this topic below.

In considering the mass-based or rate-based approach, several issues are of importance:

- The ability to engage in interstate trading and transfers. This question should be considered in the context of what other states are considering. This impacts the demand and pricing for allowances and ERCs.
- Ease of implementation.
- How new fossil fuel plants are addressed, to avoid leakage concerns.

**i. Mass-Based**

Advantages of a mass-based approach include its similarity to other air quality trading programs that many states are familiar with and possibly a broad scope of interstate trading opportunities. However, under a mass-based approach, allowance allocations decisions are fundamental and pathways for clean energy technologies to receive allowance value need to be established.

In this context, BCSE supports an updated, output based allocation. BCSE is also considering how set-asides or other mechanisms to transfer allowance value to energy efficiency and renewable energy can be structured to ensure that these resources can play a meaningful role in compliance and assist to avoid leakage or other market distortions. Other allowance allocation methods, including auctions, can also be effective if properly structured.

Finally, should a mass-based approach be adopted, EPA should encourage complementary energy policies to further support the deployment of projects and activities in clean energy sectors to ensure that they deliver on the low-cost carbon reductions that the Clean Power Plan is built upon.

**ii. Rate-Based**

Advantages of a rate-based approach include a clear pathway to generate ERCs for certain clean energy project types. However, there are design questions that should be considered. For example, not all renewable energy technologies are treated in the same manner in terms of ERC eligibility. Further, for energy efficiency, questions have been raised about the time and costs associated with emissions monitoring, reporting and verification (EM&V). BCSE affirms that EM&V protocols and the development of ERC registries can address these issues.

As with mass-based approaches, the expected demand for ERCs should be considered, as it will impact the value and prices ERCs command. Demand and pricing are impacted by other states that choose rate-based approaches and how they structure their state plans.

Waste-to-energy (WTE) and biomass should be included as an eligible emission rate credit generating technology under the proposed Federal Plan. The proposed rate-based Federal Plan is similar to the proposed rate-based Model Rule, with one significant difference: the rate-based Model Rule (and the CPP Final Rule) includes a broader set of zero-emitting resources eligible to create ERCs, including waste-to-energy. Under the proposal, WTE would be ineligible to generate emission rate credits in a state in which EPA is implementing a Federal rate-based plan. BCSE recommends that EPA allow all energy generation resources that are ERC-eligible technologies under the CPP Final Rule to generate ERCs in a Federal Plan.

If EPA chooses to finalize a rate-based Federal Plan, BCSE urges EPA to allow all quantified and verified demand-side energy efficiency to generate ERCs in the plan.<sup>2</sup>

---

<sup>2</sup> Third-Party Delivered Energy Efficiency Coalition, Comments on U.S. EPA's: Clean Power Plan Federal Plan, Model Trading Rules, Clean Energy Incentive Program, and Evaluation, Measurement, and Verification Guidance, AJW, Inc.

### **iii. Addressing Leakage under a Mass-Based Plan**

BCSE firmly supports EPA's view that "effectively controlling leakage under all compliance pathways is an essential element of the Best System of Emissions Reduction (BSER)."<sup>3</sup>

The problem is particularly acute in mass-based trading approaches to BSER implementation, where, absent correction, compliance obligations for existing natural gas combined cycle (NGCC) generation could incentivize construction of new, unaffected NGCC generation as a pathway to Clean Power Plan compliance. This would result in illusory reductions and compliance with the Clean Power Plan's mass-based goals.

As EPA explains, the primary leakage concern is that new fossil generation would benefit from its carbon emissions not being regulated under that approach, incentivizing a shift to new fossil generation that would increase total electric sector emissions because those new fossil emissions are not capped under that CPP approach. A related leakage concern is that states choosing different compliance pathways could result in differential incentives that could increase total electric sector emissions or harm economic efficiency.

BCSE members have a range of views on the options that EPA has put forward to address this issue. However, there is general agreement that an optimal way to address leakage is to include new sources in the existing source mass-based plan.

A second avenue to address leakage under a mass-based plan is to allocate allowances on an updating, output-basis. This approach would allocate allowances based on the generation and emissions profiles of new non-emitting and existing natural gas combined cycle generation during the CPP compliance period.

This allocation method controls leakage by putting existing gas, new non-emitting resources, and new gas generation on a level playing field, offsetting the unfair and inefficient benefits that accrue to new gas because it is not being regulated by the existing-source-only compliance pathway. By allocating allowances to existing gas generation and new non-emitting generation, this approach incentivizes production from those resources that directly offsets the incentive new fossil is receiving by virtue of not being regulated.

While output-based allocation strategies provide many benefits relative to alternatives, the primary benefit is that they solve the significant concerns about emissions leakage under the existing-source-only mass-based compliance pathway, preserving the integrity of the CPP rule.

Further, one of the most effective ways to prevent gas leakage in future years is for EPA, under its 8-year review authority, pursuant to 111(b), to reclassify new facilities, at that point, as existing.

### **iv. Linkages Between States**

The EPA proposes that affected EGUs in any state covered by a Federal Plan could trade compliance instruments with affected EGUs in any other state covered by a Federal Plan or a state plan meeting the

---

<sup>3</sup> Federal Register at 64822

conditions for linkage<sup>4</sup> to the Federal Plan. BCSE supports allowing linkages between Federal Plan and non-Federal Plan states in rate- and mass-based states. EPA should consider states that utilize an EPA-designated tracking system that is interoperable with an EPA-administered tracking system as “ready for trading.”<sup>5</sup> These changes will expand the trading markets to the broadest possible extent and allow the greatest number of market participants. Moreover, a robust trading market will drive down the overall compliance cost of the CPP for states and promote flexibility.<sup>6</sup>

### **Technology Eligibility**

Utilizing a diverse portfolio of clean energy options available for compliance will make the US economy stronger, reduce emissions and increase resiliency. EPA should affirmatively indicate that technologies, resources, and practices that are not included in the Building Blocks can be eligible as compliance options for states, in addition to energy efficiency efforts. EPA should consider providing a menu of options eligible for states to utilize to meet their target emission reductions.

#### **i. Biomass, Waste-to-Energy, Combined Heat Power, Waste Heat Power, Direct-Use Natural Gas**

Through the Federal Plan, states should be encouraged to support local governments’ investments in renewable energy and other clean energy and greenhouse gas mitigating facilities to avert net or off-system carbon increases. We urge EPA not to rewrite how biomass is defined and to allow states to define and treat biomass per its state by state assessment based on the unique resource in that state. In addition, we urge the EPA to recognize waste derived feedstocks as acceptable fuels for qualified biomass facilities.

The Federal Plan and the mass-based Model Rule should include Combined Heat Power (CHP), Waste Heat Power (WHP), Waste-to-Energy and Biomass as eligible technologies to receive allowances. Direct-use natural gas and propane should also be considered as eligible in this context. EPA makes no explicit mention of natural gas direct use, and while we understand EPA’s list is illustrative rather than exclusive, and that direct use would qualify as an energy efficiency or demand-side management (DSM) compliance option, BCSE recommends EPA list natural gas direct use explicitly in the Federal Plan and the Model Trading Rules. We also ask EPA to make revisions as needed to facilitate the use of natural gas CHP, WHP and direct use as compliance options.

#### **ii. Distributed Generation**

The EPA should clarify that EM&V for small distributed solar does not require a revenue grade meter. The proposed language regarding eligibility of distributed generation (DG) under the Federal Plans and model rules is unclear. BCSE urges EPA to include DG (solar as well as CHP) as eligible technologies

---

<sup>4</sup> EPA includes the following as required for “linkage”: (1) approval of state plan, (2) implementation of the same type of trading program as the Federal Plan, (3) use of identical compliance instruments as the Federal Plan, (4) approval as a ‘ready for interstate’ trading plan, and (5) use of EPA-administered tracking system (EPA is requesting comment on expanding this category to include a state plan that uses an EPA-designated tracking system (64,977).

<sup>5</sup> *Id.*

<sup>6</sup> Third-Party Delivered Energy Efficiency Coalition, Comments on U.S. EPA’s: Clean Power Plan Federal Plan, Model Trading Rules, Clean Energy Incentive Program, and Evaluation, Measurement, and Verification Guidance, AJW, Inc.

under the Federal Plan and Model Rules. Additionally, EPA should clarify eligibility requirements for DG and issue a guidance document outlining the compliance pathways for DG under the Federal Plans and Model Rule.

**iii. Third Party Delivered Energy Efficiency Technologies<sup>7</sup>**

Performance Contracting: Performance-based contracting (PC) for energy savings provides a one-stop procurement process that enables building owners to use savings from avoided energy consumption to pay for new energy-efficient equipment and services. PC is regarded as a turnkey mechanism to undertake and complete energy savings projects without reliance on capital funds. PC projects are developed and installed by Energy Savings Companies (ESCOs), and tend to be focused on achieving significant energy reductions (typically between 15-30% and in some cases 30-60%) through comprehensive energy retrofit projects usually at multi-building facilities. Approximately 85% of ESCO revenue comes from a combination of what is commonly known as the “MUSH” market (municipalities, universities, schools, hospitals) and the federal buildings market.

Industrial Energy Efficiency (IEE): The industrial sector, which includes manufacturing, mining, construction, and agriculture, accounts for roughly one-third of all end-use energy demand in the United States and remains the largest energy user in the US economy. Studies have estimated that there is the potential to cost-effectively save 18-20% of industrial energy use. Reductions in industrial energy consumption of this magnitude, whether delivered through ratepayer or private-sector initiatives, create an enormous opportunity to contribute to state compliance with the CPP. Importantly, savings associated with private-sector delivered IEE can provide benefits under any approach adopted by states, significantly reduce emissions of GHGs, and provide states with low-cost compliance options that can contribute in a meaningful way to compliance with 111(d) goals.

To help meet their energy efficiency policy goals, states are increasingly looking to tap the large cost-effective resource potential in US industry. IEE, delivered through the use of an energy management system and participating in the Department of Energy’s Superior Energy Performance (SEP) program is one possible method to measure and verify private-sector delivered IEE savings. Organizations that implement and certify their facilities under this program will meet the target-setting, reporting, monitoring, and verification requirements for an approvable compliance pathway.

Above-code Certification: Above-code certification provides third-party verification that a building or portfolio of buildings has achieved savings in electricity over the baseline applicable building code. Examples of above-code certification include ENERGY STAR, developed by EPA and Leadership in Energy and Environmental Design (LEED), overseen by the US Green Building Council.

Above-code building certification systems can be used in new construction and existing buildings. They generally include minimum requirements along with a suite of credits and projects earn more points for deeper efficiency gains. These systems together with ongoing performance monitoring are effective tools for achieving whole building energy efficiency. They provide integrated improvements across building systems: envelope, lighting, hot water, heating ventilation and air conditioning (HVAC) including strategies and equipment efficiencies.

---

<sup>7</sup> Third-Party Delivered Energy Efficiency Coalition, Comments on U.S. EPA’s: Clean Power Plan Federal Plan, Model Trading Rules, Clean Energy Incentive Program, and Evaluation, Measurement, and Verification Guidance, AJW, Inc.

With appropriate incentive, BCSE believes that the CPP can drive greater market activity in all third party delivered energy efficiency projects and help states and EPA reduce the carbon intensity of the power sector more quickly and cost-effectively.

### **Energy Efficiency**

For energy efficiency activities, EPA should consider defining compliance crediting mechanisms similar to Renewable Energy Certificates (RECs). Translating energy savings into carbon savings is already in practice in independent system operators' accounting mechanisms such as the PJM Environmental Information Services' Generation Attribute Tracking System (GATS).

These systems report emissions data associated with the generation mix for the region, and can be used as a verifiable proxy to count emission reductions due to energy efficiency projects. In addition, Evaluation, Measurement and Verification or EM&V requirements for energy efficiency initiatives need to be verifiable but they should not be too burdensome or costly which would discourage states from adopting robust energy efficiency programs and projects in their plans.

### **Clean Energy Incentive Program**

BCSE provided the below comments to the EPA during the comment period for the Clean Energy Incentive Program (CEIP) on December 15, 2015. Due to the close relationship between the Federal Plan, Model Rule and CEIP the Council wishes to provide these recommendations again for EPA's reference.

### **BCSE Recommendations for the Clean Energy Incentive Program**

BCSE believes that while there is an obvious potential benefit of the CEIP for renewable energy and energy efficiency development and deployment, the current design of the CEIP could be improved to more effectively incentivize a broader spectrum of renewable energy and energy efficiency technologies prior to 2022.

BCSE believes that a properly designed CEIP can help incentivize states to begin emissions reductions as soon as possible and increase their use of renewable energy and energy efficiency technologies. A properly designed CEIP will assist states in more quickly moving toward a more diverse, affordable, and clean energy portfolio that meets the Clean Power Plan's emissions reduction targets.

### **Early Action under the CEIP**

While the CEIP is a useful tool for states to decrease their emissions, the design could be improved to more strongly encourage early action and investment in new renewable and energy efficiency projects prior to the start of the interim compliance period. As proposed, CEIP eligible projects that want to partake in the early action credit would:

- Be forced to hold off construction until a final state plan is submitted (which could be as late as September 6, 2018).

- Only be able to generate “early action” credits, at a minimum, two years later (i.e., beginning January 1, 2020). Therefore, the developer might be incentivized to not have the project become operational until as little time in advance of that date as possible.
- Only be able to earn the credits in a two-year window—2020-21.
- Not know whether it is worth holding off construction and/or operation of their projects because the value of the allowances/credits under the CEIP will not be truly known until post 2022.

In order to address these issues, the EPA could consider moving the commence construction date so that it occurs after a state signals its willingness to participate in the CEIP in its initial submittal – 2016. This definition will still ensure it incentivizes “new” projects. In addition, the banking period should begin when a state submits its final state plan, which could occur as early as 2016, but more likely to be 2018. This approach incentivizes states to submit plans as early as possible and does not hurt market opportunity.

### **Renewable Energy in the CEIP**

There are many readily-available clean energy technologies, resources, and practices that can be used by states to reduce GHG emissions. EPA should broaden what is eligible under the CEIP to other forms of renewable energy technologies.

EPA should seek parity among renewable energy sources in the CEIP, rather than prescribing which renewable energy technologies should be eligible. Further, electricity projects using diverse fuel sources should all be eligible to earn CEIP credits if they are able to meet the other criteria established under this program. Finally, we urge EPA to set an earlier project eligibility date so that renewable energy technologies that have longer lead times may take advantage of the benefits of the CEIP.

### **Energy Efficiency in the CEIP**

Energy efficiency is among the easiest, fastest and least-cost ways to reduce overall greenhouse gas emissions from power plants. In addition, it provides direct and significant benefits to residential, commercial, and limited-income customers by reducing their electric bills. BCSE encourages EPA to finalize the CEIP by clarifying structures and definitions with an eye toward facilitating the maximum use of cost-effective energy efficiency benefitting the broadest population.

For energy efficiency or renewable energy efforts that do not emit CO<sub>2</sub> (or for low-carbon generation technologies such as CHP), a reference rate reflecting the emissions intensity of avoided fossil-fired generation can be used; the historical marginal emissions rate available for each eGrid sub region, or from tracking system such as PJM GATS maintained by several of the RTOs/ISOs is a potential source of such information.

BCSE recommends that EPA incorporate significant flexibility into its eligibility requirements, in order to ensure that the CEIP optimally achieves the objectives of assisting low-income communities while incentivizing the early implementation of proven, low-cost energy efficiency measures. The CEIP should be designed to provide incentives for energy efficiency measures that benefit low-income communities in urban and rural areas, as well as residents that are homeowners or renters living in single-family homes and multifamily buildings alike.



In addition, BCSE recommends generally that EPA provide early guidance on the evaluation, measurement and verification (EM&V) of energy efficiency projects as well as the translation of megawatt-hours (MWh) of energy savings to carbon reductions (denominated in tons of CO<sub>2</sub>) in order to give program implementers greater certainty. This, in turn, should induce increased participation in the CEIP.<sup>8</sup>

BCSE supports maximum recognition, crediting, and encouragement of energy efficiency as an emission reduction strategy. More efficient use of energy reduces the fuel required to provide electricity, and thus, the associated emissions. Energy efficiency on both the demand side and in the supply side of electricity delivery can provide cost-effective emissions reduction and avoidance.

## **CONCLUSION**

BCSE appreciates the opportunity to provide you with its comments on the proposed Federal Plan and Model Rule under the Clean Power Plan and hopes these views will be useful as EPA reviews and finalizes the rule. BCSE would like to be viewed as a resource to EPA during this process to help ensure the full portfolio of clean energy technologies and their full emissions reduction potential are recognized in Clean Power Plan compliance planning. Please contact the Council on the issues discussed if there are questions.

Sincerely,



Lisa Jacobson, President  
Business Council for Sustainable Energy

---

<sup>8</sup> Comments to the EPA from the Southwest Energy Efficiency Project's Comments on the Clean Energy Incentive Program (CEIP)