

September 30, 2014

National Climate Coalition

Preliminary Comments on Clean Power Plan Proposal

1. **2030 Target Adjustments** – A state’s 2030 carbon intensity performance target (i.e., the result of applying BSER¹ as determined by EPA for the state) must be adjustable at any time based on discovery of material changed circumstances (at the state’s burden relative to EPA’s assumptions) affecting or the development of more or better information related to a state’s ability to achieve its target.
2. **Glide Path** – Although, subject to (1), EPA sets the 2030 carbon intensity targets, states must be able to determine the enforceable emission reduction trajectory to reach that target.
 - a. *Legal reasons:* under the CAA’s federalism approach (in sections 110 and 111), EPA sets the performance standards but Congress gives states the discretion both to select actual control strategies and to establish the compliance schedule, subject only to minimal EPA oversight to assure compliance. Section 111 also requires EPA and the states to consider the remaining useful life of regulated units, which states naturally will do as they develop their plans.
 - b. *Policy reasons:* states are uniquely positioned to determine both the path and the timing for implementing energy strategies.
 - i. *Rate and early action considerations* - many states already have implemented costly measures (e.g., renewable portfolio standards, demand-side management programs) with rate and reliability implications that must be carefully considered in determining the timing of implementing EPA’s 2030 performance standard.
 - ii. *Resource adequacy, reliability, affordability* - States are also best positioned, with the assistance of regional transmission entities, where they operate, to determine the adequacy of natural gas and other energy supplies and infrastructure, particularly as significant coal-fired generation is retired, and to evaluate particular energy and environmental impacts. Rushed compliance could cause unintended consequences, such as the lock in of one implementation path (e.g., gas) to the partial exclusion of other paths (e.g., renewables).
3. **Federal Enforceability of State Plans** – Unless otherwise requested by a state, EPA should consider to be federally enforceable only a state’s commitment to achieve progress in the form (e.g., rate, mass) and over the timeframe the state submits and EPA

¹ Please refer to prior and forthcoming NCC comments on the definition of BSER and related legal authority issues.

approves, but specific state plan provisions (i.e., targeted performance under individual building blocks) would not necessarily be federally enforceable. EPA would be entitled to issue deficiency determinations and promulgate a federal plan in appropriate circumstances.

4. **Compliance Flexibility** – EPA should develop default mechanisms to ensure that potentially regulated entities have the maximum degree of flexibility to comply with state plans at reasonable cost. These mechanisms should include the availability of additional greenhouse gas emission reductions (or avoidance) from the energy sector within the state or from other states under appropriate circumstances.
5. **State Plan Equivalency** – A state that implements a multi-sector or portfolio approach must have the option of demonstrating the equivalency of its plan on a programmatic (as opposed to purely sector-specific) basis.
6. **Adjudicating Interstate Disputes and Respecting Corporate Portfolio Investments** – EPA should establish a default adjudication process to resolve interstate disputes regarding GHG-reduction credit for renewable and demand-side investments subject to alternative approaches selected by states through appropriate bilateral or multi-state agreements.
7. **New Source Review** – To ensure that EGUs may implement energy efficiency upgrades without material economic penalty, EPA should confirm that such projects can meet applicable NSR/PSD requirements without triggering a separate BACT or LAER determination for criteria pollutants so long as the modified EGU already has installed reasonable controls for such pollutants and its resulting emissions would not materially cause or contribute to an area's nonattainment. The EGU's energy efficiency upgrade under a 111(d) plan should be considered GHG BACT for any applicable PSD determination.
8. **Implications for Other Sectors** – Given the potential precedential effect of the 111(d) EGU program, EPA should articulate the limitations of its system-wide approach for applications to other sectors (e.g., transportation fuels, goods movement, manufacturing) that have certain system characteristics. EPA also should confirm that GHG emission reductions by industrial, commercial and residential sources as part of a state 111(d) energy plan should be recognized in any future EPA 111(d) regulation of such sources.

Because National Climate Coalition comments integrate and reconcile occasionally conflicting individual company perspectives, no particular position should be attributed to any individual NCC member. The Coalition offers these comments as part of a constructive dialogue with public and private stakeholders. Coalition positions may evolve over time based on emerging agency proposals and stakeholder ideas.

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