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Power by Association

August 22, 2016

Janet McCabe, Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

[Submitted Electronically through www.regulations.gov]

RE: Draft Regional Haze Guidance, Docket No. EPA-HQ-OAR-2016-0289

Dear Ms. McCabe:

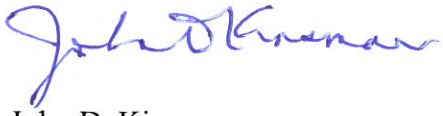
The Edison Electric Institute (EEI) appreciates the opportunity to comment on the *Draft Guidance on Progress Tracking Metrics, Long-Term Strategies, Reasonable Progress Goals and Other Requirements for Regional Haze State Implementation Plans for the Second Implementation Period,* 81 *Fed. Reg.* 44,608 (July 8, 2016).

EEI is the association that represents all U.S. investor-owned electric companies, international affiliates and industry associates worldwide. Our members provide electricity for more than 220 million Americans, operate in all 50 states and the District of Columbia, and directly employ nearly 500,000 workers. Investing more than $100 billion, on average, in annual capital expenditures, the electric power industry is responsible for millions of additional jobs. Safe, reliable, affordable and clean electricity powers the economy and enhances the lives of all Americans.

As the owners and operators of electric generating units subject to the Draft Guidance, EEI members have a strong interest in the proposed changes to the Regional Haze program, through both the proposed regulation on which EEI previously commented and this Draft Guidance. EEI believes that EPA should make substantial changes and clarifications to the Draft Guidance.

If you have any questions concerning EEI's comments, please contact John Kinsman (jkinsman@eei.org or 202-508-5711) or Riaz Mohammed (rmohammed@eei.org or 202-508-5036).

Sincerely,



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Comments of the Edison Electric Institute

EPA's Draft Guidance on Progress Tracking Metrics, Long-Term Strategies, Reasonable Progress Goals and Other Requirements for Regional Haze State Implementation Plans for the Second Implementation Period

The Edison Electric Institute (EEI) appreciates the opportunity to comment on the "Draft Guidance on Progress Tracking Metrics, Long-Term Strategies, Reasonable Progress Goals and Other Requirements for Regional Haze State Implementation Plans for the Second Implementation Period." (Draft Guidance) 81 *Fed. Reg.* 44,608 (July 8, 2016).

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Emissions from electric generating units (EGUs) have dropped dramatically and will continue to do so for the foreseeable future; since 1990, the two primary visibility-related emissions from power generators—sulfur dioxide (SO_2) and nitrogen oxides (NO_x)—have been reduced by 86 and 79 percent, respectively. Many Clean Air Act (CAA) programs, including Regional Haze Best Available Retrofit Technology (BART), have contributed to these emission reductions.

The Environmental Protection Agency (EPA) also has proposed a number of significant changes to existing regulations, which EEI addressed in comments submitted on August 10.[1] As the owners and operators of EGUs subject to the proposal, EEI members have a strong interest in proposed changes to the Regional Haze Program, through both the proposed regulations and the Draft Guidance. EEI believes that EPA should make substantial changes and clarifications to the Draft Guidance.

[1] In response to *Protection of Visibility: Amendments to Requirements for State Plans,* 81 *Fed. Reg.* 26,942 (May 4, 2016)

I. Executive Summary

EPA posted a document on its web site titled "Draft Guidance on Progress Tracking Metrics, Long-Term Strategies, Reasonable Progress Goals and Other Requirements for Regional Haze State Implementation Plans for the Second Implementation Period." EPA is inviting public comment on the Draft Guidance and related documents[2] through August 22. 81 *Fed. Reg*. 44,608 (July 8, 2016).

In general, the Draft Guidance provides additional detail and perspectives on how EPA views changes in regulatory requirements that it has proposed for the Regional Haze Program. In addition to submitting comments on the proposed rule, EEI has identified several issues in the Draft Guidance that merit further comment.

First, taken as a whole, the source screening process that is outlined in the Draft Guidance leads to a presumption that states must consider a large number of sources and large portion of light extinction regardless of what progress a state already may have made in improving visibility or could make through "on the books" controls. As our comments below further detail, EPA's treatment of cost of control in the four-factor analysis could be misinterpreted or implemented in a way that justifies virtually any cost as reasonable.

Second, the source screening process and other elements of the Draft Guidance could result in a large amount of reductions in the second implementation period—while at least three subsequent Regional Haze Program implementation periods remain after the second implementation period. This could result in the imposition of costly control technology investments that may not be needed in order to address a state's uniform rate of progress (URP). It also could result in expenditures that are not even necessary to incur over the longer-term. As EPA notes, "[i]n future implementation periods, newer technology may reduce the costs of compliance for certain

[2] In addition to the Draft Guidance, EPA also has posted a Regional Haze Guidance Technical Support Document and Data File (TSD). *See* https://www.epa.gov/visibility/draft-guidance-second-implementation-period-regional-haze-rule. This TSD provides additional detail on how EPA recommends that states implement the Regional Haze Program. EPA also conducted a webinar on the Draft Guidance and has posted a Powerpoint presentation used in the webinar. *See* https://www.epa.gov/visibility/public-informational-webinar-proposed-regional-haze-rule-revisions.

sources or sources that are expensive to control may retire." Draft Guidance at 97. The electric power sector is undergoing an extensive fleet transition including new technologies, greater efficiency, changing fuel use and generation types, and plant retirements. Forcing a large portion of Regional Haze Program reductions into the second implementation period could constrain and complicate this transition toward more safe, reliable, affordable and clean electric power. EPA must allow states more flexibility in selecting the number and type of sources subject to screening, evaluation and ultimately controls.

Third, through the proposed rule and the Draft Guidance, EPA has set up a one-sided analysis that will result in long-term strategy (LTS) control requirements that drive reasonable progress goals (RPGs) that exceed a state's URP. In some cases, it is possible that these control requirements will far exceed a state's URP. By EPA's own design, however, the Regional Haze Program is intended as a 60-year long effort to make steady progress following the URP towards natural conditions. As currently constructed, however, the Draft Guidance appears intended to try and accomplish much of the visibility improvements in the second implementation period without reference to the long-term nature of the program.

EPA should take several steps to alter the Draft Guidance before finalization. EPA should:

(a) not require states to include stationary sources associated with 80 percent of aggregate light extinction impacts in the four-factor analysis;

(b) revise its treatment of cost of control which could be misinterpreted to justify virtually any cost as reasonable;

(c) allow states to consider cost and visibility benefits together in evaluating potential source controls;

(d) allow states to fully assess all of the four factors applicable to the consideration of new controls on sources;

(e) either impose no limit or allow far greater than a 5-year exclusion from the screening analysis for EGUs with highly effective controls;

(f) allow for full consideration of the investments that EGUs have made in emissions controls when screening sources for application of the four-factor test and allow for equivalent treatment of EGU and non-EGU sources; and

(g) provide more detail and direction with respect to the ability to exclude the influence of man-made international emissions on regional haze in the United States.

Finally, EPA indicates that the Draft Guidance "is not binding or enforceable against any person . . . [and that] states may choose not to follow the recommendations in this guidance . . ." *Id*. at 1. Throughout the document, however, EPA has used terminology which at least implies that use of the guidance with respect to certain determinations and decisions is mandatory. EPA should clarify the limited purpose of the Guidance and the continuing ability of states to deviate from the document in both making decisions regarding source controls and in fulfilling their state implementation plan (SIP) obligations.

II. EPA's Proposed Use of a Screening Analysis for the Determination of Control Measures Can Result in Overcontrol for the Second Implementation Period

A. EPA's Initial Screening Analysis Is Too Restrictive

Under the proposed rule and Draft Guidance, a state uses a "screening analysis" to select a "subset of sources" before a four-factor analysis to determine whether controls are appropriate. Draft Guidance at 13. This initial screening analysis is to consider visibility benefits and EPA indicates that states should "bring[] forward from screening sources that, in the aggregate, represent the large majority of controllable emissions that are impairing visibility." *Id*. at 17. Specifically, EPA recommends that in-state sources contributing *80 percent* of the aggregate light extinction impacts from all major, minor, and minor/area stationary sources in the state (to any Class I area to which sources in the state are linked) be brought forward into the four-factor analysis. EPA Public Webinar on Draft Guidance at 23; Draft Guidance at 72.

EPA further recommends that the 80 percent impact be measured both with respect to the 20 percent most impaired days and the average source impact across this set of days multiplied by a constant value. *Id*. According to the Draft Guidance, a state screening should pass both tests in order to be used. If a state does not include 80 percent of the impact from sources, state thresholds for selecting sources "should be reassessed for reasonableness." *Id*.

Taken as a whole, this screening process means that states are being directed to consider a large number of sources regardless of what progress a state already may have made in improving visibility. The 80-percent screening step is to be used whether a state is actually ahead of, or behind the steady progress envisioned by a state's URP calculation. EPA presents no specific basis or technical support for such a recommended level. Such an approach is a substantial departure from what was intended by the Regional Haze Program. In fact, other aspects of the Draft Guidance seemingly expand even further the sources that EPA suggests should be considered by states.[3] .

Rather than directly focus on sources that contribute the most to visibility degradation, EPA is casting a wide net that could require control measures for sources that either may not contribute significantly to visibility impairment or could more efficiently be addressed in future implementation periods.

The 80-percent threshold is one of many examples in the Proposed Guidance where EPA is establishing a presumption or expectation improperly in what the Agency clearly calls "non-binding guidance"[4] and at the same time limiting state discretion.

B. EPA Has Unduly Constrained the "Four-Factor" Test to Focus Almost Exclusively on Cost

Once the screening analysis is completed, the Draft Guidance's preferred approach[5] indicates that states are to consider "*only* the four statutory factors to determine whether control measures

[3] Since the four-factor analysis is to be completed for each Class I area separately, it is likely that even a greater portion than 80 percent of the light extinction impact ultimately will need to be considered in the second implementation period alone. Further, page 58 of the Draft Guidance provides that states could consider all Class I areas for which the state contributes at least one percent to anthropogenic light extinction from all U.S. sources *on any day* within the 20 percent most impaired days, which could drive even more sources into four-factor analysis in the second implementation period.

[4] Draft Guidance at 1

[5] EPA also includes two alternative approaches, one under which states would simply consider the available control measures for all sources without reference to visibility, and another under which states would consider visibility both during the screening step and during a state's consideration of the four-factor test. *Id*. at 15. EPA considers the first alternative approach to be "clearly permissible" under the CAA. EPA, however, considers the later alternative approach as presenting "severe technical challenges." In addition, EPA indicates that this approach could be pursued only after seeking input from EPA, federal land managers and the public. *Id*. at 16. Thus, while the Draft Guidance theoretically makes alternative approaches available, as drafted, the guidance is clearly and strongly "tilted" towards EPA's preferred approach.

are necessary to achieve reasonably progress." *Id.* at 15. (emphasis added). These four factors are "costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining *useful* life of any potentially affected sources." 40 C.F.R. §51.308(d)(1)A).

Under EPA's recommended approach in the Draft Guidance, a state should reject a control measure only when one of the four statutory factors, or some combination of the four factors, makes it unreasonable to require the control. Yet, EPA essentially narrows the four-factor test down to two overriding factors. First, EPA dismisses the statutory factor of "time for compliance" by indicating that "the time necessary for compliance does not present the same type of barrier because the long time perspective of the Regional Haze program extends well beyond the time required to install and 'shake down' any emission control system." *Id* at 109. Next, in general, EPA proposes to read the third factor—"energy and non-air quality environmental impacts of compliance"—out of the statute by indicating that state should consider such impacts as "*part* of the costs of compliance." [6] *Id.*

This approach essentially leaves the cost of compliance and remaining useful life factors to drive consideration of whether a source is to be included in the LTS at the end of the four-factor analysis. EPA then narrows the field even further with regard to "remaining useful life." EPA indicates that only sources that are "certain to close by 2028 under an enforceable requirement" may be considered to not require further controls. *Id.* Altogether, EPA's treatment of the non-cost statutory factors is an overly restrictive and unsupported reading of the statute.[7] Then under the Draft Guidance, at the conclusion of the four factor analysis, a state "must incorporate all emission control measures necessary to make reasonable progress into the LTS in enforceable

[6] The Draft Guidance notes that in "*rare location-specific cases*, the installation of a control measure may lead to adverse non-air quality environmental impacts that are extreme or unusual for a particular type of source. In these cases, states may consider such impacts separately from the costs of compliance when determining whether the measure is necessary to make reasonable progress." Draft Guidance at 109. (Emphasis added). But EPA otherwise recommends that "ordinary" non-air quality environmental impacts be accounted for as part of the costs of compliance. *Id.* Otherwise, EEI agrees with the Draft Guidance that "a state is not required to consider GHG emission impacts, or climate change effects, in the development of its LTS." *Id.* at 92.

[7] CAA section 169A(b) provides that EPA is to provide "guidelines" to states on "appropriate techniques and methods for implementing this section . . ." Thus, states are primarily tasked with determining reasonable progress, including the assessment of the remaining useful life of a facility.

form", driven essentially by cost of compliance for any source not under enforceable requirements to close by 2028. *Id.* at 18.

Moreover, how EPA would direct states to deal with cost of control is troubling. Under the Draft Guidance:

a. If the cost/ton of a measure under consideration is about the same as for a measure that has been previously required for a similar source, then the state should conclude that measure under consideration has a reasonable cost of compliance and should not eliminate the measure as being needed for reasonable progress based on the cost of compliance. *Id*. at 97.

b. Once a state has estimated the cost/ton of a measure under consideration "it should consider past conclusions that the state itself, *other states* and the EPA have made regarding whether the costs of compliance would be unreasonable." *Id.* at 98. (Emphasis added). EPA further indicates that "states should not view the weighing of costs and visibility benefits as an in-state issue . . ." *Id*. at 103.

c. EPA further directs that "when the cost/ton of a measure would be in the range of cost/ton values that have been incurred multiple times by sources in generally similar situations, states should presume that the costs of compliance are not an obstacle to the measure being considered necessary to make reasonable progress." *Id*. at 99.

d. EPA also provides that "[i]n the second implementation period… a state could use [a $500/ton] value to establish that a measure for EGUs with the same cost/ton was within the range of reasonableness for the cost of compliance… A state should not rely on this value to conclude that a measure for EGUs with a higher cost/ton value should be rejected as not needed for reasonable progress." *Id*. at 93.

e. EPA says that "states should not consider the incremental differences in cost between the [control] alternatives." *Id*. at 100.

f. EPA states further that the cost/deciview metric is likely to be misunderstood by the public and state decision-makers and adds that "the cost/deciview metric does not allow for apples-to-apples comparisons between sources…" *Id.* at 107.

g. EPA recommends that states research past control cost evaluations using EPA's RACT/BACT/LAER Clearinghouse, but asserts that "the environmental objective of a control measure required under another CAA provision in a previous example is not relevant to whether the cost impacts of a similar measure that might be adopted for regional haze purposes are unreasonable." *Id* at 99.

Taken together, these statements in the Draft Guidance—by "advising" states to not rely on past cost/ton values, to not consider incremental costs, to not use cost/deciview metrics, and to review control measures used in programs which are not focused on visibility—could be interpreted as justifying virtually any cost as reasonable.

To include best available control technology (BACT) and lowest achievable emission rate (LAER) emission control decisions—stemming from significantly more stringent requirements related to public health and the environment—as a method to inform reasonable further progress decision-making is inappropriate. BACT and LAER are included within requirements to attain National Ambient Air Quality Standards (NAAQS), standards which are based on different statutory considerations and which are to be attained within entirely different timeframes than the Regional Haze Program.

Moreover, EPA's BART Guidelines expressly allow states to consider cost/deciview and its 2007 Guidance called cost/deciview a "meaningful" metric in some circumstances.[8] Thus, to dissuade states from considering incremental differences between control costs of alternative control options is contrary to the BART Guidelines and EPA's 2007 regional haze guidelines.[9] It also is directly inconsistent with the stated purpose of the Draft Guidance to "advise states" regarding how to develop and submit regional haze SIPs. EPA lacks authority to disapprove a SIP on the basis that a state did consider the cost/deciview metric in formulating source controls that may be needed.

C. EPA Should Revise Its Screening Analysis for Electric Generating Units

The Draft Guidance indicates that if an EGU has been modified (or newly constructed) with highly effective control technology within the five years prior to submission of a state SIP, the state may choose not to bring the source forward through the screening analysis.[10] *Id.* at 77. In EPA's estimation, highly effective control technology may include year-round operation of flue

[8] 70 *Fed. Reg*. at 36,130 and 39,170 and "Guidance for Setting Reasonable Progress Goals Under the Reasonable Haze Program" at 5-2, respectively

[9] 70 *Fed. Reg*. at 36,167 and "Guidance for Setting Reasonable Progress Goals Under the Reasonable Haze Program" at 5-2, respectively

[10] EPA, however, describes this mechanism as being restrained to "certain limited situations" and requires states to document the technology utilized. *Id.* at 77-78.

gas desulfurization (FGD) with an effectiveness of at least 90 percent or year-round operation of selective catalytic reduction (SCR) with an effectiveness of at least 90 percent.

While recognizing past investments by EGUs in control technology is appropriate, we question the limited scope of this provision. First, if the Regional Haze Program is targeted on visibility concerns, it should not matter when highly effective technology was installed; such technology may be effective five, 10, 20 or more years past the date of installation and the effect on regional haze from an older or newer unit will be the same. Thus, the five-year cut-off that is proposed is arbitrary.

Second, an approach leading to EGUs with highly effective installed controls "passing through" the screening test to consideration in the four-factor test stage will not allow for a relative comparison of the effectiveness and need for controls on EGUs versus other sources. That is, it appears that EPA is suggesting that states only consider the cost of new controls for an EGU—no matter the level of previous investment in controls. In this regard, highly effective controls for SO_2 and NO_x for an EGU can cost over one hundred million dollars per unit. Yet, EPA appears to be suggesting that such long-term investments would not be considered, only the cost of adding on even more controls. This could create an imbalance in the overall financial burden borne by EGUs vs. non-EGU sources.

Finally, EPA indicates that when retrofitting a FGD system to reduce SO_2 emissions, a state should consider a system capable of achieving a 90-percent reduction in SO_2 emissions as well as a more advanced system capable of achieving a 97 or 98-percent reduction. *Id*. at 87. While in some cases a more efficient system might be warranted, EPA should not assume that the most efficient or effective control systems will always be needed in order to address visibility.

D. EPA Must Consider the Long-Term Nature of Regional Haze Program

Altogether, the screening analysis for the second regional haze implementation period has the potential to result in imposing more controls than necessary on sources to meet the URP. The Draft Guidance clearly defaults to a paradigm under which large numbers of sources will pass

through the screening analysis and then be considered for controls whether or not a state is achieving more or less than the URP.

The Regional Haze Program, by EPA's own design, is a 60-year program. Focusing a large amount of reductions in the second implementation period—while at least three subsequent implementation periods remain—risks imposing costly control technology investments that may not even be needed over the longer-term given future system operation decisions in the third and subsequent implementation periods by unit operators along with state regulators. As EPA notes, "[i]n future implementation periods, newer technology may reduce the costs of compliance for certain sources or sources that are expensive to control may retire." Draft Guidance at 97. The electric power sector is undergoing an extensive fleet transition including new technologies, greater efficiency, changing fuel use and generation types, and plant retirements. Forcing a large portion of Regional Haze Program reductions into the second implementation period could constrain and complicate this transition toward more safe, reliable, affordable and clean electric power. EPA must allow states more flexibility in selecting the number and type of sources subject to screening, evaluation and ultimately controls.

III. EPA Should Better Align Required Long-Term Strategies with Reasonable Progress Goals and Account for Other Improvements in Air Quality

Once a state develops its LTS, EPA's Draft Guidance indicates that a state must use air quality models to project conditions in the 20 percent most impaired days and 20 percent clearest days, and determine the state's RPG. RPGs are used to determine a state's progress in addressing regional haze, *i.e.*, by comparing the RPGs to a state's Class I area-specific URP. If comparison of the RPG to the URP shows that a state is lagging in making progress, a state must demonstrate to EPA that there are no other reasonable control measures. Yet, if a comparison of the RPG to the URP shows a state making greater progress than indicated by the URP, EPA asserts that this does not provide a "safe harbor that exempts states from the requirements of the Regional Haze Rule" and that additional reasonable controls could be considered and imposed for sources. Draft Guidance at 18, EPA Webinar at 30.

The Draft Guidance provides that states should decide on new emission controls for incorporation into the LTS and, subsequently, conduct regional photochemical modeling to set RPGs. *Id*. at 11.

In fact, under the Draft Guidance, a state would model the emission reductions that will result from implementation of its and all states' LTSs and other enforceable measures that will reduce visibility impairment to set the RPGs for 2028. A state is to project visibility conditions after it has determined emission control measures within its state "and measures adopted by any contributing states into their LTS . . ." *Id*. at 117.

This requirement seems to add substantial complications. EPA recognizes that state determinations regarding their individual LTS may not occur in an orderly sequence and that "[a]t the time the air quality modeling is performed, it may be necessary to assume the outcome of final decisions by some states on the content of their LTS." *Id*. at 118. EPA also recognizes that "subsequent SIP revisions or FIPs may alter the content of the LTS in one or more states contributing to visibility impairment at a Class 1 area." *Id*. Yet, after creating this complicated analytical requirement, the Draft Guidance only suggests that states should consult with EPA concerning the appropriate method to account for such variations. Thus, the net result of this element of the Draft Guidance is to impose an even greater burden for states to bear—to account for LTS in a number of undefined contributing states and then to adjust its modeling and RPGs based on this extraterritorial LTS activity (or lack thereof). This is an unreasonable and unwarranted complication in the process that each state must follow in determining its own LTS.

This process appears designed to result in LTSs and RPGs that are more stringent than needed to address the URP in the second implementation period. In the Draft Guidance, EPA makes it clear that a state must go to great extremes to justify RPGs that do *not* equal or exceed the URP. At the same time, controls imposed through the four-factor test could realistically be more than are necessary to address URP. EPA therefore has set up a one-sided analysis based on the four-factor test serving as a stringency floor for determination of a state's LTS to be followed by a determination of a state's RPG based on the LTS. This process then can realistically result in control requirements that exceed the URP, and in some cases far exceed the URP.

EEI questions whether EPA can or should require controls that exceed the URP. States must be allowed wide latitude under the CAA to develop approaches to address regional haze over multiple state plans over numerous decades. As noted above, however, EPA's Draft Guidance appears designed to impose higher and higher per/ton costs of control and to apply such costs when evaluating a large majority of sources within a state within the second implementation period. By design and statutory structure, however, the Regional Haze Program is not focused on protection of human health and the environment, but on "the prevention of any future, and the remedying of any existing impairment of visibility in class I Federal areas . . ." 42 U.S.C. 7479(a)(1). In recent years, multiple CAA programs have been imposed on the EGU sector, including the Clean Air Interstate Rule, the Cross-State Air Pollution Rule (CSAPR), CSAPR "Update" and the Mercury and Air Toxics Standards (MATS) rule. Additional programs, like the nitrogen dioxide (NO_2), fine particulate matter and SO_2 NAAQS are in the process of being implemented. Substantial progress has been made and will continue to be made over the next decade. In this context, aggressively imposing additional near-term controls on the basis of visibility improvement and largely driven by EPA's view of acceptable control costs is not aligned with the basic priorities or efficient implementation of the CAA.

IV. Emission Control Measures for Sources Should be Assessed With Reference to the Four-Factor Test and Applied Equally for EGUs and Non-EGUs

The Draft Guidance lists a number of different factors and approaches that a state should consider in addressing whether control measures are feasible for sources selected for the four-factor analysis. Among items discussed is the consideration of replacement and retrofit of emissions-generating equipment, consideration of increasing or mandating the fuel with inherently lower SO_2, NO_x and/or particulate matter emissions for sources "capable of using multiple fuels," year-round operation of SCR and SNCR units, operating restrictions, including shutdowns, and energy efficiency and renewable energy measures."[11] *Id*. at 85-87.

[11] SNCR = selective non-catalytic reduction

EPA's direction that states "should identify and consider all available control measures that are technically feasible"[12] for sources selected for four-factor analysis could be misinterpreted. Pursuant to CAA section 169(g), in determining reasonable progress the costs of compliance, time necessary for compliance, energy and non-air quality impacts, and remaining useful life of existing sources are to be "taken into consideration." Thus, states are not directed to identify and consider all possible control measures, but rather states have latitude to determine reasonable progress with reference to four-factor test. EPA should clarify that there is no duty for states to consider each and every control option that may be technically feasible. Further, EPA should rescind its statement that "for sources that are capable of using multiple fuels, reasoned decision making requires states to consider increasing or mandating the fuel with inherently lower SO_2, NO_x and/or PM emissions." *Id*. at 86. The CAA, previous regional haze guidelines and BART guidelines do not *require* states to consider fuel switching. In addition, EPA should not seek to define "remaining useful life" in the context of sources that are "certain to close by 2028." *Id.* at 78. This redefinition seeks to constrain states to consider remaining useful life only for a subset of sources for which this may be a legitimate consideration

In addition, with regard to any approach for the assessment of source controls under the four-factor test, the approach should be applied equally with respect to EGU and non-EGU sources.

Finally, the Draft Guidance indicates that states are to review previous decisions regarding control measures, including those related to BART. States "should consider the decisions made by other states (or being made by other states) and the EPA . . . [and] should not view the weighing of costs and visibility benefits as an in-state issue." *Id*. at 103. Should EPA adopt such a broad perspective on state obligations in the final Guidance, the Agency again must ensure that the provisions apply equally as between EGU and non-EGU sources. More importantly, however, EEI is concerned that states retain the ability to differ in their interpretations of previous decisions on BART. The evaluation of individual sources in different states may reasonably differ with respect to state-specific factors.

[12] Draft Guidance at 85.

V. EPA Must Provide Additional Guidance Concerning International Emissions

EPA's proposed rule indicates that it may be appropriate for states to adjust RPGs to take into account international emissions, but that the Agency is "not convinced that such impacts can be estimated with sufficient accuracy at this time." 81 *Fed. Reg.* at 26,956. EPA requested comment in this area and with regard to a proposal to allow states to make adjustments to their URP based on international emissions. *Id.* The Draft Guidance, however, offers little in the way of additional detail on this issue. EPA indicates that its proposal to address extreme episodic extinction of visibility will "largely resolve issues stemming from the same types of natural emissions in other countries." Draft Guidance at 53. EEI is concerned, however, that EPA provides no further analysis or information supporting this assertion.

Moreover, the Draft Guidance does not provide further information or recommendations regarding international anthropogenic emissions, although EPA acknowledges that states should not be required to adopt more controls on account of such emissions. Instead, EPA paradoxically asserts that international anthropogenic emissions should *not be a factor* with regard to whether controls on a domestic source are reasonable. *Id.* at 54. This appears to contradict the Agency's claim that states do not need to address such emissions. EPA asserts that the proposed revisions to the Regional Haze rule could allow a state to adjust its URP based on international anthropogenic emissions, but then suggests that any adjustments may only be available for scientifically validated data concerning sources in Mexico and Canada. *Id.* This is an insufficient and inadequate treatment of this important issue. States should be allowed to fully exclude international anthropogenic emissions since, by definition, they are beyond their ability to control.

Additional guidance is needed in this area, especially in light of the fact that EPA applies methods to provide such estimates in the context of other CAA rulemakings (*e.g.*, NAAQS development). EPA also should allow for public notice and comment on both the guidance and related rule provisions in proposed §51.308(f)(1) regarding international emissions.

VI. EPA Should Define the Purpose of the Draft Guidance More Clearly

In the Introduction section of the Draft Guidance, EPA claims that the document is intended merely to "advise states on how to develop and submit regional haze SIPs" and that "[n]one of the recommendations contained in this guidance are binding or enforceable against any person . . ." *Id*. at 1. However, throughout the Draft Guidance, EPA variously uses terms and phrases that could be interpreted as effectively making the guidance mandatory. While EPA claims that use of the terms such as "should" are intended only to describe policies and recommendations, the guidance creates confusion when it indicates various actions a state "should" or "should not" take. In certain contexts, the difference between "should" and "must" can be hard to discern.[13]

Accordingly, EPA should thoroughly disclaim and remove any implication in the final guidance document that states are constrained from taking certain actions, or that states must justify an approach that "contradicts a specific recommendation." *Id*. at 17. EPA should make clear that the Draft Guidance is consistent with providing "guidelines" and not instructions or explicit direction to states that are responsible for implementing the Regional Haze Program.

[13] For example, EPA says that a state "*should not* justify its screening threshold based on it being the limit of what is humanly perceptible." Draft Guidance at 13. With regard to determining the measures necessary to make reasonable progress, EPA indicates that "[s]tates may deviate from these recommendations, but *must* justify any approach that contradicts a specific recommendation." *Id*. at 17. States also "*must include* BART-eligible sources in the screening process and subsequent steps, as part of the requirement to provide for reasonable progress." *Id*. at 76. (Emphasis added in all quotations above).