



Department of Justice

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Ms. Gina McCarthy, Administrator
Ms. Janet McCabe, Acting Assistant Administrator, Office of Air and Radiation
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Ms. Rebecca Weber
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Re: EPA Regulation of Carbon Dioxide Emissions from Existing Power Plants

Dear Ms. McCarthy, Ms. McCabe, and Ms. Weber:

The Iowa Department of Justice and its Consumer Advocate Division ("Iowa OCA"), collectively "Iowa DOJ", submit the following comments in response to the Clean Power Plan ("CPP") issued by the United States Environmental Protection Agency ("EPA") on June 2, 2014. The CPP proposes emission guidelines for states to follow in developing plans to address greenhouse gas emissions from existing fossil fuel-fired electric generating units ("EGUs"). Specifically, the EPA proposes state-specific rate-based goals for carbon dioxide ("CO₂") emissions from the power sector, as well as guidelines for states to follow in developing plans to achieve the state-specific goals.

The Iowa DOJ has the duty to represent the interests of utility consumers generally and the public generally. Therefore, the Iowa DOJ has an interest in ensuring that the requirements the EPA chooses to apply to existing electric generating plants are developed and implemented in such a way that they do not impose significant, unnecessary or unfair cost increases, or create disruptions in the provision of electric service to Iowa consumers. On November 12, 2014, the Iowa Utilities Board (IUB),

Iowa Department of Natural Resources (IDNR), and the Iowa Economic Development Authority (collectively “Iowa Agencies”) submitted comments to the EPA on the CPP proposal. Iowa DOJ generally supports the Iowa Agencies’ comments. In particular, Iowa DOJ endorses the Iowa Agencies’ description of forward-looking regulatory policies in Iowa and voluntary actions undertaken by Iowa utilities that collectively contribute toward reduced CO2 emissions from EGUs. Iowa DOJ joins the Iowa Agencies in urging the EPA to **retain CPP rate-based goal guidelines that give Iowa appropriate credit for these early-action initiatives that reduce CO2 emissions**. As noted by Iowa Agencies, p. 7, n. 4, Iowa consumers have paid for these early action initiatives, often at a significant premium as compared to a business as usual or more traditional system planning approach, with the expectation that they would benefit from such investments under potential future CO2 regulations.

Iowa DOJ submitted initial written comments regarding the EPA’s plans to regulate CO2 from existing power plants in January 2014, and incorporates those comments by reference. Overall, Iowa DOJ is pleased with EPA’s incorporation of stakeholder feedback and particularly appreciates EPA taking a flexible approach toward CO2 regulation through the proposed CPP and allowing states significant latitude to develop plans that are appropriate for their unique circumstances.

Iowa DOJ supports the framework for CO2 reduction reflected in the CPP and urges EPA to retain this approach in its final proposal. With the following comments, Iowa DOJ will elaborate on Iowa-specific considerations and highlight matters of particular importance regarding the proposed CPP in areas where EPA has requested comments. Iowa DOJ’s comments generally follow the order in the CPP table of contents.

I. BUILDING BLOCKS FOR SETTING STATE GOALS AND THE BEST SYSTEM OF EMISSION REDUCTION

Performance standards under Section 111 of the Clean Air Act must reflect the degree of emission limitation achievable through the application of Best System of Emission Reduction (“BSER”) that has been adequately demonstrated. EPA’s CPP defines “system” broadly to include not only upgrades and operational changes that could be made at EGUs, but also measures such as: re-dispatch from higher-emitting resources like coal to lower-emitting resources like natural gas, increased renewable energy (“RE”) deployment, and increased demand-side energy efficiency (EE). Iowa DOJ’s January 2014 comments supported this “beyond the fence-line” approach. EPA established the state goals based on four categories of “building blocks” for CPP compliance, including:

- Reduce Coal-Fired Emissions Rate (Building Block 1): a 6-percent heat rate improvement in the state’s coal fleet;
- Re-Dispatch to Existing Natural Gas Combined Cycle (“NGCC”) units (Building Block 2): raising the state’s NGCCs to a 70-percent capacity factor.

- Nuclear and Renewables (Building Block 3): 5.8 percent of each state's nuclear capacity credited starting in 2020, and, on average across the states, a 13-percent RE capacity achieved by 2030; and
- End-Use Energy Efficiency (Building Block 4): on average across the states a 10.7-percent cumulative savings by 2030.

Iowa DOJ supports the EPA's proposed use of four compliance building blocks for BSER. The Building Blocks reflect a broad array of CO₂ reducing measures that are already in place, including renewable energy standards and demand-side energy efficiency programs. Iowa DOJ recognizes that the EPA's use of the four building blocks to derive Iowa's CO₂ reduction goal does not commit the state to incorporate the same amount of CO₂ savings from each of the building blocks in its implementation plan. The EPA did not use least-cost planning in developing the state targets for the CPP. Accordingly, it is critical that states consider least-cost planning analysis to determine the optimal amount and combination of building block-driven CO₂ reductions. Iowa DOJ supports the flexibility granted by EPA, which will allow states to develop the most cost-effective state implementation plans to achieve state-specific CPP goals by deploying an optimal mix of the four compliance building blocks. The most cost-effective state implementation plan may involve a multi-state approach for achieving some of the building block components.

In addition to the state-specific goals derived from the four building blocks, the CPP allows states to identify and propose state plans reflecting technologies or strategies that are not specifically identified within the four building blocks.¹ Based on this guidance, Iowa DOJ interprets the flexible design of the proposed rules to allow states to include new natural gas combined cycle units (NGCCs) as a permissible measure for achieving CO₂ reduction goals within Building Block 2. The 70-percent capacity factor NGCC target for Building Block 2 involves reducing mass emissions by shifting electricity generation from the most carbon-intensive units (coal and oil steam generators) to less carbon-intensive NGCCs. The EPA recognizes that new NGCCs present the same opportunity to reduce CO₂ by replacing generation at high carbon-intensity units as can be achieved through greater dispatch of existing NGCCs. EPA declined to propose new NGCC capacity as part of the basis supporting the BSER because it is typically much more costly than increasing the capacity factor on existing NGCCs.

EPA seeks comment on whether it should consider construction and use of new NGCC as part of the basis supporting the BSER. Iowa DOJ is supportive of EPA encouraging more cost-effective compliance options and appreciates EPA's recognition that it could be quite costly and create huge infrastructure demands if most states relied heavily on new NGCC to meet CPP goals. Information gathered from Iowa stakeholders suggest that Iowa utilities can increase the capacity factor of existing NGCC and should fully consider this compliance path particularly because it is often much less costly than

¹ CPP at 34837.

installing new NGCC capacity. While DOJ does not disagree with the EPA excluding new NGCC as part of the basis supporting the BSER, Iowa DOJ does not interpret this exclusion as precluding new NGCCs being part of a state's CPP compliance plan. Iowa DOJ supports the Iowa Agencies request for EPA to specifically confirm that new NGCCs added after the baseline date may be included in the state compliance plans. In some cases, where new capacity is needed, new NGCCs may be part of a least cost compliance approach.

EPA correctly determined that the four building blocks reflect major sources of CO₂ reductions that are available to the power plant sector at reasonable cost. Therefore these building blocks satisfy BSER criteria and are appropriately considered in determining CO₂ reduction goals under section 111(d) of the Clean Air Act. The EPA's allowance of flexible multi-state compliance strategies is also beneficial and allows states to pool their building block resources, where appropriate, for more cost-effective compliance. The EPA seeks comment on whether there are special considerations affecting small rural cooperative or municipal utilities that might merit adjustments to the BSER proposal, and, if so, possible adjustments that should be considered. Iowa Agencies noted some unique challenges that may confront smaller utilities in developing the compliance building blocks within the proposed interim and final compliance timeframes. Iowa Agencies propose less stringent interim goal requirements and timelines (Iowa Agency comments, p. 15). Iowa DOJ is supportive of the Iowa Agency request, not to delay implementation of sensible, cost-effective CO₂ reduction strategies, but to ensure that Iowa stakeholders have adequate time to develop an optimal and cost-effective compliance plan. The allowance of additional time to meet interim goals will help accommodate the challenges faced by smaller utilities and assist them in designing strategies to develop certain building blocks approaches, possibly through trading or a multi-state approach.

II. STATE GOALS

EPA seeks comment on all aspects of the proposed form of the state goals and the goal computation procedure. In prior comments concerning the appropriate method for deriving CO₂ reduction goals as part of an overall CO₂ reduction plan, Iowa stakeholders urged the EPA to give the state credit for its existing policies, programs, and early actions to reduce CO₂ emissions. Through the proposed CPP, EPA has given appropriate recognition to existing state policies, programs and early actions to reduce CO₂ emissions. Iowa DOJ finds the EPA's calculation of Iowa's goals to be fair and well-founded.

A state may demonstrate during the comment period that application of one of the building blocks would not be expected to produce the level of emission reduction quantified by the EPA because implementation of the building blocks at the levels envisioned by the EPA is technically infeasible, or because the costs of doing so are significantly higher than projected by the EPA. (CPP 34893). Such a showing will not necessarily alter the applicable state goal if the overstated potential for CO₂ reductions

under one building block can be made up through other building block options. (CPP 34898). For example, Iowa's potential for cost-effective CO₂ savings under Building Block 1, based on a 6% heat rate improvement across all affected facilities, may be overstated because regulations and unique regulatory constructs in Iowa have motivated power plant efficiency and therefore reduced the amount of savings that can be achieved cost-effectively through additional efficiency improvements. On the other hand, Iowa is well-positioned to make up for such savings through other building blocks and has a regulatory structure that supports expanded efforts in renewable energy and energy efficiency.

EPA seeks comment on whether the final rules should set a renewable generation floor equal to the amount of the state's actual 2012 renewable energy generation for states such as Iowa that exceed the regional average. (CPP at 34869). Iowa DOJ concurs with Iowa Agencies in opposing this alternative baseline because it would penalize and fail to give appropriate credit to Iowa utilities and ratepayers for the significant costs of associated with their early actions to implement renewable energy. Due to the enormous cost of Iowa's early investments in renewable energy, DOJ expects that any effort to diminish the credit for these early actions would be met with strong resistance.

The proposed goals may present significant challenges to smaller utilities and others who either have fewer building block opportunities or simply have not elected to make significant investments in CPP building blocks measures and strategies. The CPP's CO₂ reduction goals may present serious challenges for some utilities. This is best addressed by the EPA allowing a flexible plan and adoption of a less stringent interim carbon dioxide reduction target and timeline, as suggested by Iowa Agencies, rather than a weakening of final CO₂ reduction goals.

While the Iowa-specific goals as currently determined give appropriate recognition to Iowa's existing policies, programs, and early actions to support renewable energy, energy efficiency, and consideration of CO₂ reduction objectives in resource planning, the CPP provides that measures that a state takes after the date of this proposal, or programs already in place, *which result in CO₂ emission reductions during the 2020-2030 period*, would apply toward achievement of the state's 2030 CO₂ emissions goal. (CPP p. 34839). As such, the CPP appears to preclude states from taking credit for existing programs and early actions that take place between 2012 and 2020. **Iowa DOJ joins the Iowa Agencies in urging the EPA to give states credit for CO₂ reductions occurring between 2014 and 2020.** (Iowa Agencies, p. 9). Otherwise, there will be diminished incentive to pursue aggressive steps to implement CO₂ reducing measures over the next several years.

As addressed in Iowa DOJ's January 2014 comments, Iowa policy has supported and continues to support significant investments in wind energy and energy efficiency. Iowa utilities continue to make investments in renewable energy facilities and have indicated plans to continue such investments over the next several years. The accomplishments of Iowa's investor-owned utilities in the development of wind energy in

Iowa have come at significant cost to Iowa's utilities and their customers. Including the large wind project recently announced by MidAmerican Energy Company (MEC), Iowa utilities will have spent almost \$6 billion on wind projects in Iowa since 2003, reflecting approximately 3000 MW of nameplate wind capacity. Similarly, Iowa utilities have ongoing energy efficiency programs and ratepayers pay more than \$100 million annually for these programs that will generate significant CO₂ reductions over the next several years. Ratepayers bear enormous costs in association with these RE and EE investments. Therefore, it is critical that the CPP fully recognize the contribution of these and other building blocks opportunities toward meeting Iowa's CO₂ reduction targets.

While the state goals established for Iowa recognize Iowa's existing policies, programs, and early actions to support renewable energy, energy efficiency, and consideration of CO₂ reduction objectives in resource planning in setting Iowa's emission reduction goals, the CPP fails to give sufficient credit for such actions that take place between 2012 and 2020. Iowa policy continues to support significant investments in wind energy and energy efficiency. It is important that the CPP recognize the contribution of these and other building blocks opportunities toward meeting Iowa's CO₂ emission reduction targets. It is also important that EPA craft a policy to continue the encouragement of utility investments in wind generation and demand-side energy efficiency by recognizing renewable energy and energy efficiency contributions toward CO₂ reduction occurring between 2012 and 2020.

III.STATE PLANS

A. State Commitment Approach

A state plan must include enforceable CO₂ emission limits that apply to affected EGUs. A state plan may take a portfolio approach, which could include enforceable CO₂ emission limits that apply to affected EGUs as well as other enforceable measures, such as renewable energy and demand-side energy efficiency measures, that avoid EGU CO₂ emissions and are implemented by the state or by another entity and thus do not place legal responsibility for achieving the entire amount of the emission performance level on the affected EGUs. (34837-38). In response to its request for comment (CPP 34903), Iowa DOJ supports EPA's conclusion that it is not bound to interpret section 111(d) in a manner that allows a portfolio approach and does not require sole responsibility for achieving the emission performance level to be on affected EGUs.

Another vehicle for approving CAA section 111(d) plans for states that wish to rely on state renewable energy and energy efficiency programs but do not wish to include those programs in their state plans is the "state commitment approach." (CPP 34902). The primary and important advantage of the state commitment approach is that state requirements for entities' state renewable energy and energy efficiency programs, other than affected EGUs, would not be components of the state plan and therefore would not be subject to federal oversight or enforcement. Instead, the state plan would include an enforceable commitment by the state itself to implement state-enforceable measures that

would achieve a specified portion of the required emission performance level on behalf of affected EGUs. This is important because it addresses the legal issues that could arise with extending federal enforcement over matters such as renewable energy and demand-side energy efficiency requirements that, to date, have been within the exclusive purview of state utility regulatory commissions.

The EPA invites comment on the appropriateness of the “state commitment approach” and associated policy ramifications. The major concern that has been identified regarding the commitment approach is that it may subject state utility regulatory commissions to challenges brought by citizens groups for violations of CAA requirements. Iowa DOJ understands that, in practice and based on input from entities such as the California Air Regulatory Board, the EPA has been willing to work with state regulators to address compliance concerns such that the risk of citizen lawsuits is not formidable. Iowa has a solid track record in the area of energy efficiency and renewable energy and is in the process of implementing a technical reference manual to better assure the integrity of demand-side energy efficiency investments and results. These efforts will greatly limit the potential risk of enforcement claims. Iowa DOJ finds that the advantage of retaining state oversight of renewable energy and energy efficiency decisions is sufficiently important and greatly outweighs the risk of potential citizen lawsuits. For these reasons, Iowa DOJ urges the EPA to retain this compliance option for state implementation plans.

B. Relief Valve

Commenters will point out the need for a relief valve or adjustment mechanism to recognize changes in circumstance that will undoubtedly occur over the next fifteen years and impact state progress toward state implementation plans and appropriate goal-setting. For similar reasons, Iowa Agencies advocate that the final CPP rules should include provisions for suspension or modification of compliance requirements in the event that unforeseen circumstances threaten system reliability or produce cost impacts that would significantly harm customers. (Iowa Agency Comments p. 8).

The need for and importance of maintaining a flexible regulatory approach with ongoing review was presented in Iowa DOJ’s January 2014 comments. The EPA’s proposed regulation of CO₂ by the utility sector is part of a larger scheme to reduce total greenhouse gases. The EPA may implement separate regulatory schemes for different economic sectors or types of activity. When establishing the parameters for carbon reduction by the utility industry, it is important that the EPA consider the flexibility and shifting use of electricity and natural gas in the United States. For example, if electric vehicle adoption increases, this would shift energy use from the oil and gas or transportation sectors to the utility sector. The same principle would apply to natural gas powered vehicles. Because of the versatility and ubiquity of electricity, changes in the use of electricity could arrive unexpectedly and without much warning. It is important that the EPA adopt a regulatory scheme with sufficient flexibility to properly account for these changes as they occur. If, for example, adoption of electric vehicles increases

significantly, the utility sector would need to increase electric generation to meet the increased demand for electricity with a corresponding increase in CO₂ emissions. It would be economically inefficient and unfair to allow the entire burden of these increased emissions to fall on the utility sector and its customers. The same could be said for natural gas. The impact of new uses for electricity would be lessened, but not eliminated, under a scheme focused on carbon intensity rather than total utility emissions.

The EPA must establish a scheme with the flexibility to properly account for unexpected shifts in the use of electricity or natural gas in America. A relief valve and process for ongoing evaluation of CPP requirements will help assure that the CPP appropriately accommodates potential shifts in electric and natural gas usage.

C. Multistate Approach

Iowa DOJ has pointed out the importance of EPA crafting a policy under the proposed CPP that credits states like Iowa for deploying proactive policies which have successfully reduced the carbon intensity of Iowa's utilities and significantly expanded the availability of renewable and non-CO₂-emitting energy resources for consumers inside and outside Iowa. (Iowa OCA January 2014 comments). Since all or most of these renewable and non-CO₂-emitting energy resources are bid into the energy market administered by the Midcontinent Independent System Operator (MISO), the MISO market is an appropriate venue for accounting of such positive attributes.

EPA's proposed CPP recognizes that states are part of assorted EGU dispatch systems, like MISO, and vary in the amount and type of energy that they import and export. For these reasons, EPA recognizes the value in allowing and promoting multi-state reduction strategies. (CPP 34855). EPA recognizes the cost efficiencies of a multi-state approach (CPP 34893), which have been confirmed by MISO.² In response to EPA's request for comment (CPP 34899), Iowa DOJ believes it is appropriate and necessary to factor in cost considerations in evaluating appropriate compliance options and state implementation plan proposals. Regional transmission organizations, such as MISO, are positioned to play a vital role in helping implement certain elements a multi-state plans and demonstrating emission performance across existing RTOs. DOJ envisions the possibility of a plan whereby a state utilizes a multi-state approach for implementing Building Block 2, yet retains full state-specific oversight and responsibility for the renewable energy and demand-side energy efficiency building blocks through a state-commitment approach.

EPA seeks feedback on whether states participating in a multi-state plan should be given the option of providing a single submittal or allowing individual state submittals that address all elements of a multi-state plan. (CPP 34910-11). Iowa DOJ urges the

²MISO Analysis of EPA's Proposal to Reduce CO₂ Emissions for Existing Units (Nov. 12, 2014) <https://www.misoenergy.org/Library/Repository/Communication%20Material/EPA%20Regulations/AnalysisofEPAProposalReduceCO2Emissions.pdf>

EPA to give the states flexibility to determine the best reporting structure for their particular situation.

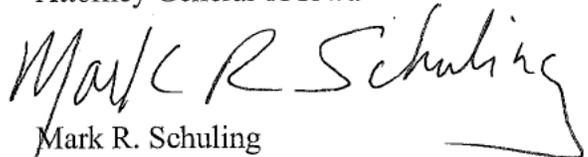
IV. CONCLUSION

Iowa DOJ understands the enormous scope of EPA's project and appreciates that the EPA gave the Iowa DOJ and other Iowa stakeholders the opportunity to comment. Iowa DOJ supports the framework and flexible regulatory regime reflected in the proposed CPP. Iowa DOJ respectfully requests that EPA fully consider these comments in devising any revisions to the proposed CPP.

Respectfully submitted,



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