

[Union of Concerned Scientists

November 1, 2016

To: Administrator Gina McCarthy

cc: Janet McCabe, Acting Assistant Administrator, Office of Air and Radiation

Tina Ndoh, Ph.D., Sector Policies and Programs Division, Office of Air Quality and Regulation Standards

Docket ID No. EPA-HQ-OAR-2016-0033

Clean Energy Incentive Program Design Details, Proposed Rule. Vol. 81, Federal Register, No. 126, Thursday, June 30, 2016. Environmental Protection Agency: 40 CFR Parts 60 and 62.

U.S. Environmental Protection Agency, EPA Docket Center, Mail Code: 28221T, 1200 Pennsylvania Ave, NW, Washington, DC 20460.

Submitted directly to Regulations.gov.

Dear Administrator McCarthy,

The Union of Concerned Scientists (UCS) commends the EPA's continued efforts to lay the groundwork for the Clean Power Plan (CPP), and we take this opportunity to provide comments to the agency to help ensure that the laudable goals of the Clean Energy Incentive Program (CEIP) have the best chance of being achieved. We also strongly urge all states to incorporate the CEIP in their compliance plans for the CPP so that the benefits of a clean energy economy can flow to more communities.

UCS puts rigorous, independent science to work to solve our planet's most pressing problems. On behalf of our more than 500,000 supporters and network of approximately 17,000 scientists, we combine technical analysis and effective advocacy to create practical solutions for a healthy, safe, and sustainable future. This includes working to develop and deploy clean energy policies that lower greenhouse gas emissions and mitigate the worst of climate impacts. The renewable energy industry is already creating tens of thousands of jobs and driving other local economic benefits around the nation. Right here in the United States, we are also facing the impacts of climate change, including worsening risks of coastal flooding, heavy precipitation, drought, and heat waves. Steps we take now to cut our emissions—including by reducing our reliance on heavily polluting coal-fired power plants and ramping up clean energy—can contribute to the global effort to limit climate change.

The CPP is a landmark opportunity to shape states' pursuits of clean energy resources, and to establish a framework for achieving increasingly stringent carbon reduction goals. UCS has invested significant analytical and outreach efforts to support the EPA's rule, and to make sure that it is developed in as forward-looking a manner as possible. We have done this through modeling¹ and technical comments^{2,3,4} submitted to the agency, and through engagement

¹ Cleetus, R., S. Clemmer, J. Deyette, S. Mullendore, and J. Richardson. 2014. *Strengthening the EPA's Clean Power Plan*. Cambridge, MA: Union of Concerned Scientists. Online at www.ucsusa.org/sites/default/files/attach/2014/10/Strengthening-the-EPA-Clean-Power-Plan.pdf.

² Union of Concerned Scientists. 2014. *Technical comments on the Environmental Protection Agency (EPA) Proposed Rule: Carbon Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*. Cambridge, MA. Online at www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0602-33893.

³ Union of Concerned Scientists. 2015. *Technical comments on the Clean Energy Incentive Program (CEIP) Design and Implementation*. Cambridge, MA. Online at www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2015-0734-0097.

⁴ Union of Concerned Scientists. 2016. *Technical comments on the Environmental Protection Agency's Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014*;

at the state and regional levels to determine effective and equitable clean energy strategies. UCS supporters are also strongly in favor of a robust CPP; most recently 17,000 of our supporters sent comments to the EPA in support of the CEIP. The CPP's final emission guidelines were the outcome of a significant outreach and stakeholder engagement process by the EPA, and as a result, the final rule represents a far stronger product than that which had been originally proposed. We hope that the same will be true for the CEIP.

1. Introduction

In developing the CEIP, the EPA rightly recognized the need to address two fundamental issues underpinning the equitable, effective, and efficient implementation of the broader CPP: first, the opportunity to enhance incentives for the near-term deployment of renewable resources and thereby cut emissions and limit a rush to natural gas, and second, ensuring that low-income communities—that have historically borne a disproportionate burden of pollution from our dependence on fossil fuels and have suffered from chronic underinvestment in local clean energy and energy efficiency resources—are specifically prioritized for meaningful investments in energy efficiency and renewable resources. To ensure that these two essential efforts will be successful in their aims, however, we believe that the agency must make some important revisions before issuing the final CEIP, as detailed in our comments below.

We also note that the CEIP, which is predicated on the implementation of a carbon trading program, cannot on its own adequately advance an equitable clean energy transition. More will need to be done to ensure that equity is central to the CPP's outcomes. States must conduct a comprehensive environmental justice (EJ) analysis of their compliance plans, using guidance and tools provided by the EPA.⁵ The EJ stakeholder process should include the approval of clear and robust definitions for “low-income communities,” and establish a minimum threshold to ensure that benefits flow to the communities they are intended. These communities must be prioritized for energy efficiency and clean energy projects. Further, the low-income community component of the CEIP must be expanded to include explicit benefits for communities of color, Native American communities, and EJ communities. Participation in the CEIP is voluntary; however, states should be required to provide a defensible rationale for not participating, including a detailed explanation of equivalently robust alternative pathways to achieve the equity goals of the CEIP.

We thank the EPA for the opportunity to participate in the development of a robust incentive program, and request that the agency takes these comments into consideration as it works to finalize the CEIP. We encourage the EPA to promulgate a finalized CEIP as soon as the agency is able in order to support states as they continue to accelerate their clean energy transitions, and for the agency to provide as much technical assistance as possible to states to ensure the greatest number of CEIP participants.

2. Apportionment of the CEIP matching pool

2.1. UCS supports the EPA's proposed approach for allocating the 300 million short ton matching pool across states.

UCS supports the EPA's proposed approach of pro rata distribution based upon the scale of state-specific required CPP emissions reductions. All states will benefit from the early deployment of renewable and energy efficiency resources, as such investments can lower long-term compliance costs and reduce the likelihood of a near-term rush to natural gas to curb emissions. UCS understands and fully supports the EPA's effort to drive CPP-specific compliance with renewables and energy efficiency as the first-best approaches, and thus the allocation of awards based on scale of CPP requirements.

Model Trading Rules; Amendments to Framework Regulations. Cambridge, MA. Online at www.regulations.gov/document?D=EPA-HQ-OAR-2015-0199-0436.

⁵ www.epa.gov/cleanpowerplan/clean-power-plan-community-page

2.2. UCS welcomes the EPA's expansion of CEIP eligibility to non-contiguous and presently-uncovered states, tribes, and territories.

UCS supports the EPA's expansion of CEIP eligibility to states and territories that will be, but are not yet currently, covered by the CPP. UCS also agrees with the agency that the CEIP awards to support these areas should come from a redistribution of the presently established matching pool, not from the pool's expansion itself.

The EPA is right to recognize that the emission guidelines for these additional areas may not be finalized until after the originally covered states are required to signal their intent to participate in the CEIP; however, UCS believes the agency is also correct in its proposed prioritization of award allocation finalization over exact proportional alignment. Therefore, the agency should proceed with its plan to finalize CEIP award allocation across all covered areas according to an estimated share of proportional requirements for the added regions.

UCS also supports the EPA's related proposal to extend participation opportunities to projects located within non-covered regions, provided such projects can demonstrate generating benefits for the affiliated participating state.

2.3. UCS agrees with the EPA's proposal to retire all unclaimed credits from the federal matching pool; however, prior to states finalizing CEIP participation decisions, UCS urges the agency to make clear to states and stakeholders the significant programmatic benefits of participation. Further, states that opt out should be required to provide a defensible rationale for not participating, including a detailed explanation of equivalently robust alternative pathways to achieve the equity goals of the CEIP.

UCS agrees with the EPA's motivations for only invoking an expansion of the CPP emissions cap in accordance with the stated goals of the CEIP, and thus supports the agency's decision to retire any unclaimed awards due to incomplete subscription of project pools or states opting out of CEIP participation altogether. UCS also appreciates the agency's emphasis on streamlining program implementation, and its shift toward a single round of award allocation.

However, UCS is concerned that low-income residents located in laggard states are among those in greatest need of improved access to energy efficiency and clean energy resources. The EPA would be prudent to consider mechanisms for opening opportunities to projects in such states even if the states' decision-makers opt out of the incentive program. At a minimum, UCS believes that the EPA should make clear that projects located in *covered* but non-CEIP-participating states be allowed the same opportunities as projects located within non-covered areas, insofar as projects demonstrating the provision of direct benefits to CEIP-participating states should be eligible to receive awards for those projects, too, even if their state has opted out.

UCS also urges the agency to highlight the many benefits of participating in the CEIP to eligible states, and eligible stakeholders within each state. While many states are aware of the economic component of the incentive program, fewer have fully explored the broader programmatic benefits available from CEIP enrollment. Because states are required to implement administrative procedures in order to take part, the full suite of benefits should be clearly identified to encourage more states to participate. Furthermore, by highlighting the direct ties between the CEIP and EJ initiatives—including the required EJ analysis component of every approvable state compliance plan—the EPA can make a clear case that for a state to have adequately performed an EJ analysis, it can only opt out of the CEIP by providing a strong rationale and detailing the alternative pathways by which it intends to attain the equity goals of the CEIP.

Finally, UCS encourages the EPA to actively distribute resources to stakeholders in non-CEIP-participating states that highlight alternative opportunities available for project support, including at the federal, state, and local levels. This will help ensure that projects and populations precluded from accessing the CEIP's benefits due to the

decisions of the state in which they are located have other opportunities to make progress toward a low-carbon, clean energy economy.

2.4. UCS recommends that the EPA increase the proportion of credits available to low-income community projects, and allow states limited flexibility in setting final allocation distributions.

Prior to the Federal Production Tax Credit (PTC) and Investment Tax Credit (ITC) extension, UCS had supported the EPA's initially proposed even split between renewable energy projects and low-income community projects, with the added recommendation that the agency introduce some moderate level of flexibility to recognize differences in state resources and needs. However, UCS also believed that it was important to limit the level of flexibility afforded to ensure protection of, and support for, investments in low-income community projects. Following the promulgation of the proposed CEIP Design Details, UCS still encourages the agency to incorporate a limited amount of flexibility in allocation between pools, but with a shift such that low-income community projects are eligible to receive a greater share of the total awards allocation.

Critically, the extension of the Federal PTC and ITC following the initial CEIP comment period has resulted in a significantly brighter near-term outlook for wind and solar resource development. Indeed, multiple modeling efforts across a variety of modeling platforms have found that the PTC/ITC extension will greatly accelerate the rate of renewables deployment over the next several years. This is a positive development. Still, it calls into question the CEIP's ability to achieve significant additional installments of renewable energy projects given the degree of impact provided by the PTC and ITC. This leaves the agency with several options. First, the EPA can recognize the projects already coming online due to the PTC/ITC, and only allow issuance of awards to unsupported projects. Second, the EPA can discount credits to those projects receiving PTC/ITC benefits, in recognition of the contributions they are already receiving, without fully removing the incentive provided by the CEIP. Finally, the agency can continue to offer awards to all otherwise-eligible projects regardless of PTC/ITC status, but lessen the pool of awards available to these projects and increase the pool available to low-income community projects.

UCS recommends that the agency embrace the last approach, with an additional limit for projects receiving full tax credit support. Namely, UCS proposes that the EPA redistribute the matching award pools such that low-income community projects are eligible to receive a greater proportion of the 300 million short tons, and that projects receiving full tax credit support are excluded from the renewables portion of the pool. The proposed adjustment in reserve allocations would also then reflect the fact that the recent extension of the Federal PTC and ITC for renewable energy will provide a significant boost to utility-scale renewable energy projects in general, thereby diminishing the previously identified need of the CEIP to help bring renewable energy projects online prior to the first compliance period. Still, by maintaining non-trivial support for renewable resources, the allocation can bolster projects that may have otherwise been on the margin.

Importantly, UCS continues to recommend that the EPA should allow states some limited flexibility in final allocation between pools. For example, if the EPA were to amend its proposed distribution to 30 percent for renewables and 70 percent for low-income community projects, under a flexibility approach, the EPA could instead designate 25 percent to renewables, 65 percent to low-income community projects, and leave the final 10 percent flexible for states to allocate as best suits their specific needs. It is vital, however, that the EPA not extend this flexibility to such a degree that states are able to fully undercut the low-income project pool. Therefore, UCS recommends that the EPA apply a careful and considered limit to any re-allocation flexibility that it allows, and at a minimum not allow the low-income project pool to drop below 50 percent in any participating state.

Finally, UCS supports the EPA's current proposal of awarding credits at a rate of two-to-one for low-income community projects. Ultimately, the more the EPA expands the awards per eligible megawatt-hour or ton reduced, the less the compliance returns on the investment. And, while UCS strongly supports the full subscription of low-

income community project award pools across all states, our organization does not believe that expanding the federal match per project is the most prudent approach, as the clean energy resource gains must be weighed against the expansion of the emissions cap. At the same time, should a state believe that the successful deployment of a project hinges on an increase in the award rate, then UCS believes the EPA should make clear that states are provided the leeway to increase their own portion of the awards such that a project receives more credits, but only at the expense of the *covered* pool, not the EPA's matching pool. Crucially, UCS strongly encourages the agency to make resources available to stakeholders across all states to inform them about additional federal, state, and local incentives available to further support investments, and thus assist in encouraging more projects to come online. Other programs, including the Administration's Clean Energy Savings for All Americans Initiative, for example, can complement the CEIP and provide an effective pathway for increasing clean energy access in disadvantaged communities. UCS sees the CEIP as much as a catalyst for policy and program initiation as an economic incentive program itself.

3. Eligible project types

3.1. UCS appreciates and supports the EPA's clarification of its use of the term "projects."

UCS supports the EPA's clarification and proposed revision to recognize that "programs" can participate insofar as they are responsible for deploying eligible "projects," and appreciates the agency's effort to increase consistency across the CEIP and the CPP more broadly.

3.2. UCS supports the EPA's expansion of resources considered eligible under the renewable energy project pool.

UCS supports the EPA's expansion of eligible renewable energy projects to include hydro and geothermal resources. The agency is right to recognize the value in being as technology-agnostic as possible when it comes to low-carbon resources and tempering states' rush to natural gas as the primary compliance mechanism. Expanding the range of eligible resources to include hydro and geothermal supports this effort.

3.3. UCS supports the EPA's deference to states in its flexible approach for defining "low-income community"; however, the EPA should backstop such flexibility with safeguards to ensure that the aims of the program are not intentionally or unintentionally undermined. The EPA should also allow room for definitions that explicitly support communities of color, Native American communities, and EJ communities.

UCS strongly supports the EPA's inclination to defer to states when it comes to understanding, identifying, and prioritizing the metrics and parameters that would serve to best direct benefits to the intended communities in each particular state, and UCS appreciates the agency's acknowledgement of the value in flexibility for such definitions. At the same time, UCS shares the EPA's concern that deference to states and flexibility in implementation must be balanced against a top priority of ensuring that the benefits of these projects truly reach the communities for whom they were intended. Therefore, UCS supports the EPA's limitation of a single definition per specific program, and advocates for the establishment and implementation of a minimum threshold or recipient safeguard.

UCS believes that one safeguard can be implemented by requiring states to tie the effort of determining eligible definitions with the EJ analysis to ensure definitions target projects in high-priority communities, and with the EJ stakeholder process to ensure definitions and program implementation goals are broadly supported. By appointing the environmental justice stakeholder group to approve of the one or more definitions for eligible project communities within a state, the EPA will allow states to retain their flexibility in implementation while also ensuring that the definitions are appropriately targeting communities that most need the support. For states subject to a federal implementation plan, the EPA should confirm that definitions selected for the states are appropriately considerate of state-specific EJ analysis results.

3.4. UCS commends the EPA’s expansion of project types considered eligible for the low-income community project pool, and encourages the agency to further expand eligible project types.

UCS applauds the EPA’s expansion of resources eligible for low-income community project awards to include solar. We have long touted the benefits of distributed generation, and second the EPA’s recognition of the advantages that can be derived from increasing low-income communities’ access to such resources. Following this same line of reasoning, and given our call for an expansion of the low-income project pool, UCS encourages the EPA to further expand resource eligibility. This expansion should include appropriately scaled geothermal, wind, small hydro, and combined heat and power (CHP) projects, where these resources have a similar ability to generate economic and potential environmental benefits for low-income communities. The CEIP—in tandem with a state’s EJ analysis—would present an opportunity to generate conversations around where and how such projects could be deployed. Provided project eligibility is sufficiently scrutinized to confirm the direct accrual of monetary benefits to low-income communities, the agency should not stand in the way of potentially beneficial, low- or non-emitting proactive resource development.

4. Eligible start-date criteria

4.1. UCS appreciates the EPA’s clarification regarding its use of the term “commence operations” for demand-side energy efficiency projects, and supports the agency’s provision of a ramp-up period.

UCS supports the EPA’s clarification regarding the use of “commence operations,” and its concomitant declaration of eligibility initiation as September 6, 2018. Demand-side energy efficiency (DS-EE) projects are unique when compared to other low-carbon resources in the time needed to scale up operations, and verify savings, for some time after initial project commencement. The EPA recognizes this need in its establishment of DS-EE eligible start date criteria. UCS also supports the agency’s effort to maintain consistency in eligible start-date criteria across broader plan definitions.

4.2. UCS supports the EPA’s transition to defining renewable resource project timing eligibility according to “commence commercial operation,” but encourages the agency to consider advancing the time at which eligible projects may come online and start generating electricity.

UCS supports the EPA’s change of definitions from “commence construction” to “commence commercial operations” for renewable resources. This action successfully shifts dependency away from an unknown and potentially dynamic starting point, and instead allows policies and investments to point toward a specific, independent date.

Conversely, UCS believes that the EPA should reconsider its establishment of January 1, 2020, as the initial date for eligible operation commencement. The use of such a cut-off could result in an unintended disincentive for renewables generation in the latter part of 2019, ultimately leading to a delay in emission reductions. Although the EPA is right to consider the extent to which the CEIP is truly incentivizing utility-scale renewables projects and that timing is one lever for limiting such overlap, the coincident generation and operational start date of January 1, 2020, does not effectively handle the issue. UCS urges the EPA to consider an advanced timeline, with an actual operations start date determined by balancing the need for allowing projects to come online early enough to maximize cumulative emission reductions and preempt the rush to natural gas, while minding the broader goal of additionality to ensure the program achieves the greatest gains possible.

5. Maintaining stringency

5.1. UCS agrees with the EPA's proposed approach for maintaining the stringency of compliance plans for mass-based states participating in the CEIP.

UCS supports the EPA's proposal to require mass-based states to only issue CEIP allowances from the first interim compliance budget (i.e., 2022 to 2024). By structuring the participation requirement as such, the agency readily resolves potential issues of budgetary stringency, while simultaneously minimizing the risk of growing complexities from allowing a longer window to draw from.

5.2. UCS recommends that for maintaining the stringency of CEIP-participating states employing rate-based compliance plans, the EPA should highlight as presumptively approvable any approach whereby a state retires or withholds ERCs, as opposed to only an adjustment factor approach.

UCS appreciates the EPA's diligence in developing a protocol that sufficiently addresses maintaining the stringency of emissions programs for rate-based states participating in the CEIP. The incentive program is valuable in its aim to drive the proactive deployment of clean energy resources to aid in CPP compliance; however, were the program to actually result in an erosion of required emissions reductions beyond that allowed by the EPA's matching pool, the CEIP's benefits would clearly be reduced.

Establishing emissions certainty is more straightforward for mass-based approaches; by design, rate-based approaches do not place an explicit cap on emissions. The EPA carefully lays out options available to rate-based states, including by detailing a presumptively approvable adjustment factor approach, which the agency suggests it would apply to any state subject to a rate-based federal implementation plan. UCS supports the EPA's efforts here, and believes that the agency's proposed approach is sound. However, UCS considers retiring ERCs to be the all-around best method for states to employ to address this challenge, and therefore believes that the EPA should also clearly delineate such an approach as presumptively approvable. Though the agency may not be able to retire ERCs for federal implementation plan states, state-plan states can and should, as it remains the best means of maintaining incentives for ERC-generating resources. Detailing a presumptively approvable approach for doing so would significantly assist states considering the option.

6. Improper issuance of awards and requirements for state participation

6.1. UCS supports the EPA's proposed criteria for state participation in the CEIP, and believes that the EPA's mechanism for addressing the improper issuance of awards and requirements is sound and prudent. However, UCS encourages the agency to develop guidance and provide additional programmatic support for states to lower the barriers to participation.

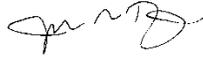
The CEIP presents an opportunity for states to proactively shape their clean energy futures. All states stand to benefit from participation. UCS is concerned, however, that states pursuing a mass-based approach may be put off by the additional administrative requirements of the CEIP, and will consider bypassing the program altogether. While we do not believe that the CEIP presents such insurmountable hurdles, we are sensitive to this feedback from states, and therefore urge the EPA to develop and deploy further guidance, technical assistance, and programmatic support for states to ensure the greatest number of participants as possible.

We again thank the EPA for the opportunity to participate in the development and refinement of the CEIP. We now encourage the agency to finalize the incentive program as quickly as possible to best support states as they proactively push forward with their clean energy transitions.

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