April 25, 2018

Via Electronic Filing: a-and-r-docket@epa.gov
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U. S. EPA Docket Center (EPA/DC)
U.S. Environmental Protection Agency
Mail Code: 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attn: DOCKET ID No. EPA-HQ-OAR-2017-0355

Re: Proposed Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 82 Fed. Reg. 48035 (October 16, 2017).

Dear Administrator Pruitt and Staff:

In response to the above-referenced docket, American Municipal Power, Inc. (AMP) and the Ohio Municipal Electric Association (OMEA) hereby provide the following comments for the record. While supportive of the repeal of the Clean Power Plan (CPP or Section 111(d) plan) due to its many legal and structural flaws, we are supportive of the promulgation of a reasoned replacement rule to regulate the emission of greenhouse gases (GHG) that does not concurrently attempt to restructure domestic energy policy. Any such replacement rulemaking should be consistent with existing statutory authority while providing certainty and predictability to the regulated community.

Background on AMP/OMEA

Ohio-based AMP is the non-profit wholesale power supplier and services provider for 135 locally regulated municipal electric entities located in Delaware, Kentucky, Indiana, Michigan, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia. AMP's members collectively serve more than 650,000 residential, commercial, and industrial customers and have a system peak of more than 3,400 megawatts (MW). AMP's core mission is to be public power's leader in wholesale energy supply and value-added member services. AMP offers its

member municipal electric systems the benefits of scale and expertise in providing and managing energy services.

AMP's diverse energy portfolio makes the organization a progressive leader in the deployment of renewable and advanced power assets that includes a variety of base load, intermediate and distributed peaking generation using hydropower, wind, solar and fossil fuels, as well as a robust energy efficiency program. AMP has actively worked over the past decade to diversify our power supply portfolio, to the point that we are on track for our owned assets to be approximately 21% renewable in 2017, and to increase this proportion further in 2018. Our fossil fuel assets currently include a 368 MW ownership share of the 1,600 MW coal-fired Prairie State Generating Company located in Lively Grove, Illinois, as well as the 707 MW (fired) natural gas combined cycle AMP Fremont Energy Center in Fremont, Ohio. Most of AMP's members are in the PJM Interconnection, LLC regional transmission organization (RTO) footprint, while some members are located within the Midcontinent Independent System Operator, Inc. footprint. The OMEA represents the state and federal legislative interests of AMP and member Ohio municipal electric systems.

Because of AMP's structure as a non-profit wholesale power provider, we closely follow regulatory initiatives that have the potential to impact the costs and reliability of our members' energy and capacity supply. To that end, AMP's/OMEA's past public comments on the CPP rulemaking reflected expected impacts of the standards on AMP and member units, as well as to other units in the region, from which AMP/OMEA members might acquire varying portions of their power supply through wholesale market purchases. As we have expressed in past comments on the draft CPP and its various components, the multi-state nature of AMP's/OMEA's membership and power supply portfolio, plus the various types of electricity markets within which we operate, all point to the need for careful consideration of all options in addressing GHG emissions, and an acknowledgment that "one size does not fit all" when it comes to carbon standards.

Comments in Support of a CPP Repeal

"…whether the CPP exceeded the EPA's proper role and authority…and whether the Agency's proposed reading... which limits the BSER to measures that can be applied to or at individual sources, would ensure that CAA section 111 has not been construed in a way that supersedes or limits the authorities and responsibilities of the FERC or that infringes upon the roles of states."

Like all parties impacted by the final CPP, AMP has struggled with the concept of an outside-the-fence regulatory approach under the New Source Performance Standards (NSPS). Significant legal and practical issues were never resolved by U.S. EPA, yet the Agency forged ahead with the final CPP.

U.S. EPA's proposed repeal demonstrates a recognition of the extensive debate on how states would incorporate outside-the-fence strategies into a Section 111(d) plan, including whether they were even legally permissible, and whether they are necessarily central to a compliance strategy. We will not repeat those arguments in full other than to state that

AMP/OMEA fully concurs with U.S. EPA's latest view of the legality of outside-the-fence regulation under NSPS.

Specifically, AMP/OMEA generally disagreed with EPA's previous interpretation that Best System of Emission Reduction (BSER) could be an enforceable action directed at non-affected electricity generating units (EGU). This prior approach would have extended regulatory programs far outside the bounds of their original intent and would have placed states in the unenviable, and likely illegal, position of enforcing compliance measures against non-EGU entities. We were pleased to see U.S. EPA directly address this issue in the proposed CPP repeal.

The final CPP presented significant jurisdictional challenges between the Federal Energy Regulatory Commission (FERC) and U.S. EPA, and in fact has been referred to as a "jurisdictional train wreck."[1] This is because, as with other sections of the final CPP, the approach of enforcing an EGU NSPS against a non-EGU would have required the U.S. EPA to establish energy and economic policy, an action outside the realm of environmental policy and well beyond existing legal authorities.

RTOs encompass geographic regions that include a wide variety of electric generating assets as well as states that, under the final CPP, would have had varying emission reduction targets. In fact, each state was assigned a different CO_2 emission reduction target, and presumably each state implementation plan would have proposed to achieve its respective target using different measures. However, many states rely on the RTOs to dispatch electric generating assets based on regional market concepts. As a result, under the CPP, it is likely that RTOs would have been forced to implement environmental dispatch of generating units, placing environmental considerations ahead of economic reasons. This logic is contrary to the purpose for which RTOs were formed and violates those regional entities' obligations under the Federal Power Act to dispatch generation economically.[2]

The underlying assumption of this approach was that the electric utility industry would be able to quickly and easily implement this shift from economic dispatch to environmental dispatch while maintaining reliability. AMP/OMEA believes this assumption was flawed and not thoroughly examined by U.S. EPA, in both legal and practical terms, before promulgating the CPP. A thorough analysis that assessed whether existing natural gas infrastructure could support the anticipated increase in demand resulting from the final CPP rule was necessary.

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[1] *See Written Testimony of FERC Commissioner Tony Clark Before the Committee on Energy and Commerce Subcommittee on Energy and Power United States House of Representatives Hearing on* FERC Perspective: Questions Concerning EPA's Proposed Clean Power Plan and other Grid Reliability Challenges (July 29, 2014). Online at: http://www.ferc.gov/CalendarFiles/20140729091839-Clark-07-29-2014.pdf.

[2] Id.

EPA's revised interpretation as described in this proposal will not supersede state rights nor interfere with FERC authority. The need for coordination between U.S. EPA and FERC regarding the feasibility of compliance with any replacement rule cannot be understated.

Credit for all renewable and energy efficiency investments, including hydropower

It is critically important to AMP/OMEA that early action to address GHG emissions and to reduce carbon footprints, including hydroelectric development, renewable energy (RE,) carbon management measures, and energy efficiency (EE) investments, receive appropriate recognition or credit under any CPP replacement plan or broader GHG action.

AMP has new Ohio River run-of-the-river hydropower assets in Kentucky and West Virginia, which provide approximately 300 MW of new clean energy and capacity to participating AMP members in multiple states. Additionally, AMP and its member community of Wadsworth, Ohio have received a FERC license for a potential new hydropower facility at the RC Byrd Locks and Dam on the Ohio side of the Ohio River.

AMP's hydropower investments, as well as those in wind, solar, landfill gas and carbon offset projects, were initiated in anticipation of carbon regulations and the need to reduce GHG emissions. As such, they should not be denied credit under any CPP revision simply because they are pre-existing projects. These zero-emission projects involve significant development time for initial design, permitting and construction, and substantial upfront costs. In addition, hydro projects have a long lifespan and are financed for 35 years with an expected operational period of greater than 60 years. In the regulatory framework that replaces the CPP, it is essential that all impacted parties, including early adopters, receive credit and/or consideration for the full array of emission reductions from their investments that have successfully reduced or replaced GHG emissions.

Regulatory Impact Analysis (RIA) revisions

The updated RIA released with the CPP proposal revises numerous economic analysis used to assess the impact and necessity of the original CPP. AMP/OMEA fully supports a more realistic, practical and pragmatic approach to monetizing the impact of this rule. In particular, scaling the social cost of carbon (SC-CO_2) from a global scale to a domestic scale correctly focuses the direct impacts of climate change that are anticipated to occur within U.S. borders. This approach aligns the SC-CO_2 with U.S. EPA's scope of regulatory authority and results in more methodical, transparent and likely more accurate forecasts.

AMP supports U.S. EPA's revised accounting methodology used to predict "co-benefits" associated with implementation of the CPP and shut-down of fossil generation, including benefits related to reductions in emissions of $PM_{2.5}$ and ozone. Specifically, co-benefits become increasingly uncertain and unreliable when associated with reductions below NAAQS, which are established at levels that are protective of human health and the environment and based on the latest research available. Development and recognition of health impact threshold levels for $PM_{2.5}$ and ozone promote transparency and better reflects scientific uncertainty. We encourage

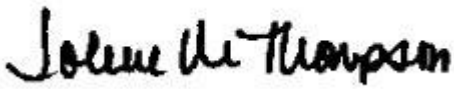
U.S. EPA to broadly adopt the accounting methodology for "co-benefits" outlined in this RIA for all regulatory activity.

Conclusion

The impacts of CO_2 emissions on climate change cannot and should not be ignored. The November 3, 2017 release of the Administration's *Climate Science Special Report; Fourth National Climate Assessment (NCA4), Volume I*, paints a sobering picture of the increasing domestic impacts of CO_2 emissions.[3] Viewed in conjunction with conclusions reached by the U.N. Framework Convention on Climate Change, the necessity of regulatory action and leadership by the U.S. is clear. However, that action cannot be so rushed to achieve an end goal that critical legal, economic and structural considerations are ignored.

While by no means exhaustive, the comments provided represent issues of most concern to AMP/OMEA relative to the proposed repeal of the CPP. We thank U.S. EPA for this opportunity to provide input to the agency on these important matters, and we are fully prepared to assist in any effort to develop meaningful and effective GHG emission regulations that do not attempt a wholesale reworking of domestic energy policy.

Respectfully Submitted



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[3] https://science2017.globalchange.gov/