Electric Reliability Coordinating Council

ERCC

May 15, 2017

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
DOCKET: EPA-HQ-OA-2017-0190

Re: Identification of Regulations that Are Unduly Burdensome to the Power Generation Sector

Dear Sir or Madam:

The Electric Reliability Coordinating Council (ERCC) appreciates the opportunity afforded by President Trump's Executive Order 13777, Enforcing the Regulatory Reform Agenda and submits the following comments to the Environmental Protection Agency (EPA) on regulations that are appropriate for repeal, replacement or modification.[1]

ERCC is a group of power-generating companies that provide reliable and affordable power to millions of consumers in geographically diverse regions of the United States. ERCC members have long been dedicated to a balanced energy portfolio that ensures reliable and affordable electric power, an essential prerequisite for the protection of the environment, public health, and the economy.

In the area of electric power, failure to calibrate our environmental standards correctly may result in no greater real environmental protection, but may inflict significant damage on those in society least able to afford it. Because this calibration is critical to ensuring affordable and reliability electricity, it is appropriate and essential for EPA to evaluate its environmental regulations and identify and address those regulations where the balance is off.

ERCC appreciates the comprehensive approach to regulatory review taken by this Administration to ensure that regulations do not unduly burden the economy in general,[2] as well as the Administration's recognition of the importance of domestic energy and the need for affordable and reliable electricity.[3] In furtherance of these goals, we identify the following regulations that unduly burden electric power-generating companies.

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[1] Executive Order 13777, Enforcing the Regulatory Reform Agenda (March 1, 2017), 82 Fed. Reg. 12285 (Feb. 24, 2017); Evaluation of Existing Regulations, 82 Fed. Reg. 17793 (April 13, 2017).

[2] Executive Order 13777.

[3] Executive Order 13783, Promoting Energy Independence and Economic Growth (March 28, 2017), 82 Fed. Reg. 16093 (March 31, 2017).

Regulations That Impose Unnecessary Regulatory Burdens on Power-Generating Companies

A. New Source Review

It is our belief that a clear and nationally applicable approach to the New Source Review (NSR) program, including the nonattainment NSR and Prevention of Significant Deterioration (PSD) regulations, coupled with next-generation cap-and-trade pollution control programs, constitutes the best approach to effective environmental protections, workplace safety, and reliable and cost-effective electric power.

ERCC encourages EPA to take this opportunity to reform the NSR/PSD programs in a manner that eliminates the uncertainty in past application and enforcement of the programs and that ensures that the programs no longer hinder innovation and efficiency upgrades. Specifically, ERCC supports reforms to the NSR/PSD Program that affirm that an hourly emission rate increase test is the appropriate first step in determining whether projects undertaken at existing electric generating units are considered major modifications under the regulations. A second aspect of NSR/PSD reform is clarifying the routine maintenance, repair and replacement (RMR&R) to simply compliance, streamline the review process, and decrease unnecessary burdens on regulated industry.

Existing power facilities are critical to the stable supply of electricity generation in the United States. Under the current program, facilities are forced into the problematical choice of conducting routine maintenance, and potentially triggering costly NSR permitting requirements, or allowing power plant performance to degrade – or to install outdated equipment that is less efficient and environmentally beneficial. Some plants might have to be shut down altogether, well before the end of their predicted useful lives. Considering the widespread difficulties in siting new facilities and the time it would take to bring new facilities on-line, power shortages and substantial price increases are the likely result. The practical results of EPA's current NSR/PSD program are reduced reliability of power generation, loss of generating capacity requiring the building of new generating facilities, increased cost of electricity to consumers, and harmful environmental impacts.

In the Clean Power Plan, EPA recognized that efficiency projects at existing power facilities are important pathways to enhanced environmental protection. While the U.S. power generation fleet is among the most efficient in the world, improvements in efficiency cannot be obtained without meaningful NSR reform.

B. Clean Power Plan and NSPS for New Electric Utility Generating Units

EPA's Clean Power Plan[4] (CPP) and New Source Performance Standards (NSPS) for Greenhouse Gas Emissions from Electric Utility Generating Units[5] go well beyond EPA's authority under the

[4] Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64661 (October 23, 2015).

[5] Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64509 (October 23, 2015).

Clean Air Act and should be repealed on this ground alone. Setting the authority issue aside, however, the regulations are likely to cause local and even regional reliability problems. In response to President Trump's Executive Order 13783, Promoting Energy Independence and Economic Growth, EPA has published notification that it is reviewing both regulations. ERCC offers EPA the following comments for consideration of this review and in support of rescinding both the CPP and the NSPS as being completely at odds with this Administration's efforts at promoting domestic energy sources.

Complying with the CPP will require a number of different public and private parties to take numerous actions over the next decade to approve, permit and build hundreds of new generating facilities and thousands of miles of new transmission and pipelines. Whether these tasks can be accomplished in a timely manner will depend upon major and often coordinated actions by FERC, state legislatures, public utility commissions, state environmental regulators, regional grid and transmission operators, reliability organizations, renewable energy developers, and industrial energy users. It will also depend on the extent of organized opposition from environmental groups and others that often oppose the construction of new generating stations, transmission infrastructure, and pipelines – and on federal and state courts that must rule on objections from these groups. And even with a major coordinated effort by all of these parties, there may still be substantial technical, geographical, dispatch, and transmission constraints that pose serious risks to electric reliability.

The CPP would require this tremendous effort in an attempt to achieve benefits that are questionable at best. EPA concedes the CPP's effect on climate change will be negligible. When asked by Members of Congress what impact the CPP will have on global temperatures, then EPA Administrator Gina McCarthy said, " ... the impacts of any single action will be small."[6] Aside from the indirect effect of CO_2 on global climate, there is no relationship between reduced emissions and improvements in human health. Thus, in order to bolster the case for the CPP, EPA has claimed that co-benefits will accrue to implementation of the proposed rule in the form of reduced emissions of particulate matter (PM). The reason for this is simple; when you shut down a power plant, it no longer has emissions of any kind. However, the Clean Air Act does not authorize EPA to deliberately seek the shutdown of as many power plants as possible. Instead, EPA is double-counting the benefits of reducing particulates governed by other environmental regulations and counting those reductions as benefits of the CPP. Not only does this technique result in skewed cost-benefit assessments, it also rigs the system to impose unnecessary costs on the American people with no improvement to the safety of the public. If EPA is going to regulate carbon emissions, EPA should calculate the benefits of reduced carbon and not use the CPP as a catch-all for its desired air quality scheme.

Of equal concern to ERCC members is the NSPS, which is a *de facto* prohibition on the construction of new coal-fired power plants. The NSPS is derived from EPA's identification of partial carbon capture storage (CCS) as "best available system of emission reduction." However,

[6] Testimony before the House Committee on Science, Space and Technology, September 17, 2014. Also, EPA Air Administrator Janet McCabe testified before the House Energy & Commerce Committee last June that "you can't predict the impact" the CPP will have on climate change-related outcomes. In 2013, Gina McCarthy testified before the House Energy & Power Subcommittee that "it's unlikely ... any specific one step is going to be seen as having a visible impact on any of those [climate change] impacts."

CCS technology is not currently available to satisfy the rule's requirements and functions as a complete ban on the development of new coal-fired generation.

The fact that the NSPS will increase electricity costs for residential consumers and businesses in the U.S. is beyond dispute. CCS technology is promising when paired with enhanced oil and das developments. However, according to a 2011 report commissioned by the Global CCS Institute, even if the barriers to CCS are overcome and it becomes commercially available, the cost of production for a coal-fired power plant is expected to increase by 61 to 76 percent after implementation of CCS technologies.[7]

Affordable, reliable energy is one of the main drivers of economic growth. Unfortunately, one impact the CPP and the NSPS might have is making the cost of doing business in the U.S. high enough to incentivize companies to move their operations overseas to countries with fewer environmental regulations than the U.S.

C. National Ambient Air Quality Standards

EPA is required under the Clean Air Act to review the National Ambient Air Quality Standards (NAAQS) for the six criteria pollutants every 5 years. Unfortunately, this statutorily-required review cycle is unrealistically short, is regularly exceeded by EPA, and inevitably results in "sue-and-settle" agreements. New, more stringent standards are often implemented before existing standards can be met by the states. Once a new standard is put in place, EPA promulgates a series of related regulatory actions implementing the standard. ERCC believes that many of the existing NAAQS are impossible to meet and are premised on faulty methodology and inaccurate data. These standards, and the related implementing regulations, should be evaluated for revision.

1. Ozone

In October 2015, EPA issued a final rule that lowers the NAAQS for ozone from 75 to 70 parts per billion ("ppb").[8] On its face, the change from 75 to 70 may not seem like such a big deal, but this rule is expected to be the 2nd-most costly rule ever adopted by EPA – second only to the Clean Power Plan (CPP). It will bring many parts of the country into "nonattainment" for the first time. In terms of its impact on the power sector, it will make it much harder to get a Clean Air Act permit for any type of new fossil fuel power plant and also add pressure to reduce NOx emissions from existing plants. Any coal-fired plant that does not have a selective catalytic reduction (SCR) system to control NOx emissions is likely to face pressure to install SCR.

2. Particulate Matter ($PM_{2.5}$)

In January 2013, EPA published its update to the $PM_{2.5}$ rule.[9] The changes to the $PM_{2.5}$ standards were set so low that many areas in the country, including some rural areas with no industrial

[7] Economic Assessment of Carbon Capture and Storage Technologies: 2011 Update, (2011) at 49 (available at: https://www.globalccsinstitute.com/publications/economic-assessment-carbon-capture-and-storage-technologies-2011-update) (Accessed May 15, 2017).

[8] National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65292 (October 26, 2015).

[9] National Ambient Air Quality Standards for Particulate Matter 78 Fed. Reg. 3086 (Jan. 15, 2013).

operations, have background $PM_{2.5}$ levels that are at, or near the NAAQS for $PM_{2.5}$. As a result, many sources are unable to obtain air permits to build new, state-of-the-art operations or to expand or update their existing facilities because such activities would have the potential to emit $PM_{2.5}$ over the NAAQS.

3. Sulfur Dioxide ("SO_2")

On June 22, 2010, EPA finalized a new one-hour SO_2 standard.[10] The rule is intended to reduce exposure to high short-term concentrations of SO_2. While this rule is economy-wide, coal-fired power plants are the main targets: the rule is already being used to target plants without scrubbers. This rule overlooked ambient monitoring data, relied too heavily on unrealistic modeling that was not subject to public comment and ultimately set a standard that was too stringent. The final compliance costs are sizable, with the agency data showing annual cost of $1.5 billion.

4. Nitrogen Dioxide ("NO_2")

On February 9, 2010, EPA set a new one-hour NO_2 standard at 100 ppb,[11] which reflects the maximum allowable concentration anywhere in an area. It has targeted a large array of industries, including coal- and gas-fired units without SCR. This rule has been poorly implemented and made it harder to obtain a Clean Air Act permit even for new state-of-the-art combined cycle natural gas-fired power plants.

D. Mercury and Air Toxics Standards

EPA finalized its Mercury and Air Toxics Standards on February 16, 2012.[12] The rule sets technology-based emissions limitation standards for mercury and other air pollutants. EPA should reconsider the finding that it is "appropriate and necessary" to regulate emissions of hazardous air pollutants (HAPS) from coal-fired power plants, even though such regulations will cost Americans almost $10 billion a year.

To justify the cost, EPA relied primarily on the assertion that regulating such emissions would also reduce emissions of fine particulate matter or "$PM_{2.5}$." But $PM_{2.5}$ is not a HAP, and other regulatory programs already ensure that levels of $PM_{2.5}$ throughout the U.S. are below the levels that are protective of public health, including the health of the most vulnerable Americans. EPA cannot rely on so-called $PM_{2.5}$ "co-benefits" to claim that it is "appropriate and necessary" to regulate emissions of HAPs from coal-fired power plants, when EPA itself has found that there is very little benefit from reducing those emissions – much, much less than the $10 billion in cost that they would impose.

[10] Primary National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. 35,520 (June 22, 2010).

[11] Primary National Ambient Air Quality Standards for Nitrogen Dioxide, 75 Fed. Reg. 6474 (Feb. 9, 2015).

[12] National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, 77 Fed. Reg. 9304 (Feb. 16, 2012).

E. Disposal of Coal Combustion Residuals

On April 17th, 2015, EPA promulgated regulations for the management and disposal of coal combustion residuals (CCR) from electric utilities.[13] The rule directly targets coal-fired plants by establishing national regulations to prescribe how coal combustion residuals can be disposed of. The final rule saw substantial changes from the proposed and subjects coal operators to even more regulation. The rule's total cost could reach upwards of $22.8 billion and 64,700 jobs. In situations where there is no cost-effective option to manage CCR, the use of coal to produce power is significantly burdened and the economic viability of the plant is jeopardized.

The rule's compliance deadlines for the most impactful components are rapidly approaching and forcing power plant owners and operators to make irreversible and significant long-term business and operational decisions. In some cases, these decisions include the closure of CCR disposal units and even the premature closure of power plants.

Many of the problems underlying the rule can be solved through the use of site-specific, risk based management standards that EPA chose not to include in the final rule due to the rule's underlying self-implementing regulatory scheme. But recently enacted legislation now allows the CCR rule to be implemented through state CCR permit programs or systems of prior approval. This fundamental change warrants reconsideration and modification of the CCR Rule to incorporate such site-specific, risk-based provisions for assuring the proper management and disposal of CCR.

F. National Pollutant Discharge Rule

EPA finalized its National Pollutant Discharge Elimination System regulations to establish requirements for cooling water intake structures on August 16th, 2014 pursuant to section 316(b) of the Clean Water Act.[14] The rule seeks to decrease the "impingement and entrainment of fish and other aquatic organisms at cooling water intake structures" used by power generation facilities. It affects 1,065 existing facilities, including 544 electric generators and 509 manufacturers. Industrywide compliance costs are slated to be over $100 billion.

G. Waters of the United States Rule

EPA finalized this rule on August 28, 2015 to expand the definition of "waters of the United States to include many new areas that EPA and the Army Corp of Engineers would like to regulate as "wetlands." If implemented, this rule will have a significant impact on the construction of new transmission lines and pipelines by requiring hard-to-get wetlands permits for many areas that had not previously been treated as wetlands. ERCC appreciates EPA's notice[15] that it intends to

[13] Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities, 80 Fed. Reg. 21,302 (April 17, 2015).

[14] National Pollutant Discharge Elimination System—Final Regulations To Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities, 79 Fed. Reg. 48300 (Aug. 15, 2014).

[15] Intention To Review and Rescind or Revise the Clean Water Rule, 82 Fed. Reg. 12532 (March 6, 2017).

reconsider this rule consistent with the President's Executive Order,[16] and encourages EPA to ensure that any revised rule provides certainty and clarity on defining "waters of the United States," and respects the authority of states to regulate non-federal waters.

H. Regional Haze Rules

Although EPA's regional haze rules are technically economy-wide rules, in the past EPA has used the regional haze program primarily to target power plants. The effects of the regional haze program have varied by region, but the costs in the western parts of the United States have been considerable. In this past, these rules have mostly affected plants in the western U.S., but EPA's recent regulatory actions and guidance on Regional Haze have expanded the scope of the program and have failed to implement the cooperative federalism approach mandated by the Clean Air Act, choosing instead to dictate how states analyze reasonable progress in development of long-term strategies.

I. Other Rules Appropriate for Repeal, Revision or Modification

1. Improvement to Air Dispersion Models and Guidance

EPA's insistence on implementing NAAQS using overly-conservative background data is increasingly less appropriate as standards move closer to background concentrations. Effective implementation of new, more stringent NAAQS requires a more unbiased and realistic characterization of background concentrations, emissions inputs, and modeling physics. EPA should develop new and long overdue reasonable guidance on this subject. EPA also should issue guidance providing more realistic treatment of emissions used in modeling to provide more accurate predictions of ambient concentrations. Modeling of actual (versus allowable) emissions should be allowed. This would lead to a change in Section 8 of the Appendix W guidance that is overdue.

2. Hazardous Waste Generators Regulations

On November 28, 2016, EPA published revised regulations for hazardous waste generators under the Resource Conservation and Recovery Act.[17] ERCC members may generate solid and hazardous wastes in the course of producing, transmitting, an distributing electricity. Members make every effort to reduce the generation of these wastes. Although EPA's stated intent for the revised regulations was to make the hazardous waste generator regulations more user friendly, we believe many aspects of the final regulations will have the opposite effect. For example, EPA's changes pose additional requirements not only for large quantity generators, but more importantly for small quantity generators, that result in overly burdensome recordkeeping. In addition, a violation of a condition for exemption may result in a small quantity generator losing its storage facility exemptions and becoming a treatment, storage, and disposal facility (TSDF) operator and thereby being subject to the more onerous storage facility regulations.

[16] Executive Order 13778, Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule (Feb. 28, 2017), 82 Fed. Reg. 12497 (March 3, 2017).

[17] Hazardous Waste Generator Improvements Rule, 81 Fed. Reg. 85732 (Nov. 28, 2016).

3. Greenhouse Gas (GHG) Reporting Program

The EPA's mandatory greenhouse gas reporting program simply requires certain industrial facilities to publicly disclose their annual GHG emissions statistics. The rule has no environmental or other benefit. The requirements should be evaluated and streamlined such that the burden associated with reporting is commensurate with any environmental benefit.

4. Exempt RICE NESHAP from Reporting

The EPA national emissions standards for hazardous air pollutants (NESHAP) for stationary reciprocating internal combustion engines (RICE) impacts ERCC members' use of portable engines and the use of such engines in pipeline infrastructure upon which many power plants depend. The costs of the required and excessive paperwork and record keeping outweigh the insignificant environmental benefits of regulations emissions from such small engines. All portable engines, including emergency generators, should be exempted from NSPS Subpart JJJJ and from NESHAP Subpart ZZZZ.

5. Restore EPA Startup, Shutdown, and Malfunction (SSM) Exemptions

The Clean Air Act provides EPA with the authority to define affirmative defenses for facilities that may exceed air emission limits, including during temporary periods of startup, shutdown, and malfunction. EPA is in the process of removing and revising the SSM provisions of its regulations in response to adverse judicial decisions. In promulgating new regulations, EPA should recognize that emissions during periods of SSM are often outside of a facility's direct control. Although they can be minimized through appropriate work practice standards, they cannot be reduced to levels that are premised on optimal operation of control technologies.

Conclusion

ERCC appreciates the opportunity to identify for EPA those regulations that unduly burden the power generating industry and welcomes any questions or concerns that EPA may have about our comments.

Respectfully Submitted,

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