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U.S. Environmental Protection Agency
EPA Docket Center EPA/DC
EPA WJC West Building
Room 3334
1301 Constitution Ave. NW
Washington, D.C. 20460

Attention: Docket: EPA-HQ-OAR-2016-0033

Subject: Comments on Proposed Rulemaking – Clean Energy Incentive Program Design Details

Dear Sir/Madam:

The North Carolina Department of Environmental Quality (NCDEQ) is providing comments on the proposed rule “Clean Energy Incentive Program Design Details” published in the *Federal Register* on June 30, 2016 (81 *FR* 42939). EPA’s proposed Clean Energy Incentive Program (CEIP) is an early action program under the Clean Power Plan (CPP) that creates incentives to reduce carbon dioxide emissions at power plants and beyond power plants in the two years prior to the start of the CPP. These comments represent a technical evaluation of the proposed CEIP.

1. The North Carolina Department of Environmental Quality (NCDEQ) submitted comments on the CEIP on August 1, 2016 along with twenty-six other states. The primary comment in this document being that the comment period for this rule should be extended for at least sixty days after the Supreme Court's stay is lifted. If EPA’s Clean Power Plan (CPP) is not upheld, the rule should be withdrawn.

Given this overarching comment and the high likelihood that all CPP related compliance dates will be tolled after the stay is lifted, the NCDEQ is submitting additional comments on the basic concepts of the proposed CEIP. We are not providing specific comments on timeline related restrictions imposed in the CEIP as the NCDEQ believes the deadlines must be adjusted accordingly after the stay is lifted.

2. The CEIP requires the same planning, documentation, evaluation, measurement and verification (EM&V) and reporting of renewable energy (RE) generation and energy efficiency (EE) savings as the CPP state plan. It also adds several layers of complexity to a state plan.
 - a. The CEIP should be a simple program to design, implement and administer. There is limited time and economic incentive for states to incorporate the complex and resource intensive approach outlined in the proposed rule.
 - b. North Carolina and 29 other states already have a Renewable Energy Portfolio Standard (RPS). EPA just needs to develop a simple accounting mechanism to recognize these existing programs.

- c. The CEIP can be accomplished outside of the scope of the CPP state plan, especially in states with existing RE/EE programs and corresponding tracking systems.
3. EPA also asks for comment regarding the agency utilizing the CEIP as a provision under a federal plan.

The NCDEQ does not support *requiring* participation in an early action program within a federal plan. Such programs are traditionally voluntary and should remain so, especially given the complexity of the proposed CEIP.

4. EPA proposes changing “commence construction” to “commence commercial operation”. EPA moved back the “commence commercial operation” date for low-income EE projects from September 6, 2020 to September 6, 2018. The RE commence commercial operation date remains the same, on or after September 6, 2020.

EPA is not allowing the RE projects that start between September 6, 2015 and September 6, 2020 to be included in the CEIP. As stated above, approximately 30 states have an RPS. EPA should not penalize RE projects that commence operation prior to the start of the CEIP.

5. EPA proposes creating two pools for CEIP allowances/ERCs: one for RE projects and one for low-income RE and EE. EPA also proposes a 50-50 split of the set-asides to each pool.

The NCDEQ supports allowing a state to develop its own distribution method. As an alternative, the EPA could eliminate the two pools and just award allowances/ERCs on a first come-first serve basis while keeping the 2-1 matching incentive for low-income community projects.

6. EPA proposes a deadline of October in the year following the RE generation/EE savings to issue CEIP ERCs/allowance.

The NCDEQ anticipates that it may be more difficult and time consuming to verify MWhs generated/saved from various projects, especially during the early years of the CEIP/_CPP.

- a. EPA may need to be more flexible with CEIP EM&V process, especially if it requires verification within 9 months.
 - b. An alternative would be to require states to issue preliminary allowances/ERCs. Then allow for a final true up by December 2023, the end of the interim first step period.
 - c. EPA should assume there will be corrections to EE MWhs when developing its guidelines since many EE projects are trued-up a year or more after the data collection period for the project ends.
7. There appears to be an error in the model rule language. In the Preamble, EPA proposes to provide states with the flexibility to use existing local, state or federal definitions of *low-income* and *community*. However, under the text of the model rule on page 42978 in section § 62.16245 (c)(2)(iii), EPA limits the definition as follows:

...the project eligibility application must identify which one of the following definitions is used to establish the “low-income community” that the project will serve:

(A) The definition used by the New Market Tax Credit Program;

- (B) The definition used by the Dept. of Housing and Urban Development's Qualified Census Tracts;*
- (C) The definition used by the DOE's Weatherization Assistance Program Income Guidelines; or*
- (D) The definition used by the Federal Poverty Level Guidelines.*

In the model rule language, EPA needs to specify state and local definitions are applicable as well.

8. The CEIP requires the generation/savings "benefit" from the RE/EE project to occur in the state issuing allowances/ERCs. EPA proposes projects could meet the benefit test via power purchase agreements.

There are several issues with EPA's proposal.

- a. Once the first compliance period starts, the project provider can sell banked allowances/ERCs to an affected EGU in any state with the same plan structure (rate/mass).
- b. How does this work in the case of a multi-state entity such as Duke Energy Carolinas (DEC) generating and/or purchasing both the power and allowances/ERCs? The allowances/ERCs could be used toward compliance of its EGUs in either North Carolina or South Carolina.
- c. There is no restriction on the location of the generation/savings projects during the actual CPP compliance periods.

The NCDEQ is not clear on how restricting the location of the project generation/savings during the CEIP will ensure the "benefit" of the CEIP stays within the state. The NCDAQ questions the intent and merit of such a restriction on the "benefit" of the project only during the CEIP period.

9. EPA requires a "mechanism" that ensures CEIP allowances/ERCs will not impact attaining mass-based/rate-based emission standards. EPA states that no adjustment mechanism is needed for CEIP mass-based plans if the CEIP allowances are taken from the state allowance budget of the first interim period. EPA then states that an adjustment mechanism is needed for rate-based plans. EPA proposes a presumptively approvable adjustment mechanism for ERCs issued to all projects under both the CEIP and the first compliance period (See FR page 42959).

EPA's proposed "mechanism" is an attempt to deal with the creation of too many ERCs watering down the effectiveness of the CPP rate-based plan. EPA's proposed approach results in uncertainty in the value of an ERC as discussed below. Secondly, EPA's proposed method does not effectively deal with the accounting problem that will result.

- a) The actual ERC amount that one MWh will be worth depends on the number of MWhs awarded during each CEIP year. The value of the ERCs will not be known until the end of 2022.
- b) The value of an ERC created during the first interim period is less than those created during other periods, which creates a disincentive for RE/EE projects during that time period. For example, 1.0 MWh during the CEIP may be worth 1.75 ERC, while a MWh during the first interim period may be worth only 0.75 ERC and a MWh during the second compliance period is worth 1.0 ERC.

- c) The rule does not restrict the location of the EGU purchasing/retiring the CEIP ERC during the compliance period. It assumes the power purchase agreement contains both the MWh and the ERC; however, the CPP rule does not require this.
- d) There is a cap on CEIP ERCs. However, there is no cap on the number of ERCs created once the compliance period for the CPP starts. NCDEQ is not sure how limiting ERCs during the CEIP will ensure compliance with the rate-based state goals in future years.

EPA's presumptively approvable adjustment mechanism for ERCs is overly complicated and unnecessary. Due to the issues discussed above, the NCDEQ recommends that EPA's adjustment factor prescribed for a rate-based plan be eliminated.

Thank you for the opportunity to comment on this proposed rule. I trust that the comments will be considered as EPA prepares the final rule. If you have any questions regarding our comments, please contact me at (919) 707-8430 or sheila.holman@ncdenr.gov.

Sincerely,



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SCH/ph

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