

Short Summary – Affordable Clean Energy Rule Replacing the Clean Power Plan

The long-awaited replacement for the Clean Power Plan was signed by Acting EPA Administrator Wheeler and then publicly released on August 21, 2018. Now called the Affordable Clean Energy (ACE) rule, EPA's proposal addresses several of NRECA's goals in a replacement rule:

- 1) Provides greater regulatory certainty and flexibility;
- 2) Is legally defensible by following precedent of the Clean Air Act;
- 3) Focuses on actions that are achievable 'inside the fence line;' and
- 4) Minimizes rate increases to co-op members-consumers

EPA's general approach to the rule was to clarify the federal and state roles in rulemaking, with particular emphasis on granting states more authority to make decisions about how they implement the ACE. EPA also clarified that the CPP had exceeded the EPA's statutory authority and that the ACE rule would follow EPA's historic application of section 111 by focusing on technologies that could be cost-effectively implemented at a facility. Lastly, EPA is making a concerted effort to ensure that the New Source Review program does not become an impediment to adopting those technologies that could improve heat-rate efficiency.

NRECA's initial review of the proposal shows that EPA either addressed, or is taking comment on many of issues raised by NRECA members.

Best System of Emission Reduction: EPA has proposed that the Best System of Emission Reduction is to be determined by evaluating actions that could be taken at individual facilities that reduce CO₂ intensity. In applying BSER and setting the standard of performance, states would evaluate efficiency improvements from a list of seven "candidate technologies" that would be used to determine what, if any, action could be taken at an individual unit. This evaluation would consider a variety of factors, including cost, feasibility, remaining useful life of the facility, etc. EPA also suggests that "In the case of an EGU that has already implemented all of the candidate technologies, EPA would expect a state to set a standard of performance that would reflect an emission rate that is at least as stringent as "business as usual" for the source without allowing for any backsliding on performance."

Compliance Demonstration/Flexibility: EPA has proposed that the form of the standard of compliance be an allowable emission rate in the form of pounds of CO₂/MWh-gross, and that state plans include only one form of the standard. EPA indicates it will take comment on alternative forms of demonstrating compliance. In terms of flexibility, EPA indicates that states can elect to use averaging across EGUs at a single facility, and invites comment on trading or averaging plants beyond a single facility. EPA also proposes that non-BSER technologies implemented at the source, such as co-firing with natural gas or biomass, can be an acceptable compliance option. The agency is taking comment on whether activities outside the fence line of the source could be used to demonstrate compliance, but is not proposing that such activities be considered for compliance in the rule. EPA proposes that states can elect to use Part 75 CEMS data to meet their monitoring, reporting and

recordkeeping requirements if they use a lb/MWh-gross emission standard since this data is already collected by utilities.

New Source Review: EPA has proposed giving states the option to adopt a new primary applicability test for NSR. Under this test, sources would first evaluate whether a physical or operational change made to an EGU would result in an increase in that unit's hourly emissions rate. Currently, NSR is triggered if a project is predicted to cause a significant increase in a facility's actual annual emissions. Should a heat rate improvement (HRI) trigger NSR, the cost of the review process and potential additional controls would be considered as relevant economic factors in determining the performance standard. If finalized, EPA proposes to sever the NSR amendments from the remaining rule on judicial review.

Expected Emissions Reductions: EPA indicates that CO₂ emissions will be approximately 34% below 2005 levels upon full implementation of the ACE rule, which is consistent with expected reductions under a fully implemented CPP. Most of the reductions are due to current and expected market conditions that are already driving energy choices, and the ACE rule will achieve emission reductions greater than a business as usual approach. An initial review of the Regulatory Impact Analysis (RIA) indicates that EPA modeled 3 different reductions scenarios: a 2 percent HRI at \$50/kw, which assumes no NSR reform; and a 4.5 HRI both at \$50/kw and \$100/kw, both reflecting greater expected HRI if the proposed NSR revisions are implemented. EPA also modeled a case with full CPP repeal and a case with the CPP. We will be reviewing the RIA in depth to evaluate the broader costs, benefits and emission reduction assumptions.

Endangerment Finding/Significant Contribution: EPA simply reaffirmed its previous positions in the CPP and is not taking further action to reconsider the Endangerment Finding in the ACE rule.

Air Quality Benefits: While some stakeholders have expressed concern that replacing the CPP will adversely impact air quality, the reality is that these pollutants are strictly regulated under other sections of the Clean Air Act. National Ambient Air Quality Standards (NAAQS) and air toxics standards are in place and utilities are complying with these requirements. These include regulation of volatile organic compounds and nitrogen oxides (that form ozone or smog), fine particulates (soot), sulfur dioxide and mercury.

By law, these standards must protect human health and the environment with "an ample margin of safety." Further, the Clean Air Act requires either a five year (ambient standards) or eight year (air toxics standards) review of each of these rules to assure that they remain protective or determine if further action is needed. Many power plants are often regulated to address interstate transport of emissions, even if the plants are meeting their local obligations. None of these air quality protections will change with implementation of the ACE.

Timing: The proposed rule should be published in the Federal Register within the next two weeks. Once published, there will be a 60-day comment period. NRECA will work closely with our members to develop comments on the proposed rule. EPA anticipates finalizing the ACE rule in early 2019.