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January 21, 2016

Environmental Protection Agency
EPA Docket Center, Mail Code 28221 T
Attn: Docket ID No. EPA-HQ-OAR-2015-0199
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Technical Comments of NMED on EPA's Proposed Federal Plan

On behalf of the New Mexico Environment Department, I am pleased to submit to the Environmental Protection Agency the enclosed technical comments of the Department. These comments do not necessarily reflect the position of other agencies or offices of the State of New Mexico.

Although we are providing comments on the proposed federal plan, we understand that any state plan we submit will be evaluated against the requirements of the Clean Power Plan and not on the requirements of the proposed federal plan or model rules.

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Richard L. Goodyear".

Richard L. Goodyear, P.E., Chief
Air Quality Bureau

Enclosure

New Mexico Environment Department
Technical Comments to the U.S. Environmental Protection Agency
“Proposed Federal Plan”
January 21, 2016

Docket #EPA-HQ-OAR-2015-0199
80 Federal Register 64966

*Federal Plan Requirements for Greenhouse Gas Emissions from
Electric Utility Generating Units Constructed on or Before January 8,
2014; Model Trading Rules; Amendments to Framework Regulations –
Proposed Rule*

Comments

- 1. The U.S. Environmental Protection Agency (EPA) should not limit their federal implementation plan to either a rate-based or mass-based approach, but should apply the most appropriate plan depending upon the unique context of the individual state.** EPA currently intends to finalize a single plan type (i.e., either mass-based or rate-based) for every single state in which it finalizes a federal plan. However, flexibility is the hallmark of the Clean Power Plan and the concomitant federal plan. Therefore, EPA should preserve as many options for state compliance as possible and not eliminate half of the options. Limiting options may have the effect of producing plans which are not optimized regarding cost and emissions reductions. EPA should evaluate on a case-by-case basis each individual state’s situation (e.g., emissions goals, surrounding state’s plans, efficacy, etc.) and impose the best plan for that particular state. For example, a group of surrounding states may develop a rate-based trading program due to concerns about growth. A federal plan that also uses a rate-based trading program would allow that state’s sources to also participate in any trading with surrounding states and could result in a lower cost to the consumers in the state with a federal plan. However, if EPA does limit the federal plan to one option, the preferred option would be for a mass-based trading program.
- 2. EPA should expand the scope of interstate trading.** EPA should expand the scope of interstate trading to include linking states covered by the mass-based (or rate-based) federal trading plan with any state that has an approved mass-based (or rate-based) trading state plan meeting the proposed conditions for linkages and that uses an EPA-designated allowance (or ERC) tracking system that is interoperable with an EPA-administered allowance (or ERC) tracking system. This expansion will demonstrate that affected units in states covered by a federal plan are not penalized by limiting trading only with other states covered by a federal plan. The criteria proposed for linkage ensure the same effect as linkage between various state plans. If EPA wants to assure states that the imposition of a federal plan is not a penalty, then allowing this additional flexibility should be included.

3. EPA should extend linkage to state plans that issue allowances in metric tons. Provisions should be outlined on how to implement such linkages. Specifically, EPA should specify the conventional conversion rate and require that metric ton issuers include the appropriate short ton equivalent, which would then be used for EPA or interoperable tracking systems. The question of whether or not to allow partial allowances should be answered by the capabilities of the tracking system(s). If ATCS or other tracking systems can only manage allowances in whole numbers, the partial allowances would be lost in true-up, although perhaps partial allowances could be aggregated for a particular generator taking allowances from various power owners. Another option is to only allow issuers of allowances in metric tons to trade whole short ton allowances. Any partial allowance effected by the conversion could be retained by the original issuer.

4. EPA should finalize its proposed approach to link from the mass-based trading-ready federal plan to state plans that include non-affected emission sources. If plans are approved that would allow interstate trading under this scenario, these same plans should be able to trade with states under the federal plan. Otherwise, allowances allocated to non-affected units would need some unique identifier with specified restriction on interstate trading, which might defeat the purpose of allowing non-affected units to participate in state plans that allow interstate trading.

5. EPA should finalize its proposed treatment of interstate effects and of leakage under both the proposed rate-based and mass-based federal plan approaches, and as part of the corresponding proposed model rules.

What is being proposed is the same as what is in the final rule. Where PPAs exist, it is appropriate to allow a rate-based state to “claim” RE (generate ERCs) provided there is a system in place to ensure that the mass-based state does not issue allowances to the same RE generator. This not only addresses “double counting,” but also avoids an unintended incentive to RE providers to send electricity out of the state in order to receive both ERCs and allowances for the same resource. The federal mass-based plan may need to place restrictions on allocating allowances to RE located in its geographic territory but for which all energy is purchased by out-of-state entities. Another option is to require that all RE generation for which PPAs exist beyond geographic boundaries include, as part of their application for either ERCs or allowances, a certification statement that ensures they will not receive both. The approach for a mass-based plan seems reasonable; the set-asides should address the leakage issue.

6. EPA should not grant additional time for affected EGUs (i.e., small entities) to come into compliance.

This would add complexity to a state’s plan and to EPA’s requirements for approvals and follow-up on periodic reporting. In effect, it would require recalculation of emission budgets for mass-based plans. For both rate- and mass-based plans, the demonstrations as well as reporting would have to be similarly altered. For truly small entities, reliability should not be an issue.

If this small entity grace period is finalized, there would need to be some type of penalty for it to work. They should still be subject to the same overall goals, which means they might need

to work a little harder in a shorter amount of time. They could be required to forfeit a percentage of their initial allowances for a mass-based plan, with EPA reallocating those forfeited allowances to the RE set-aside. If a rate-based plan is finalized, the small entity might be required to produce more ERCs to offset the under-compliance during the grace period.

7. **A reliability safety valve for the federal plan is not needed.** The only scenarios where this might not be true is if a viable market didn't actually happen or if an EGU violates the federal plan to respond to a federal emergency. A risk of a rate-based plan which allows trading is that many states may opt for mass-based plans and so the market for ERCs may be too small to be truly economical. If EPA intends to look at viable market opportunities in deciding whether to impose a mass-based or rate-based plan, then the safety valve may not be necessary. If EPA intends to choose one over the other before knowing state plan approaches, a safety valve may be necessary. If a safety valve is included, there should be clear requirements for demonstrating the need to use it. These requirements should be the same as those in the final CPP.
8. **In regards to a mass-based approach, the EPA should not create an allowance set-aside for the purpose of making allowances available in emergency circumstances in which an affected EGU was compelled to provide reliability critical generation and demonstrated that a supply of allowances needed to offset its emissions was not available.**

An additional set aside would just reduce the available pool of allowances that could be allocated during the initial allocation period, and wouldn't be available until after the true-up period. In addition, it is unlikely that an enforcement action would be taken against a source for responding to a declared emergency. Also, the utility could purchase additional allowances if necessary.

9. **EPA's implementation of the Clean Energy Incentive Program in the federal plans would create ERCs and allowances before 2022, allowing for creation of banks that could be sold in the event of an unforeseen, emergency reliability issue. However, there is limited potential for these banks of ERCs and allowances to support reliable electricity generation and transmission to be utilized in the event of a true reliability emergency.** Beyond this limited potential, the owners of the early-action ERCs or allowances may sell them on the open market. To count on their availability would require that they be held back, thereby reducing the incentive for early action. Although the main driver for RE or EE may not be the CEIP, the CEIP should remain an incentive for early action, meaning that there should be no holding requirements attached to it.
10. **Applicable requirements of the federal plan should be incorporated into Title V permits, and should be done via minor modification.**

Title V permits are meant to be a collection of all applicable requirements, so any applicable requirements from the federal plan should be incorporated into the Title V permits. Using the minor modification process would be simplest.

While the purpose of a Title V permit is to consolidate all applicable requirements into one document, it's not a vehicle to create new requirements. Typically, those come from the NSR permit which usually include NSPS, NESHAP and other requirements. EPA could use the acid rain permit model as an approach to incorporate non-emission related CPP requirements.

- 11. The EPA should not limit the scope of the federal plan. The federal plan should include various types of demand-side energy efficiency (EE) as eligible measures for ERC issuance.** EPA should not limit the issuance of ERCs to designated categories of affected EGUs and to RE resources and nuclear generation (from new capacity and incremental capacity uprates) that are measured by a revenue quality meter, rather than the full suite of options discussed in the Emissions Guidelines (EGs). Considering the cost-effectiveness of certain demand-side measures that utilities can implement, it would make sense to include at least a set of these measures which are well-understood. Demand response programs may be especially useful in keeping the least efficient types of fossil units from running (depending on typical dispatch for a given utility or ISO/RTO). At the very least, the federal plan should include demand response programs.

Such a demand response program would need to be well developed and widespread to keep an affected unit from operating. Appropriate guidance for evaluation, monitoring and verification (EM&V) of demand response programs should be clarified by EPA.

- 12. EPA should allow generation data to be aggregated for RE resources of all sizes and means of monitoring.**

If generation data is aggregated, some type of third party verification may be required for the aggregator. If utilities are allowed to aggregate from, for example, net metering, perhaps they could be required to provide data from utility bills or another accounting report that show clearly how much generation was produced by individual customers (without providing confidential identifying information).

- 13. EPA's proposed output-based allocation may be appropriate for mitigating the potential for leakage, but EPA should be more forthcoming with their modeling showing that leakage is a problem in mass-based plans which requires addressing.** The EPA is proposing a set-aside approach referred to as *output-based allocation*, which provides targeted allocations of a limited portion of allowances to existing NGCC units as a means of mitigating leakage. The EPA believes that this proposed set-aside would reduce incentives for generation to shift away from EGUs covered under mass-based plans to new unaffected EGUs. While the output-based allocation proposed may mitigate leakage, sharing the modeling results would help states understand the issue, apply it to their own situation and facilitate efforts by states not under the federal plan to demonstrate other methods of mitigating leakage. In order to determine whether leakage is indeed an issue, states need to be provided with the detailed modeling results.

- 14. EPA should provide a set-aside of allowances for demand-side energy efficiency (EE).**

The EPA proposes to provide a set-aside of allowances for distribution to RE in each state covered by the proposed mass-based federal plan, and it is also proposed for the mass-based model rule. This set-aside is expected to address concerns regarding leakage by lowering the

marginal cost of production of the incented clean energy technologies within the state. This will make RE more competitive against new sources, reducing the potential for leakage to new sources. However, as explained above, demand-side measures are often efficient and cost-effective options and should be included as an additional set-aside in mass-based plans. This will create a market-based incentive for demand-side measures, such as demand response programs and energy efficiency programs.

- 15. In the context of the proposed rate-based federal plan and model rule, EPA assumes that ERCs require a set-aside similar to mass-based plans and requests comment on whether a portion of a set-aside related to deficient providers should be targeted to RE projects that benefit low-income communities.** While mass-based plans have set-asides possible, due to the limited pool of allowances available, ERCs do not pull from a similar pool. ERCs are earned, based on the MWhs generated (or saved). This provision would make no sense in a rate-based plan. Having a set-aside for ERCs could only work if there is a cap on the number of ERCs that can be generated, and this is an unwanted outcome.

- 16. Redistribution of allowances, due to deficient RE generators, to low-income projects is appropriate, although the focus should be on various vulnerable communities, not just low-income.** Considering EPA’s focus on environmental justice, any redistributions beyond the original allocations should be focused on incenting solutions for vulnerable populations. This could include communities impacted by loss of economic participation, such as those reliant on coal-related industries. Such vulnerable populations may not (initially) qualify as “low income.”

- 17. Without buy-in from the states, the CEIP program will not be as robust as envisioned.** EPA requiring states to implement the CEIP program under a mass-based federal plan as a condition of a state choosing to determine its own allocation approach via a partial state plan or a delegation of the federal plan may diminish the robust response to the program EPA is seeking. If EPA wishes to effect robust implementation, requirements for that implementation may need to be included.