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November 30, 2014

Ms. Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
Attention: Docket ID No. EPA-HQ-OAR-2013-0602  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Subject: Comments on EPA's Proposed Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, Docket ID No. EPA-HQ-OAR-2013-0602

Dear Administrator McCarthy:

The Wisconsin Department of Natural Resources (WDNR), in conjunction with the signatory Commissioners of the Public Service Commission of Wisconsin (PSCW), is submitting these comments regarding the United States Environmental Protection Agency's (EPA's) proposed "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" ("Clean Power Plan") published in the Federal Register on June 18, 2014 (*79 FR 34830*). While this letter touches on some of the major issues associated with EPA's proposal, attached are detailed comments relating to the following specific aspects of the proposed rule:

- General comments on the proposal and EPA's approach
- Specific comments on the four "building blocks"
- Technical corrections to EPA's data for Wisconsin
- Actions taken by Wisconsin to reduce power sector CO<sub>2</sub> emissions
- Legal issues associated with EPA's proposed action
- Wisconsin-specific modeling results and cost estimates

We request that EPA thoroughly consider the comments and information provided in the attachments, make the necessary corrections and adjustments to any state data used to develop emission reduction goals, and modify the rule as needed to address the concerns we raise.

EPA provided additional information related to its proposal in a notice of data availability (NODA) published on October 30, 2014 (*79 FR 64543*). Wisconsin has provided comments on the specific issues and alternatives raised in the NODA in a separate submission to the docket. EPA also published a technical support document on translating rate-based CO<sub>2</sub> goals to mass-based equivalents on November 13, 2014 (*79 FR 67406*), which we considered in the comments provided in this submittal.

To give context to our comments, we want to first remind EPA that Wisconsin has made significant strides in reducing CO<sub>2</sub> emissions from the power sector over the past 15 years. In fact, Wisconsin was among the first states to implement many actions EPA is just now considering in its proposal. For example, in 1999 Wisconsin became the first state to enact a renewable portfolio standard (RPS) without having restructured its electric utility industry. In 2005, Wisconsin increased the RPS to 10%. Our utilities embraced the challenge, achieving our statewide target of 10% renewable generation in 2013 – two full years ahead of schedule.

Wisconsin also was an early adopter of energy efficiency programs, having implemented a utility-funded energy efficiency and renewables program (known as Focus on Energy) since 2001. This initiative recently received EPA's 2014 Energy Star "Partner of the Year - Sustained Excellence Award" for its years of leadership in protecting the environment through superior energy efficiency measures. This program, combined with the state's early actions to promote renewable energy, resulted in more than 10 million tons of avoided CO<sub>2</sub> emissions in 2013 – equivalent to a 20% reduction from 2005 emissions.

At the same time, Wisconsin also meaningfully reduced CO<sub>2</sub> emissions from our fossil-fuel plants. Wisconsin's utilities are regulated by the Public Service Commission of Wisconsin (PSCW), which means they have been and continue to be incentivized to improve and maintain efficient fleets. As a result, over the past two decades our utilities have closed many older coal-burning plants, improved the efficiency of those remaining, and invested in cleaner natural gas facilities. In addition, they have constructed several of the newest, most efficient coal-fired plants in the nation. We take pride in the fact that we have been able to sustain a reliable base of electrical generation while simultaneously reducing emissions and improving the quality of our air. In fact, EPA's own data shows that, of the highest CO<sub>2</sub>-emitting power plants in the nation, Wisconsin does not have a single unit listed in the top 50, and only one in the top 100.<sup>1</sup>

It is unfortunate, then, to see that Wisconsin's early, aggressive, and measureable actions to reduce CO<sub>2</sub> emissions are largely ignored by EPA's proposed best system of emission reduction (BSER) approach. In fact, rather than recognizing and rewarding our leadership, EPA's proposal seriously penalizes Wisconsin relative to other states that have taken little to no action on renewables, energy efficiency, and traditional "inside the fence line" controls. This will have real and dramatic consequences on Wisconsin ratepayers, as well as the state economy. Above all else, it is imperative that EPA address and remedy these inequities in any final rule.

As mentioned above, attached are detailed comments regarding this proposal. In summary, our core issues with the proposed rule include the following:

- Insufficient credit for CO<sub>2</sub> reductions already achieved. As noted above, a fundamental weakness in EPA's proposal is that it fails to recognize the CO<sub>2</sub> reductions that Wisconsin (and other early acting states) has already achieved. This problem persists throughout the proposal, but in particular in EPA's proposed structure and implementation of the BSER building blocks, and use of the recent and unrepresentative single baseline year of 2012.
- Inequity across states. Relatedly, states that already reduced emissions significantly, such as Wisconsin, are being asked to reduce emissions *more* than states that have done less. In addition, states that emit the most CO<sub>2</sub> are asked to do the least. As a result, states end up with very different, and largely counterintuitive, emissions reduction goals. These inequities and the methods used to apply the building blocks to each state must be addressed in any final rule.
- Inability of the building blocks to be implemented as proposed. EPA defined BSER in this proposal using four building blocks. However, EPA generally fails to recognize that the four building blocks, if applied simultaneously, work against each other. For instance, Wisconsin's modeling consistently

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<sup>1</sup> U.S. EPA, Inventory of Greenhouse Gas Emissions from Large Facilities, 2012.

shows that increasing in-state gas generation to comply with building block 2 drives coal-fired plants to become load-following and less efficient, thereby making building block 1 entirely unattainable. In setting BSER, EPA must adjust its building blocks to reflect what is actually achievable by an individual state in practice.

- EPA's approach to setting the baseline year. EPA's selection of 2012 as the baseline year not only fails to adequately credit states which made substantial reductions prior to that year, it ignores other serious problems associated with using just a single year to establish the baseline. For example, 2012 does not accurately reflect historical emission levels because the high use of natural gas during that year was reflective of record low natural gas prices. In addition, using a single year as a baseline rather than, for example, a three-year average, substantially increases the risk of having the baseline inaccurately represent past emissions, as is exactly the case EPA's use of 2012 as a baseline creates. EPA has since proposed alternatives to using 2012 as a single baseline in its NODA, which we respond to in a separate submission to the docket.
- Compliance costs. As detailed in the attachment, PSCW estimates that the costs to comply with EPA's proposal over the compliance period range from \$3.3 to 13.4 billion. These estimates are preliminary, based on our current understanding of the proposal, and could change depending on alterations EPA makes in the final rule. As highlighted in a previous letter to you from Governor Walker, we are very concerned the costs of EPA's proposal will threaten our most reliable energy source and damage our ability to provide affordable energy to our citizens and manufacturing-based economy.
- Lack of state agency authority. One of the major flaws in EPA's proposal is that it assumes state environmental agencies have the ability to include in state plans methods of compliance over which the agencies have no control. For example, the Wisconsin Department of Natural Resources has no authority or control over which plants are required by regional transmission organizations to dispatch electricity. Similarly, the amount utilities must spend on energy efficiency programs, and the stringency of the state RPS, are determined by the Wisconsin legislature. Other aspects of these programs are the responsibility of the PSCW, which is not responsible for the 111(d) plan. Finally, no state agency has authority to mandate continued operation of a nuclear facility.
- Electric reliability. EPA has not adequately performed sufficient analyses to demonstrate that its proposal will ensure reliability of the grid in Wisconsin. We are particularly concerned that, in the absence of a robust coal-fired fleet, natural gas plants currently used for peaking may not be able to support the electric load.
- Receiving credit for renewables purchased from out-of-state. Pursuant to Wisconsin's state RPS, renewable energy purchased from out-of-state may be used to meet the RPS requirements. Wisconsin utilities have built, own, or operate almost 400 MW of wind energy in other states and have long-term agreements to purchase even more out-of-state renewable power. EPA must establish clear, legally-based guidelines to allow states that own renewable generation in another state, or purchase such generation, to claim compliance credit for that generation. This approach is consistent with how renewable aspects of generation have been treated for many years.
- Consideration of biomass fuels. Biomass is an extremely important renewable energy source to Wisconsin. 46% of the state's land area is forested, and the sustainable use of these forest resources supports many industries, including energy production. Under state law, biomass is allowed to be credited towards meeting RPS requirements. Therefore, EPA should treat biomass differently from fossil fuel CO<sub>2</sub> emissions and consider biomass to be carbon neutral for compliance with the rule.
- Time allowed for submission of state plans. Wisconsin's legislative and regulatory processes require over two years to implement simple, noncontroversial rules. Given the amount of attention this proposal has received, it is unrealistic to expect the state to submit a complete plan within EPA's

proposed timeframes. EPA must provide more time, or, at a minimum, provide guidance on what EPA will accept at the plan due date short of a complete and final plan.

- Lack of timely guidance on critical issues. EPA's proposal lacks important details on several critical aspects of the plan, including how to account for biomass fuels in state plans and account for energy efficiency in a consistent way. Other important information, such as examples of how states could convert their rate-based goals to mass-based equivalents, was released by EPA far too late in the comment period to inform modeling or otherwise be adequately analyzed. This lack of timely information on important elements of the proposal is unacceptable. EPA needs to provide all information prior to finalization of the rule and give adequate time for public review so that the states have opportunity to submit comments with the benefit of more complete information.
- EPA must allow comment on the next version of its proposal prior to finalizing. Relatedly, due to the complex and interconnected nature of this rule, we found it challenging to meaningfully comment on any one aspect of the proposal without knowing how EPA ultimately intends to address other parts. Therefore, it's critical that EPA provide the public with the opportunity to comment on the next version of the proposal, *in its entirety*, prior to finalizing this rule.

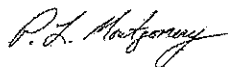
Finally, we note that neither this letter nor any state comments should be interpreted as the State of Wisconsin's acceptance of EPA's proposal. There are significant legal issues with this proposed rule. Perhaps even more fundamentally, we question whether the use of Section 111(d) via this rule proposal is an appropriate vehicle to dictate energy policy for the state of Wisconsin. We elaborate on the legal issues associated with the proposal in an attachment to this letter.

We appreciate the opportunity to comment on this proposal and look forward to seeing changes addressing our concerns in any final rule.

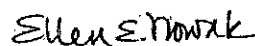
Sincerely,



Cathy Stepp  
Secretary  
Wisconsin DNR



Phil Montgomery  
Chairperson  
PSC of Wisconsin



Ellen Nowak  
Commissioner  
PSC of Wisconsin

cc:

Bob Norcross, Administrator, Division of Gas and Energy, PSCW  
Pat Stevens, Administrator, Division of Air, Waste, and R&R, WDNR

Attachments

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