



Electric
Reliability
Coordinating
Council

2000 K Street, NW – Suite 500
Washington, DC 20006
(202) 828.5800

July 8, 2014

VIA E-DOCKET and MAIL

The Honorable Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

Air & Radiation Docket and Information Center
U.S. Environmental Protection Agency, Mail Code 28221T
1200 Pennsylvania Ave. NW
Washington, DC 20460

Re: EPA–HQ–OAR–2013–0602

**Request for Extended Comment Period for Carbon Pollution Emission Guidelines
for Existing Stationary Sources: Electric Utility Generating Units 79 Fed. Reg.
34830 (June 18, 2014)**

Dear Administrator McCarthy:

The Electric Reliability Coordinating Council (ERCC) is a group of power-generating companies that provide reliable and affordable power to millions of consumers across the U.S. ERCC members have long supported commonsense interpretation of the Clean Air Act (the “Act” or “CAA”) in order to ensure electric reliability, consistency, affordability, safety, innovation, and environmental protection. In furtherance of these goals, ERCC is requesting an extension by 60 days of the comment period for the U.S. Environmental Protection Agency’s

(“EPA” or the “Agency”) proposed Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (“Proposal” or “GHG Rule”).¹

I. Introduction

The Proposal is among the farthest reaching rules ever proposed, seeking to substantially alter how electricity is generated and used, and affecting every industrial, commercial, institutional and individual consumer of electricity in the United States. It is no exaggeration to say that the Proposal seeks to create a regulatory scheme that touches on virtually every detail of how electricity is generated, dispatched, and used by individual companies and households—and the Proposal creates new EPA oversight of every state, local, and Tribal authority involved in those complex issues. EPA estimates the compliance cost of this rule will run to the billions, and these costs do not take into consideration many concerns raised by stakeholders or the administrative costs placed on state and local governments in connection with the Proposal. The complete Proposal covers nearly 130 pages of text in the Federal Register and 376 pages of regulatory impact analysis. Notwithstanding the breadth of coverage, cost and complexity of the rule, EPA has provided only 120 days for regulated sources and the public to analyze the rule and supporting documents, and provide comment to EPA.

In light of the broad scope and economic impact of the proposed rules, and of EPA's duty to provide a reasonable opportunity for public comment, we respectfully request that EPA extend the comment period by an additional 60 days, giving the public a total of 180 days for comment.

II. The Need for an Extension of the Comment Period

The Proposal is remarkably broad in scope—raising important practical and legal questions that require more than 120 days to fully analyze. Under basic principles of due process and administrative law, EPA must provide the public with a reasonable opportunity to comment on proposed rules. Whether a period for comment is “reasonable” must be based on the relative complexity and breadth of impact of the proposed rule. For example, EPA recently extended the comment period for the proposed definition of “Waters of the United States,” a proposal that does not include any new regulations of industry, to provide over 180 days for parties to consider and comment on the regulations.² The Proposal is an unprecedented use of § 111(d) authority and represents a uniquely intrusive assertion of federal authority. Given its complexity, breadth of applicability, and economic impact, 120 days is grossly inadequate.

Additional time is warranted not only because the Proposal's use of § 111(d) is unprecedented in scope, but also because the Proposal raises an almost unfathomable number of practical issues related to planning and implementation. The Proposal is really an amalgamation of many different proposed rules, and includes both differing state-specific emission rates for carbon and broad outlines of for the development, submission and implementation of state plans. Accordingly, an analysis of the Proposal will require that states and stakeholders carefully

¹ 79 Fed. Reg. 34830 (June 18, 2014).

² See <http://www2.epa.gov/uswaters> (“The proposed rule was published in the Federal Register on Monday, April 21, 2014. The public comment period will close on Monday, October 20, 2014.”).

scrutinize the data underlying each of the 50 state-specific goals and also consider the how each individual state might apply the “strategies” identified by EPA. This task would be daunting even with a narrow set of strategies to consider, but EPA has proudly refused to narrow the categories of strategies that they will consider when evaluating state plans submitted pursuant to the Proposal. Accordingly, those seeking to provide thorough and useful comments on the Proposal will be required to consider, in the context of each of the 50 states, all potential combinations of the “building blocks” identified by EPA in the proposal—which include heat rate improvement in individual electricity generating units (“EGUs”), re-dispatch lower-emitting EGUs, expanded use of low- or zero-emitting EGUs, and all possible iterations of expanded use of demand-side energy efficiency (a term that appears to include every conceivable form of energy efficiency program).³ Such a task is unprecedented and justifies a comment period of at least 180 days.

Some have suggested that administrative process be truncated due to the importance of timely addressing climate change issues. However, extending the comment period for the rulemaking is also consistent with the goal of preventing interminable delays in connections with climate change policy. EPA would be wise to carefully consider the complicated legal issues surrounding the GHG Proposal during the comment period, rather than rush through the comment period and face indefinite legal challenges and delays that are inconsistent with the policy justifications for the proposal. This is especially true given the Supreme Court’s recent warning to EPA that, “when an agency claims to discover in a long-extant statute an unheralded power to regulate ‘a significant portion of the American economy,’ we typically greet its announcement with a measure of skepticism.”⁴ Because the scope of the GHG Proposal touches on virtually all levels of state and local government, and every aspect of the economy, there are innumerable detailed, complex, and important legal issues that government regulators and private stakeholders need to carefully consider in connection with the GHG Proposal. Analyzing and presenting these issues to EPA will require more than 120 days provided by EPA, and an additional 60 days would allow stakeholders to adequately research and present these concerns, which would, in turn, allow EPA to craft a rule that is on a stronger legal foundation and could face fewer delays and challenges. Candidly, EPA, the regulated community, and other stakeholders will all benefit from an adequate deliberative process.

³ 79 Fed. Reg. at 34,856.

⁴ *Util. Air Regulatory Group v. EPA*, 2014 U.S. L.W. 4535 (2014).

III. Conclusion

The ERCC respectfully requests that the comment period for the Proposal be extended by at least 60 days. Such an extension would be consistent with recent EPA actions on other controversial proposals and would allow stakeholders and interested parties to develop comments that protect their legal interests and inform EPA's effort to craft a final rule that is workable and reduces risks and costs. We appreciate your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Segal". The signature is written in a cursive style with a large, looping "S" and "G".

Scott H. Segal, Director

Electric Reliability Coordinating Council