



Connecticut Department of

**ENERGY &
ENVIRONMENTAL
PROTECTION**

Robert J. Klee, Commissioner

October 31, 2018

U.S. Environmental Protection Agency
EPA Docket Center
Docket ID No. EPA-HQ-OAR-2017-0355
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460 (submitted via regulations.gov)

Re: Emissions Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program

Dear Acting Administrator Wheeler:

The State of Connecticut submits these comments on the U.S. Environmental Protection Agency's (EPA's) proposal to replace the Clean Power Plan (CPP) with revised emission guidelines, the Affordable Clean Energy (ACE) rule. The ACE proposal purports to reduce greenhouse gas (GHG) emissions from existing electric generating units (EGUs).

The ACE proposal is completely and wholly inadequate because it fails to fulfill EPA's legal obligation to **reduce** CO₂ emissions from existing fossil fuel-fired EGUs as required under the Clean Air Act, to **identify** the best system of emission reduction (BSER), and to **achieve** meaningful reductions in light of the danger posed by climate change to human health and the environment. Additionally the ACE proposal seeks to relax protections under the Clean Air Act's New Source Review (NSR) permitting program. The relaxation of those provisions, according to EPA analyses, could lead to localized increases in CO₂ emissions and other criteria air pollutants that would impact local air quality and air quality in downwind states like Connecticut, which is significantly impacted by pollution generated in upwind states. Taken as a whole, these deficiencies in the ACE proposal do little to mitigate the potential harm and public health impacts of climate change for Connecticut or the nation.

Connecticut is highly vulnerable to changes in climate due to regional characteristics including a dense population and aging infrastructure. Conservative climate projections for Connecticut indicate that the annual mean temperature will rise by 5-10°F by the end of the 21st Century. In an International Panel on Climate Change (IPCC) special report released in early October 2018, it was stated that there is high confidence that global warming is likely to reach 3°F (1.5°C) between 2030 and 2052 if temperatures continue to increase at the current rate. A 3°F change in temperature will also have devastating impacts on ecosystems, water supplies, human health, and socioeconomic sectors. Based on several lines of evidence, the intensity and frequency of some climate and weather extremes are also projected to increase.

Connecticut has already begun to experience the consequences of climate change and flooding from rising sea levels. Our state was brutally impacted with weeklong power outages from recent severe storms in 2011 and 2012, and the likelihood of extreme weather events continues to increase. A detailed study of sea level rise in Long Island Sound predicts up to 20 inches of sea level rise in the next three decades, turning routine coastal storms into deadly catastrophes. Connecticut's most vulnerable residents – low and moderate-income renters living in our coastal communities – are most at risk of confronting deadly storms, and frequently lack the means to escape them. For these reasons mitigating the effects of a changing climate has been among the highest priorities in the State of Connecticut and reducing GHG emissions from the electric sector has been a central strategy.¹

Given the demonstrated impacts of climate change on the citizens of Connecticut and across the nation, Connecticut and other states have taken action to significantly reduce GHG emissions at a local and regional scale. Collectively we have proven that reducing GHG emissions from the power sector can be achieved quickly and cost effectively. Furthermore we have demonstrated that reducing GHG emissions can occur concurrent to overall economic growth and generate significant savings and other benefits. The methods and successes of these actions are scalable to and compatible with a national program that could achieve far greater emissions reductions than the ACE proposal.

Connecticut and nine other states established the Regional Greenhouse Gas Initiative (RGGI). RGGI reduces CO₂ emissions from electric power plants with a capacity of 25 megawatts (MW) or greater, with RGGI states conducting periodic reviews to adjust the program cap stringency. The emissions cap is set at 82.2 million short tons in 2018 and declines 2.5 percent each year until 2020 to about 78.2 million tons.² Furthermore, RGGI states have announced plans to reduce CO₂ emissions 65 percent below 2009 levels by 2030.³

RGGI has demonstrated that substantial reductions in carbon pollution from the electric power sector can be achieved through fuel switching to less carbon-intensive generation sources, increasing use of renewable energy, and reducing demand through energy efficiency. Since 2005, RGGI member states have reduced fossil fuel power plant emissions by 50 percent, while member states' GDPs have continued to grow.⁴ Additionally, electricity prices across the Mid-Atlantic and Northeastern region have decreased by 6.4 percent since RGGI took effect, compared to an average increase of 6.2 percent in non-RGGI states.⁵ Recent progress on power sector emissions reductions have occurred in part because of market shifts but are largely also due to Connecticut's forwarding-thinking climate-related policies, legislation, and regional partnerships. Connecticut's Renewable Portfolio Standard (RPS) has steadily increased energy production from renewable energy generation sources such as wind and solar, and will double from 20 percent by 2020 to 40 percent by 2030.⁶ Public Acts 18-50 and 08-98 set GHG emissions reduction targets of 45 percent below 2001 levels by 2030 and 80 percent below 2001 levels by 2050. Connecticut's ambitious RPS targets have provided the impetus for the State to harness the power

¹EPA when applying the social cost of carbon (SCC) must consider the *global* climate change impacts and economic damages associated with incremental increases in carbon emissions and not just the domestic climate change impacts. That is, the applied SCC must highlight the important fact that CO₂ is a global pollutant, unrestrained by geographic borders, therefore emissions in the U.S. cause damages around the world. The climate change impacts due to incremental carbon emissions increases include, but are not limited to changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services.

² Elements of RGGI. The Regional Greenhouse Gas Initiative. <https://www.rggi.org/program-overview-and-design/elements>

³ Guillen, Alex. RGGI States Plan Further 30 Percent Emissions Cut by 2030. Politico. August 23, 2017. <http://www.politico.com/states/new-york/albany/whiteboard/2017/08/23/rggi-states-proposed-further-30-percent-emissions-cuts-by-2030-8613376>

⁴ The Investment of RGGI Proceeds in 2016. The Regional Greenhouse Gas Initiative. September 2018. https://www.rggi.org/sites/default/files/Uploads/Proceeds/RGGI_Proceeds_Report_2016.pdf

⁵ Outpacing the Nation: RGGI's environmental and economic success. Acadia Center. September 2017. http://acadiacenter.org/wp-content/uploads/2017/09/Acadia-Center_RGGI-Report_Outpacing-the-Nation.pdf

⁶ Public Act 18-50. AN ACT CONCERNING CONNECTICUT'S ENERGY FUTURE. Effective May 24, 2018.

of competitive bidding processes to drive down the prices of grid-scale renewable energy and capture the value of over 400 megawatts (MW) of small-scale renewable energy and energy efficiency sources.⁷

Looking forward, decarbonizing the buildings and transportation sectors will be primarily achieved through electrification of these sectors – even greater importance on decarbonizing the power sector. Modeling completed for the Connecticut Governor’s Council on Climate Change (GC3) demonstrates that Connecticut must reduce transportation sector and buildings sector GHG emissions by 33 percent and 29 percent, respectively, to meet the State’s GHG reduction target of 45 percent below 2001 levels by 2030. Decarbonization of the buildings and transportation sectors relies upon the electrification of all energy end uses. In the buildings sector this consists of electrifying space heating and cooling with air- and ground-source heat pumps, and electrifying water heating loads with heat pump water heaters and solar water heaters. For transportation, conventional fossil fuel-fired vehicles must be replaced with electric vehicles, especially light-duty and passenger vehicles.

EPA’s Regulatory Impact Analysis (RIA) for the proposed replacement rule demonstrates that the proposed replacement would result in more carbon pollution than the CPP. EPA’s own estimates indicate that CO₂ emissions from the power sector would be 47-61 million short tons more under the replacement rule in 2030 compared to the CPP.⁸ The additional air pollution EPA predicts will occur under its proposed replacement rule will dramatically impact public health. Increased air pollution will mean that hundreds or thousands more people will die prematurely, suffer asthma attacks, and miss school and work. According to the RIA, the replacement rule would result in an additional 246-1,630 premature deaths, 29,000-48,000 asthma attacks, 16,000-60,000 missed school days, and 35,000-42,000 lost work days in 2030 compared to under the CPP.⁹

A proposed rule with such significant impacts requires a meaningful stakeholder process with inclusive and diverse stakeholders – which clearly did not happen for the ACE proposal. In October 2017, EPA proposed to repeal the CPP. In December 2017, the EPA released its Advanced Notice of Proposed Rulemaking (ANPR) to inform the creation of the ACE proposal, which was ultimately released in August 2018. The ANPR received roughly 270,000 public comments during the 60-day comment period. While there were four public hearings on the high-level, non-specific ANPR, the detailed ACE proposal itself featured only one public hearing, on October 1, 2018 in Chicago, IL.¹⁰ By comparison, the EPA conducted a more thorough and far-reaching rulemaking process for the CPP. In June 2014, the EPA published the CPP Proposed Rule with a 90-day comment period and held four public hearings in Pittsburgh, PA, Denver, CO, Washington, DC, and Atlanta, GA. More than 4.3 million public comments informed the year-long process that resulted in the release of the CPP Final Rule on October 23, 2015.¹¹ Stakeholder engagement for the ACE proposal has neither been inclusive nor extensive in comparison to the CPP.

In conclusion, there are numerous state actions that have been employed here in Connecticut and around the country to reduce GHG emissions, improve air quality, and protect public health. Instead of following the states’ lead on climate and clean air, the EPA has proposed a rule that has the potential to **increase** CO₂ and other pollutant emissions, **worsen** air quality, and **reverse** Connecticut’s long-standing efforts to protect public health.

⁷ 2018 Comprehensive Energy Strategy. Connecticut Department of Energy and Environmental Protection. February 8, 2018.

⁸ 83 Fed. Reg. at 44,784, Tbl. 6

⁹ RIA at 4-34, Tbl. 4-6.

¹⁰ Affordable Clean Energy Rule Proposal: Public Hearing. U.S. Environmental Protection Agency. <https://www.epa.gov/stationary-sources-air-pollution/forms/affordable-clean-energy-rule-proposal-public-hearing>

¹¹ FACT SHEET: Overview of the Clean Power Plan. U.S. Environmental Protection Agency. <https://archive.epa.gov/epa/cleanpowerplan/factsheet-overview-clean-power-plan.html>

Clearly the ACE proposal falls woefully and laughably short of providing an adequate and affordable solution to address the potential harm and public health impacts to the roughly 3.5 million residents in the State of Connecticut that are already feeling the effects of a changing climate. In fact, the ACE proposal is an affront to the public health and environmental protection mission and mandate of the EPA.

For these reasons we urge EPA to withdraw the ACE proposal and replace it with the CPP. Additional technical comments organized by EPA's requested areas of comment are attached.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Robert J. Klee', with a long horizontal flourish extending to the right.

Robert J. Klee
Commissioner

ATTACHMENT

Detailed Comments – State of Connecticut

Response to Comment Solicitations C-2 through C-12:

- ***ACE Violates the Clean Air Act (CAA)***-The issuance of an existing source performance standard that fails to cover the breadth of sources covered under the corresponding new source performance standard would violate the CAA. 40 CFR 60, Subpart TTTT, the Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units at Subsection 60.5509 specifies that the standards of performance apply to any steam generating unit, IGCC, or stationary combustion turbine that commenced construction after January 8, 2014 or commenced reconstruction after June 18, 2014. The proposed, explicit exclusions from ACE appear to be consistent with 40 CFR 60, Subpart TTTT. However, the failure to propose standards in the ACE rule for the breadth of electricity generating units covered by 40 CFR 60, Subpart TTTT appears to be a clear violation of the CAA. Per CAA Section 111(d)(1)(A):” the Administrator shall...that establishes standards for performance for any existing source for any air pollutant to which a standard of performance under this section would apply if such existing source were a new source...” Clearly, the Administrator has a duty to develop an ACE rule encompassing standards for existing electricity generating units that reflects the applicability provisions of 40 CFR 60, Subpart TTTT. Furthermore, to the extent that the Administrator does not have sufficient data on the efficacy of heat rate improvements for other types of generating units, the ACE proposal is premature, at best. The Administrator should use his various powers, particularly those under Section 114 of the CAA to gather the data necessary to promulgate adequately protective standards for the breadth of sources that must be covered, per the CAA, by this existing source proposal.
- ***Best System of Emission Reduction (BSER) is Readily Achievable***-There are numerous technologies that are demonstrated in practice that can improve the heat rate of combined cycle plants and combustion turbines, two of the types of generating units covered by Subpart TTTT. For example Siemens offers upgrade kits that increase the net power output of gas turbine units while simultaneously reducing the heat rate.¹² The kits employ proven methods such as inlet air fogging, inlet air cooling, and compressor, combustor and turbine/blade design advances to boost the performance of the machines. In fact, the upgrades appear to be industry standard operating procedure at around the 100,000 hours of operation mark. In the ISO New England market, facilities are making the upgrades as a means of ensuring that older plants remain competitive with newer turbine designs.

Similarly, the modifications that increase the heat rates of coal-fired EGUs are, for the most part, universally applicable to natural gas and oil-fired EGUs. As oil and natural gas are less carbon intense fuels than coal, the resultant reductions in carbon dioxide emissions would be less dramatic. Given that

¹² <https://www.siemens.com/global/en/home/products/energy/services/performance-enhancement/modernization-upgrades/gas-turbines.html>

EPA's NEEDS database lists 300-400 oil/gas fired units to which the standard would apply as proposed, much deeper system wide reductions are achievable from this group of units as a whole.

- ***ACE is premature and incomplete-*** In comparison to ACE, the CPP protects more lives, achieves deeper emissions reductions at comparable or lesser costs, provides standards more consistent with market forces and trends in the electric generating sector, and offers greater flexibility consistent with the mandates of Section 111(d) of the Clean Air Act. Put simply, ACE should be withdrawn in favor of implementation of the CPP.

Response to Comment Solicitations C-14 through C-16:

In comments C-14 through C-16, the Administrator seeks feedback on 1.) whether the ACE rule should specify a rubric for states to develop standards of performance for affected sources, 2.) whether the ACE rule should allow for the standard of performance to be specified as something other than an emission rate, and 3.) whether there are merits to differentiating between gross and net heat rate.

The ACE rule must specify a rubric for states to develop standards in order to assure that standards are developed in a consistent manner. EPA demonstrated the ability to do so in the CPP by assessing state and regional electricity markets and applying the three building blocks to specify lb/mwh standards of performance for each state, based on each states unique mix of generation assets. Incidentally, EPA maintains a database which includes technical and emissions data on all units that would be subject to ACE. EPA has further demonstrated its analytical prowess by publishing a methodology to translate each state's lb/mwh standard of performance into ton per year emission rates. Thus, EPA has the tools to provide a consistent method for states to derive a performance standard from the menu of heat improvement options provided.

For the same reasons cited above, EPA should also allow for the standard of performance to be specified in more than one form, provided that such forms result in equivalent overall emissions reductions from affected sources.

The one area where CPP and ACE appear to both reasonably ask for comments is on the merits of differentiating in a standard between gross and net power output from the facility. The question seems superfluous, since as proposed, ACE only affects Acid Rain Units. Acid Rain units already report carbon dioxide emissions and megawatt-hour output to EPA. It should be quite simple to determine compliance with a lb/mwh performance standard for those units, if such standard is specified in terms of the same form of power output that is already recorded and reported under the Acid Rain Program. Such would be the most efficient approach because the monitoring, recording and reporting infrastructure for that approach is already in use.

Response to Comment Solicitations C-18 through C-21:

EPA seeks comment on whether or not the standard of performance should be implemented at the source and measureable at the source. EPA further requests comment on whether or not certain non-BSER measures should be disallowed for compliance and what would be the criteria for disapproval.

CAA Section 111(d)(1) states that each state shall submit a plan to the Administrator that "establishes standards of performance for any existing stationary source." Section 111(a)(1) defines standard or performance as: "standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such

reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.” However, there is no part of Section 111 that expressly or implicitly precludes a state from developing a plan that employs mechanisms additional to or in lieu of the determined BSER, that result in reductions across all affected units that are equal to or greater than the amount of reduction that would be achieved if each individual affected unit met the standard. In fact, EPA published a draft policy on such mechanisms in 1990 to guide states in developing cost effective measures to assure compliance with applicable regulations.¹³ Further, EPA has successfully employed, with the support of industry and the power sector, market-based mechanisms for reducing pollutants such as SO₂ and NO_x since 1990. These programs have resulted in significant and cost effective reductions of pollutants at affected facilities. In light of this, there would seem to be no logical reason to disqualify any “non BSER” mechanism(s) other than that the application of such measure(s), in total, would result in an amount of emissions reduction across the fleet of affected units in a state or group of cooperating states that is less than the amount of emissions reductions that would be achieved if the each affected unit met the applicable standard of performance.

Programs such as RGGI¹⁴ and the Western Climate Initiative (WCI) result in greater emissions reductions across the fleet of affected sources than could be achieved as the sum of reductions achievable at each affected unit. Thus they provide a model for reducing emissions at across a fleet of individual units. The CPP clearly recognized this as EPA published a proposed federal implementation plan compatible with the use of RGGI and WCI as compliance mechanisms under the CPP. EPA should similarly allow the use of established cap and trade programs as a means of compliance with ACE.

Response to Comment Solicitations C-22 through C-27:

EPA seeks comment on how to consider the remaining useful life of plant when developing a standard of performance and the possibility of offering a variance or the use of other compliance flexibilities in a state plane.

Section 111(d)(1) authorizes states to consider the remaining useful life of plants in applying a standard of performance to a specific source. However, the emissions standard variance provision in proposed 40 CFR 60.24a(e) appears to violate what is allowed under CAA section 111(d). As proposed, the language allows for the consideration of additional factors in applying the standard. This exceeds what is explicitly allowed by CAA section 111(d). Therefore, DEEP recommends that the words “factors, such as” be removed from 40 CFR 60.24a(e) (i.e., “*In applying a standard of performance to a particular source, the State may take into consideration ~~factors, such as~~ the useful life of such source, provided that the state demonstrates.....*”).

With respect to how to treat the remaining useful life of plants within a state’s fleet of affected units, CPP addressed this concern in a thoughtful, well-documented manner that addressed the entire fossil fuel generating sector (i.e. coal and other fossil fuel generating units) as required under Section 111(d)(A)(ii). Rather than pursue this matter further under the ACE proposal, which fails to satisfy Section 111(d)(A)(ii) by only focusing on one

¹³ EPA. Improving Air Quality with Economic Incentive Programs. EPA-452/R-01-001 (January 2001). <https://www.epa.gov/sites/production/files/2015-07/documents/eipfin.pdf>

¹⁴ Since 2009, the Regional Greenhouse Gas Initiative (RGGI) has capped CO₂ emissions from ten northeastern and Mid-Atlantic States (nine states starting in 2012, but will increase to eleven states by 2020). The cap is a regional CO₂ “budget” for the power sector with tradable allowances. The budget will be reduced 2.5% per year from the 2014 budget during 2015-2020 and decrease further between 2021 and 2030. Ultimately, the RGGI states will reduce collective CO₂ emissions by 19% from 2005 levels. The Western Climate Initiative includes California and a few Canadian provinces and aims to reduce greenhouse gas emissions to 15% below 2005 levels by 2020. One component of the Western Climate Initiative is a regional cap-and-trade program that began in 2012.

of the stationary source types addressed in the corresponding new source performance standards, EPA should simply withdraw the ACE proposal and pursue implementation of the CPP. Barring that, for an affected source to avail itself of special consideration for its remaining useful life, such source should 1.) be subject to a financial test which looks at the time to payback the Heat Rate Improvements (HRI) given resulting profits and fuel savings over the remaining useful life of the facility and 2.) be required to enter into a practicably and federally enforceable agreement to either discontinue operation of the facility at the end its useful life as specified in the applicable financial test or install the necessary HRI at the affected source, regardless of alleged remaining useful life. Affected sources should not be allowed to indefinitely extend operations of units with short remaining useful lives without implementing BSER.

Response to Comment Solicitations C-28 through C-41:

EPA seeks comment on emissions averaging and trading as a means of compliance with standards of performance promulgated in State Plans. Stakeholders have already spoken to this point and EPA demonstrated its concurrence with allowing averaging and trading, following comprehensive analyses, in the CPP and the subsequent proposed federal plan and model. Since ACE fails to satisfy Section 111(d)(A)(ii) of the CAA and therefore cannot stand as a final rule, there is no reason to exhaustingly revisit the analyses in the context of ACE.

Clearly EPA has demonstrated that market-based mechanisms have a place in meeting standards and providing cost effective compliance flexibility. EPA has approved state implementation plans that avail themselves of market-based mechanisms to assure compliance with ambient air quality standards. EPA has instituted market-based programs to significantly reduce emissions of nitrogen oxides, sulfur oxides and particulate matter (e.g. the Acid Rain Program, the NO_x Budget Rule, Clean Air Interstate Rule (CAIR), Cross State Air Pollution Rule (CSAPR), and the CSAPR update). With respect to reducing emissions of carbon dioxide, RGGI and the Western Climate Initiative (WCI) have demonstrated the efficacy of market-based trading programs. The text of Section 111(d) of the Act does not expressly or implicitly preclude the use of a market-based mechanism such as emissions averaging or trading.

As a general rule, market-based mechanisms such as site wide or fleet wide averaging and/or allowance trading should only be allowed if the mechanisms result in an environmental benefit (i.e. the flexibility results in greater emissions reductions than would be possible if the individual units met the standard). New unit and new capacity could participate in the averaging or trading scheme to the extent that the new capacity outperforms any applicable new source standard of performance. The principles that should be applied to any averaging or trading scheme are detailed in the EPA's *Improving Air Quality Programs with Economic Incentive Programs*, Appendix S to 40 CFR 51, and the technical support documents underpinning the Acid Rain Program, the NO_x Budget Rule, CAIR, CSAPR, the CSAPR Updates and the proposed federal plans to implement the CPP.

Response to Comment Solicitations C-43 through C-50: Proposed New Implementing Regulations for Section 111(d) Emission Guidelines

EPA is proposing to adopt new 40 CFR Part 60, Subpart Ba as a substitute for existing Subpart B for submissions under the proposal and for concurrent or subsequent submissions. EPA notes that existing Subpart B is old (adopted in 1975) and so fails to account for CAA Sections 110 and 111(d) as currently promulgated. While true, new Subpart Ba is unnecessary except for EPA's failure to designate a level of emission rate, standard of performance, CO₂ emission reduction goal or any other environmental result in the proposal. EPA's failure makes the list in 40 CFR 60.5740a necessary. Proposed Subpart Ba essentially requires each state to make a case-by-case demonstration for every applicable unit in the state of how the state assigned a CO₂ standard of performance (lb CO₂/MWh-gross). Had EPA made a more complete proposal that more closely aligned with the environmental result the proposal is meant to achieve, Subpart B would be adequate.

EPA further proposes that state plans be submitted electronically. Electronic submissions are appropriate given EPA's efforts to create and make available an online document submission and filing system (State Planning Electronic Collaboration System or SPeC). However, consistent with the implementing regulations for State Implementation Plans, electronic submissions should not be the only acceptable method of submitting a state plan. The regulations should continue to allow for either electronic or paper submission. The CPP already allows for multiple submission options, and EPA has worked with states to develop the SPeC system to facilitate state plan submissions. As such, the CPP should be implemented rather than ACE.

Response to Comment Solicitations C-48, C-52 through C-55: Proposed New Implementing Regulations for Section 111(d) Emission Guidelines, Updates to Timing Requirements

None of the proposed extensions of time for states or for EPA are necessary. In the majority of the cases, the complexity of the task is not such that it requires additional time given appropriate planning and attention. Furthermore, it is often said – and truly so in government agencies – that work will expand to fill the time allotted. So, once this additional time is allowed, it will be used. And, undoubtedly, it will not be enough. Do not extend the timelines for this proposal or for prospective or ongoing emission guidelines.

Response to Comment Solicitations C-56 through C-58: Proposed new implementing regulations for Section 111(d) emission guidelines – standard of performance and variance

The combination of the new definition of “standard of performance” and variance provisions (e.g., proposed 40 CFR 60.24a(e) and (f)) make the emissions guidelines process for ACE much like that of the “reasonably available control technology” (RACT) emissions limits required under CAA Section 184. While RACT emission standards for major sources of NO_x and VOC have created pollutant reductions, the RACT program has done so with considerable administrative effort by states, sources and EPA regional offices and with considerable variation from state to state, region to region and unit to unit in the stringency of the resulting standards. As in the case-by-case RACT provisions, EPA's variance provisions in ACE will allow many older, less efficient emission units to continue to operate at a higher emission rate because of the cost of control or the age of the unit. The continued operation of such units will undermine the CO₂ emissions reductions and efficiency improvements that may be achieved. Consequently ACE fails at its intended mission and should be abandoned for the CPP.

Responses to Comment Solicitations C-59 through C-70: regarding proposed changes to the NSR applicability triggers under the ACE Rule.

The proposal to allow NSR applicability tests other than those codified in 40 CFR 51.165, 40 CFR 52, and in state implementation plans approved in accordance with Section 110 of the CAA is wholly inappropriate in this action under Section 111 of the CAA. The entire proposal to amend the NSR applicability triggers should be abandoned. First, EPA cannot legally amend the NSR triggers through this action because it would lead to violations of the CAA. Second, EPA should address NSR reform as a package of reforms that fully comply with Parts C and D of the CAA. The ACE rule is not the venue to pursue these changes. The proposed applicability tests are 1.) inconsistent with the CAA; 2.) unnecessary because 40 CFR 51.165 and 40 CFR 52 adequately address the matter in the Actual-to-Projected Future Actual test that applies to the definition of a major modification, and 3.) potentially detrimental to human health and the environment because the Administrator failed to assess the impacts that such changes would have on existing non-attainment areas and prevention of significant deterioration requirements.

The CAA specifies when a source is subject to permitting based on its annual emissions (i.e. tons per year). For example, the definition of a “major stationary source” is based on the annual emissions of regulated NSR pollutants from the facility. Pursuant to Parts C and D of the CAA, a state’s implementation plan must have preconstruction requirements and/or offsetting emissions requirements for new major stationary sources constructed in the state. Similarly, the “de minimis” rule under Section 182 of the act requires a major emitting facility to apply for and obtain a permit if emissions of ozone precursors in an ozone non-attainment area increase by a certain ton per year amount over the course of a specified number of years. Sections 40 CFR 51 and 40 CFR 52 clearly define a “major stationary source” and a “major modification” in terms of tons of emissions per year. Changing the tests applicable to NSR will create inconsistencies with the CAA and existing federal regulations. EPA cannot legally offer states the discretion to violate the CAA.

Additionally, the proposed changes to the NSR applicability triggers are unnecessary. The Administrator has already built sufficient flexibility into the definition of major modification to allow for the HRI proposed under ACE. The Actual-to-Projected-Future-Actuals test, derived from the WEPCO Decision and based primarily on the experiences of electricity generating facilities, provides all the flexibility that is needed to allow for HRI at any ACE affected facilities without the need to apply for NSR permits. In fact, EPA has recently issued guidance that it will take the facilities calculated projected actuals on faith, and that it will pursue significant net increases retrospectively. This flexibility applies to states where EPA administers the air permitting program or where the state has been delegated authority to implement EPA’s air permitting program. States with SIP-approved air permitting programs that are more stringent than EPA’s program are welcome to submit a SIP revision to bring their programs in line with EPA’s. The proposal to change NSR applicability thresholds as part of the ACE rule is a misguided attempt to solve a problem that does not exist.

Finally, the proposed changes to the NSR applicability triggers endanger public health and the environment. As shown by EPA’s analyses, the ACE rule will result in increases in annual emissions of NO₂, CO₂ and PM_{2.5} in some states. Consequently, these emissions increases will lead to increased ambient concentrations of these

pollutants. The National Ambient Air Quality Standards for NO₂ and PM_{2.5} are annual standards and compliance with the standards could be jeopardized in those states where emissions are increasing. Furthermore, NO₂ is a precursor to ozone. Ozone and PM_{2.5} are pollutants that are transported on prevailing winds away from sources and can adversely impact air quality in neighboring states. The primary purpose of the NSR program is to achieve and maintain compliance with ambient air quality standards. The Administrator's proposal to modify the NSR applicability triggers as part of the ACE rule without showing that ambient air quality standards will be adequately protected demonstrates a flagrant disregard for Section 110 and Parts C and D of the Clean Air Act.