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U. S. EPA Docket Center (EPA/DC)
U.S. Environmental Protection Agency
Mail Code: 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attn: DOCKET ID No. EPA-HQ-OAR-2017-0355

**Re: Proposed Rule
Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility
Generating Units: Revisions to Emission Guideline Implementing regulations;
Revisions to New Source Review Program, 83 Fed. Reg. 44746 (July 31, 2018)**

Dear Acting Administrator Wheeler and Staff:

In response to the above-referenced docket, American Municipal Power, Inc. (AMP) and the Ohio Municipal Electric Association (OMEA) hereby provide the following comments for the record. AMP supports U.S. EPA's (EPA) efforts to regulate greenhouse gas (GHG) emissions within the confines of the agency's existing authorities.

Background on AMP/OMEA

AMP is a non-profit wholesale power supplier and service provider for 135 members, including 134-member municipal electric systems in the states of Ohio, Pennsylvania, Michigan, Virginia, Kentucky, West Virginia, Indiana, and Maryland and the Delaware Municipal Electric Corporation, a joint action agency with nine members headquartered in Smyrna, Delaware. AMP's members collectively serve more than 650,000 residential, commercial, and industrial customers and have a system peak of more than 3,400 megawatts (MW). AMP's core mission is to be public power's leader in wholesale energy supply and value-added member services. AMP offers its members the benefits of scale and expertise in providing and managing energy services.

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MARYLAND BERLIN **MICHIGAN** CLINTON • COLDWATER • HILLSDALE • MARSHALL • UNION CITY • WYANDOTTE **OHIO** AMHERST • ARCADIA • ARCANUM • BEACH CITY • BLANCHESTER
BLOOMDALE • BOWLING GREEN • BRADNER • BREWSTER • BRYAN • CAREY • CELINA • CLEVELAND • CLYDE • COLUMBIANA • COLUMBUS • CUSTAR • CUYAHOGA FALLS • CYGNET • DELTA
DESHLER • DOVER • EDGERTON • ELDORADO • ELMORE • CALION • CENOA • CFORGETTOWN • CLOUSTER • CRAFTON • GREENWICH • HAMILTON • HASKINS • HOLIDAY CITY • HUBBARD
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NEW BREMEN • NEW KNOXVILLE • NEWTON FALLS • NILES • OAK HARBOR • OBERLIN • OHIO CITY • ORRVILLE • PAINESVILLE • PEMBERVILLE • PIONEER • PIQUA • PLYMOUTH • PROSPECT
REPUBLIC • SEVILLE • SHELBY • SUILOH • SOUTH VIENNA • ST. CLAIRSVILLE • ST. MARYS • SYCAMORE • TIPP CITY • TOLEDO • TONTOGANY • VERSAILLES • WADSWORTH • WAPAKONETA
WAYNESFIELD • WELLINGTON • WESTERVILLE • WILARTON • WOODSFIELD • WOODVILLE • YELLOW SPRINGS **PENNSYLVANIA** BERLIN • BLAKELY • CATAWISSA • DUNCANNON
EAST CONEMAUGH • FILWOOD CITY • EPHRAATA • GHARD • GOLDSBORO • GROVE CITY • HATFIELD • HOOVERSVILLE • KUTZTOWN • LANSDALE • LEHIGHTON • LEWISBERRY • MIFFLINBURG
NEW WILMINGTON • PERKASIE • QUAKERTOWN • ROYALTON • SAINT CLAIR • SCHUYLKILL HAVEN • SMEITHPORT • SUMMERHILL • WAMPUM • WATSONTOWN • WEATHERLY • ZELIENOPLE
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AMP's diverse energy portfolio makes the organization a progressive leader in the deployment and procurement of renewable and advanced power assets that include a variety of base load, intermediate and distributed peaking generation using hydropower, wind, landfill gas, solar and fossil fuels, as well as a robust energy efficiency program. AMP has actively worked over the past decade to diversify our power supply portfolio, to the point that our owned and managed assets, and contracted power were approximately 21% renewable in 2017. Our fossil fuel assets currently include a 368 MW ownership share of the 1,600 MW coal-fired Prairie State Generating Co. (PSGC) located in Lively Grove, Illinois, as well as the 707 MW (fired) natural gas combined cycle AMP Fremont Energy Center in Fremont, Ohio. Most of AMP's members are in the PJM Interconnection, LLC regional transmission organization (RTO) footprint, while some members are located within the Midcontinent Independent System Operator, Inc. (MISO) footprint. The OMEA represents the Ohio and federal legislative interests of AMP and member Ohio municipal electric systems. Subsequent "AMP" references herein also represent the interests and comments of OMEA.

Because of AMP's structure as a non-profit wholesale power provider, we closely follow regulatory initiatives that have the potential to impact the costs and reliability of our members' energy and capacity supply. To that end, AMP's past public comments related to the Clean Power Plan (CPP) reflected expected impacts of that standard on AMP and member generating assets, as well as to other generators in the region from which AMP members might acquire varying portions of their power supply through wholesale market purchases. Because of the multi-state nature of AMP's membership and power supply portfolio, along with the various types of electricity markets within which we operate, the proposed Affordable Clean Energy (ACE) rulemaking, as this action is commonly referred to, has real impacts on not only our member communities but their residential, commercial, and industrial customers.

Statutory Authority and Determination Process

AMP concurs with the reasoning and conclusion that EPA possesses the statutory authority for the approach taken in this rulemaking. We support the Agency returning to the historical interpretation of Section 111 of the Clean Air Act (CAA), and providing necessary time and flexibility for the states, including avoidance of "presumptive" standards of performance. AMP agrees with EPA that states bear the responsibility of determining achievable standards through application of the Best System of Emission Reduction (BSER). The ACE rule recognizes that EPA's authority is limited to establishing BSER based on emission reductions employed within the fence line of a subject source. This precludes the use of CPP concepts such as generation shifting and redefining a source, which exceeded EPA's authority under the CAA. AMP supports EPA's cognizance of the limits of its authority to providing a programmatic framework and information to the states, which then have the authority to establish enforceable performance standards on a categorical or unit-specific basis.

BSER for supercritical pulverized coal EGUs

We support the comments of PSGC asking that EPA recognize the inherent efficiencies of supercritical pulverized coal EGUs. We agree that the best approach to establishing BSER under this rule is through subcategorization of supercritical pulverized coal EGUs or establishment of a categorical exclusion from being an "affected EGU" in 40 CFR 60.5780a. As

EPA correctly recognized “[...] BSER [...] should be based on the performance of a well operated and maintained EGU using the most efficient generation technology available, which we have concluded is a supercritical pulverized coal (SCPC) or supercritical circulating fluidized bed (CFB) boiler for large units, and subcritical for small units.” Since such units meet BSER for reconstructed units under the Section 111(b) standard, AMP recommends that no further heat rate improvement (HRI) measures are necessary under the ACE Rule.

Emissions Averaging

The ACE proposal makes clear that emissions averaging between affected units within a single facility will be allowed but averaging emissions between facilities or among categories of sources is not within EPA’s interpretation of the law. This presents an immediate and practical issue for entities that have already taken steps to reduce GHG emissions through other means. Under this rulemaking, states could not use compliance with a program such as the Regional Greenhouse Gas Initiative (RGGI) or emissions averaging beyond the applicable sources as independent method(s) to achieve compliance.

Affected sources under the proposed ACE rule are required to implement BSER, which is dependent on the cost and availability of the candidate HRI technology under consideration. AMP is in favor of appropriately structured market-driven emissions averaging programs as a means to comply with state emission standards; we believe that the implementation of BSER at the source level and the availability of emissions averaging programs at the state level are not mutually exclusive. Requiring assessment and implementation of HRIs in accordance with the proposed ACE rule while at the same time reserving to the states their role as the lead agency under Section 111(d), which includes the flexibility to establish emission standards and compliance programs, are not incompatible approaches. While state authority is not unbounded, certainly reading a prohibition on emissions averaging programs into the statute where none currently exists is an unwarranted and unnecessary exercise. AMP requests that EPA remain silent on this issue respecting the boundary between state and federal responsibility in Section 111(d).

AMP supports the inclusion of an emissions averaging system that is structured fairly and without regard to political differences among the states. EPA clearly understands the current trend in the electrical generation sector: that natural gas-fired plants are cost competitive with coal-fired plants, and renewable energy incentives at the federal and state level (along with significant investments in renewable generation) are significantly impacting the mix of generation. Further, EPA has recognized “*that there are significant benefits of averaging [...] across affected sources [...]*” (see 83 FR 44768). Market-based programs are among the most successful and effective EPA programs at achieving cost-effective emissions reductions. Given this backdrop, a market-driven system allowing emissions averaging at the state, regional, or national level strikes an appropriate balance between EPA’s stated regulatory goals and market forces.

There are already successful models of emissions averaging schemes in place that could be employed to economically reduce emissions and which have established verification and enforceability mechanisms. The generation of credits or allocations that can be used in such a scheme should not be limited to single sites or just GHG emissions generated from fossil fuel combustion. Despite the differing legal interpretations between the CPP and ACE, the goal of

both remains to reduce emission of GHG from applicable sources. In pursuing such a goal, EPA should embrace any method that serves to further this nationwide effort, including investments in hydropower, wind and solar generation. AMP has made multi-billion dollar investments in such renewable assets, and we firmly believe they have an important role to play in deferring GHG emissions. Many of these zero-emission projects involve significant cost and development time with lifespans of up to 80 years. States should be afforded discretion to include such benefits in their 111(d) plans without restrictions from EPA preventing full recognition and/or credit of these long-term zero-carbon projects.

Understanding that EPA relied on the holding in *State of New York v. EPA*, 413 F.3d 3 (D.C. Cir. 2005) in developing portions of the ACE rule, we encourage EPA to review and consider the closing statement of the Court in that opinion:

“On a broader note, this case illustrates some of the painful consequences of reliance on command-and-control regulation in a world where emission control is typically far more expensive, per unit of pollution, when accomplished by retrofitting old plants than by including state-of-the-art control technology in new ones. In the interests of reasonable thrift, such regulation inevitably imposes more demanding standards on the new. But that provides an incentive for firms to string out the life of old plants. Indefinite plant life is impossible without modifications, however, so the statute conditions modifications on the firm's use of technological improvements. This in turn replicates the original dilemma: a broad concept of modification extends both the scope of the mandate for improved technology and the incentive to keep the old. By contrast, emissions charges or marketable pollution entitlements provide incentives for firms to use-at any and every plant-all pollution control methods that cost less per unit than the emissions charge or the market price of an entitlement, as the case may be.”

New Source Review (NSR)

As AMP expressed in our comments on the CPP rulemaking, any CAA Section 111(d) rulemaking impacting electric utility generating units must include NSR exemption provisions to accommodate improvements and modifications at a unit that are implemented solely for purposes of compliance with the Section 111(d) rules. Mandating BSER efficiency upgrades that trigger a “major NSR modification” runs counter to the purpose and intent of the ACE rule. AMP supports EPA’s proposal to revise the NSR rules for electric generating units, and encourages the Agency to consider expanding applicability of these NSR reform rules to generating facilities not currently subject to Section 111(d) rule requirements.

Currently, determining whether a change or an upgrade at a facility constitutes a major modification under NSR is dictated by whether that physical change or change in the method of operation (PCCMO) results in a significant net emissions increase. The NSR program as it stands today measures this emissions increase on an annual basis. While efficiency upgrades allow a plant to run more efficiently, they may also allow the plant to be dispatched more frequently – the “rebound effect”. Consequently, an evaluation that employs an annual test may find a major modification has occurred, even when there is no change in the emissions rate of a particular pollutant on an hourly basis. Increased dispatch of more efficient, cost effective generation may potentially increase annual emissions, which in turn triggers NSR requirements and evaluation of BACT.

AMP supports the proposed change in the NSR rules with sources first evaluating emissions increases on an hourly basis, and any hourly increase resulting in further evaluation on an annual basis. We understand that EPA has tried to create narrow, tailored exemptions to NSR triggers in the past with limited success when attempting to distinguish classes of physical changes. We agree that, given the discretion typically afforded EPA when interpreting the CAA and the known ambiguity with respect to the determination of time periods associated with emissions increases, this approach appears legally sound and legally justified. We are concerned that the unavoidable judicial review of this rule exposes it to the potential to be reversed. As such, AMP recommends that any NSR reform provisions be structured such that they are severable from the broader ACE rule.

State plan considerations

The flexibility afforded to states as they develop their plans, along with the extended deadlines for plan development, make the ACE proposal a more realistic and pragmatic rule than the CPP. While the CPP raced to a 19-month deadline for implementation, ACE affords states three years to submit state plans and provides EPA an additional year to act on the plans. Given the history of SIP actions, and the fact that regulation of existing fossil-fuel fired GHG emission sources is still a relatively new concept, this will afford both states and regulated entities time to develop substantive, comprehensive plans and avoid rushing into ill-designed programs that open the door for litigation and non-compliance. Further, this additional window will give states more time to not only coordinate with EPA on approvable plans, but also with other states should the need arise. AMP supports these changes in the state plan development, timing, and approval requirements.

EPA should provide guidelines on emission standard averaging time while reserving to the states the flexibility to establish site- or category-specific emission standards in their plans. We are concerned that inconsistency in establishing emission standard averaging times will lead to a patchwork of state regulatory standards with varying degrees of stringency. Specifically, AMP is in favor of establishing emission standards that include sufficient averaging time to dampen out short-term variability. EPA clearly understands that this variability exists, having accounted for it in prior Section 111(b) rules. While AMP does not support additional regulatory requirements to address this concern, we do encourage the agency to provide some guidelines on what it would consider reasonable averaging times when evaluating state plans for approval.

AMP encourages EPA to consider a minor change to the variance provision required in state plan requirements. The current variance provisions in 40 CFR 60.24(f) are mirrored in the proposed ACE rule at 40 CFR 60.24a(e), and we encourage EPA to retain them. AMP proposes one minor change to 40 CFR 60.24a(e)(3) as follows:

~~“(3) Other factors specific to the facility (or class of facilities) that make the application of a less stringent standard of final compliance time significantly more reasonable.”~~

The requested change preserves state discretion when developing plans and emission standards. This is not an unbounded discretion: states must provide reasonable justification for policy choices memorialized in their state plans, which in turn are reviewed by EPA. This requested change is in keeping with the clearly delineated state and federal roles in Section

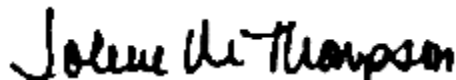
111(d) of the CAA, which requires that “[r]egulations of the Administrator [...] shall permit the State [...] to take into consideration, among other factors, the remaining useful life of the existing source [...] .” The proposed ACE rule should recognize this directive, and provide a flexible, common-sense regulatory framework to the states.

State plan requirements

We are concerned that EPA is requiring states to include information in their ACE rule compliance plan that is under the purview of the Department of Energy (DOE) rather than EPA. For example, 40 CFR 60.5740a(a)(4) includes requirements to include such information as fuel prices, fixed and variable operations and maintenance costs, and all wholesale electricity prices. It is not clear why such information is necessary or even useful to EPA when DOE maintains a wealth of publically available information with respect to fuel types, capacity factors, and electricity prices on its public website. In addition, much of the data requested varies over time, and as a result represents nothing more than a snapshot in time. Given the rapid pace of changes in the electric generation sector, it is unclear what EPA intends to do with data that will be out of date almost immediately. Further, owners and operators of generating facilities consider most pricing and operational cost data proprietary, and the proposal does not clearly provide necessary protections for sensitive submittals nor justification for why such data is necessary. AMP recommends limiting data requests in any applicable state plan to that information necessary to demonstrate the state has adequately evaluated BSER and established emission standards under Section 111(d).

We thank EPA for this opportunity to provide input to the agency on these important matters. Please let us know if you need any additional information.

Respectfully Submitted,



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