

Georgia Department of Natural Resources

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U.S. Environmental Protection Agency

EPA Docket Center (EPA/DC)

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1200 Pennsylvania Ave. NW.

Washington, DC 20460

Subject: Attention Docket ID No. EPA-HQ-OAR-2015- 0199, Georgia EPD's Comments on the Proposed Clean Power Plan (CPP) Federal Plan and Model Trading Rules

Dear Docket Coordinator:

The Georgia Environmental Protection Division (EPD) appreciates the opportunity to provide the following comments on the U.S. Environmental Protection Agency's (EPA) Proposed Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014 and Proposed Model Trading Rules for a rate-based approach (under 40 CFR 62 Subpart NNN) and a mass-based approach (under 40 CFR 62 Subpart MMM). The proposal was published in the *Federal Register* on October 23, 2015 (80 Federal Register (FR) 64965) with a request that comments be received by EPA on or before January 21, 2016.

Executive summary

Georgia Environmental Protection Division (EPD) recommends that EPA: (i) finalize both rate-based and mass-based options in the Federal Plan and Model Rules, (ii) provide a timeline for Clean Energy Incentive Program (CEIP) implementation and allow the early submittal of Energy Efficiency (EE) and Renewable Energy (RE) project applications that could qualify for CEIP matching credits, (iii) establish broad categories of biomass that are eligible for emission rate credits (ERCs), (iv) confirm that mass-based states can trade biomass ERCs and nuclear ERCs with rate-based states, (v) add flexibility to Evaluation, Measurement and Verification (EM&V) and Monitoring, Recordkeeping, and Reporting (MRR) to reduce the cost of compliance, and (vi) clarify who would be responsible for issuing and tracking ERCs and how those services would be funded.

Comments related to including both mass-based and rate-based options in the federal plan and model trading rules.

1. EPA should finalize both mass-based and rate-based approaches instead of a single approach for a Federal Plan to give states more flexibility if they fail to submit an approvable state plan.

The preamble section I.A. (Page 64968 – Executive Summary) of the proposal states that:

“The EPA currently intends to finalize a single approach (i.e., either the mass-based or rate based approach) for every state in which it promulgates a federal plan, given the benefits of a broad trading program, as discussed in section I.B of this preamble. We [the EPA] invite comment on which approach, i.e., either mass-based or rate-based trading, should be selected if we opt to finalize a single approach.”

The selection of a state plan approach and more specifically a state’s decision to adopt a mass-based or a rate-based approach depends on a variety of factors that may include stakeholder feedback, results from economic modeling, or even decisions taken by other states in the country. Most states do not have sufficient data to decide on a plan approach at this time. Leaving the option open for states to choose a federal plan that is either rate-based or mass-based is important for states that are not able to submit an approvable plan by the September 2018 deadline.

Georgia EPD recommends finalizing two federal plan options, one rate-based and one mass-based and allowing individual states the flexibility to choose the federal plan that works best for their state.

2. EPA should finalize both mass-based and rate-based model trading rules that states can choose to adopt as an approvable state plan.

Although the preamble section I.A. (Page 64968 – Executive Summary) of the proposal states that the “EPA intends to finalize both the rate-based and mass-based model trading rules in summer 2016”, a later section of the preamble section I.B. (Page 64970 – Organization and Approach for This Proposed Rule) states that:

“..., in order to support states’ consideration of adoption of one of the model trading rules as an approvable state plan, the agency intends to finalize either or both model rule options presented in this proposed rule...”

As stated in Comment 1. above, leaving the option for states to choose a model trading rule that is either rate-based or mass-based based on the specific circumstances of each state is important.

Georgia EPD recommends that EPA finalize both a mass-based model trading rule (under 40 CFR 62 Subpart MMM) and a rate-based model trading rule (under 40 CFR 62 Subpart NNN), so that states can choose to adopt either as an approvable state plan.

Comments related to CEIP Timeline and Early Approval of CEIP projects.

3. EPA should include a Clean Energy Incentive Program (CEIP) implementation timeline as additional guidance

Georgia EPD respectfully requests that EPA develop a CEIP implementation timeline that includes the following key milestones:

- a. State submits final CPP plan
 - b. EPA approves final CPP plan
 - c. State accepts applications for eligible projects
 - d. State approves projects
 - e. EPA awards state proportion of credits (ERCs or allowances)
 - f. Projects are completed/constructed
 - g. Energy is generated/saved
 - h. EM&V verification by third party
 - i. True-up of credits issued
4. EPA should allow early review and conditional approval of RE and EE projects under CEIP and change definition language of RE eligible projects to include projects that "commenced operation" instead of "commenced construction" after the specified date.

The proposed federal plan on the bottom of page 65062 [40 CFR 62.16231(a)(2)] and the proposed rate-based model rule both state that for the CEIP:

"Eligible RE projects must commence construction, and eligible demand-side EE projects must commence implementation after September 6, 2018 for those states on whose behalf the EPA is implementing the federal plan."

The preamble section III.A.3 (Page 64978 – Provisions to Encourage Early Action) also states that for CEIP:

"These RE projects must commence construction, and these EE projects must commence implementation after the date of submission of a final plan to the EPA by the state they are located on or benefitting, or after September 6, 2018, for those states on whose behalf the

EPA is implementing the federal plan, and will receive incentives for the MWh they generate or the end-use energy demand reductions they achieve during 2020 and/or 2021.”

Large RE projects, especially utility-scale projects take a long time to build, so only allowing RE projects that commenced construction after the date of submission of a final plan to EPA, or after September 6, 2018, could limit the inclusion of projects that began construction earlier but commenced operation after the plan submittal, or after September 6, 2018. This in turn will limit a state’s ability to take full advantage of the 2-year CEIP compliance window (2020-2021) and may discourage early action.

Georgia EPD recommends changing the language from “commenced construction” to “commenced operation” to allow the inclusion of more RE projects that would qualify for CEIP matching credits or allowances.

Georgia EPD also recommends that EPA allow states to receive project applications prior to the submittal of a final state plan to EPA. This will allow states sufficient time to review the project proposals and grant conditional approval for those projects.

These recommendations will spur the early action intended in the CEIP. Companies will be able to start their planning process earlier, so that they can procure the contracts and permits they need to move forward with their RE and EE projects in time for the start of the CEIP compliance window in 2020.

Comments related to ERC eligibility

5. EPA should include a broad range of pre-approved biomass categories eligible for ERCs

The proposed rate-based model rule includes “Qualified Biomass” as an eligible resource to earn ERCs. EPA includes a proposed approach to defining qualified biomass by compiling a list of pre-approved biomass fuels. EPA also proposes a mechanism for adding additional categories to the pre-approved list.

Georgia EPD agrees that qualified biomass should be included as an eligible resource and supports the approach of having pre-approved categories of fuels. In general, biomass materials used to generate electricity would displace fossil fuel and avoid carbon emissions associated with biodegradation of the materials that would otherwise occur. If the approved categories are too narrow, it would unnecessarily complicate recordkeeping and emission credit calculations for EGUs that would normally consume biomass from a range of sources. An overly complex methodology for quantifying the benefit of using a specific biomass fuel would be a disincentive for utilization of this resource.

Georgia EPD encourages EPA to be as inclusive as possible in identifying biomass materials for the pre-approved list and to have a straightforward process for amending the list.

6. Verification that biomass and under-construction nuclear generation are included in the list of ERC-eligible generating resources located in a mass-based state.

The proposed rule 40 CFR 62.16435(a)(4) defines the categories of eligible resources other than affected EGUs that can qualify for the issuance of ERCs. Paragraph (a)(3) allows such resources located in a state with a mass-based plan to be awarded ERCs as long as the resource can demonstrate that its power is delivered to a state whose affected EGUs are regulated under a rate-based plan.

However, 40 CFR 60.5800(a)(3)(2) of the final rule 40 CFR 60 Subpart UUUU restricts the categories of ERC-eligible resources in a mass-based state to a much smaller subset of the categories listed in the model rule (40 CFR 62.16435). Georgia EPD believes that 40 CFR 62.16435 should take precedence. That is, the more inclusive list of resources located in mass-based states should be eligible for issuance of ERCs.

This will give generating resources such as biomass and under-construction nuclear, both of which are located in Georgia, the flexibility to participate in CPP-related credit markets regardless of the plan approach chosen by their state of residence.

Comments related to EM&V and EE

7. Scope of review performed by an “independent verifier”

The proposed rule, 40 CFR 62.16465, makes it clear that an “independent verifier” is required to approve EM&V reports. The EPA should allow the Administrator flexibility in relation to the review and approval of energy service company (ESCO) projects.

Depending on how the ESCO contract is set up, the value of the ERCs may go to either the project owner or the ESCO. In performance contracting, the ESCO typically performs the EM&V and submits the report to the owner for approval. If both parties agree to the report, the EPA should consider the relaxation of independent verifier review requirements in order to keep costs low enough to encourage the voluntary participation of ESCO projects. A full independent verifier review of the report could be very costly and discourage participation. If an independent verifier determines that site visits are needed, the costs will increase even more.

8. Remove certification requirements of an EE installer

The EPA should not include a requirement that EE installers need to be certified in order for the work to be approvable for ERCs.

The proposed rule, pages 65008 (section IV.D.8) states that while skills certification is “not an aspect needed for presumptive approvability, states are encouraged to include in their plan a description of how states will ensure that workers installing demand side EE and RE projects...will be certified by a third party entity.” It is important that the EPA does not decide to make this a requirement for EE. EE includes such a wide range of measures that requiring skills certification for some simple measures does not make sense and will only add to the administrative and cost burden of states. The focus should be on the EM&V plans and reports, not on certifying installers on the front end.

9. Common Practice Baseline in the Draft EM&V Guidance

The EPA discusses the concept of the Common Practice Baseline (CPB) in the Draft EM&V Guidance, section 2.2. The EPA should provide more guidance on calculating the CPB and how it would apply to programs such as performance contracting and weatherization.

The CPB is more easily understandable when it comes to utility funded DSM programs, building codes, and appliance standards. But it is not easily understandable for how it relates to performance contracting and weatherization. For instance, in a performance contracting program, it isn't necessary to replace a 30-year-old piece of equipment with the highest efficiency piece of equipment currently on the market in order to achieve major savings. The same thing can be said for weatherization programs. Therefore, even by installing the base level measures, significant savings is realized. In this case, the baseline should be the efficiency level of the old equipment/measures and the ERCs should be based off of that full savings. Depending on how a CPB is determined in a performance contracting scenario, it could limit the amount of performance contracting and weatherization that qualifies for ERCs because a base level of projects is already taking place regardless of any program incentives or the value of the ERCs.

CPB guidelines should not be so stringent that they significantly limit the generation of ERCs in a state and as a result discourage additional EE.

10. Flexibility of EM&V types and ease of implementation

The EPA should maintain its plan to allow for a range of EM&V types and should ensure that the reporting timelines, presented in the proposed rule, page 65006 (section IV.D.8), are no more stringent than what is being proposed.

The EPA generally seemed to listen to states and proposed allowing for a range of industry standard EM&V methodologies, including IPMVP, FEMP, and ASHRAE. This is very important to maintain in final guidance and the final federal rule. EPA should also allow for further expansion of deemed and comparison group methods. These methods can offer states increased

flexibility. The reporting timelines proposed in the federal rule and draft EM&V guidance are sufficient. More frequent reporting would be unnecessarily burdensome.

11. Ease implementation of low-income weatherization program

The Draft EM&V Guidance, Appendix C (page C-3), discusses EM&V options for low-income weatherization programs. It is important that the EPA give wide latitude to states on low-income EM&V due to the unique and sensitive nature of the program.

Many state low-income weatherization programs use a DOE-provided average number for calculating per home savings in the program. This approach would minimize the burden on states, community action agencies, and low-income residents. Low-income weatherization includes a wide range of measures that can be installed in a home, depending on the specific needs of the home. It is difficult to gain access back into a home once it has been weatherized. Due to the nature of the vulnerable populations, including elderly, many program participants are not receptive to having more people come through their home after the measures are installed. States utilizing DOE funding already perform site inspections on a small sample of homes to ensure proper installation of measures and follow-up with residents to ensure their satisfaction with the work. EPA should ensure that states can continue to operate their programs in a similar manner and allow for EM&V that does not add additional significant burdens.

Comments related to Monitoring, Recordkeeping, and Reporting (MRR)

12. Allowing substitute data recorded in accordance with part 75 in the rate-based model rule.

The requirements are found in §62.16540(a)(2)(i) and (ii) prohibit the use of substitute data even when valid data is not available from the continuous monitoring system. The language is as follows:

“(a)(2) Each compliance period shall include only “valid operating hours” in the compliance period, i.e., operating hours for which:

- (i) “Valid data” (as defined in §62.16570) are obtained for all of the parameters used to determine the hourly CO₂ mass emissions (lbs). For the purposes of this subpart, substitute data recorded under part 75 of this chapter are not considered to be valid data; and
- (ii) The corresponding hourly net energy output value is also valid data (Note: for hours with no useful output, zero is considered to be a valid value).”

The phrase “are not considered to be valid data” is inconsistent with the corresponding section of the proposed mass-based model trading rule, §62.16345(a)(1), where substitute data values

recorded under part 75 must be used. EPA should revise §62.16540(a)(2) to be consistent with §62.16345(a)(1).

13. Defining the term “natural persons”.

The term “natural persons” is included in the proposed model rules under 40 CFR 62 Subparts MMM and NNN in the following sentence:

“An authorized account representative of a general account may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.” [Page 65080 §62.16320(c)(5)(i) for Mass-Based Model Rule and Page 65105 §62.16515(c)(5)(i) for Rate-Based Model Rule]

“Natural persons” is not defined. Is a natural person only a living human being, or could it be an automated system with little or no human interface? Can a natural person be an employee or a contractor?

Georgia EPD recommends adding a definition of “natural persons” in §62.16375 and §62.16570.

14. Timeframe to notify Administrator of a change in email account information

There is no timeframe for notifying the Administrator when the email address of an account holder changes. The proposed rules suggest notifying the Administrator “immediately”. The language is as follows:

“Until this notice of delegation is superseded by another notice of delegation under (...) I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under (...) is terminated.” [Page 65105 §62.16320(c)(5)(iii)(E) for Mass-Based Model Rule and Page 65105 §62.16515(c)(5)(i) for Rate-Based Model Rule]

Leaving the term “immediately” undefined could lead to excessive or inconsistent enforcement practices.

Georgia EPD recommends specifying a time frame, such as 10 business days, that requires authorized account representatives to change or update email addresses within 10 business days.

15. Removal of deduction for ERCs or Allowances equal to two times the facility’s excess CO₂ emissions.

The requirement for the Administrator to deduct CO₂ allowances equal to two times a facility's excess CO₂ emissions is included in §62.16340(d). The language is as follows:

“(d) Deductions for excess emissions. After making the deductions for compliance under paragraph (b) of this section for a compliance period in a year in which the facility has excess emissions, the Administrator will deduct from the facility's compliance account an amount of CO₂ allowances, allocated for a compliance period in a prior year or the compliance period in the year of the excess emissions or in the immediately following year, equal to two times the number of tons of the facility's excess emissions.”

The requirement for the Administrator to deduct ERCs equal to twice a facility's excess CO₂ emissions is included in §62.16535(e). The language is as follows:

“(d) Deductions for exceeding the emissions standard. After making the deductions for compliance under paragraph (b) of this section for a compliance period in a year in which the affected EGU has exceeded its CO₂ emission standard, the Administrator will deduct from the affected EGU's compliance account an amount of ERCs, allocated for a compliance period in a prior year or the compliance period in the year of the excess emissions or in the immediately following year, equal to two times the number of ERCs of the affected EGU's excess emissions.”

Excess emissions can occur for any number of reasons. Some will occur because of malfunctions and some for reasons beyond a facility's control, such as natural disasters, extreme cold and extreme heat. Shutting down a power plant to avoid excess emissions is not always feasible. Georgia EPD recommends eliminating this automatic deduction and relying on states' existing permit enforcement procedures.

Comments related to ERCs issuance and tracking and delineation of responsibilities between EPA, states, and third party verifiers

16. EPA should clarify responsibilities for the management of the ERC issuance and tracking process and funding for the administration of the tracking system. [40CFR 62.16445 and 62.16450]

Division of Responsibilities

In 40 CFR 62.16445 and 62.16450 and in the preamble Section IV.D (pages 64997-65000) there is a description of how ERCs would be tracked and managed. There are many components to this management system. For example on page 64999, EPA is “proposing that ERCs would be tracked in the Allowance Tracking and Compliance System (ATCS). Additionally, the EPA is proposing that the agency would establish a complementary tracking system for the ERC issuance process. This ERC issuance tracking system would provide transparent access to RE

project and program eligibility applications and regulatory approvals as well as information on the activities of accredited third party verifiers...” EPD requests clarification as to which “agency” will establish and maintain this ERC issuance tracking system.

In addition, the ERC system requires a number of tasks to be performed including identification of a designated representative, establishment of an account in EPA’s tracking system, receipt of an eligibility application by the agency, a review by the agency to assure that the application meets all of the requirements, submission and review of a Monitoring and Verification report, issuance of the ERCs to the account holder, logging of the ERCs into an EPA designated tracking system, identification and accreditation of third party verifiers, third party verification of projects and ERC generation, adjustments to ERCs to correct errors and possibly rescinding or withholding approval of specific credits. Some of these responsibilities fall on the entity applying for the ERCs, some fall to EPA and others fall to a state agency that adopt a model plan (or acceptable alternative). EPA also suggests in the preamble that EPA may use a designated agent to coordinate the project application and assist with project reviews.

It is unclear to Georgia EPD how these responsibilities are divided under an approved state plan. Who accredits the third party verifiers? Could a state have an approved plan but rely on EPA to manage the ERC application, review and issuance process (initially or permanently)? If a state is expected to manage this process or designate an agent to assist, which parts of this overall system will EPA provide? What are the limitations of responsibilities that EPA or a state can delegate to a “designated agent”? Could a state environmental agency use a state energy agency as a designated agent to manage the ERC process? It would be helpful if EPA would provide a process flow chart or table of the ERC management system indicating the division of responsibilities between the applicant/account holder, EPA and a state agency under either a Federal Plan or an approved state plan.

Clarity of definitions

EPD also requests clarity on the difference between an *EPA-administered tracking system* and an *EPA-designated tracking system*. The preamble on page 64977 (Chapter III Section A.1., Federal Plant Structure to Achieve Reductions, Overview-Interacting with State Plans and Scope of Trading) addresses eligible tracking systems. The language in question is noted below:

“The state plan must use an EPA-administered tracking system (we are also requesting comment on expanding this to include a state plan that uses an EPA-designated tracking system that is interoperable with an EPA-administered system. . . .”

Ownership of ERCs


The ownership of ERCs for certain projects could come into question. For example, the Department of Energy provides grants for a range of energy efficiency projects. These grants may be passed down to a state energy agency, which then provides grants to a municipality or county or other entity, which in turn hires a contractor to implement the EE measures. State energy offices may also provide funding for Energy Performance Contracts to other state agencies, such as a prison system. In these type cases, it is unclear which entity should be granted the ERCs. If EPA or a state receives two applications for the same project, how will the rightful recipient be determined? How is double counting of projects avoided if different entities apply for the credits for the same project but at different time periods? If the default, absent specific contract terms, is the entity funding the project, could the DOE or state energy office earn ERCs?

Funding Administrative Costs

As EPA is aware, most state air regulatory agencies operate on tight budgets and often struggle to adequately fund ongoing programs required by the Clean Air Act (CAA). It is unclear how the administrative cost of operating an ERC management system will be funded. Under the CAA, is it acceptable for a state to use Title V revenue to cover this cost? Can the entity applying for the ERC be charged a fee to cover administrative cost? It is important that EPA identify sufficient resources for States to meet the planning requirements, and that these funds do not come from existing sources of funding such as Section 105 grants.

Thank you for the opportunity to provide input on this important issue. Please contact me at 404-363-7016 or karen.hays@dnr.ga.gov if you have any questions or wish to discuss these comments.

Sincerely,



Judson H. Turner
Director