

MIDCONTINENT STATES ENVIRONMENTAL AND ENERGY REGULATORS

November 21, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: **Midcontinent States Environmental and Energy Regulators'
Comments on the Proposed Clean Power Plan**

Dear Administrator McCarthy:

Participation in this letter should not be interpreted as conveying support or opposition to EPA rulemaking under Section 111(d) of the Clean Air Act.

The Midcontinent States Environmental and Energy Regulators (MSEER) group brings together state air and public utility regulators from 14 states¹ to explore and assess implementation options to meet proposed federal carbon dioxide emissions targets as set forth in the Clean Power Plan (as published in 79 Fed. Reg. 34830, June 18, 2014). MSEER wants to understand whether multi-state coordination would reduce costs and bring other benefits to its states compared to a single-state approach. MSEER writes to provide comments on those aspects of the proposed rule that relate to regional coordination and state planning.

The MSEER states have not yet made any decision on whether or how states might coordinate on Clean Power Plan implementation. We nevertheless provide the following comments designed to give states flexibility in developing plans that include multi-state coordination.

1. Flexibility on the form of submission. EPA should recognize that multi-state collaboration can take numerous forms and allow states to file separate state compliance plans that include or contemplate a connection to other states.

¹ To date MSEER discussions have brought together representatives from Arkansas, Illinois, Indiana, Iowa, Kentucky (observer only), Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, North Dakota, South Dakota, and Wisconsin.

For example, two states could implement separate programs that are connected only by the mutual acceptance of each other's emissions reductions. In such a case, the two state plans would stand alone as a legal and regulatory matter, without a joint multi-state implementation plan as proposed in EPA's draft proposal.

2. Regional versus state-specific goals. EPA's proposal suggests that states that coordinate implementation of their compliance plans would need to combine all of their state goals in a multi-state group and implement the same multi-state goal. The combining of state goals to create a multi-state goal represents only one possible approach to multi-state coordination and EPA should enable multi-state approaches under which individual states keep their state goals and nevertheless allow for cooperative activities between states.

3. Timing of collaboration will vary across states. Each state will need to follow its own established political, legal and regulatory process for making compliance decisions. EPA's timeline for multi-state coordination does not currently allow for differing decision-making processes across states. Due to the complex nature of multi-state coordination, EPA must provide more time than the one year allotted under the proposed rule for states to reach agreement to pursue a multi-state approach. In addition, EPA and states will need to allow for the entrance and exit of potential collaborating states from multi-state coordination, depending on the outcomes of subsequent individual state decisions.

4. Extension of time for submittal of plans contemplating multi-state coordination. EPA must acknowledge that states will receive a total of 3 years from issuance of the final guideline by EPA for submitting a final compliance plan or plans, so long as they demonstrate that they are actively engaged in a process with other jurisdictions to consider multi-state coordination and that they are developing multi-state or individual state plans that contemplate such coordination. EPA should clarify that a state does not lose its extension if multi-state coordination is ultimately not successful in whole or in part, and grant states more time to implement contingencies to respond to a state or states dropping out of or joining a multi-state compliance plan.

5. Enforcement in a Multi-State Context. EPA should recognize that states can connect individual state programs while remaining separate for implementation and enforcement purposes. For example, two states with self-correcting plans in place on affected units can connect those plans through mutual acceptance of emissions reductions or credits without connecting enforcement mechanisms. If an affected unit is out of compliance in one state, then enforcement is against that unit and not against any other unit in either state. In addition, if a state that is coordinating with other states fails to carry out its

federally approved plan, EPA's enforcement must be limited to the state failing to carry out its plan, not with any connected state. Lastly, EPA should work with states to address any issues that may arise in the event that one state in a multi-state effort fails to implement its approved plan.

6. Support for state planning and implementation. EPA must provide financial assistance to help states with the development of state or multi-state compliance plans. To facilitate development of the architecture for effective implementation of state plans and multi-state approaches, EPA should also provide states with optional:

- systems (or system) for tracking emissions, allowances, reduction credits, and/or generation attributes that states may choose to use in their 111(d) plans;
- examples of evaluation, measurement and verification protocols that provide a minimum acceptable level of EM&V, issued concurrent with the final rule, that can be used in connection with crediting of emission reduction measures, such as energy efficiency and/or renewable energy; and
- detailed examples of elements of compliance pathways, such as trading programs, corrective measures, crediting mechanisms and other similar items.

At the same time, EPA must accept the authority of states to use existing state or regional tracking and accounting systems.

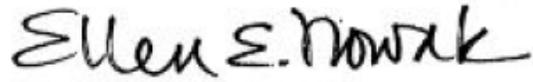
Thank you for your consideration.

Sincerely,

Members of the MSEER Steering Committee:

A handwritten signature in black ink that reads "Douglas P. Scott". The signature is written in a cursive, flowing style.

Douglas Scott
Chairman
Illinois Commerce Commission

Handwritten signature of Ellen E. Nowak in black ink.

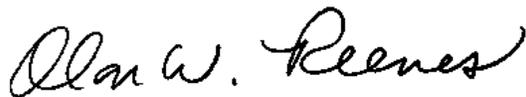
Ellen Nowak
Commissioner
Wisconsin Public Service Commission

Handwritten signature of Vince Hellwig in black ink.

Vince Hellwig
Chief, Air Quality Division
Michigan Department of Environmental Quality

Handwritten signature of Robert S. Kenney in black ink.

Robert Kenney
Chairman
Missouri Public Service Commission

Handwritten signature of Olan W. Reeves in black ink.

Olan W. Reeves
Commissioner
Arkansas Public Service Commission

Hon. Gina McCarthy
November 21, 2014
Page 5 of 5

A handwritten signature in black ink, appearing to read 'D Thornton', with a long horizontal line extending to the right.

David Thornton
Assistant Commissioner
Minnesota Pollution Control Agency