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November 1, 2016

Ms. Gina McCarthy
Administrator
Environmental Protection Agency
Attention: Docket ID NO. EPA-HQ-OAR-2016-0033.

Re: Clean Energy Incentive Program Design Details

Ms. McCarthy:

The attached document is submitted on behalf of the Arkansas Department of Environmental Quality (ADEQ) and the Arkansas Public Service Commission (APSC) (collectively referred to as the Agencies). The Agencies submit these comments on the United States Environmental Protection Agency's (EPA) "Clean Energy Incentive Program Design Details" (Proposed Rule) with the caveat that we view the timing of this proposal to be inappropriate given the Supreme Court's stay of the "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (Clean Power Plan) of which the Clean Energy Incentive Program is a voluntary, ancillary component. Submittal of these comments does not indicate that the Agencies support the Clean Power Plan or the issuance of ancillary rulemakings related to the Clean Power Plan during the stay. Rather, the Agencies are providing these comments to ensure that all opportunities for achieving least-cost implementation of the Clean Power Plan in whatever form it survives legal challenge are well-designed and available to the State as compliance options.

Sincerely,



Becky W. Keogh

Director, ADEQ



Ted Thomas

Chairman, APSC

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The Arkansas Department of Environmental Quality (ADEQ) and Arkansas Public Service Commission (APSC) (collectively “the Agencies”) comment below on the Environmental Protection Agency’s (EPA’s) proposed “Clean Energy Incentive Program Design Details” (Proposed Rule) published in the Federal Register on June 30, 2016. Submission of these comments should not be interpreted as conveying support for EPA’s rulemaking under section 111(d) of the Clean Air Act (CAA) or the issuance of the Proposed Rule during the Supreme Court’s stay of “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (Clean Power Plan). The Agencies view the timing of this proposal as being in contravention of the stay of the Clean Power Plan because it put states in the position of expending resources to evaluate and comment on the Proposed Rule or risk giving up a future right by ignoring this proposal. Despite our support for the legal challenges to the Clean Power Plan by the Arkansas Attorney General and others and our appreciation of the Supreme Court’s stay, the Agencies deem it necessary to provide comments recommending improvements to the design details included in the Proposed Rule to ensure that all opportunities for achieving least-cost implementation of any portion of Clean Power Plan that survive legal challenge are available to the State.

Background

The Proposed Rule seeks to elaborate on design details for the Clean Energy Incentive Program (CEIP) that was established in the final Clean Power Plan. The CEIP would allow states with affected electric generating units (EGUs) to meet their compliance goals under the Clean Power Plan, in part, by incentivizing investment in energy efficiency (EE) and solar generation in low-income communities and by encouraging early investments in zero-emitting renewable energy (RE) generation. The CEIP attempts to accomplish incentivizing low-income community EE and solar and RE by providing states with the opportunity to offer allowances, in the case of a mass-based approach to compliance with the Clean Power Plan, or emission rate credits (ERCs), in the case of a rate-based approach to compliance with the Clean Power Plan, and providing matching allowances or ERCs, as appropriate based on state plan type, from a pool equivalent of 300 million short tons of CO₂ emissions. State and EPA allowances and ERCs awarded for eligible projects delivering emission reductions during 2020 and 2021 (generally referred to as “early action credits”) may be awarded to projects at a 1:1 ratio for eligible RE (including both the EPA and state match) and at a 2:1 ratio for eligible projects in low-income communities. The Proposed Rule elaborates on design details for the CEIP beyond what was included in the final Clean Power Plan and the

“Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; and Amendments to Framework Regulations” (Federal Plan and Model Trading Rules) proposal.

Timing

Notice and Comment on the Proposed Rule

The Agencies concur with comments filed by the State of West Virginia Office of the Attorney General *et al.* on August 1, 2016 that the public comment period should be extended until 60 days after the Supreme Court’s stay of the Clean Power Plan is lifted.¹ These comments are hereby incorporated by reference.

Submission of a State Plan and Participation in the CEIP

EPA proposes to limit apportionment of matching early action credits to only those states with EGUs subject to the final Clean Power Plan and that have submitted a final plan with approved CEIP provisions, as well as those states for which EPA is implementing a federal plan. Although it makes sense to limit apportionment of early action credits to those states with EGUs subject to the final Clean Power Plan, EPA should consider the possible implications of the stay on the ability of states to submit a timely state plan with CEIP provisions. The purpose of the stay is to prevent states from being forced to expend resources planning for compliance with the Clean Power Plan until litigation is resolved. Therefore, there should be sufficient time provided if the litigation is resolved in EPA’s favor to develop a comprehensive state plan with CEIP provisions and there should be no disadvantage for states that did not work on crafting a state plan or CEIP provisions during the stay.

Timing of CEIP-Eligible Projects

In the Proposed Rule, EPA reopens for comment the eligibility timeframe established in the final Clean Power Plan. In the final Clean Power Plan, EPA deemed eligible only certain RE and demand-side EE projects that “commence construction” following the submission of a final state plan, or after September 6, 2018 in states which choose not to submit a final state plan by that date, and that

¹ *Re: Request for extension of time to comment on the proposed rule, Clean Energy Incentive Program Design Details, 81 Fed. Reg. 42,940 (June 30, 2016), docket no. EPA-HQ-OAR-2016-0033, by the undersigned States and state agencies (included with this submission following comments by the Agencies).*

generate megawatt hours (MWh) or reduce energy demand during 2020 and 2021. In the Proposed Rule, EPA replaces the term “commence construction” for eligible CEIP RE projects with “commence commercial operation” and changes the date of project eligibility to on or after January 1, 2020. For low-income community projects, EPA replaces the term “commence construction” with “commence operation” and decouples the eligibility date from submission of a final state plan. Instead, the eligibility date for low-income community projects is on or after September 6, 2018.

The Agencies agree that it is appropriate to redefine the terms to more accurately reflect deployment of these resources and to decouple project eligibility timing from state plan deadlines; however, the Agencies recommend that the eligibility timing for projects that commence commercial operation (RE) or commence operation (EE) should be expanded. EPA should allow the earliest possible trigger date for eligibility to send a signal to those who wish to work on CEIP-eligible EE and RE to begin work and achieve emission reductions as soon as possible, including before the 2020 date. As such, EPA should credit any RE project that was not included in an integrated resource plan (IRP) as of the publication date of the final Clean Power Plan on October 23, 2015 and delivers MWh between September 6, 2018 and the commencement of the first interim compliance period. Any EE project that delivers MWh savings that commences operation after October 23, 2015 and delivers MWh savings between September 6, 2018 and the commencement of the first interim compliance period should be eligible for CEIP early action credits. This would increase the likelihood that the matching pool of CEIP early action credits is fully subscribed while limiting eligibility to those projects that were not in the works prior to the finalization of the Clean Power Plan. In addition, this would remove the incentive for facilities to delay the commencement of commercial operations for RE and the operation of low-income projects in order to receive credit.

Apportionment

Distribution among States

EPA proposes to apportion early action credits from the 300 million short ton equivalent pool to the states based on the amount of reductions from 2012 levels the affected EGUs in a state are required to achieve relative to those in other participating states. This approach appropriately recognizes the different levels of effort among states that are required to comply with the Clean Power Plan and

provides additional assistance to those states with more stringent goals. The Agencies support this method of distributing early action credits to the states.

In the Proposed Rule, EPA reverses its proposal included in the Federal Plan and Model Trading Rules to execute a reapportionment of early action credits among states if some states choose not to participate in the CEIP. Instead, EPA now proposes to retire those early action credits that would have otherwise gone to states that decline to participate in the CEIP instead of reapportioning these early action credits to participating states. The Agencies understand EPA's rationale that reapportionment may not be administratively feasible given the timing considerations described by EPA in the Proposed Rule. The Agencies recommend that EPA reconsider whether reapportionment is feasible if the Clean Power Plan survives litigation and the compliance dates are tolled.

Apportionment between Renewable Energy and Low-Income Community Energy Efficiency and Solar Reserves

EPA proposes to divide the matching pool of early action credits evenly between the RE reserve and the low-income solar and EE reserve (a "50-50 apportionment"). EPA's analysis, however, of potential for EE and low-income solar and RE during the CEIP period suggests that the low-income EE/RE program will be severely undersubscribed. To address this issue, the Agencies suggest that EPA establish a "floor" under which states must dedicate at least 15% of their CEIP compliance to low-income EE/RE and 25% to RE, but otherwise can allocate the remainder of their allocations to either purpose.

EPA's estimates suggest that low-income community projects only have the potential to absorb 15 % (54 million ERCs or 43 million allowances) of the matching early action credits rather than the 50 % (150 million allowances or 187.5 million ERCs) that EPA proposes to apportion to the low-income projects reserve. EPA estimates that states will match 15% of their allocations through a combination of low-income EE (10%) and low-income RE (5%).

The Agencies note that the "Technical Support Document: Clean Energy Incentive Program Design Details Proposed Rule Renewable Energy and Low-Income Community Projects Potential" (TSD) that appears to form the basis for this estimate relies on Conservation Voltage Reduction (CVR) for 18 million MWh of the 39 million MWh of estimated EE potential.² CVR thus comprises 46 % of the 10 % of CEIP low-income allowances that states will likely match under EPA estimates.

² *Technical Support Document: Clean Energy Incentive Program Design Details Proposed Rule Renewable Energy and Low-Income Community Projects Potential* at 7.

CVR is a valuable technology that has the potential for significant energy savings. It is not, however, usually considered an EE program targeted to low-income customers (or to any specific customers) because it creates savings on the utility side of the meter that accrue to the system as a whole, rather than to specific customers (for instance, energy reductions from CVR would reduce the fuel cost recovery rider, benefitting all customers). Also as a practical matter, state approval of utility CVR programs would likely require a separate proceeding from EE program consideration and may thus be less likely to occur in the contemplated timeframe. This is because the underlying policy considerations for implementing CVR are different from those underlying EE program approval. The Agencies point this out, not because EPA should not incentivize CVR, but rather to reinforce the point that EPA's documentation suggests that states are unlikely to be able to match their full allocations of allowances under CEIP for low-income EE programs, and that further CEIP revisions are necessary to reasonably incent what are commonly understood to be EE programs benefitting low-income communities expansion. The Agencies will further evaluate low-income EE program potential and its implications for CEIP program design below, but first the Agencies further discuss evidence that the 50-50 allocation of allowances between the low-income EE/RE program and the RE should be revised.

EPA conservatively estimates that renewable energy potential is 185 million MWh during the CEIP incentive period, based on historical deployment between 2010 and 2014.³ Although EPA would only match half of the MWh generated by eligible RE projects during the CEIP period, generation from eligible RE projects at this level could absorb 25 % (92.5 million ERCs or 74 million allowances) of EPA's matching pool.

RE costs continue to decline and RE potential for 2020 – 2021 is thus likely greater than suggested by historical deployment. The National Renewable Energy Laboratory (NREL) projects an economic potential for the types of RE projects eligible for CEIP of 6,945.9 million MWh in the continental United States that is incremental to the level of MWh generated from these sources in 2013.⁴ While this economic potential for utility scale RE will likely not be deployed by 2020 and 2021, the scale of this economic potential suggests that EPA underestimates CEIP-eligible RE generation.

³ *Technical Support Document: Clean Energy Incentive Program Design Details Proposed Rule Renewable Energy and Low-Income Community Projects Potential*

⁴ NREL (2015). *Estimating Renewable Energy Economic Potential in the United States: Methodology and Initial Results*. www.nrel.gov/docs/fy15osti/64503.pdf <Accessed 8_4_2016>

While EPA's general estimate of RE potential is likely conservative, EPA states that its potential estimate for CEIP-eligible solar projects in low-income areas is an "aggressive, upper-bounds estimate of potential electricity generation in 2020 and 2021." EPA based this estimate on 2014 distributed residential and non-residential solar deployments. EPA assumed that 5 % of national EE programs served low-income communities. EPA applied no such assumption for distributed solar projects, but rather included the full 8 million MWh based on all distributed solar deployed during 2014. Taken together, the inclusion of CVR within low-income EE and aggressive low-income distributed RE estimates suggest that states will not be able to match even the 10% and 5% allocations estimated by EPA, under the current CEIP program design, which will leave a significant share of the 50% allowance allocation to low-income communities unused.

EPA asserts that the 50-50 apportionment is appropriate because stakeholders requested an even larger apportionment for low-income community projects and because technology and consumer demand is "rapidly evolving." The Agencies suggest that nationwide potential for CEIP-eligible low-income community projects, as currently defined, would fall far short of 50%. This is true based on national averages in EPA's TSD, without considering variation among states for EE and RE potential that could further reduce real world state allowance matching.

Recognizing some of the issue outlined above, EPA solicits comment on whether a "floor" should be set on the portion of the matching pool that would be available for RE projects and low-income community projects and leave a portion of the matching pool available to be apportioned at the states' discretion. Such an approach would provide greater flexibility to states and increase the likelihood of greater subscription of early action credits from the matching pool. The Agencies recommend that EPA set a floor of 15 % of early action matching credits for low-income community projects and 25 % for CEIP-eligible RE projects based on EPA's estimated potentials for those project types during 2020 and 2021. The apportionment of the remaining 60 % of early action credits from the matching pool distributed to each state should be left to the discretion of that state. The portion of the matching pool available for apportionment at the states' discretion should be eligible for reapportionment from one reserve to another based on state-identified priorities and the potential for projects under each reserve in each state.

Project Eligibility

Definition of Project

EPA's proposal to refer to programs that implement RE and EE projects in the term "project" is appreciated as is the provision to allow a project provider for a program to submit a single eligibility application for multiple projects implemented under the same program. This common sense approach would reduce the bureaucracy and difficulty for both project providers and state agencies involved with submitting and reviewing CEIP eligibility applications. The Agencies support this approach to defining the term "project."

Eligible Renewable Energy Projects

In the final Clean Power Plan, EPA established that only solar and wind resources were eligible CEIP RE project types. In the Proposed Rule, EPA changes the project eligibility requirements for RE projects to add geothermal and hydropower resources to the list of CEIP-eligible resources. While the Agencies are pleased that EPA is extending eligibility for CEIP early action credits to geothermal and hydropower resources, EPA should also consider inclusion of other net-zero emission power generating resources that can be deployed within the timeframe necessary to take advantage of CEIP credits, such as biomass, landfill gas, etc., as well as energy efficiency projects in communities other than low-income communities.

EPA solicits comment on whether projects that receive benefits from the investment tax credit (ITC) or production tax credit (PTC) programs should be eligible for CEIP awards and whether the impacts of the PTC or ITC should impact the apportionment for the RE reserve. The Agencies assert that EPA should neither disallow RE projects taking advantage of the ITC/PTC from eligibility under the CEIP nor decrease apportionment to the RE reserve. As discussed in the "Apportionment between Renewable Energy and Low-Income Community Energy Efficiency and Solar Reserves" section above, EPA estimates that the CEIP is likely to be undersubscribed. Furthermore, benefits from the PTC decrease each year for wind projects commencing construction from 2016 through 2019. As PTC benefits decrease, availability of early action credits under the CEIP would provide additional incentives to further develop RE projects. The benefits from the ITC are available to solar projects that commence construction prior to 2020 for residential solar and 2022 for utility-scale and commercial projects. The benefits decrease with time, dropping to 0 % for residential solar projects after 2020 and 10 % for commercial and utility projects in 2024. Rather than create a conflict between taking advantage of the CEIP and taking advantage of benefits under the ITC/PTC,

EPA should acknowledge that the existence of both benefits is likely to increase deployment of CEIP-eligible RE resources beyond what could be expected by either program alone. The combined incentive would result in further emissions reductions than would otherwise be achieved, which would thus further EPA's goal of reducing carbon emissions.

Eligible Energy Efficiency Projects

The final Clean Power Plan established that demand-side EE projects in low-income communities would be eligible for CEIP early action credits. In the Proposed Rule, EPA expands eligibility to include solar projects and transmission and distribution improvements that benefit low-income communities. EPA proposes that demand-side EE, solar, transmission, and distribution projects that benefit small businesses, organizations, and institutions that work with low-income residents would also be eligible. Furthermore, EPA proposes flexibility with regards to the definition of "low-income" community.

The Agencies appreciate EPA's expansion of eligibility for projects in low-income communities. The Agencies agree that EE, solar, transmission, and distribution improvements that benefit residents of low-income communities or small business, organizations, and institutions that work with low-income residents or benefit low-income communities directly should be eligible for 2-for-1 early action credits under the CEIP. EPA's apparent flexibility with regards to the definition of "low-income community" is also appreciated, particularly EPA's proposal to enable a state to include more than one definition of "low-income" in its state plan and to allow eligibility for different types of programs (household vs. geographic scale). EPA's proposal to allow the use of current federal level and state level definitions is also appreciated. EPA proposes only to allow definitions in existence prior to October 23, 2015; however, EPA should also consider new definitions specifically created for the purposes of implementing the CEIP. Any new definitions would be submitted as part of CEIP provisions in a state plan and subject to approval by EPA.

Use of an Agent for Review of CEIP Projects and Allocating Early Action Credits

EPA proposes that a state may delegate the function of reviewing CEIP project applications and reports of verified MWh generation or savings, allocating early action allowances, and issuing early action credits to a qualified agent. The use of an agent would greatly simplify implementation of the CEIP in the State, and the Agencies support EPA's proposal to allow for delegation of these functions.

Maintaining Stringency

In the Proposed Rule, EPA re-proposes the approach included in the Federal Plan and Model Trading Rules for maintaining stringency of the Clean Power Plan to account for state early action allowances awarded to CEIP under a mass-based approach. However, EPA offers a novel approach for maintaining stringency under a rate-based plan. EPA's new proposed method for maintaining stringency under a rate-based system would effectively discount the amount of ERCs/MWh provided to all ERC-eligible resources during the first interim compliance period based on the number of early action ERCs awarded by a state under the CEIP. This could potentially result in interstate economic competition issues in which a project provider may choose to construct in one state over another based on the difference in number of ERCs/MWh in each state. A level playing field among states is critical to achieve fair and effective implementation of the Clean Power Plan. Furthermore, discounting the amount of ERCs/MWh during the first compliance period may incentivize eligible ERC providers to delay construction until after the first interim period. For both rate-based and mass-based plan types, EPA should issue early action credits under the CEIP without requiring a state match thereby avoiding these potential issues.

EPA's proposed approach to maintaining stringency under a mass-based plan penalizes affected EGUs that would otherwise receive allowances that must be set-aside, while its proposed approach to maintaining stringency under a rate-based approach penalizes projects that are eligible for ERCs during the first interim compliance period, particularly those that were not in operation during the CEIP period. If EPA were to prorate ERC issuance for only those projects that received early action credits under the CEIP, there would be no net-benefit to those sources for commencing operation in 2020 or 2021 versus during the interim compliance period. Furthermore, ERCs generated during the first compliance period would likely be banked rather than used or sold because carbon emission trends from affected EGUs are projected to be under the Clean Power Plan emission targets for the first few years of the compliance period. Thus, such an approach would eliminate the incentive that EPA intends to create with the CEIP.

Due to the problematic nature of accounting for the state portion of the CEIP early action credits, EPA should rethink the requirements for participation in the program. According to the final Clean Power Plan, states are required to include a mechanism that enables issuance of early action ERCs or allowances without impacting the emission performance standard required under the Clean Power Plan; however, states are not required to account for matching ERCs or allowances

from EPA. If EPA were to issue the 300 million short ton equivalent early action credits without requiring a match from the state, EPA would avoid the problem of having to employ set-asides or retiring ERCs that would otherwise be purchased by affected EGUs, adjusting state targets away from the uniform subcategorized rates; or prorating ERCs awarded per MWh to maintain the stringency of the Clean Power Plan. The effect on the stringency of state performance standards without requiring a match from the state pool of allowances or ERCs would be the same as would be achieved by requiring the state to employ these accounting mechanisms for its portion of early action credits. Therefore, EPA should remove its requirement for states to issue early action credits in order for a CEIP-eligible project to receive credits from the 300 million short ton equivalent early action credits pool provided by EPA. Furthermore, the Agencies recommend that EPA strengthen its awards to EE and RE project providers to ensure that the 300 million short ton pool of early action credits is fully subscribed.

Further Considerations and Suggestions Regarding Low-Income EE

Arkansas is strongly committed to EE as a utility resource and has a large low-income population. EPA's proposed CEIP allocation to Arkansas for low-income EE/RE is 3.2 million allowances (i.e., half of the 6.4 million total CEIP allowance allocation to Arkansas.) The Arkansas Public Service Commission (APSC) has roughly estimated the share of CEIP allowances that could be matched under the CEIP low-income EE programs, based upon 2015 program performance, as a way to develop further constructive comments. The Agencies previewed this analysis to EPA during two phone calls in order to verify that it roughly captures the potential impact of CEIP allowance matching on Arkansas Clean Power Plan compliance. The Agencies make four suggestions, below, for EPA to consider regarding CEIP matching allowances for EE programs.

Arkansas's investor-owned electric utilities spent \$76 million on EE programs in 2015, producing first-year net evaluated savings of 282,000 MWh (roughly the amount of electricity used in a year by 21,000 homes). Taken together, these programs reduced annual retail electricity sales by about 1% for participating utilities. While Vermont, California, and Massachusetts save more electricity as a percentage of retail sales, Arkansas has substantial EE programs and produces significant EE savings within an economy that uses much more electricity for air conditioning and for industrial uses than northern and western states. Arkansas employs state-of-the art Evaluation, Measurement, and Verification (EM&V) to verify all EE savings.

For simplicity, we will focus on the state's largest utility, Entergy Arkansas, which achieved 80 % of the EE program savings. Industrial and commercial projects comprised 56 % of the EE savings in 2015. Roughly 16 % of the savings are strictly residential. Lighting, which can be either residential or commercial, makes up most of the remainder.

While no program is defined as "low income," the Multi-Family program and the Manufactured Homes (mobile home) program serve almost exclusively low-income families. These two programs created savings of 2.1 MWh per year (less than 1 % of the total energy saved). Also, the general home energy and weatherization program saved 25 MWh per year, or 10 % of the total. The home energy program currently is free for customers and careful evaluation has provided a basis for estimating the share of participants who are low-income.

Assuming that all the mobile home and multifamily projects qualify as "low income," plus 20 % of the home weatherization program, annual savings would be 7,208 MWh. Program budgets for the two "low-income" programs plus 20 % of the weatherization program are about \$3.6 million per year.

Counting three years of programs (2018 – 2019, 2019 – 2020, 2020 – 2021), cumulative savings during the two-year 2020 – 2021 window for allowance matching would be roughly 43,248 MWh. At the 0.8 conversion for tons of carbon saved, that would be 34,589 tons for the total EE emissions reductions over the two year period.

EPA proposes to double the impact of these savings through CEIP matching, offering Arkansas another 34,589 allowances. Overall, CPP compliance will require allowances for 36 million tons of emissions in 2022. Thus, at current program levels, CEIP over two years could provide 34,589 allowances/36,000,000 tons or about 0.1 % of the necessary allowances for one year of compliance. Also, Arkansas's current low-income effort would garner about 1 % of the available 3.2 million CEIP low-income allowances, leaving 99 % on the table. If Arkansas chooses mass-based compliance, CEIP would be the only reason for Arkansas to prove its (already robust) EM&V to EPA, adding complexity and expense to the CPP compliance plan in order to gain 0.1 % of allowances for compliance.

At a \$5 allowance price, these allowances would be worth about \$340,000, while 3-year program budgets would be about \$11 million. Allowances thus would contribute 3 % to the low-income EE program budgets at \$5, or 12 % to these program budgets at a \$20 allowance price. Because early-year compliance has been

projected to be non-binding for many states, allowance prices currently are estimated to be closer to the former.

Ramping these programs up by a factor of ten (i.e., spending \$36 million in Entergy territory rather than \$3.6 million) still would provide only 1 % of the allowances needed for a single year of compliance and would contribute somewhere between 3 % and 12 % of low-income EE program budgets. With 10 times the current spending, Arkansas could pull down roughly 20 % of the available 3.2 million CEIP low-income allowances, leaving 80 % of CEIP allowances on the table.

The Agencies are thus concerned that, even though CEIP makes 3.2 million allowances available for low-income EE in Arkansas, even a large expansion of low-income EE programs will produce only a negligible share of compliance. Further, the budgetary impact of CEIP may be too negligible to promote CEIP's fundamental purpose of increasing low-income EE.

The Agencies thus suggest that this potential for non-use of the CEIP program is not merely an issue of CEIP allowance allocation between utility-scale RE and programs serving low-income communities. Rather, it goes to underlying differences in the nature of the resource being developed.

Utility-scale RE projects, like conventional generation, require an upfront capital investment, which is recovered over time from energy sales. For instance, to meet a 100 MW need, a utility might spend six months getting regulatory approval and then a year or more managing construction. Investment-based calculations underlie the decision to construct or not construct in a specific year. An incentive targeted to specific early compliance years may work to incent further upfront investment in these capital-intensive projects.

Low-income EE programs, by contrast, require sustained, incremental investment. In order to meet a 100 MW need, a utility might propose for approval a multi-year program that includes training for the necessary workforce and continuous program improvement based upon annual EM&V. A CEIP incentive aimed at the early part of this period will likely capture only the "start-up" of this program and will provide no incentive for it to continue to implement and maximize its savings. This issue may be compounded because low-income EE programs tend to cost more for implementation (and to be closer to break-even on cost-effectiveness metrics) than other EE programs, such as industrial programs or lighting programs. By counting only 2 years of EE savings for these programs on the front end of compliance, CEIP runs counter to the whole purpose of these programs: long-lived savings for hard-to-

reach populations. EE programs generally can deliver large amounts of savings, but the issue is the time needed for those savings to accumulate.

The agencies note that some of the facts surrounding the early incentive feature of CEIP have changed. It was originally aimed in part to address what states perceived as a “cliff” of reduced emissions at the original 2020 Clean Power Plan compliance date. EPA mitigated this cliff by delaying compliance to 2022 and real-world shifts in generation dispatch have further delayed any estimated “cliff” to 2025 or 2030. The RE focus also may have been aimed at softening the expected expiration of RE tax credits, which have since been extended.

The Agencies also note that allowances themselves present some challenges as a mechanism to incent low-income EE. Investors place capital at risk to build generation, expecting to earn a profit. The unknown, but estimated value of CEIP allowances could be one element of the calculated value of investment at a particular time. Once utility-scale RE is built, however, the resource exists and the investment decision cannot be revoked. By contrast, low-income EE program managers require a continuing stream of actual dollars to pay continuing labor costs to implement EE programs. If the value of allowances estimated on the front end does not materialize, the low-income EE program will, in actuality, perform less work and accrue less savings.

The Agencies suggest for consideration three potential revisions to CEIP as it applies to low-income EE programs and one alternative approach:

- First, EPA might set a different, later window in time for the counting of low-income EE. For instance, if low-income EE allowances were to accumulate until 2025, the accumulated savings would be significantly greater.
- Second, EPA could count EE savings over a longer window of four or five years. The calculations above suggest that, otherwise, the value of allowances will be too small to change program planning decisions. The Agencies suggest retaining the earliest possible low-income EE program eligibility start date in order to allow time for savings to accrue. Each of these steps—a later window and a longer window—better fit the nature of an incremental resource that requires sustained investment and innovation. Further, increased matching is reasonable, if necessary, in order to serve low-income communities.
- Third, in recognition of the incremental nature of the EE resource and the need for sustained program support, the Agencies suggest a program mechanism under which EE allowances would be incrementally awarded at one- to three-year intervals, as savings occur and are proven. This structure

would more closely align EE allowances with state's annual review of EE program performance.

- In the alternative, or in addition, EPA could treat EE in general similarly to RE for CEIP purposes. All cumulative EE program savings after a date certain, and during an appropriate eligibility window, could be matched one for one. This approach could eliminate the 50-50 allocation issue, avoid issues associated with defining "low income," and include a large enough EE component that it would be more likely to significantly assist Clean Power Plan compliance. Under this approach, it may still be reasonable to choose a later window for matching EE savings, in keeping with the timing of expected compliance challenges.

The Agencies hope these suggestions may be acceptable or may spark further discussion to develop the CEIP low-income EE allowance allocation into a strong program to incent services to low-income customers; to incent EE program savings; and to produce significant, additional, verifiable emissions reductions.

Conclusion

Although the Agencies disagree with the timing of this proposal given the Supreme Court's stay of the Clean Power Plan, the Agencies submit these comments for consideration with the goal of preserving the State's rights and improving the design of the CEIP to allow the program to more effectively achieve the goal of incentivizing deployment of zero-emitting resources and easing the burden of compliance with the Clean Power Plan. The Agencies recommend that certain design details be restructured to increase flexibility for states, ensure that the program is fully subscribed, properly credit all zero-emitting sources commencing commercial operation (in the case of RE) or commencing operation (in the case of EE) during the timeframe for eligibility under the CEIP, and provide a tangible benefit for the State toward compliance with the Clean Power Plan.

Rather than requiring states to pull early action credits from the compliance period in order for EPA to provide early action credits, the CEIP should provide a pool of early action credits that EPA awards, or states award on behalf of EPA, to eligible projects that achieve carbon emission reductions between the finalization of the Clean Power Plan and the start of the first interim compliance period. All EE and RE projects that were not planned prior to the finalization of the Clean Power Plan and that provide MWh or save MWh during the CEIP period should be eligible for at least one early action credit (1 ERC or 0.8 allowances) from EPA for each MWh. Any such project that benefits low-income communities should receive two

early action credits (2 ERCs or 1.6 allowances) from EPA for each MWh. EPA should set a “floor” for apportionment between the two reserves for low-income community projects and other RE and EE projects based on potential and leave the remainder of the early action credits to the states to apportion at their discretion based on state-identified priorities. Also, EPA should revise the low-income portion of CEIP such that allowances may be credited during a later period which allows EE savings to grow, and over a longer window to recognize the potential low and variable value of allowances and the difficult economics of low-income projects. In the alternative, EPA should place all EE generally on the same footing as RE, thereby simplifying the program and treating all eligible resources equally. Lastly, EPA should allow states to use pre-existing definitions of low income, but should also allow states to develop new definitions subject to EPA approval. The Agencies strongly recommend that EPA make the recommended changes to the CEIP so that the program can more effectively achieve the policy goals of removing barriers to investment in EE and solar measures in low-income communities, encouraging early investment in zero-emitting RE generation, and helping states and affected sources meet their compliance obligations under the Clean Power Plan.