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January 20, 2016

U.S. Environmental Protection Agency
EPA Docket Center
Mail Code: 28221T
Attention: Docket ID No. OAR-2015-0199
1200 Pennsylvania Ave., NW
Washington, DC 20460

Dear Sir/Madam:

RE: Ohio Valley Electric Corporation Comments on the Federal Plan Requirements for Greenhouse Gas Emissions from Electric Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; EPA-HQ-OAR-2015-0199

Ohio Valley Electric Corporation (OVEC) and its wholly owned subsidiary, Indiana-Kentucky Electric Corporation (IKEC), collectively referred to herein as "OVEC," own and operate two coal-fired electric generating stations with a total nameplate capacity of 1,086.3 MWs at OVEC's Kyger Creek Station in Gallia County, Ohio, and a total nameplate capacity of 1,303.56 MWs located at IKEC's Clifty Creek Station in Jefferson County, Indiana.

Since OVEC owns and operates two coal-fired steam electric generating stations that will be directly impacted by the above-referenced proposed regulatory action, we appreciate the opportunity to submit the enclosed comments.

OVEC is a member of the Edison Electric Institute, the Utility Air Regulatory Group, the Indiana Utility Group and we support and incorporate by reference the comments submitted by these groups. We also support and incorporate by reference the comments submitted by American Electric Power.

If you have any questions about these comments, please contact me at (740) 289-7299**.**

Sincerely,

J. Michael Brown

J. Michael Brown
Environmental, Safety & Health Director

JMB:klr

Enclosure

OHIO VALLEY ELECTRIC CORPORATION COMMENTS ON THE FEDERAL PLAN REQUIREMENTS FOR GREENHOUSE GAS EMISSIONS FROM ELECTRIC GENERATING UNITS CONSTRUCTED ON OR BEFORE JANUARY 8, 2014; MODEL TRADING RULES

Docket No. EPA-HQ-OAR-2015-0199

Ohio Valley Electric Corporation (OVEC) and its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation (IKEC), collectively OVEC, own and operate two coal-fired electric generating stations. One of the two stations is the Kyger Creek Station located in Gallia County, Ohio, and the second is the Clifty Creek Station in Jefferson County, Indiana. The Kyger Creek Station contains five (5) generating units with a total nameplate capacity of 1,086.3 MWs, and the Clifty Creek Station contains six (6) generating units with a total nameplate capacity of 1,303.56 MWs. All eleven units at the two Generating Stations are equipped with emission controls designed to allow both facilities to operate while in compliance with all applicable state and federal environmental regulations.

Within the last five years, each station installed two jet-bubbling reactor (JBR) scrubbers designed to remove up to 98% of the SO_2 in the flue gas of all eleven units. The combined investment for these scrubbers was approximately 1.3 billion dollars. Given the scope of this investment, combined with the potential impact that the nature of these regulations could have on our current investment, and our forecasted future capital environmental compliance investments, OVEC appreciates the opportunity to comment on the proposed federal plan and model trading rules intended to implement the greenhouse gas (GHG) emission guidelines for existing fossil-based electric generating units (EGUs) under section 111(d) of the Clean Air Act (CAA).

Prior to offering our comments on these rules, we do want to clarify that OVEC is a member of the Edison Electric Institute (EEI), the Utility Air Regulatory Group (UARG), and the Indiana Utility Group (IUG). In addition, via a contractual arrangement, American Electric Power (AEP), and several other utilities purchase the power produced by the Clifty Creek and Kyger Creek generating stations to serve their customer and market needs.

Each of the four entities listed above have identified myriad legal issues with the Clean Power Plan (CPP), Federal Plan Requirements and the Model Trading Rules that should ultimately lead to the rules being vacated. We support and adopt by reference herein, the comments submitted by each organization.

Notwithstanding the legal issues surrounding each rule, OVEC is providing comment upon certain aspects of the federal plan and model trading rules so that if the CPP is ultimately implemented, the federal plan and model trading rules will be as flexible and cost-effective as possible for the utility industry, and ultimately the consumer.

Should these rules be implemented, we expect that the model trading rules will be used as a template by states to create their own state implementation plans, and the proposed federal plan is the framework that the Environmental Protection Agency (EPA) would use to implement a federal plan on a specific state, if necessary, under Section 111(d)(2). EPA has also proposed amendments to the framework regulations implementing section 111(d), and a proposal concerning the applicability of the emission guidelines to existing sources that modify

or reconstruct and thereby become "new" sources. EPA also is taking comment on how to implement the Clean Energy Incentive Program (CEIP) in the context of both the proposed federal plan and final state plans. While the CEIP was included in the final emission guidelines, it was not included in the proposed guidelines, and OVEC therefore will provide comments on this new aspect of the CPP in this docket.

I. Introduction

OVEC supports the development of broad, competitive trading markets that preserve state flexibility in designing state-specific compliance plans. Trading has been well demonstrated in the Acid Rain Program and other EPA regulations to increase compliance flexibility and thus minimize overall compliance costs. However, OVEC has significant concerns with specifics of the federal plan and model trading rules, which may lead to suboptimal and costly implementation and result in additional administrative burdens. Specific comments on these aspects of the federal plan and model rules are included below. We also note that certain provisions of these rules exceed EPA's authority, or are inadequately described in the proposal and cannot be finalized without an adequate opportunity for public comment. Other provisions of the proposed rules will not aid in the development of sound programs under Section 111(d), and should be eliminated from the final rules.

II. EPA's Federal Plan and Model Rules Exceed EPA's Authority

The proposed federal plan and model rules suffer from the same legal deficiencies as the CPP. We refer to AEP and UARG comments on the CPP for specific examples of how the CPP is deficient in at least three key ways:

1. No Section 111(d) rule can be developed for existing sources that are in a source category that EPA has already regulated under Section 112 of the CAA. 42 U.S. C. §7411(d)(1)(A)(i). EPA listed coal- and oil-fired steam electric generating units and regulated hazardous air pollutant emissions from such units under the Mercury and Air Toxics Standards (MATS) rule in 2012. 77 Fed. Reg. 9,304 (Feb. 16, 2012). Therefore, EPA's regulation of these same sources under Section 111(d) is prohibited by the literal terms of the CAA.
2. EPA has adopted an interpretation of the phrase "best system of emission reduction" that goes far beyond the implementation of cost-effective emission reduction techniques and is in direct conflict with the express language included by Congress in Section 111(d), and
3. The rules purloin authorities entrusted by Congress to the Federal Energy Regulatory Commission (FERC) under the Federal Power Act, 16 U.S.C. § 824(b), and they also conflict with Section 310 of the CAA, which specifies that nothing in the CAA is intended to supersede or limit the authorities of any other federal agency. 42 U.S.C §7610(a).

III. Specific Comments on the Federal Plan and Model Rules

A. EPA Should Finalize Options for Both Rate- and Mass-Based Plans and Establish a Clear Process for Public Notice and Comment in the Development of Any Federal Plan

Notwithstanding any of the legal issues previously identified, if EPA proceeds with this rulemaking, EPA should finalize both rate- and mass-based options for the federal plan and model trading rules. Adoption of both options has tremendous value because it would preserve flexibility and minimize costs for both the states and for the individual sources responsible for implementation. Individual states have a wide variety of sources of generation, and will

necessarily take widely varying approaches on how electricity is currently generated and how they will evaluate and approve the addition of new generation resources to meet future needs. A one-size-fits-all approach to a federal plan will conflict with both state flexibility as well as the goal of providing an efficient and cost-effective compliance pathway.

OVEC also specifically supports the comments submitted by UARG and EEI on the statutory requirements that apply to actions of the Administrator if the Administrator is finalizing a federal plan for any particular state. Specifically we support the comments requiring an opportunity for public notice and comment within each affected state.

B. EPA Should Include Measures to Promote Trading and Trading Liquidity, Reduce Uncertainty, Minimize Administrative Burdens, and Assure the Reliability of the Bulk Electric System

OVEC strongly supports trading with the caveat that the structure of any trading program be designed to foster stable markets. The requirements must also be clear, and designed to minimize risk and administrative burdens for the participants. We also support the concept that the model trading rules will be "presumptively approvable". This will allow states to easily incorporate common elements of the model trading rule into their state plans by reference. Prior EPA-administered trading programs have demonstrated that trading can ease the administrative burden on states. It also has the benefit of providing simple compliance requirements for affected sources.

However, there are certain aspects of the proposed model rules that diverge from the successful model used in prior EPA trading programs, and those divergent elements could compromise the prospects for success of a broad CO_2 trading program. Key tenants of an efficient and effective trading program include the following:

1. "Trading ready" state plans should be able to freely trade emission allowances between states, whether those states are subject to a state or federal plan – a position supported by EPA.
2. A common allowance tracking system should be established to ensure that a common "currency" is available for trading allowances. A system based on the Clean Air Markets Division operations that have implemented the Acid Rain Program and regional emissions trading programs would be an ideal example to model this program after and it could be supported by existing EPA infrastructure. The benefits of a program modeled after the Acid Rain Program would include stability, transparency, functionality and the minimization of risk and uncertainty for market participants.
3. EPA also should create a mechanism by which states and units subject to "trading ready" plans could convert Early Reduction Credits to allowances, and vice versa – this would also promote market liquidity.
4. Both the federal plans and the model trading rules should also allow for banking and borrowing of compliance instruments. Banking has been used extensively in other emission trading programs including the Acid Rain Program, CAIR and CSAPR with good results. Borrowing is appropriate for a program as unique and distinct as this one-of-a-kind program focusing on managing global concentrations of a ubiquitous compound. It would also foster compliance flexibility and reduced implementation costs – key tenants of making this a palatable and implementable program at the state level.
5. EPA should also include a reliability safety valve mechanism within the final emission guidelines that is available in both the model rules and federal plan.
6. Finally, OVEC encourages EPA to craft an allowance allocation system that would allow utilities to make appropriate long-term planning decisions. Further, a utility should not be

placed into a situation where transitioning from a state to a federal program or vice versa would disrupt long term planning around future allowance allocations.

C. Specific Comments on Rate and Mass-Based Plans

Allowance Allocation Recommendations

OVEC recommends that EPA provide full flexibility for states to pursue either mass or rate based options, and EPA should also offer both options to states and seek their feedback on which option provides greater value when implementing a federal plan. While OVEC generally supports rate-based plans as an option to be considered, we do think the use of a mass-based compliance option has the benefit of transparency and familiarity, as EGUs have significant experience with this type of system in other CAA programs. However, the cost to customers in states subject to a mass-based compliance plan will be most directly affected by the allowance allocation process. Thus, EPA must get the allocation process right relative to a mass based plan to achieve the goal of providing an efficient and cost-effective compliance pathway for both the consumer and the impacted sources. Specifically, we support the following elements in a mass-based approach:

1. OVEC agrees with EPA's conclusion that allowances should NOT be auctioned in the context of a federal plan as there is no authority for an auction, and the proceeds would be required to be deposited to the U.S. Treasury, and not available to offset the added costs that would be passed on to customers through their electric bills.
2. OVEC submits that allowances should be issued to EGUs in perpetuity and transparently. Even if an EGU ceases operation, it should retain the value of the allowances to transfer to other units within its fleet that also have a compliance obligation under these rules.
3. Perpetual allocations to existing affected sources are consistent with the approach EPA took under the Acid Rain Program. The Section 111(d) requirements are even better suited to a perpetual allocation scheme, since the sources subject to the emission guidelines are a static collection of those sources on which construction commenced prior to a date certain. Allocations in perpetuity eliminate the need for updating allocations thereby decreasing the administrative burdens of the program, and provide a stable signal for the long-term planning that is required to make the kinds of fundamental changes in the portfolio of generating assets envisioned by EPA. Other schemes could result in suboptimal economic decisions around future long term planning, so they should be avoided.
4. Leakage – OVEC recognizes EPA's claims that states electing to implement the CPP through a mass-based plan must address "emission leakage". However, EPA has not appropriately demonstrated that "leakage" would actually occur or needs to be addressed. EPA has also not adequately demonstrated that the mechanisms developed by EPA will in fact prevent or minimize "leakage". We consider this entire "leakage" discussion a red herring and suggest the entire concept is illegal, and cannot be included as a required element of any state or federal plan. Please refer to comments filed by EEI, UARG and AEP for additional details surrounding the fallacy of the alleged leakage phenomenon.
5. Finally, EPA's desire that NGCC units and renewable resources should be incentivized through prescribed set-asides and allowance allocations is nothing more than an attempt to create economic penalties for existing affected units. EPA has no authority to create such preferences; its authorities are limited to prescribing emission levels that can be achieved through the use of the best system of emission reduction that has been adequately demonstrated.

D. Specific Comments on the Proposed Clean Energy Incentive Program

EPA introduced the Clean Energy Incentive Program (CEIP) as part of the final emission guidelines, but has requested comments on numerous aspects of the program in the context of the model rules and proposed federal plan. The CEIP is envisioned as a means to spur early investment in renewable energy and energy efficiency prior to the commencement of the CPP's first interim compliance period in 2022. The program would add approximately 300 million additional allowances or ERCs into the markets. OVEC was not given an opportunity to comment upon this program previously; however, OVEC offers the following comments.

OVEC supports the CEIP conceptually as an attempt to incentivize and reward emission abatement activities prior to the beginning of the first CPP compliance period. The CEIP could serve as a valuable vehicle to add much needed liquidity of compliance instruments into the market during the transition into this new regulatory regime. Furthermore, the early support for clean energy afforded by the CEIP will also likely enable continuing emission abatement that will be critical to cost-effective compliance with the CPP. However, as currently proposed, the CEIP has numerous deficiencies. A few examples are provided below:

1. Emission reduction activities and programs could be much more broadly implemented, which would encourage deployment of the most cost-effective measures, the details of which are provided in comments submitted by EEI, UARG, IUG and AEP.
2. OVEC also supports the elimination of the need for state matching allowances to support the program. Based on its current design, the CEIP effectively functions as an economic subsidy for EPA's arbitrarily selected "preferred" sources of future generation and compliance mechanisms. That is not to say the CEIP does not serve a well-intended purpose or than it will not produce emission reductions, but rather that the prescribed mechanism for awarding allowances or credits under the CEIP as proposed is not limited to EGUs that have compliance obligations, nor does it directly promote compliance activities. EPA has not required state matching allowances for prior programs with allowance incentives and they should not start doing so now.
3. The proposed CEIP also does not give enough flexibility for states to tailor the program to their unique situation and circumstances. Individual states have substantial differences electric generation, renewable resources, economic circumstances, customer base, regulatory frameworks and policy objectives. OVEC encourages EPA to consider recommendations provided by AEP on ways to structure the program so it provides more state flexibility and market liquidity.

IV. Conclusion

OVEC appreciates the opportunity to comment on the proposed model rules and federal plan. Given the scope of the issues upon which comments have been requested under both rules, the ongoing litigation concerning the underlying emission guidelines in the CPP, and the extensive activities being undertaken by the states in response to these far reaching regulatory actions, OVEC requests that EPA be deliberate in its next steps, and we respectfully ask you seriously consider the suggestions and recommendations contained in these comments during final rulemaking deliberations.