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The Honorable Gina McCarthy, Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Final Rule on Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units

Dear Administrator McCarthy,

The Commonwealth of Kentucky respectfully petitions the United States Environmental Protection Agency (EPA) to grant reconsideration of the Final Rule issued in *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, Docket No. EPA-HQ-OAR-2013-0602, 80 Fed. Reg. 64662 (October 23, 2015).

Pursuant to Clean Air Act § 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B), if any person raising an objection can demonstrate to the EPA that it was "impracticable" to raise the objection within the public comment period, and "if such objection is of central relevance to the outcome of the rule," the EPA "shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed." The EPA's Final Rule on carbon emissions for existing stationary sources changed significantly from the proposed rule published on June 18, 2014. Many of these changes are so dramatic and unanticipated that it would have been "impracticable," if not impossible, for the Commonwealth to raise objections about these changes during the public comment period. Therefore, under § 307 EPA must convene a proceeding for reconsideration of the Final Rule on Carbon Pollution Emission Guidelines for Existing Stationary Sources, and provide an opportunity for public comment.

The following sections provide specific examples of areas in the Final Rule that significantly impacted the outcome without being subject to public comment.

I. EPA's Methodology

The Final Rule establishes CO_2 emission performance standards for two subcategories of affected sources: (1) fossil-fuel-fired electric steam generating units and (2) stationary combustion turbines. It employs a new methodology to calculate carbon emission targets, without providing an opportunity for public comment. The information below highlights the change in methodology, and how that methodology arbitrarily impacted Kentucky's target in a manner unauthorized by consistent application of the Clean Air Act (CAA) §111(d).

Consistent application pursuant to the CAA requires any standard of performance authorized by CAA 111(d) to take into account the remaining useful life of designated sources. Such standards of performance have been consistently bounded by percent reductions requirements achievable by stationary sources at the unit level, regardless of whether compliance reductions strategies allow the consideration of a system-based framework.

In its proposed rule, EPA applied four "building blocks" to the state 2012 baselines to generate emission rate targets for each state:

1. Coal-fired power plant efficiency improvements;
2. Natural gas combined cycle (NGCC) displacement of more carbon-intensive sources, particularly coal;
3. Increased use of renewable energy and preservation of existing and under-construction nuclear power; and
4. Energy efficiency improvements.

In its Final Rule, EPA eliminated building block 4 and modified the components and application of building blocks 1-3. In particular, the renewable energy (RE) assumptions (building block 3) changed dramatically in the Final Rule. According to EPA, the Final Rule's renewable energy generation level in 2030 is more than twice the level in the proposed rule. Coupled with statements in the Regulatory Impact Analysis (RIA), cited in footnote 1 below, this change in renewable energy assumptions demonstrates failure by EPA to properly consider the methodology expressly required by CAA 111(d).[1] The state-specific emission rate targets derived by the final methodology are exhibited below, in a manner that demonstrates the final methodology actually allows some states to increase CO_2 emissions despite Kentucky's arbitrarily derived and dramatically more stringent final target. (See figure on next page.)

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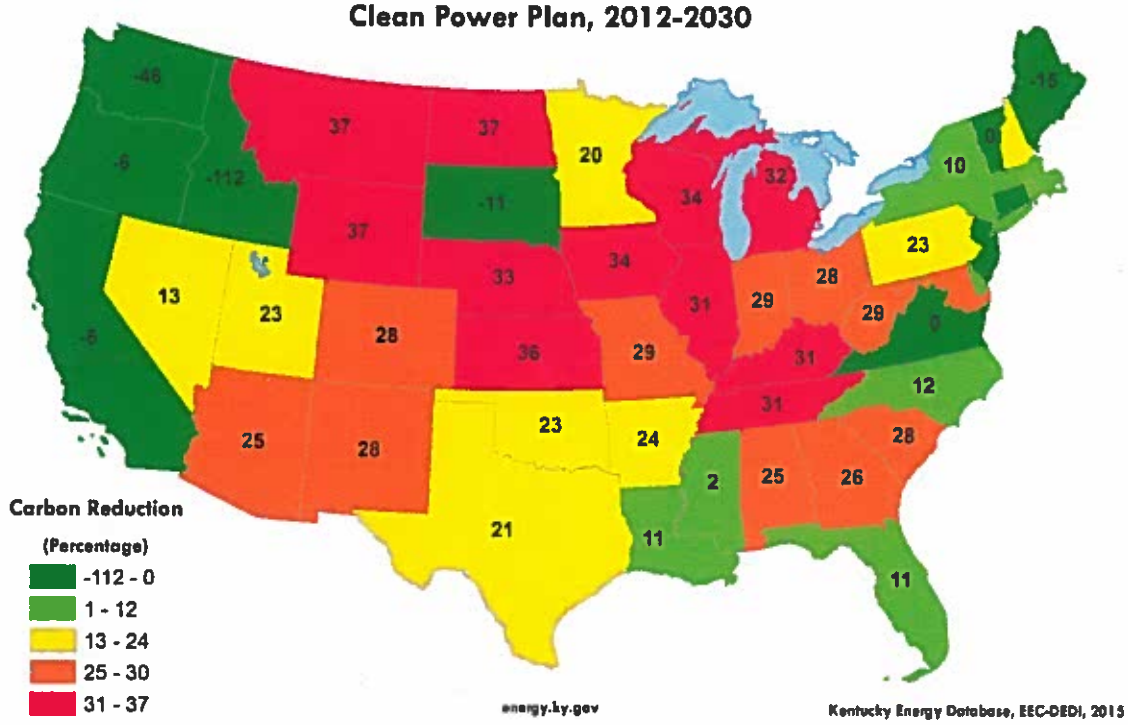
[1] This change was made without addressing that the Clean Power Plan is an "unfunded mandate" (and despite acknowledging the expense to states of the CPP process). For example, see the RIA at Chapter 7. The RIA explains that while the rule does not impose requirements on regulated entities, state standards imposed upon existing sources may potentially impact small entities (7.3), will incur unfunded expenses to the states (7-4 & 7-9), and will result in an estimated 23-24 percent reduction in coal-fired electricity generation (7-17). These points highlight EPA's mistaken belief that CAA 111(d) authorizes EPA to substitute its discretion for that of Kentucky. As the Administrator of any state plan, Kentucky has the authority to determine how it will meet any emission guideline that EPA may legally publish under 111(d). While Kentucky's determination is reviewable, that does not mean these decisions are not Kentucky's to make in the first instance.

Percentage Reduction in Carbon Emissions from Electricity Generation

Clean Power Plan, 2012-2030



a. BSER Regions

The Final Rule creates three BSER regions: the Eastern Interconnection, Western Interconnection, and Texas Interconnection, without reference in the proposed rule and without allowing public comment on the matter. The EPA boldly concludes that "[t]his regionalized approach, as described in the NODA, takes into account the opportunity to develop regional RE resources and thus better aligns building block 3 generation levels with the rule's approach to allowing the use of qualifying out-of-state renewable generation for compliance." The Final Rule fails to adequately explain how the regions were chosen, the alternatives that were considered, and the reasons those alternatives were not chosen.

Kentucky was arbitrarily mandated a low emissions rate by placing it in the Eastern Interconnection region, which allegedly holds the most renewable potential, 67.8% as opposed to 9.7% for the Texas Interconnection Region for 2022. Placement in that region requires Kentucky to have the lowest emission rate in the country, and to generate renewable energy (RE) at an unrealistic rate.

b. Treatment of renewable energy

A comparison of estimated results from the RIA accompanying the proposed and Final Rule indicates a substantial increase in EPA's analysis of renewable energy's contribution to the nation's electricity portfolio by 2030. The RE methodology added a "historical maximum

capacity change" rather than the "historical average capacity change" used for calculations up to 2024. The result is that the renewable potential jumps significantly at 2024 and beyond. The difference between the average and the maximum is 33,397,141 mwh. The "historical maximum capacity change" in the Final Rule is substantially different than the "average" used in the proposed rule and is not a logical outgrowth of the methodology used in the proposed rule. Kentucky could not have anticipated the totally new methodology for calculating renewable energy generation potential created in the Final Rule, and was deprived of the opportunity to submit comments on this drastic change.

Additionally, in making this drastic change, EPA improperly relied on studies (the National Renewable Energy Laboratory's 2015 Annual Technology Baseline Estimates and the National Renewable Energy Laboratory's Renewable Energy Economic Potential Study) which were published after the proposed rule and not made part of the rulemaking docket for the promulgation of the Final Rule. The Public was clearly denied the ability to examine these studies and methodologies employed therein.

c. Treatment of Biomass

The Final Rule allows states to use "qualified biomass" as a means of meeting state-specific reduction requirements. This appears to be a narrower approach than was taken in the proposed rule. Also, EPA requires additional accounting and reporting requirements if a state decides to use qualified biomass. The agency gives some indication as to which biomass types may qualify:

> The EPA generally acknowledges the CO_2 and climate policy benefits of waste-derived biogenic feedstocks and certain forest- and agriculture-derived industrial byproduct feedstocks.... Use of such waste derived and certain industrial byproduct biomass feedstocks would likely be approvable as qualified biomass in a state plan when proposed with measures that meet the biomass monitoring, reporting and verification requirements.

However, the EPA continues to deal in vagaries with biomass which creates uncertainty for the future of biomass as a compliance option under the Final Rule. It is unclear whether the biomass facilities located in the Commonwealth would "likely be approvable," or not, as a part of a state compliance plan.

d. State-specific targets

The Final Rule contains state-specific emission rate targets and mass-based targets that differ drastically from the ones in the proposed rule. Specifically, Kentucky's final targets are dramatically more stringent than those in the proposed rule. This dramatic difference is apparent in the table on the next page, which demonstrates proposed versus final numbers for Kentucky. In fact, the final targets for existing sources in Kentucky are now more stringent than the 111(b) standards for new sources.

	CO_2 Rate	CO_2 Mass
2012 Historic Baseline	2,166 lbs/MWh	91 million tons
Proposed Goal	1,763	77
Interim Period (2022-29) (Final Rule)	1,509 (avg. for the period)	71
Final Goal	1,286	63

Moreover, EPA failed to do a state-by-state cost-benefit analysis, and these targets were set without considering those state-specific impacts. State-by-state cost-benefit analysis will demonstrate that the targets for Kentucky have a devastating effect on ratepayers, the economy, and the standard of living in the Commonwealth and other similarly situated states. We urge the EPA to reconsider altering the carbon emission targets so dramatically without allowing for meaningful public comment.

II. Clean Energy Incentive Program

EPA's Final Rule includes a Clean Energy Incentive Program (CEIP) "to reward early investments in renewable energy (RE) generation and demand-side energy efficiency (EE) measures ... during 2020 and/or 2021." There was no mention of the CEIP in the proposed rule. Public comment on this early action credit program is of central relevance to the outcome of the Rule.

III. Leakage

The concept of "leakage" was not included in the proposed rule. Leakage is defined in the Final Rule as "...increased CO_2 emissions due to increased utilization of unaffected sources..." (80 FR 64903, col.2, paragraph 1). The EPA asserts that the increased CO_2 emissions, due to increased utilization of unaffected sources, are contradictory to the objectives of the Final Rule and should be minimized. The EPA goes one step further and requires states that submit a mass-based plan to demonstrate that potential emission leakage has been addressed in several ways, one of which is to regulate new non-affected EGUs as a matter of state law in conjunction with emission standards for affected EGUs in a mass-based plan.

The CAA does not authorize the EPA to force states to regulate new non-affected EGUs at the same time a state is attempting to comply with the 111(d) requirements. No legal authority enables the EPA to combine new sources and existing sources as a means of complying with a section 111(d) plan, and EPA has not required this in the past. The Final Rule concedes that the CAA does not allow this mechanism, by stating, "The allowance allocation alternative for addressing leakage was chosen for the federal plan and model rule proposal because EPA does not have authority to extend regulation of and federal enforceability to new fossil fuel-fired sources

under CAA section 111(d), and therefore we cannot include them under a federal mass-based plan approach." (80 FR 644889, col.3, paragraph 1).

The leakage component of the Final Rule is not a logical outgrowth of the proposed rule. In the proposed rule, states could use 111(b) sources as a compliance tool. In the Final Rule, a state that uses 111(b) sources as part of its state plan to meet the 111(d) target is penalized because the Rule requires the target to be more stringent if 111(b) sources are used as a compliance tool. That state must now show how leakage is accounted for and demonstrate that it can enforce those requirements. The EPA must convene a proceeding so that the Public can make meaningful comment on the EPA's attempt to pressure states into regulating non-affected EGUs through this rulemaking.

IV. Conclusion

The issues raised above are of central relevance to the outcome of the Final Rule and it was "impracticable" for Kentucky to raise the issues during the comment period afforded. The EPA should convene a proceeding for reconsideration of the Rule pursuant to §307(d)(7)(B), so that the Public has the opportunity to make meaningful comment on these issues. The Commonwealth respectfully requests that you give due consideration to this petition for reconsideration without delay.

Sincerely yours,

Charles G. Snavely
Secretary

cc: R. Bruce Scott, Commissioner
Sean Alteri, Director, Division of Air Quality
The Department for Environmental Protection