

Office of the Governor

December 1, 2014

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

Re: Docket ID No. EPA-HQ-OAR-2013-0602 – Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units

Dear Administrator McCarthy,

I appreciate the opportunity to comment on the U.S. Environmental Protection Agency's (EPA or Agency) proposed rule – Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (Proposal). State agencies will submit individual comments, which are incorporated by reference.

The EPA does not have the legal authority to propose, finalize or enforce this Proposal. The EPA has introduced a Proposal that will functionally and structurally hamstring the energy and electricity sectors. It will burden our nation's economic security and prosperity with almost no environmental or health benefits.

Wyoming supplies 40% of the coal used in the United States – distributed to 30 some states annually. The mining industry employs – directly and indirectly – thousands of people in Wyoming. Coal production funds school construction, infrastructure projects and federal, state and local government functions. In addition to mining, Wyoming coal fired power plants produce affordable power for residents and businesses both in Wyoming and in other states. The EPA's Proposal will create an unnecessary burden for Wyoming residents and businesses who receive 89% of their electricity from coal generation.

The Wyoming Public Service Commission wrote to the EPA in 2013 and elaborated on the importance of allowing coal facilities to remain available for service for the duration of their useful lives – expressly allowed for under the Clean Air Act.¹ The myriad of unjustified requirements in this Proposal (on top of investments required from recently finalized regulations) will burden utilities and ratepayers. Ratepayers will pay for both stranded investments and new electricity infrastructure. Unfortunately, the EPA has not accounted for this statutorily-

¹ 42 U.S.C. § 7411(d)(B)

mandated consideration. The Agency incorrectly asserts that since states determine compliance avenues, the remaining useful life of coal units need not be considered. As a result of this ill-considered and incorrect position, it is expected that 49 gigawatts of coal generation will be shut down by 2020.

The CAA gives the Agency a narrow role in developing a proposal such as this. The EPA went beyond this narrow role. The EPA provides guidelines and states have ultimate authority to determine performance standards. The Agency has proposed four components to achieve emission reductions and has set mandatory reduction targets for every state. The EPA is trespassing on state jurisdiction, the establishment of renewable portfolio standards and energy efficiency standards. This encroachment is wrong.

The first proposed component requires coal units to achieve a 6% efficiency improvement over current levels. The EPA based this level of achievement on an analysis of aggregated national information with little applicability to individual coal units. Wyoming coal units have routinely invested in new technologies to run more efficiently. The EPA proposes a level of additional improvement not possible or practical given the cost. The Agency asserts that cost increases will be offset by reduced fuel cost needs. In Wyoming, many coal units are mine-to-mouth with fuel costs significantly lower than the national average. The promised savings are much smaller than projected by the EPA. The other three components, discussed below, are counter to this first component. If coal plants are to run at maximum efficiency they must operate at full capacity. The last three components reduce the operating capacity of coal units by design. This is nonsensical.

The second proposed component requires increased utilization of natural gas generation as an offset to coal generation. Under this Proposal, natural gas use would need to increase to 70%, a rate achieved by only 10% of natural gas units nationally. The EPA made an error in their analysis of the Cheyenne Prairie Generating Station, the sole natural gas combined cycle unit in Wyoming. The EPA assumed a 220-megawatt facility when it is a 95-megawatt unit. This error calls into question the entire component analysis.

The broader concern is the EPA's requirement for sale of electricity generated from natural gas (to meet a federally mandated level) regardless of price. Electricity is currently purchased on an economic basis and coal has historically been the fuel of lowest cost. This proposal transforms the electricity market from an economic market to an environmental market based on a single environmental consideration – CO₂. In testimony before the House Subcommittee on Energy and Power, Federal Energy Regulatory Commission Commissioner Moeller stated, "Changing from economic dispatch to environmental dispatch is truly a fundamental change that would require a complete redesign of markets to include essentially a carbon fee on any resources that emit carbon dioxide." This action will strain utilities' ability to meet demand, especially during extreme cold and heat. Utilities will be required to reconstruct generation portfolios in short order and at significant cost to businesses and other ratepayers. The EPA has no authority to fundamentally transform the electricity market.

The third proposed component requires states to add renewable energy to their power generation portfolios. The EPA burdens states with the cost and responsibility for this regulation. The CAA requires that emission reductions arise from actions taken at the regulated source. It grants the EPA no authority to force emission reductions through non-regulated parties. This proposal represents an unprecedented power grab by regulatory authorities and the consequences are significant.

In calculating renewable requirements for each state, the Agency grouped states into arbitrary regions, averaged the renewable portfolio standards (RPS) from states that have enacted them and assigned percentage requirements to states. The EPA did not include the 13 states without a RPS, presumably to avoid lowering targets for all states. The establishment of a RPS is within the sole discretion of a state. No federal agency has the authority to dictate a state's generation portfolio. The EPA stated that this component is in line with what states are already doing. This is not true (Wyoming is not) and it is irrelevant.

The Agency's renewable energy targets (based on inaccurate analysis) are unachievable by Wyoming. The EPA, in developing a target, incorporated all of the renewable energy generated in Wyoming when only 15% of this renewable energy is consumed in-state. This simplistic approach and the EPA's required growth rate would require Wyoming to increase its consumption of wind energy from 666,212 megawatt hours of wind energy in 2012 to 9,427,996 megawatt hours by 2030. This represents a 1,415% increase in intrastate consumption of wind energy (equating to a 52% RPS). Wyoming will not have the demand to meet this excessive supply of electricity nor the infrastructure to support it.

The final proposed component requires Wyoming to increase its utilization of demand-side energy efficiency. Energy efficiency programs are successful because demand and price peak at certain times of the day. Wyoming's industrial sector consumes nearly 60% of intrastate electricity. This results in relatively flat demand throughout the day. There is little incentive for Wyoming residents or businesses to install energy efficiency technologies because savings are modest. The Agency's proposed standard cannot be reasonably achieved in Wyoming. The EPA is attempting to make third parties responsible for actions directed at a regulated source.

According to the EPA, the four components result in a 19% reduction in Wyoming carbon emissions by 2030. Each component was developed with little applicability to real world situations. These mandates are not achievable and are not directed at regulated sources.

The CAA allows states to consider non-air quality and environmental impacts in developing state compliance plans.² Wyoming has been working for years to conserve the Greater Sage-Grouse, a candidate species under the Endangered Species Act. Since 2008, private landowners, industry, local governments, other western states and federal agencies have partnered to develop

² 42 U.S.C. § 7411(a)(1)

an effective management strategy. In Wyoming, more than 15 million acres have been identified as priority habitat for the Greater Sage-Grouse. Some of the best wind resources in Wyoming overlap Greater Sage-Grouse core area habitat. The effects of wind energy development on Greater Sage-Grouse are not fully understood. Consequently, Wyoming prohibits wind energy development in core area habitat. A build out of wind generation on the scale contemplated by the EPA would directly conflict with Wyoming's sage-grouse efforts. It would put not only Wyoming's economy, but the economies of 11 western states, at risk.

At most, states will have two years to develop a compliance plan. This is insufficient time to plan the best way to accomplish emission reductions. This Proposal impacts power markets, generation fleets, reliability, environmental considerations, infrastructure and more. Compliance programs will require state legislative action. Incorporating these considerations into actionable programs will take more than one legislative session.

The Agency is frontloading emission reductions. Wyoming's carbon emission rate in 2012 was 2,115 lbs/MWh. In 2020, the first year of compliance, the EPA expects Wyoming to reduce emissions to 1,899 lbs/MWh – representing 10% of the required 19% reduction in year one. This requirement is not present for many other states. The EPA claims to have given broad authority to states to determine the most reasonable compliance path, but the stringent and rushed deadlines leave few options.

There is no assurance that factors outside of a state's control will not affect compliance. As an example, western states must take into consideration federal land issues. In many instances, a federal agency has authority over the timelines for permitting and ultimate authority to grant or deny a project. These agencies have a poor track record of timely permitting. This is one example of an external factor that puts at risk a state's ability to comply with its plan.

The EPA does not have the legal authority to issue this Proposal. The Agency must finalize standards for new power plants before addressing existing plants. The EPA issued a proposal for new power plants earlier this year, but that proposal is also legally flawed. The EPA's determination that carbon capture and sequestration technologies must be used to limit emissions from new power plants exceeds its authority. These technological systems have not been "adequately demonstrated," a threshold requirement of the CAA.³ The Energy Policy Act of 2005 restricted the EPA's use of technologies that had received funding from certain federal programs in making its determination. The EPA based its determination entirely on projects that had received federal funding.

The Agency is further barred from issuing rules for existing sources under Section 111(d) of the CAA. Regulating under Section 111(d) is prohibited if the source in question is already regulated under Section 112 of the Act. The U.S. Supreme Court affirmed this in *American Electric Power Co., Inc. v. Connecticut*, "EPA may not employ [Section 111(d)] if existing

³ 42 U.S.C. § 7411(a)(1)

stationary sources of the pollutant in question are regulated under . . . the ‘hazardous air pollutants’ program, [Section 112].” 131 S. Ct. 2527, 2537 n.7 (2011). The EPA recently finalized the Mercury and Air Toxics Standards, which regulates mercury from existing power plants through Section 112 of the CAA. This bars the EPA from issuing regulations for existing power plants under Section 111(d). Wyoming and 11 other states are challenging the EPA over this issue.

This Proposal will have severe consequences. Energy prices will increase. Under recently finalized EPA air regulations, 70 gigawatts of coal generation are expected to shut down. Under this Proposal, the EPA anticipates an additional 49 gigawatts will shut down. This is one-third of the U.S. coal fleet by 2020. The North American Electric Reliability Corporation (the entity responsible for ensuring a reliable and functional national electric grid) warned that 108-134 gigawatts will close – primarily coal plants – and that this Proposal “...would increase the use of controlled load shedding and potential for wide-scale, uncontrolled outages.” This position is supported by separate studies from American Electric Power and the Southwest Power Pool (predicting major grid reliability issues, including cascading outages). This will threaten business operations, hospitals, households and essentially every person that depends on reliability.

This Proposal decreases fuel diversity. Utilities will be over-reliant on natural gas generation as coal is phased out. Power generation and home heating will compete for the resource. Individuals will pay both higher electricity bills and higher heating bills. There is a real risk of insufficient supply of natural gas.

Any amount of CO₂ emission reductions from the U.S. will be insignificant as many countries continue to increase their use of coal. China and India alone are expected to add 1,055 gigawatts of coal generation by 2035. Energy poverty is a real issue across the world with 1.3 billion people without access to electricity. Coal is the fuel of choice, providing low-cost, reliable electricity. Coal is not a luxury we can simply do away with. It is a necessity.

The significant cost and compliance hurdles associated with this Proposal are frightening. National Economic Research Associates (NERA) projects this Proposal will carry annual compliance costs ranging from \$41-\$73 billion. NERA also projects that 43 states will see double-digit increases in the price of electricity. These price increases will not be absorbed by utilities – they will be passed on to customers. Businesses will become less competitive. The price of products and services will become more expensive.

There is strong evidence that the EPA’s Proposal is arbitrary, capricious and contrary to law.

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The economic and social impacts to Wyoming and the nation are too great. This Proposal should be rescinded immediately.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew H. Mead", written over a horizontal line.

Matthew H. Mead
Governor

MHM:mdm

cc: The Honorable Mike Enzi, United States Senate
The Honorable John Barrasso, United States Senate
The Honorable Cynthia Lummis, United States House of Representatives