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U.S. Environmental Protection Agency
EPA Docket Center Mail Code 28221T
Attention: Docket ID No. EPA-HQ-OAR-2013-0602
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Via <http://www.regulations.gov>

To Whom it May Concern:

The following comments regarding the June 18, 2014 Federal Register notice entitled “Carbon Pollution Emissions Guidelines for Existing Stationary Sources: Electric Generating Units”, have been submitted on behalf of the members of The Business Council of New York State (“The Business Council”).

The Business Council is the leading business organization in New York State, representing the interests of small and larger firms throughout the State employing over 1.4 million people. Our membership is composed of power generators, independently owned utilities, energy service companies and electric power consumers, including more than 1,100 manufacturing firms. The primary function of the Business Council is to serve as an advocate for its members in policy matters affecting economic development, jobs and the general business climate.

Our membership in various forms has committed significant time and talent to addressing the myriad of public policy issues surrounding climate change. The Business Council is deeply troubled by the potential adverse effects of the U.S. Environmental Protection Agency’s (“EPA” “or “agency”) Carbon Pollution Standards for Existing Power Plants (“Clean Power Plan”). The Business Council supports efforts to reduce the carbon intensity of our economy in a manner that does not injure economic growth. The Business Council is considerably concerned that there are more efficient and effective solutions to addressing the release of GHG than the Clean Power Plan.

The Business Council is specifically concerned that the Clean Power Plan lacks statutory legitimacy, penalizes early adopters, and does not truly support RGGI and “outside the fence” approaches as compliance mechanisms.

The Business Council supports the adoption of climate policies with co-benefits. We support the adoption of climate policies that provide near-term and concrete changes that address GHG. The primary rationale for the policy goals should be to improve the quality of human life (enjoyment, health, economic advancement) – additionally each of these policy goals would have a co-benefit to reduce the effects of humans on the climate system. Climate policies with co-benefits require an “outside the fence” approach. EPA through the development of a “Best System of Emission Reduction” has attempted to address some potential areas “outside the fence”, but because of the statutorily questionable underpinning of this approach, the aggressive timeframe for the development of State Plans and the difficulty of enforcement, few if any climate policies with co-benefits will be adopted.

Lack Statutory Legitimacy

A plan to reduce carbon emissions should not be predicated upon uncertain interpretations of the agencies authority under Section 111(d) of the Clean Air Act. The agency pursuant to the Clean Air Act has the authority to limit emissions by determining an appropriate system of controls for those emissions at their source. EPA does not have explicitly authority under the Clean Air Act to limit GHG emissions by requiring energy efficiency, greater utilization of zero emission resources, or increasing the natural gas capacity factor, three of the four building blocks. Given the potential significant gravity of the Clean Power Plan the Agency should not predicate the program on implied powers but should depend upon explicit authorization.

There is a significant degree of certainty that provisions of the Clean Power Plan will be subject to substantial litigation. Already, West Virginia has been joined by eleven other States, including Alabama, Indiana, Kansas, Kentucky, Louisiana, Nebraska, Ohio, Oklahoma, South Dakota, South Carolina and Wyoming in *West Virginia v. EPA*, 14-1146, U.S. Court of Appeals, District of Columbia, in questioning the validity of the Clean Power Plan. Provided the aggressive time table outlined in the Clean Power Plan the uncertainty associated with litigation will hamper the private sectors ability to plan and correct for the potential positive and negative effects of the Clean Power Plan on the energy markets.

Furthermore, the building blocks deviate from typical Clean Air Act State plan design. Section 110 of the Clean Air Act provides an explicit statutory scheme for the development of State plans to meet national ambient air standards. In contrast

three of the four building blocks of the Clean Power Plan will be difficult to include in State Plans because current market design, Federal Energy Regulatory Commission (“FERC”) and Nuclear Regulatory Commission (“NRC”) regulations and conflicting State laws, will make them difficult to enforce and implement. EPA has established guidance for the enforceable requirement of provisions in State plans. Specifically State plans must include (1) a technically accurate limitation; (2) the time period for the limitation; (3) a method to determine compliance (including monitoring, record keeping, and reporting); (4) the categories of sources covered by the rule; and (5) the consequences for failing to meet the requirement.¹

Building Blocks

The Business Council recommends that EPA amend Building Block 1 stipulating that no reductions associated with coal plant heat rate improvements will be required for states that generated less than 10% of their total annual energy from coal. There are many reasons EPA should exclude states with limited coal production from Building Block 1. First and foremost those states with less than 10% of their total energy generated from coal have already undergone a significant change in the energy mix. The coal currently operating in New York is performing a needed function as it helps to address local reliability issues and in many instances is operating because those units must run for local reliability needs.

The Business Council believes that Building Block 2 which is predicated upon unit capabilities does not consider system capability. In New York State to increase Natural Gas Combined Cycle Capacity (“NGCC”) Factor to 70% will result in significant reliability issues or force an unwarranted undesirous market redesign. The North American Electric Reliability Corporation (“NERC”) has expressed the following reliability concerns “with greater reliance on natural-gas-fired generation, the resiliency and fuel diversification that is currently built in to the system may be degraded.” We agree with NERC that continued assessment of the reliability implications of the proposed Clean Power Plan need to occur, because the over dependence on one fuel type can expose customers to the potential of detrimental price volatility.

Additionally requiring 70% NGCC capacity factor will alter market design resulting in less utilization of zero emission resources, and will make the attainment of Building Block 3 more costly. Simply, altering market design to achieve a set capacity factor in New York which has deregulated the electricity market will be almost impossible.

¹ “Guidance an Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits”
www.epa.gov/region7/air/nsr/nsrmemos/potoem.pdf

The EPA should recognize the limitation and significant benefits of deregulated markets and encourage deregulated markets that have delivered significant reduction in GHG and not place those markets in peril.

The Business Council has significant similar overarching concerns about the equity and application of Building Blocks 3 & 4. Those concerns are discussed below. We have specific concern that Building Block 3 requires EPA to regulate zero emissions resources. EPA does not currently have explicit power to regulate non-emitting resources like nuclear, wind, and solar. The Business Council is concerned that FERC rules make it difficult to support long term out-of-market incentives which will hamstring State's abilities to achieve results through Building Block 3. EPA should utilize a determination of technically potential renewables in a similar manner to the National Renewable Energy Laboratory ("NREL") estimates of the technical potential of specific renewable electricity generation technologies.

It is important that EPA Clean Power Plan acknowledges the role of nuclear power in producing zero emitting power. Approximately 5,200 MW of nuclear generation in New York State produces approximately 30% of the state's total electric generation. Nuclear facilities are an important part of the state's energy portfolio and we should be committed to the promotion and continue economic viability of nuclear power generators in New York. Low-carbon nuclear energy has numerous attributes including round-the-clock production of large amounts of electricity to help stabilize the electric grid; clean-air compliance; forward electricity price stability; fuel and technology diversity; and high-paying jobs at facilities that can withstand extreme natural and man-made events.

Additionally, enforcement of Building Block 4 is difficult because measurability and verifiability are difficult to attain. The Identification of parties to enforce energy efficiency against is difficult. The independently owned utilities are a poor target for enforcement as many of the efficiency measures are outside of their control as many of the measures can only occur with a willing customer. New York State has been unable to meet currently established efficiency targets despite a significant financial commitment.

Penalizes Early Adopters

Some of our gravest concerns are the seemingly punitive nature of the design of the Clean Power Plan. A legitimate program should not punish States that have made significant progress to addressing GHG. The EPA should commend States that have made significant GHG reductions on their own. There is little doubt that New York is

treated inequitably. Compounding the issues with inequitable treatment is the fact that New York has some of the United States' highest energy cost and cannot sustain any increased energy costs. Other States need to address the economical low hanging fruit. National policy should be focused on reducing national GHG in a manner that first address the least costly options.

The Business Council believes that the use of a single year, as the baseline for measuring GHG could result in the establishment of atypical targets. The EPA has selected 2012 as the baseline year but for the Northeastern states largely due to Super Storm Sandy energy consumption was atypical.

The four building blocks individually punish States that took early action resulting in a collective goal which is unjustifiable. States like New York and Washington which have an energy generation sector with reduced carbon footprint are required to make substantial reductions. Washington ranks near the bottom of the list of greenhouse gas emitting states and has a power plant CO2 emissions rate of only 763 lbs/MWh— the nation's fifth lowest but must reduce emissions by 81%. Other states, such as North Dakota with a very carbon intensive energy generation sector (2,368 lbs/MWh) but is required to only make an 11% reduction in its emission.

New York energy consumers have been required to devote over a billion dollars a year on renewable energy and energy efficiency programs. The energy assessments that have supported these programs have come at a significant cost to energy consumers and have raised New Yorker's energy cost to some of the highest in the nation. The New York State Public Service Commission ("Commission") has recently acknowledged that the current renewable and energy efficiency programs have "served adequately for many years, it now falls short of the pace of technology development that defines many parts of our economy."² The Commission in response to this knowledge has begun the Reforming the Energy Vision ("REV") proceeding which is an open acknowledgement of limitation of the current market place to meet additional renewable energy and energy efficiency goals. REV is intended to transform New York's electric industry, for both regulated and non-regulated participants, with the objective of creating market based, sustainable products and services that drive an increasingly efficient, clean, reliable, and consumer-oriented industry. The Commission through the REV proceeding is trying to identify ways to encourage transformation in the energy sector with co-benefits.

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[http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/26be8a93967e604785257cc40066b91a/\\$FILE/ATTK0J3L.pdf/Reforming%20The%20Energy%20Vision%20%28REV%29%20REPORT%204.25.%2014.pdf](http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/26be8a93967e604785257cc40066b91a/$FILE/ATTK0J3L.pdf/Reforming%20The%20Energy%20Vision%20%28REV%29%20REPORT%204.25.%2014.pdf)

EPA should learn from those State's which have taken a lead in renewable and should seek on the development of climate solutions with co-benefits.

EPA's decision to discount the value of domestic hydropower is completely puzzling. Hydropower is a renewable, efficient, and reliable source of energy that does not directly emit greenhouse gases or other air pollutants, and that can be scheduled to produce power as needed, depending on water availability. If EPA does not want energy costs to rise substantially, EPA needs to rethink the discount of domestic hydropower. Not only is it clean and renewable, it is essential to new "intermittent" renewables such as wind and solar. Hydro output can be quickly and easily turned up or down to keep the electrical grid in balance.

We agree with the nine Northeastern and Mid-Atlantic states participating in RGGI, whom on November 5th issued comments to the EPA when they state the following "the impact of including hydroelectric resources as part of the target-setting methodology creates a differential between Northeast states' existing renewable generation and their derived 2030 proposed renewable energy targets that is unrivaled in its stringency and may not be technically achievable without the inclusion of existing hydroelectric resources as a compliance option."³ EPA must recognize that for states such as New York where hydroelectric resources are foremost in a state's current renewable portfolio, it is essential that hydropower is properly recognized.

Clean Power Plan and RGGI

The Business Council continues to have significant concern that the true cost of RGGI has never been revealed. None of the studies conducted on RGGI review the regional impacts of RGGI. Additionally, studies have failed to capture the costs of transmission upgrades or reliability must run orders or the different application of energy efficiency measures across States and customer classes.

As much as the Business Council remains concerned about RGGI, it might be the least bad means of attaining compliance with the Clean Power Plan. EPA should make the following changes; emissions rate targets should be equal to mass based targets, EPA should provide guidance on how to deal with the difference in applicability including new sources; facilities that are covered under RGGI that are between 73MW and 25MW; RGGI's no restriction on the fungibility of RGGI allowances, the three year compliance period. Additionally EPA should learn from RGGI and should adopt a reevaluation time period.

³ http://www.rggi.org/docs/PressReleases/PR110714_CPP_Joint_Comments.pdf

In closing EPA should ultimately determine that RGGI is an adequate compliance program.

Conclusion

GHG is an international issue and cannot be addressed locally without reviewing the global impact. A poorly drafted solution to GHG will ensure carbon leakage resulting in net gain of GHG. Under the EPA plan leakage is likely to occur on a national level but also on a state level. Due to the structure of the Clean Power Plan, New York and New York facilities will be at a significant disadvantage. Load currently migrates from facilities to facilities from one company to another depending upon energy costs. The Clean Power Plan will make those matters worse as it is likely to have significant electric energy rate impacts in some states, but not equitably among the states.

It is most important that Energy-intensive trade-exposed (EITE) industries require a level playing field to prevent GHG leakage. According to the EPA's own calculations, the rule will increase industrial electricity prices by \$2.2 billion each year, or \$37.4 billion by 2030 to the cost of the EIA AEO 2014 electricity forecast. Combined, industrial electricity would rise 154 percent by 2030 (see Figure 2). This means that from 2013 to 2030, a 17-year period, electricity prices will raise an average of 9.1 percent each year. Total industrial sector electricity costs would rise from about \$65.1 billion in 2013 to 165.6 billion in 2030, a 154 percent increase. This is in contrast to the last seventeen year period (1996 to 2013), where prices rose from \$4.60 KWh in 1996 to \$6.82 KWh, only a 48.3 percent increase.

Sincerely,

A handwritten signature in black ink, appearing to read "Darren Suarez". The signature is fluid and cursive, with the first name "Darren" being larger and more prominent than the last name "Suarez".

Darren Suarez
Director of Government Affairs
The Business Council of New York State, Inc.

