United States Environmental Protection Agency

Proposed Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations

EPA-HQ-OAR-2015-0199

Comments of Missouri River Energy Services and Western Minnesota Municipal Power Agency

January 21, 2016

Table of Contents

1. EXECUTIVE SUMMARY 1

2. MISSOURI RIVER ENERGY SERVICES AND WESTERN MINNESOTA MUNICIPAL POWER AGENCY HAVE A UNIQUE INTERSTATE CHARACTER 1

A. Our only affected Electric Generating Unit is in Wyoming, the Laramie River Station 2
B. Electric load of all sixty member municipal utilities is in Iowa, Minnesota, North Dakota & South Dakota 3
C. Clean, non-emitting energy resources of MRES are located outside of Wyoming, including the Red Rock Hydroelectric Project under construction in Iowa 3

3. EPA'S PROPOSED FEDERAL PLAN AND MODEL TRADING RULES ARE UNLAWFUL AND MUST BE WITHDRAWN 4

A. The proposed Federal Plan and Model Trading Rules are Illegal 4
B. The Clean Power Plan and the Proposals encroach on state jurisdiction 5
C. EPA's Clean Power Plan and its most recent Proposals are unconstitutional 6
I. Tenth Amendment state sovereignty 6
II. Fifth Amendment Takings Clause 7
III. Article I Contracts Clause 8

4. EPA'S FEDERAL PLAN AND MODEL TRADING RULE PROPOSALS PROVIDE WELCOME DIRECTION, BUT FALL FAR SHORT OF THE STRUCTURE FOR A WORKABLE AND FLEXIBLE IMPLEMENTATION OF THE CLEAN POWER PLAN. 9

5. THE FEDERAL PLAN AND MODEL TRADING RULES FAIL TO DELIVER ON EPA'S PROMISED FLEXIBILITY FOR STATES TO DESIGN THEIR OWN STANDARDS 10

A. EPA's strategy to finalize a single Federal Plan will deny states the ability to choose the Federal Plan (i.e., rate-based or mass-based trading) best suited to their circumstances if the state plan is not approvable. 10
B. EPA should finalize both rate-based and mass-based Federal Plans to enable affected states or tribes to select the best plan 10
C. States should not be forced to adopt state plan pathways identical to the Federal Plan in order to enable interstate trading between Federal Plan states and state-plan states with trading-ready mechanisms 11
D. States should not be forced to use an as-yet-undeveloped EPA-administered tracking system to engage in interstate trading between federal-plan states and state-plan states with trading-ready mechanisms 12

6. THE EPA'S PROPOSED MASS-BASED FEDERAL PLAN AND MODEL TRADING RULES REQUIRE IMPORTANT CHANGES TO ENSURE WORKABILITY 12

A. State authority to determine the methodology for allowance distribution should include additional parameters to protect consumers 12
I. Auctioning of allowances should not be permitted 13
II. States should be allowed to replace all of the proposed Federal Plan's allocation set-aside provisions in the mass-based trading program, including the Clean Energy Incentive Program set-aside 13
III. EPA must more clearly define leakage, and states should be allowed to choose alternative options to address leakage or demonstrate that leakage will not occur due to specific characteristics of the state 14

iv. Out-of-state Renewable Energy projects must be eligible for allowances from the Renewable Energy set-aside 15
b. MRES supports EPA's proposed use of banked allowances because it is essential for workability 15
c. The Federal Plan should establish the right to borrow allowances from future compliance periods during the useful life of the Electric Generating Unit to provide the most flexibility for compliance and minimize compliance costs. 16

7. THE EPA'S PROPOSED RATE-BASED FEDERAL PLAN AND MODEL TRADING RULES ALSO REQUIRE IMPORTANT CHANGES TO ENSURE WORKABILITY 16

a. The Proposals must require full tradability of Emission Rate Credits, require utility/ratepayer-funded Emission Rate Credits be awarded to the utility, and allow Emission Rate Credits to be used to meet compliance obligations in any state, including those with a Federal Plan and those with approved state plans 17
b. Emission Rate Credits must be fully-tradable to protect MRES ratepayer-owners from unreasonable exposure to price separation between the Emission Rate Credit and the allowance markets, and prevent the unjustified sacrifice of the value of ratepayer investments in new Renewable Energy and Energy Efficiency 18
c. EPA should streamline Evaluation, Measure & Verification requirements and make rules to maximize approval of Emission Rate Credits based on any state Evaluation, Measure & Verification protocols 19
d. The Federal Plan should be inclusive and allow energy efficiency programs to be eligible for Emission Rate Credits 21
e. MRES supports EPA's proposed use of banked ERCs because it is essential for workability 22
f. The right to borrow ERCs from future compliance periods during the useful life of the RE or EE measure must be included to provide maximum flexibility and minimize compliance costs 22
g. The Federal Plan and Model Trading Rule should establish that EPA- or state-issued ERCs are presumptively valid if they satisfy the EPA or state eligibility standards to enable the effective operation of trading markets and eliminate uncertainty 23

8. THE PROPOSED FEDERAL PLAN PROVIDES INSUFFICIENT CREDIT FOR RETIREMENT OF AFFECTED EGUS 24

a. Mass-Based: By arbitrarily limiting to 3-5 years the time in which a retired unit may receive allowance allocations, the EPA ignores the significant costs incurred if an affected EGU is forced to shut down prematurely before the end of its useful life, and may constitute an unconstitutional taking of private property 24
b. Rate-Based: EPA has arbitrarily failed to provide credit for retirement of EGUs that recognizes the value of such reductions to generate ERCs, and by failing to allow these reductions to generate ERCs, the EPA creates an unfair and potentially illegal or unconstitutional regulatory scheme 26
c. EPA's Alternative Compliance Pathway for EGUs that agree to retire before a certain date requires important changes to ensure workability 27

9. EPA MUST PREVENT MARKET MANIPULATION 27

a. Opportunities abound for potential market manipulation 29
b. Mechanisms to prevent market manipulation 30

10. THE PROPOSED CLEAN ENERGY INCENTIVE PROGRAM MUST BE REVISED TO EFFECTIVELY AND FAIRLY INCENTIVIZE THE QUICK DEVELOPMENT OF BOTH RENEWABLE ENERGY, AND OF ENERGY EFFICIENCY FOR LOW INCOME COMMUNITIES 32

a. Definitions and Criteria for Clean Energy Incentive Program eligibility should promote early Renewable Energy and Energy Efficiency development 33

i. Allow eligibility for renewable energy and energy efficiency projects that commence operation after publication of the final Clean Power Plan Rule 33
ii. Allow issuance of early action allowances or emission rate credits for generation from new Renewable Energy resources that occurs between the publication of the final Clean Power Plan rule and 2022 34
iii. An eligible low-income energy efficiency project should be deemed to have "commenced operations" if the program is listed in the state-approved Technical Resource Manual 34
iv. All categories of renewable energy generation used to quantify Building Block 3 emission reductions as a component of the Best System of Emission Reduction in the final Clean Power Plan should be eligible under the Clean Energy Incentive Program 35
v. Utility-owned or contracted renewable energy should be considered to "benefit" the state in which that utility has an affected Electric Generating Unit 36
vi. States should be allowed to define low-income communities 37
b. EPA should streamline Evaluations, Measurement & Verification requirements and leverage existing tracking systems to track and verify Renewable Energy generation and Energy Efficiency savings for the Clean Energy Incentive Program 37
c. Distribution of early action allowances and Emission Rate Credits 38
i. EPA should allow states to determine how the pool of allowances or Emission Rate Credits is distributed between the reserves for eligible Renewable Energy projects and Energy Efficiency programs in low-income communities 38
ii. EPA should allow states to re-direct unused early action allowances/Emission Rate Credits into other reserve 38
iii. The pro rata distribution of allowances/Emission Rate Credits should be based on the output of CO_2 from affected Electric Generating Units, allocating more allowances/Emission Rate Credits to those states with the greatest emissions 39
d. EPA should revise the Clean Energy Incentive Program framework to prevent market manipulation and hoarding of allowances 39
e. The Clean Energy Incentive Program should give certainty to the utilities, to the rate-payers and to the reliability of the grid 40

11. RELIABILITY MUST BE ADDRESSED IN THE PROPOSALS 41

a. Omission of an Reliability Safety Valve in the Federal Plan is arbitrary and capricious 41
b. An "emergency allowance" set-aside is an inequitable means to address reliability in the Federal Plan 43
c. The Reliability Safety Valve must last longer than 90 days 43
d. Proposals must define process for coordination with reliability entities 44

12. CONCLUSION 44

1. Executive Summary

Missouri River Energy Services (MRES) believes the proposed Federal Plan and Model Trading Rules ("Proposals") to implement the Environmental Protection Agency's (EPA) Clean Power Plan (CPP) under section 111(d) of the Clean Air Act (CAA) are, like the CPP itself, illegal and unconstitutional because they incorporate, and in some respects add to, the unlawful elements of that final rule. The Proposals are roadmaps to implement the rule's illegal requirements, and are similarly unlawful. MRES believes that EPA should withdraw the Proposals.

Although the Proposals and the underlying CPP have fatal flaws, MRES accepts its responsibility to comply with the CPP as it has been finalized, and provide a constructive critique to ensure that the Proposals are workable and the cost and reliability impacts are minimized. MRES has a fiduciary responsibility to its Members to prepare to comply with the interim requirements when they begin in 2022, and the final goals in 2030. In addition, as an affected entity, MRES is committed to respect environmental regulations in furtherance of our mission to provide reliable, cost-effective energy and energy services to our not-for-profit municipal utility members and their consumer-owners.

The Proposals, together with the Clean Energy Incentive Program (CEIP), provide welcome direction, but fall far short of the structure for feasible and flexible implementation of the CPP. Several key issues must be addressed to ensure the workability of the Proposals, especially for interstate utilities like MRES with load in states entirely remote from the location of their only affected Electric Generating Unit (EGU). The major flaws include insufficient flexibility for states to design their own standards, failing to address the full, interstate tradability of compliance instruments, the threat posed by allowance auctions to consumer costs, the lack of details surrounding leakage, burdensome Evaluation, Measurement and Verification (EM&V) requirements, insufficient credit for retired EGUs, failure to prevent market manipulation, the distorted disincentives created by the CEIP that force delay in development of renewable energy and energy efficiency in low-income communities, and the threats to reliability created by the Proposals. If the Proposals are finalized, EPA must correct these deficiencies if these regulations are to achieve the carbon dioxide reduction goals, while maintaining the integrity and reliability of the electric system, and protecting consumers from significant price hikes.

MRES is a member of, and supports the comments of the American Public Power Association (APPA), and offers these additional comments on the Proposals and to provide constructive observations to improve the workability of the Proposals.

2. Missouri River Energy Services and Western Minnesota Municipal Power Agency have a unique interstate character

Missouri River Energy Services is a municipal power agency which supplies power and energy, and energy services to sixty (60) municipal utility members throughout Iowa, Minnesota, North Dakota and South Dakota. Organized under Iowa Code Ch. 28E, MRES was created by the member communities that own it. As a political subdivision of the state of Iowa, MRES is a not-

for-profit, member-owned public entity, like the municipalities it serves. MRES is based in Sioux Falls, South Dakota.

Western Minnesota Municipal Power Agency (Western Minnesota) is a municipal corporation and political subdivision of the State of Minnesota. Western Minnesota finances and is the owner of the generation and transmission facilities used to serve members of MRES under the terms of power supply and transmission capacity contracts between Western Minnesota and MRES. All output and capacity of Western Minnesota facilities is dedicated exclusively to MRES.

a. Our only affected Electric Generating Unit is in Wyoming, the Laramie River Station

MRES is a regional utility like many of its counterparts, but MRES is unique. MRES relies on a single, base load coal plant in Wheatland, Wyoming called the Laramie River Station (LRS) to serve the needs of its members. LRS is the only MRES EGU that falls within the definition of "affected unit" under the CPP. The three units of LRS began commercial operations in 1980, 1981 and 1982, and produce 1,710 megawatts (MW). Western Minnesota owns 16.5% of LRS, corresponding to approximately 282 MW, all of which is supplied to MRES. LRS has six owners, all of which are consumer-owned entities in the region. LRS is the only MRES resource that falls within the definition of an "affected unit" under this rule. MRES has no members and no sales in Wyoming.

The 282 MW of generation that LRS provides represents 70 percent of the energy that MRES supplies to its members. Most members of MRES also have allocations of federal hydropower that supply a portion of their needs, and MRES serves the balance of their community's need over and above the allocation. On average, MRES member communities rely on LRS for 40 percent of their power.

In January 2014, EPA issued a Federal Implementation Plan (FIP) for Regional Haze as it relates to LRS, among other power plants in Wyoming. LRS was ordered by EPA to install Selective Catalytic Reduction (SCR) technology on all three units of LRS by 2019.[1] The remaining life of LRS is about 20-30 years. The cost to install the three SCRs at LRS is approximately $750 million, a cost of $125 million for MRES and Western Minnesota alone.

The Regional Haze investments may be stranded if one or more units are forced to retire to comply with CPP, forcing the 60 member municipal utilities of MRES and their consumer-owners to pay for air quality control measures for which there is no value. The final CPP and

[1] In response to EPA's order, the owners of LRS appealed the decision to the United States Circuit Court of Appeals for the Tenth Circuit, as did the State of Wyoming, PacifiCorp, and the Powder River Basin Resource Council. While the consolidated cases are pending before the 10th Circuit, the Court has granted a stay of enforcement of the FIP for the duration of the case. In the event EPA's FIP is upheld, LRS will then have five years to comply with the terms of the FIP. Wyoming v. United States Environmental Protection Agency, No. 14-9529 (No. EPA-R08-OAR-2012-0026), Powder River Basin Resource Council v. United States Environmental Protection Agency, No. 14-9530, Basin Electric Power Cooperative v. United States Environmental Protection Agency, No. 14-9533, and PacifiCorp v. United States Environmental Protection Agency, No. 14-9534 (September 9, 2014).

these corresponding proposed Federal Plan and Model Trading Rules are premised on the assumption that all utilities own multiple and diverse plants that allow relatively easy shifting generation within their portfolios to lower emitting generation. However, that option is not available to most small utilities, like MRES, that rely on a single base load coal plant to meet their needs.

b. Electric load of all sixty member municipal utilities is in Iowa, Minnesota, North Dakota & South Dakota

All 60 MRES members are in states remote from our single base load coal resource in Wyoming. Our multi-state load is in Iowa, Minnesota, North Dakota and South Dakota. Our municipal utility communities range in size from nearly 40,000 to those with populations around 200 people. The average population of MRES member communities is nearly 5,000. Our members serve a population of approximately 300,000 people, with over 150,000 customer meters. The MRES member communities are spread widely over a geographic area which is primarily rural. Fifty-eight of the 60 members have allocations of federal hydroelectricity under contracts with the Western Area Power Administration (WAPA). Those members have recently executed new contracts with WAPA for hydropower that will begin in 2021 and run through 2050. The WAPA allocations are fixed amounts of power, and MRES provides the supplemental power required to meet the entire electricity needs of nearly all of those members. In the case of Pella, Iowa, MRES provides 100% of the power that serves the community.

In addition to providing their citizens with reliable and low-cost electricity, nearly all MRES members also have energy efficiency programs to provide their consumer-owners with the opportunity to make the most economical use of electricity in their homes and main street businesses. MRES provides the Bright Energy Solutions® (BES) program to offer incentives to the end-use customers of our member utilities to implement many energy efficiency measures.

c. Clean, non-emitting energy resources of MRES are located outside of Wyoming, including the Red Rock Hydroelectric Project under construction in Iowa

The generating portfolio of MRES includes many clean, non-emitting resources. MRES has 85.7 MW of wind capacity from five wind energy resources located across Iowa, Minnesota, and North Dakota. All of these wind resources were built prior to 2013. MRES purchases the energy associated with the wind capacity from these projects, and owns all of the environmental attributes associated with such generation. MRES also purchases 32 MW of nuclear power from the Point Beach Nuclear Plant near Two Rivers, Wisconsin. MRES has a right to the non-emitting attributes from this facility.

In addition, MRES is constructing additional renewable generating resources. MRES and Western Minnesota are constructing the Red Rock Hydroelectric Project, a 36 MW hydro plant on the existing Red Rock Dam on the Des Moines River near Pella, Iowa. This project is expected to be completed and operational by spring 2018.MRES is also developing a 1 MW solar energy project in Pierre, South Dakota, which is expected to be commercially operable

within the next year. MRES expects the Red Rock Hydroelectric Project and the solar project to meet the eligibility requirements under the final CPP, and the Proposals, for issuance of Emission Rate Credits (ERCs) or renewable energy set-aside allowances.

MRES renewable resources are part of the overall generation mix serving MRES members, and each member's power supply includes theses renewable resources, in addition to their federal hydropower allocations. MRES has taken, and continues to take, the initiative in working with its states – within existing state law and energy policy – to develop a resource portfolio that continues to reduce its carbon dioxide (CO_2) footprint.

The circumstances of MRES, Western Minnesota, and their members, including their generating resources, reveals that the CPP and these Proposals have significant shortcomings, particularly as it relates to the interstate nature of utilities. Taken together, the multistate nature of MRES and its members demonstrates that for MRES and for small, regional municipal entities like it, these Proposals are unworkable in their current form. While the Proposals provide states and EGUs with a certain level of flexibility in choosing compliance pathways, that attempt at flexibility falls short of the structure for a workable and flexible implementation of the CPP.

As States develop their compliance plans, they must be allowed to exercise that flexibility to deviate from the Model Trading Rule without forfeiting the ability for their plan to be considered "presumptively approvable." Many difficulties posed by specific elements of the Proposals can be avoided with relatively minor changes to ensure the workability of the Proposals, while ensuring reliability and cost containment.

3. EPA's proposed Federal Plan and Model Trading Rules are unlawful and must be withdrawn

The proposed Federal Plan and Model Trading Rules serve as implementation plans for, and incorporate the requirements of, the final Clean Power Plan rule. As detailed in our comments on the proposed CPP, the underlying rule is unlawful and unconstitutional.[2] Although EPA ignored most of those comments and incorporated nearly all of the unlawful elements of that proposal into the final rule, these same fatal flaws likewise taint the Proposals here. MRES incorporates by reference and summarizes below its previous comments on the proposed CPP and the arguments related to the illegality of that proposal.

a. The proposed Federal Plan and Model Trading Rules are Illegal

EPA lacks the authority under the Clean Air Act (CAA) to advance the Proposals to a final rule. First, EPA is prohibited from regulating power plants under §111(d)[3] because it has regulated these same plants under CAA §112. 42 U.S.C. § 7411(d)(1)(A). Second, CAA §111(d) does not allow EPA to set the CO_2 reduction goals of each state or to go "beyond the fence" – beyond the

[2] *See* Comments of Missouri River Energy Services, dated November 26, 2014, on the EPA proposed rule entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 79 Fed. Reg. 34,830 (June 18, 2014).

[3] What is known as section 111(d) of the Clean Air Act is found at 42 U.S.C. § 7411.

boundaries of a power plant which is the source of a pollutant – to regulate that pollutant. It is limited by statute to "establish[ing] a ***procedure*** … under which each State shall submit … a plan which … establishes standards of performance ***for any existing source*** …" [4] EPA has no authority to impose federally-enforceable requirements or impose a Federal Plan to reduce pollution on non-EGUs (*e.g.*, by setting state goals based partially on renewable energy generation); it can only regulate the source of pollution.[5]

In addition, EPA's analysis of remaining useful life violates the CAA. Section 111(d)(2) of the CAA states that, when promulgating a Federal Plan to implement a section 111(d) standard of performance, "the Administrator shall take into consideration, among other factors, remaining useful lives of the sources . . . to which such standard applies."[6] In the Proposals, EPA asserted that the Federal Plan considers remaining useful lives of affected EGUs. It claims that proof it considered remaining useful life is provided by the fact the Proposals are flexible because they allow trading, "[r]elatively long periods for affected EGUs to come into compliance, the ability to credit early action, the use of emissions trading, the use of multi-year compliance periods, and the ability to link to other federal or state plans to create larger emissions markets."[7] EPA's consideration of remaining useful lives falls short of the EGU-specific analysis required by the CAA and other relevant authorities relied upon by EPA.[8] The Agency went beyond its discretion under the CAA when it determined that remaining useful life could not be relied upon to adjust any standard of performance.[9] The failure of this proposal to meaningfully consider remaining useful life is an illegal disregard of a statutory requirement.[10]

b. The Clean Power Plan and the Proposals encroach on state jurisdiction

As with the CPP, these Proposals are an attempt by EPA to assert jurisdiction over matters traditionally reserved to the states as part of their long-standing police powers and related rights to set standards and rules within their own borders, and under the historical development of both the Federal Power Act (FPA) and the CAA. The Proposals are unlawful and should be withdrawn.

The FPA bars the Proposals because they intrude into the regulatory sphere explicitly reserved to the states by the FPA. Congress limited the terms of the FPA to federal regulation of "the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce."[11] In addition, the FPA, Federal Energy Regulatory Commission (FERC) and the U.S. Supreme Court collectively have established there is a "bright line" that places issues regarding basic generating resource decisions – from constructing new resources to

---

4 *Id.* (emphasis added).

5 *Id.*

6 *Id.*

7 80 Fed. Reg. 64,983.

8 The Regional Haze Program under the CAA also requires EPA to consider remaining useful life as a factor for determining the best available retrofit technology (BART) for a particular source. 42 U.S.C. §7491.

9 80 Fed. Reg. 64,982.

10 42 U.S.C. §7411(d)(2)(B).

11 16 U.S.C. §824(a).

closing existing plants, and everything between – and matters specific to retail issues, squarely within state authority, and denies the federal government or its agencies the power to regulate in these arenas.[12] Local service issues, including reliability of local service, authority over integrated resource planning, the need for additional generating capacity, the generating facilities to be permitted, demand-side management, and the power to impose retail stranded cost charges, ratemaking, and even matters of retail transmission are all within the exclusive province of the states.[13] The Proposals to implement the CPP disregard not only the historic role of the states, but the plain language of the FPA and Supreme Court rulings defining the line between state and federal regulation of the electric industry.

The CAA is also a statutory bar to the Proposals to implement the CPP because nothing in the CAA expressly authorizes EPA to regulate the generation of electricity, the type of electricity, or other such energy regulatory matters traditionally reserved to states. As discussed above in Section 3.a., the CAA delegates to EPA the authority to establish *procedures* only, and reserves to the states the authority to set emission *standards*.[14] The Proposals extend far beyond what is permitted by the CAA into areas within the states' exclusive jurisdiction, such as resource planning and ratemaking which are governed at the state level by state utility commissions and local governing bodies. Matters of wholesale electricity and transmission are reserved by the FPA to FERC.[15] EPA does not have authority to act in matters that affect the wholesale market, and the CPP cannot be implemented without affecting wholesale markets, including the mix of wholesale resources a utility such as MRES uses to meet its needs. The overall intent of the CPP and Proposals to implement it are to force significant shifts in generating capacity in the wholesale market which squarely impacts both wholesale generation and transmission, and oversteps the authority of the EPA.

c. EPA's Clean Power Plan and its most recent Proposals are unconstitutional

In addition to the illegality of the Proposals under federal and state law, these actions violate several fundamental constitutional tenets. The structure of the CPP relies on EPA's directive to states to implement the CPP in ways that contravene traditional constitutional principles.

i. Tenth Amendment state sovereignty

The CPP, and by extension the Proposals, violate the Tenth Amendment to the United States Constitution because they overstep the boundary between federally permissible regulation and those powers reserved to the states, and should be withdrawn. The Tenth Amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." EPA's rules to reduce CO_2 from

---

[12] *See Fed. Power Comm'n v. S. Cal. Edison Co.*, 376 U.S. 205, 215 (1964).

[13] *Id.*; *New York v. FERC*, 535 U.S. 1, 24, 122 S.Ct. 1012, 1026, 152 L.Ed.2d 47, 66 (2002) (citing Order No. 888, at 31,782, n.543 and n. 544); *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm'n*, 461 U.S. 190, 212 (1983); *see also, e.g.*, *Electric Power Supply Ass'n v. FERC*, 753 F.3d 216, 224 (D.C. Cir. 2014) ("the Federal Power Act unambiguously restricts FERC from regulating the retail market").

[14] 42 U.S.C. §7411(d)(1)(A).

[15] 16 U.S.C. Ch. 12. *See also* 42 U.S.C. §§7171-7172.

existing power plants directly imposes on states the requirement to meet CO_2 emission performance rates established by EPA, which may be accomplished by meeting state-specific CO_2 "goals" reflecting CO_2 emission performance rates or by application of nationally uniform emission rate standards. The Proposals to implement the CO_2 emission performance rates and state "goals" prevent states from exercising their authority over both the standards and how such standards must be achieved, and impermissibly encroach on the powers reserved to the states. In addition, the bulk of the CPP and the Proposals to implement it are centered on achieving CO_2 reduction through building blocks 2 and 3, both of which are matters of traditional state sovereign power not specifically or unmistakably delegated to Congress or EPA. Here, EPA's Proposals cross the line and improperly seek to control how states regulate private parties who may emit CO_2 – and potentially even those who do not emit CO_2 – and tries to pass it off as a rule which merely regulates activities of the state itself directly.[16]

By expressly setting the emissions rate that each state must achieve, the CPP requires states to use their sovereign power to regulate the citizens and businesses within their respective borders. As a set of implementation plans for the CPP, the Proposals force the state itself to either undertake actions to reduce the CO_2 rate in the state or regulate the conduct of its private citizens that emit CO_2. The United States Supreme Court has drawn the line between the authority of the federal government to act and those instances in which the power is reserved to the states and their citizens under the Tenth Amendment.[17] Here, Congress recognized that bright line and empowered EPA only to adopt *procedures*, and left to the states the authority to adopt *standards* and the methods to implement those standards; EPA has overstepped its delegated authority.[18]

It is precisely because Congress has embraced the principles of cooperative federalism it delegated to EPA limited authority under the CAA. That authority is limited expressly to the establishment of procedures, and both EPA's decision to set binding CO_2 emission limits on states and the express effort to define the mechanisms that states may use to comply (*i.e*. the building blocks) contravenes the constitutional limits of EPA's delegated powers. EPA must withdraw the Proposals.

ii. **Fifth Amendment Takings Clause**

The Clean Power Plan's approach to allow states to use utility-owned renewable energy and credits to meet a state CO_2 goal creates the potential for an unconstitutional taking of property without just compensation. It provides

---

[16] *See South Carolina v. Baker*, 485 U.S. 505, 514, 108 S. Ct. 1355, 1362, 99 L. Ed. 2d 592, 604 (1988).

[17] MRES has characterized this issue as a Tenth Amendment issue, but it is at the same time an Article I issue:

> In some cases the Court has inquired whether an Act of Congress is authorized by one of the powers delegated to Congress in Article I of the Constitution. In other cases the Court has sought to determine whether an Act of Congress invades the province of state sovereignty reserved by the Tenth Amendment. In a case like these, involving the division of authority between federal and state governments, the two inquiries are mirror images of each other. If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress.

New York v. U.S. 505 U.S. 144, 155, 112 S.Ct. 2408, 2417, 120 L.Ed.2d 120, 137 (1992) (internal citations omitted).

[18] *See* 42 U.S.C. §7411(d)(1)(A).

> " … under a state measures plan, a state might include state requirements such as an RPS, where compliance with the RPS can be met through out-of-state RE generation."[19]

The state measures approach is one which EPA identifies as a structure for states to use to develop their compliance plans.[20] Such a plan would allow "a state to rely upon state-enforceable measures on entities other than affected EGUs, in conjunction with any federally enforceable emission standards the state chooses to impose on affected EGUs."[21] Suggesting that a state with a renewable measure in place which causes renewable investment in a separate state may claim the out-of-state renewables as a CO_2 offset in its state compliance plan confiscates renewable energy and credits of utilities and developers.

While the Proposals tout flexibility and offer "options" to states in developing compliance plans, EPA uses these features to impermissibly empower states to confiscate for their own regulatory goals the renewable energy and credits which are the property of utilities and developers, and to do so to satisfy the newly created individual state CO_2 goal. Under a state measures approach, state plans which include renewable energy for compliance will open the door for a state to structure its state plan to count toward compliance all of the Renewable Energy (RE) credits used in the state by out-of-state entities to satisfy the state Renewable Portfolio Standard (RPS) (also known as a Renewable Energy Standard (RES)).[22] As a result, the utility that owns the renewable energy/credits will be prohibited from using those resources elsewhere because the CPP expressly prohibits "double counting."[23] This is especially true in states with a renewable energy mandate which already requires retirement of Renewable Energy Credits (RECs) for compliance with that separate state goal. However, EPA notes that an ERC is issued separately from any other instruments that may be issued for a MWh of energy generation (*e.g.* such as a REC for meeting state RPS requirements).[24] But the creation of an ERC that represents a MWh with "zero associated CO_2 emissions" may conflict with the REC holder's right to claim that the MWh of electricity has no associated emissions, and double-counting the environmental benefits. Such a conflict would likely depend on the definition of the associated REC as established under state statute, regulations, and orders of the Public Utilities Commission. Ultimately, this element of the CPP is an unconstitutional taking of private property without compensation, in violation of the Fifth Amendment to the United States Constitution.

iii. **Article I Contracts Clause**

The CPP and its related Proposals also violate the Contracts Clause by authorizing state plans that enable states to take the renewable energy and/or RECs of utilities and others.[25] A state

---

[19] 80 Fed. Reg. 64,897 n.942.

[20] *Id.* at 64,668.

[21] *Id.*

[22] Under this scenario, it is not clear whether a state plan would be required to honor contracts under which in-state renewable resources and RECs are sold to an out-of-state entity. The CPP and the Proposals are silent on this point, and make no indication that EPA recognizes that the RE/RECs are the property of utilities and not states.

[23] 80 Fed. Reg. 64,912.

[24] *Id.* at 64,908.

[25] Article 1, Section 10 of the United States Constitution, clause 1, provides in pertinent part: "No State shall … pass any … Law impairing the Obligation of Contracts[.]"

measures approach which adopts EPA's suggestion to use the renewable energy and associated credits under a state RPS to satisfy a state CO_2 goal will take the RE and credits out of the hands of the owner/purchaser and into the hands of the state to meet its objectives, disregarding the contractual rights of both the seller and the purchaser. The CPP expressly authorizes state plans that would have this very result.[26] It vitiates the obligation of the seller to deliver the RE and RECs to the purchaser, and substitutes the state as the beneficiary of the renewable contract (again, without compensation). This constitutes an undeniable "substantial impairment of a contractual relationship."[27] The construct of the state measures approach, including its provisions allowing states to interfere with existing contracts for RE and RECs – both in-state and out-of-state – violates the Contracts Clause.

d. MRES supports litigation of APPA and others

MRES supports the efforts of industry groups, including APPA, and twenty-seven states challenging the CPP in the Court of Appeals for the District of Columbia Circuit. The result could also determine the legality of the Proposals, even though they are not directly at issue in the court proceedings. MRES is a member of, and supports the comments of the APPA submitted in response to the EPA's Proposals.

MRES recognizes the CPP is a final rule and as an affected entity, it must focus on implementing the CPP as part of its commitment to respect each applicable environmental regulation in furtherance of our mission to provide reliable, cost-effective energy and energy services to our not-for-profit municipal utility members and their consumer-owners. We offer these comments on the Proposals to provide constructive observations to improve the workability of the Proposals, especially for interstate utilities like MRES with load in states entirely remote from the location of their only affected EGU.

4. EPA's Federal Plan and Model Trading Rule Proposals provide welcome direction, but fall far short of the structure for a workable and flexible implementation of the Clean Power Plan.

MRES appreciates EPA taking public comment on two proposed approaches to a Federal Plan for states and other jurisdictions that do not submit an approvable plan to EPA, and proposing Model Trading Rules that states can adopt or tailor for implementation of the final CPP. These proposals provide welcome direction to states in deciding how to comply with the CPP requirements. MRES believes strongly that in commenting on these Proposals, it should not only identify the elements of the Proposals that are unworkable and present potentially fatal flaws, but it must also stand ready to suggest solutions to achieve the ultimate goals of the Proposals in a workable and cost-effective manner for MRES and its municipal utility members. MRES believes that many problems posed by specific elements of the Proposals can be avoided with relatively minor changes. MRES also believes the suggested alternative approaches identified in these comments for a workable Federal Plan and Model Trading Rules will work for the entire

---

[26] *Id.* at 64,897 n.942.

[27] *See General Motors Corp. v. Romein*, 503 U.S. 181, 186, 112 S.Ct. 1105, 1110, 117 L.Ed.2d 328, 337 (1992).

industry – investor-owned utilities, cooperatives, and municipal entities alike – and minimize the regulatory burden on the states.

5. The Federal Plan and Model Trading Rules fail to deliver on EPA's promised flexibility for states to design their own standards

EPA emphasizes that the flexibility inherent in the proposed Federal Plan and Model Trading Rules enables EPA and the states to provide a level of flexibility for owners and operators of affected EGUs to determine the best way to achieve the emission reductions considering their own specific circumstances.[28] While the proposed Federal Plan and Model Trading Rules appear to provide states with a certain amount of flexibility in developing compliance plans, as a factual matter, the actual flexibility available to states is minimal. If a state exercises the "flexibility," it does so at the risk of having its plan rejected by EPA or severely limiting its ability to trade allowances or ERCs in the markets. Here, MRES summarizes areas of the Proposals that fall short, and identifies alternative approaches that would provide states the flexibility to develop workable compliance plans.

a. EPA's strategy to finalize a single Federal Plan will deny states the ability to choose the Federal Plan (i.e., rate-based or mass-based trading) best suited to their circumstances if the state plan is not approvable.

Under the Federal Plan proposal, a state that fails to submit an approvable state plan cannot choose the type of Federal Plan (*i.e.*, rate-based or mass-based trading) that will be imposed on the state because EPA intends to finalize a single approach for all Federal Plans.[29] In addition, states that exercise any of the options touted as "flexibility" built into the final CPP when they develop a state plan have no assurance that the state plan will be approved by EPA. This places states in the untenable position of having to decide whether to devote limited state resources to tailor plans to their unique circumstances to maximize effectiveness and minimize cost and risk EPA disapproval and imposition of a Federal Plan.

b. EPA should finalize both rate-based and mass-based Federal Plans to enable affected states or tribes to select the best plan

Given the benefits of a broad trading program, EPA intends to finalize a single approach (*i.e.*, rate-based or mass-based) for every state in which it promulgates a Federal Plan.[30] MRES would support the EPA finalizing either a rate-based or a mass-based Federal Plan to create a larger market for trading in compliance instruments. However, MRES recognizes that it may be necessary and desirable to provide both plan types as options given the wide divergence of circumstances in the states.

---

[28] 80 Fed. Reg. 64,969.

[29] *Id.* at 64,968.

[30] *Id.*

In addition, providing both plan types might allow states to utilize portions of a state plan not found to be deficient. EPA could disapprove a state's submitted mass-based state plan because its monitoring, reporting and recordkeeping requirements for its affected EGUs is determined to be inadequate.[31] EPA may promulgate a mass-based Federal Plan for the state after consulting with the state to identify which type of plan would be best. EPA's Federal Plan proposal would permit the state to then replace the Federal Plan allocation method with the state's own method from the state's otherwise approvable state plan through the submittal of a partial state plan.[32] In such an instance, if EPA chose only to finalize a rate-based approach for all Federal Plans, the state's previous work to design and tailor an allowance allocation approach to the characteristics and preferences of the state would be wasted.

c. States should not be forced to adopt state plan pathways identical to the Federal Plan in order to enable interstate trading between Federal Plan states and state-plan states with trading-ready mechanisms

The proposed rate-based Federal Plan allows interstate trading between federal-plan states and state-plan states with trading-ready mechanisms *only if* the state plan uses the sub-categorized emission rate standards like the Federal Plan.[33] The proposal *does not* allow affected EGUs operating under a Federal Plan to trade with affected EGUs in states with state plans using the state's rate-based goal rather than the subcategorized approach as the uniform rate for all affected units within the state. As a result, states are forced to choose the least flexible of the EPA-identified plan pathways for setting EGU emission rate limits under a rate-based state plan. This results in the state not taking advantage of the significant benefits that flow from interstate emissions trading.

MRES strongly supports allowing interstate trading between affected EGUs in states covered by Federal Plans and affected EGUs in states covered by state plans. As explained by EPA in its proposal, emissions trading inherently provides maximum flexibility to individual affected EGUs to choose their method of compliance.[34] EPA should allow states and their affected EGUs to utilize the flexibility provided by emissions trading under the other plan pathways identified in the final CPP.[35] This would ensure that states wanting to participate in trading programs have more than one option to consider, especially given the unique circumstances of particular states.

---

[31] *Id.* at 64,847.

[32] *Id.* at 65,027.

[33] *Id*. at 65,011.

[34] *Id*.

[35] The four streamlined plan pathways outlined in the final CPP include the following: 1) Establishing federally enforceable, mass-based CO_2 emission standards for affected EGUs, complemented by state-enforceable mass-based CO_2 emission standards for new fossil fuel-fired EGUs; 2) Establishing federally enforceable, mass-based CO_2 emission standards for affected EGUs; 3) Establishing federally enforceable, subcategory-specific rate-based CO_2 emission standards for affected EGUs, consistent with the CO_2 emission performance rates in the emission guidelines; and, 3) Establishing federally enforceable rate-based CO_2 emission standards at a single level that applies for all affected EGUs, consistent with the state rate-based CO_2 goal for affected EGUs in the emission guidelines. 80 Fed. Reg. 64832-64833.

d. States should not be forced to use an as-yet-undeveloped EPA-administered tracking system to engage in interstate trading between federal-plan states and state-plan states with trading-ready mechanisms

The EPA proposes to allow interstate trading between affected EGUs in states covered by the proposed Federal Plans and affected EGUs in states covered by state plans *only if* the state plan uses an as-yet-undeveloped EPA-administered tracking system.[36] MRES supports expanding this requirement to include a state plan that uses an EPA-designated tracking system interoperable with an EPA-administered tracking system. For many years, renewable energy attributes have been successfully tracked in renewable energy certificate (REC) tracking systems around the country. Significant investments have been made in these various tracking systems. The Midwest Renewable Energy Tracking System (M-RETS) was designed and built with ratepayer funds and is used by Illinois, Indiana, Iowa, Manitoba, Minnesota, Montana, North Dakota, Ohio, South Dakota, and Wisconsin to verify compliance with state and provincial renewable energy requirements. These states should have the flexibility to leverage investments made by ratepayers and M-RETS subscribers in this tracking system if it is determined to be the most efficient and cost-effective way to track these new CPP compliance instruments.

6. The EPA's proposed mass-based Federal Plan and Model Trading Rules require important changes to ensure workability

While MRES agrees with EPA that "[m]ass-based trading programs are relatively simple to operate, which reduces administrative time and cost[,]"[37] several important changes must be made to make the proposed mass-based Federal Plan and Model Trading Rule workable for states and affected entities. Among those changes include adding certain conditions to protect consumers, more clearly defining leakage and allowing alternative options to address leakage, permitting out-of-state renewable energy to be eligible for allowances from the renewable energy set-aside, and allowing allowances to be banked and borrowed from future compliance periods under certain circumstances.

a. State authority to determine the methodology for allowance distribution should include additional parameters to protect consumers

EPA proposes to allow a state subject to the Federal Plan to submit a partial state plan to replace the Federal Plan allocation method with the state's own allowance allocation method.[38] EPA proposes to allow states to use many approaches to distribute allowances, including auctions, when crafting their own allowance allocation provisions for a mass-based Federal Plan.[39] MRES supports giving states the ability to choose their own methodology for distributing allowance

[36] *Id*. at 64,977.
[37] *Id.* at 65,011-12.
[38] *Id.* at 65,027.
[39] *Id.*

allocations among its affected EGUs (and other entities). There are specific areas where states should be given greater flexibility in choosing approaches to distribute allowances in a state allowance-distribution methodology to more fully consider the specific characteristics of their individual state. States have a detailed understanding of the particular priorities the state would like to address and are in the best position to ensure that allowances are distributed equitably among recipients. At the same time, MRES believes EPA should protect consumers by placing certain limitations on a state's ability to craft its own allocation method.

i. Auctioning of allowances should not be permitted

EPA proposes to allow a state subject to the mass-based Federal Plan to use an auction to distribute allowances.[40] MRES firmly believes that auctioning of allowances should not be among the options available to states. MRES supports allocating allowances to each affected EGU based on its *pro rata* share of the state's total historical generation or emissions from affected EGUs over a specified time period, such as 2010-2012. Auctions expose consumers to significant price risk, and are mechanisms to redistribute wealth from one group to another based on the shifting policy priorities of diverse states. The existence/creation of allowances is based expressly on the characteristics of the affected EGU; it is only fair that distributing those allowances be confined to those EGUs based on actual historical generation or emissions. In addition, auctions create the potential for market manipulation and imposing unwarranted costs upon consumers. This and other concerns regarding market manipulation are discussed in more detail in Section 9.

ii. States should be allowed to replace all of the proposed Federal Plan's allocation set-aside provisions in the mass-based trading program, including the Clean Energy Incentive Program set-aside

EPA proposes to require states submitting their own allowance allocation methodology address leakage and implement a set-aside for the CEIP as a condition of taking over allowance allocation.[41] States subject to a Federal Plan that create their own allocation methods to replace the Federal Plan allocation provisions should be allowed to replace all of the proposed Federal Plan's allocation set-aside provisions in the mass-based trading program, including the CEIP set-aside. EPA notes, but does not require, that states could meet the requirement to address leakage by adopting EPA's proposed output-based allocation and renewable energy allowance set-asides, which are detailed in the proposed Federal Plan. However, states are given no other option but to include the CEIP in their own allocation methods.[42]

The requirement to include the CEIP in a state's own allocation methodology is contrary to the "substantial flexibility" that EPA purported to provide states in choosing approaches to distribute their allowances. The CEIP was publicized as an "optional" program "in which states may choose to participate."[43] States may have valid reasons for not including the CEIP in their allowance allocation methodology. In addition, although the proposal provides that the CEIP set-

---

40 *Id.*

41 *Id.* at 65,027-28.

42 *Id.*

43 *Id.* at 64,829.

aside is mandatory under the Federal Plan, EPA proposes to allow states to choose how many allowances to set aside for CEIP.[44] This suggests that a state could comply with the CEIP requirement by simply setting aside 10, 5, or even a single allowance for the CEIP. Such an absurd result provides additional support for making the CEIP an optional program that a state may include in its own allocation methodology under a Federal Plan.

iii. EPA must more clearly define leakage, and states should be allowed to choose alternative options to address leakage or demonstrate that leakage will not occur due to specific characteristics of the state

EPA's Proposals note that the final CPP requires that all mass-based plans address the risk of "leakage," which EPA defines as the potential of a plan "to create a larger incentive for affected EGUs to shift generation to new fossil fuel-fired EGUs relative to what would occur when the implementation of the Best System of Emission Reduction (BSER) took the form of standards of performance incorporating the subcategory-specific emission performance rates representing the BSER."[45] The requirement that states address "leakage" is not only vague, it has the potential to inhibit the development of a market for allowances. States and affected entities need additional clarity around EPA's concept of leakage. Specifically, the rules must provide a concrete structure to define what constitutes leakage and a very specific means for utilities and states to address leakage.

If the leakage requirement is retained in the final version of the Federal Plan and Model Trading Rules, EPA must address the disconnect between the portfolio of resources by a utility and the fact that a majority of states operate within markets run by Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) and purchase energy from the markets to serve load, which may be (and frequently is) in a state other than that where the load is located. The Federal Plan and Model Trading Rules should only require leakage be addressed if an analysis demonstrates that leakage will occur and will cause significant increases in overall CO_2 emissions. Such a demonstration is necessary given that the provisions in these rules to eliminate leakage will likely increase compliance costs for affected EGUs.

States choosing to design their own allocation approach must include provisions in the state's approach that addresses leakage.[46] EPA proposes that a state must address leakage by including an incentive in the state's allowance allocation methodology to counteract any leakage that might otherwise occur.[47] EPA proposes this can be done through adoption of the set-asides proposed by EPA or other as-yet-determined allocation approaches to counteract leakage.[48] EPA should provide guidance to states on other acceptable alternative approaches to address leakage that meet the CPP requirements.

---

44 *Id.* at 65,026.
45 *Id.* at 65,019.
46 *Id.* at 65,027.
47 *Id.*
48 *Id.*

EPA specifically requested comment on whether a state should be allowed to choose an alternative option to address leakage by providing a demonstration that leakage will not occur due to specific characteristics of the state.[49] This additional option for addressing leakage is available to states pursuing state plans under the CPP and should be available to states choosing to design their own allowance allocation provisions under a Federal plan. States subject to a Federal Plan should have the same opportunity to choose this approach to address leakage as non-Federal Plan states, as long as the state meets the requirements in the CPP for conducting such a demonstration. EPA should create and clearly define "safe harbors" for demonstration that no leakage is likely to occur.

iv. Out-of-state Renewable Energy projects must be eligible for allowances from the Renewable Energy set-aside

EPA proposes that it would create an RE set-aside (in addition to the output-based allocation and CEIP set-asides) for each state covered by a mass-based Federal Plan.[50] EPA notes this set-aside is expected to address leakage by "lowering the marginal cost of production of the incented clean energy technologies *within the state*."[51] Restricting RE set-aside eligibility to only RE within the state overlooks that the electric industry does not fall neatly within state borders; most utilities operate in interstate commerce, serving customers in multiple states. As a regional utility, Western Minnesota owns generating resources across several states. Utilities must be able to develop RE projects in the most cost-effective and optimal locations. Not every state has the same potential for RE development due to a lack of available land, resources, sufficient transmission, and other reasons. EPA should change its proposal to allow out-of-state RE projects to be eligible for RE set-aside allowances in any mass-based Federal Plan, as long as the out-of-state RE has not already received mass-based set-aside allowances or ERCs for any generation. This change must be applied uniformly across every Federal Plan if it is to support a successful trading market (SO_2 trading is premised on uniformity – no variation among states). Allowing out-of-state RE projects to be eligible for RE set-aside allowances in any mass-based Federal Plan would serve as an incentive to develop RE where it makes the most economic and practical sense. In addition, such a change would address leakage concerns given that CO_2 emissions are global and do not respect national borders, as CO_2 emissions (and reductions) in one state have impacts throughout the world and vice versa.

b. MRES supports EPA's proposed use of banked allowances because it is essential for workability

The proposed Federal Plan and Model Trading Rules allow owners of affected EGUs to bank allowances for any future compliance period, without restriction, including the banking of Interim-Period allowances for use during the Final Compliance Period.[52] MRES supports this proposed approach to allowance banking. The ability to bank allowances promotes the environmental goals of the CPP and has been a successful element of other federal mass-based emission budget trading programs, such as the Acid Rain Program. EPA noted in the CPP that

---

[49] *Id.* at 65,028.

[50] *Id.* at 65,019.

[51] *Id.* at 65,022, emphasis added.

[52] *Id.* at 65,014.

"[b]anking provisions have been used extensively in rate-based environmental programs and mass-based emission budget trading programs" because it "reduces the cost of attaining the requirements of the regulation."[53] Not only does banking reduce compliance costs overall, but it helps minimize financial impacts to consumers and encourages affected EGUs to make additional emission reductions in the near-term. This follows the social preferences for environmental improvements to occur sooner rather than later (especially for long-lived atmospheric gases, such as CO_2). Further, there should be no artificial time limit in which the allowances must be used; they should have an indefinite shelf-life.

c. The Federal Plan should establish the right to borrow allowances from future compliance periods during the useful life of the Electric Generating Unit to provide the most flexibility for compliance and minimize compliance costs.

EPA's proposal that affected EGUs be prohibited from borrowing allowances from future compliance periods for use in the current period[54] should be reversed. MRES believes the Federal Plan should allow affected EGUs to borrow allowances from future compliance periods during the useful life of the EGU. Under this approach, the Federal Plan would restrict an affected EGU from borrowing allowances beyond the useful life of the EGU. EPA can then create a mechanism in the Federal Plan to true-up the borrowed allowances against actual future allocations.

Allowing borrowing will maximize compliance flexibility for individual affected EGUs by enabling them to spread the cost of compliance over multiple compliance periods. Although allowing borrowing across compliance periods adds a level of complexity to the mass-based trading program, the benefits of borrowing far outweigh the costs of crafting a solution to address the added complexity.

7. The EPA's proposed rate-based Federal Plan and Model Trading Rules also require important changes to ensure workability

If it is possible to overcome the illegality and unconstitutionality of the CPP and any plan to implement that rule, several important changes must be made to make the rate-based Federal Plan and Model Trading Rule Proposals workable. First, MRES urges EPA to revise the Proposals to require fully-tradable ERCs, that is utility/ratepayer-funded ERCs created in one state must be awarded to the utility for use as a compliance instrument in any state of the utility's choosing, including states with a Federal Plan and those with approved state plans. Second, EPA should streamline EM&V requirements and establish rules that maximize eligibility and approval of ERCs based on any state EM&V protocols. Third, the Federal Plan should be inclusive and allow energy efficiency programs to be eligible for ERCs. Fourth, EPA should allow unlimited banking and borrowing of ERCs under certain circumstances. Last, the Federal Plan and Model Trading Rule should be revised to establish that EPA- or state-issued ERCs are presumptively valid if they satisfied EPA or state eligibility standards when they were issued.

---

[53] *Id.* at 64,890.

[54] *Id.* at 65,012.

a. The Proposals must require full tradability of Emission Rate Credits, require utility/ratepayer-funded Emission Rate Credits be awarded to the utility, and allow Emission Rate Credits to be used to meet compliance obligations in any state, including those with a Federal Plan and those with approved state plans

The CPP provides that eligible emission reduction measures, including RE generation and demand-side EE "may be used to adjust a CO_2 emission rate, regardless of whether the associated generation or electricity savings occur inside or outside the state."[55] The CPP permits a state to include a Renewable Portfolio Standard (also known as a Renewable Energy Standard) under a state measures plan, "where compliance with the RPS can be met through out-of-state RE generation."[56] Such an approach implies that states may use utility-owned RE and ERCs to meet a state CO_2 reduction goal. By suggesting that a state with a renewable measure in place which causes renewable investment in a separate state may claim the out-of-state renewables as a CO_2 offset in its state compliance plan, the rule doubles down by reaching across state borders to confiscate renewable energy and ERCs of utilities and developers. The CPP and proposed Federal Plan and Model Trading Rules do not provide clear and unequivocal guidance to states regarding the tradability of ERCs under a rate-based trading program.

As a set of implementation plans for the CPP, the proposed Federal Plan and Model Trading Rules must be revised to clearly acknowledge that ERCs issued for eligible emission reduction measures are the property of the entity that owns the RE or EE resource or has the right to the output and environmental attributes. The Federal Plan and Model Trading Rules must require fully-tradable ERCs, that is utility/ratepayer-funded ERCs created in one state must be awarded to the utility for compliance in any state of the utility's choosing, including states with a Federal Plan and those with approved state plans. It is essential that the utility or third party that owns the ERCs must be allowed to exercise its property rights to use those credits in any state of its choice.

Fully-tradable ERCs will encourage the development of the most economical and efficient RE and EE in the location(s) with the most viable RE/EE resources and infrastructure to support such opportunities. Explicitly recognizing the owner's property rights in RE and credits, and requiring fully-tradable ERCs serves the objective of creating more clean energy to reduce CO_2 emissions. Without full tradability, the Proposals create an absurd *disincentive* to build RE generation in states with rich resources (such as the wind-rich states of North Dakota and South Dakota) because it would restrict the ability to use those ERCs in other states where an affected unit has a CO_2 reduction requirement.

In addition, fully-tradable ERCs are critical for multi-state utilities and their ratepayers to minimize the cost impact of the CPP. MRES is constructing the Red Rock Hydroelectric Project (RRHP), a 36 MW hydroelectric power plant at the Red Rock Dam in central Iowa. This clean energy resource is one of the few RE resources that has a relatively long useful life (80 years

[55] *Id.* at 64,897.

[56] *Id.* at 64,897 n.942.

versus roughly 20 years for wind and solar), *and* it creates baseload generation that helps stabilize the grid and compensate for other intermittent RE resources. RRHP should be available to MRES to offset emissions from its only affected EGU in Wyoming. However, the CPP and the Proposals provide no assurance this asset will not become a stranded investment. This hydro generation has an established value to MRES, and that value is likely to increase substantially under a regulatory regime where it can offset CO_2 emissions. However, a short-sighted regulatory scheme that restricts the interstate use of ERCs will prevent MRES and others with compliance obligations from managing generation resources to reduce carbon intensity. If RRHP ERCs cannot be used by MRES as the owner of those ERCs to offset its compliance obligations for an affected EGU in another state, EPA's rules will strand this asset. The stranding of clean energy resources —besides the stranded investment in its coal resource — creates a direct cost impact on MRES and its member municipal utilities.

It would be potentially illegal and unconstitutional for the Federal Plan to allow a state to prohibit the utility that owns/contracts for the output of eligible RE resources the right to use the ERCs from these resources to offset CO_2 emissions from the utility's affected EGUs in another state. While MRES may have an RES compliance obligation in Minnesota, the RES obligation does not entitle EPA to authorize Minnesota to take the RE paid for by MRES members and their customers to meet a Minnesota goal to offset the CO_2 emitted by affected units in that state and owned by others. If Iowa took a similar approach, the same renewable energy and ERCs could be claimed by multiple states to meet their state compliance plan under the EPA's flawed reasoning that a state policy that encourages the construction of renewables can be claimed by the state even if it is located out-of-state. It sets up a state versus state argument over which state's policy induced the construction of the RE, and completely ignores the ownership of the RE and its associated RECs or ERCs resides with a private entity, not the state. Under either case, this element of the CPP is an unconstitutional taking of private property without compensation, in violation of the Fifth Amendment to the United States Constitution. In addition, the CPP and proposed implementation plans violate the Contracts Clause by authorizing state plans that enable states to take the renewable energy and/or ERCs of utilities and others without compensation.

Finally, it would be fundamentally unfair and unduly discriminatory to prohibit the ability of MRES and its members/ratepayers to use new hydropower from RRHP in Iowa to offset their only affected EGU in Wyoming. It is only fair that ratepayers get the full benefit of their investments in non-emitting resources by allowing the utility owning ERCs to use those credits for its own benefit to offset its own CO_2 emissions in any state.

b. Emission Rate Credits must be fully-tradable to protect MRES ratepayer-owners from unreasonable exposure to price separation between the Emission Rate Credit and the allowance markets, and prevent the unjustified sacrifice of the value of ratepayer investments in new Renewable Energy and Energy Efficiency

EPA unreasonably limits trading by proposing state plans that want to link to a Federal Plan for market trading purposes, require the state plan to implement the *same* trading program as the

Federal Plan trading program (*i.e.*, mass-based trading programs can only link to mass-based trading programs, and rate-based trading programs can only link to rate-based trading programs).[57] The inability to trade between mass-based trading programs and rate-based trading programs exposes affected EGUs to price separation between the ERC market and the allowance market, including MRES and its ratepayer-owners. There is no guarantee that two equally robust and competitive markets will emerge and result in relatively equal market costs, with ERCs and allowances having a similar valuation. Ultimately, only a few states might implement a rate-based trading program due to the administrative burdens of an EPA- or state-based ERC approval and issuance system, and the familiarity of states with implementing mass-based emissions budget trading programs.

As a regional utility, MRES faces the potential of being awarded ERCs in a state with a rate-based plan, while its only affected EGU is in a state with a mass-based plan. Rather than giving a utility like MRES the flexibility to use the ERC for compliance in any state where the utility has a compliance obligation, the limitations on the interstate portability of non-emitting generation and credits set forth in the Proposals would force a utility to sell ERCs in the ERC market when those compliance instruments cannot be used in a state where the utility has a mass-based compliance obligation. While the utility can sell in the ERC market, and use the proceeds to purchase in the allowance market, it exposes the utility and its ultimate consumers to the risk of significant price separation. If the ERC market is relatively low-priced (because there is an unlimited potential supply of ERCs) and the allowance market is relatively high-priced (because only a limited number of allowances will ever be created), the difference in price will potentially force MRES and our member-owners to surrender the value of their investment in new RE and EE for only a fraction of their worth.

Fully-tradable ERCs are necessary to protect MRES ratepayer-owners from exposure to price separation between the ERC market and the allowance market. The Proposals should be revised to clearly and unequivocally require that utility/ratepayer-funded ERCs created in one state may be used by the utility in any state of the utility's choosing, including states with a Federal Plan and those with approved state plans.

c. EPA should streamline Evaluation, Measure & Verification requirements and make rules to maximize approval of Emission Rate Credits based on any state Evaluation, Measure & Verification protocols

The EM&V requirements are disjointed and unduly burdensome, and should streamline the process for determining eligible RE or EE projects, and eliminate the requirement for independent verification of such reports.[58] Under the Proposals, to receive an ERC, the RE or EE provider must submit an application that shows the generation or avoided generation comes from an eligible source and is only being credited for ERC issuance in the respective state or Federal Plan (not double counted), but the provider also must demonstrate it meets complicated EM&V

[57] *Id.* at 64,976-77.

[58] *Id.* at 65,002-08.

calculations to prove emission reductions will occur because of the project, and an independent third party must verify the review and approval of the eligibility requirements.[59]

EPA should streamline EM&V requirements and establish rules that maximize approval of ERCs based on *any* state EM&V protocols. Many states and utilities already have successful EE programs and RE projects. This success has occurred without need for the Proposals' massive amount of red tape, complicated administrative burdens, and without independent, third-party verification. MRES engages in EE in all four states where it has members and has experience in this field.

MRES first works with its own consultants and municipal electric utility members to determine which EE programs best fit the demographics and needs of each community. Through repeated Demand-Side Management Market Potential studies, and using dedicated EE software, each EE potential program is also evaluated to determine savings expected to be achieved and cost-effectiveness (state law in Iowa and Minnesota require that EE projects must be cost effective). Then, MRES works with its member municipal retail utilities to implement the programs. Verification of achieved savings is a required step before payment of financial incentives. Much of this is done based on the Minnesota Technical Reference Manual, which comprises a set of standard methodologies and inputs for calculating savings impacts and cost effectiveness of EE programs. This is all done efficiently using existing procedures and standards, and without need for independent verification, and without imposing lengthy eligibility applications or unduly complicated administrative burdens to be satisfied before a program may be implemented.

Likewise for RE, the EPA proposes that applicants submit an eligibility application to receive ERCs.[60] Similar to EE, many states have a RE tracking system in place. MRES and its members comply with renewable energy standards or objectives in Minnesota, North Dakota, and South Dakota. To demonstrate compliance, MRES uses the M-RETS. M-RETS efficiently tracks and verifies RE generation and the Renewable Energy Certificates (RECs) that result from each MWh of renewable energy generated by the registered units or otherwise sold into the M-RETS system. To register a generation unit, the account holder attests it is not registered elsewhere and renewable energy claims are substantiated by reporting 100 percent of the output from a registered unit by meter readings of the Midcontinent Independent System Operator. Self-reporting is allowed by smaller units.

The REC tracking systems in the United States collaborate and coordinate to ensure that each system's public reports are searchable by the others to ensure that projects are not registered in more than one tracking system. Likewise, the tracking systems incorporate the ability to determine whether any given registered unit and its output will qualify for use based on eligibility requirements of the various states participating in that tracking system. These tracking systems have succeeded without the burdensome and disjointed requirements of the process and independent verification proposed here by EPA. MRES recommends the Federal Plan, Model Trading Rules and CEIP process requirements for EM&V can be satisfied by participation of any RE resource (and potentially and EE program) registered and compliant with M-RETS or a similar system, and such compliance is sufficient to approve RE and EE resources as eligible and

[59] *Id.* at 64,999.

[60] *Id.*

to issue ERCs. An independent verification is unnecessary when using such a system; it only adds another layer of administrative burden and costs. We urge EPA to carefully consider the comments submitted by M-RETS, as those comments provide additional detail on the ability of such entities to successfully track and verify the environmental attributes of RE generation.

The proposed process here is likely to create delay and cost increases for RE and EE projects because the Proposals use a lengthier and more complicated the process for an EE or RE project to meet EM&V eligibility, and subsequent approval for issuance of ERCs, and those burdens will ultimately fall on the shoulders of all consumers, including customer-owned not-for-profit municipal entities. EM&V requirements must not be overly burdensome and should be based on the state's existing policies where possible.

d. The Federal Plan should be inclusive and allow energy efficiency programs to be eligible for Emission Rate Credits

In response to EPA's question on whether ERCs for Energy Efficiency (EE) measures should be permitted under a Federal Plan,[61] MRES urges EPA to include EE projects in the Federal Plan. EPA correctly determined that it cannot use EE measures as a building block to define BSER because that would be unlawful, but it also correctly determined that it would be entirely permissible to allow EE to be a used as a *compliance mechanism* under the Federal Plan. MRES agrees that EE should be defined as an eligible emission reduction measure for generating ERCs.

MRES has established successful energy efficiency and demand-side management programs in our member states that generate verifiable CO_2 reductions outside of Wyoming, in states where we have no affected units that emit CO_2 under the CPP. It is important that the energy efficiency efforts that are ongoing, and the results achieved by the programs, be counted toward compliance with any federal or state plan. Allowing EE to be eligible for issuance of ERCs is essential to maintain the momentum of existing, and incent the commencement of new EE programs. Without that, the Federal Plan creates a *disincentive* for utilities and third parties to continue their EE efforts in any state subject to a Federal Plan and may, perversely, create a motivation to discontinue existing efforts because they do not provide value for compliance purposes, either before 2022 or thereafter.

MRES recommends EPA incorporate a state's EM&V requirements into a Federal Plan for that state. If a state had no EM&V requirements for a particular EE measure, EPA could adopt a host of options from other states and allow affected EGUs to select the most appropriate measure. A similar approach would be appropriate for EPA's Model Trading Rules and would allow for timely adoption of these sorts of measures well-before implementation of the rule takes place.

[61] *Id.* at 64,994.

e. MRES supports EPA's proposed use of banked ERCs because it is essential for workability

MRES strongly supports EPA's suggestion to allow unlimited banking of non-expiring ERCs within and between the interim and final compliance periods.[62] As with allowance banking, the unlimited banking of ERCs will reduce compliance costs and encourage affected EGUs to make additional emission reductions in the near-term. And, as previously mentioned, this approach has succeeded in other federal trading programs, such as the Acid Rain Program. In the case of the Acid Rain Program, the ability to bank allowances has been accompanied by continued SO_2 emissions reductions, even as the number of allowances available increased due to the availability of banked allowances.[63]

MRES advocates for maximum flexibility for ERCs. In response to its question about whether EPA's rate-based Federal Plan should place a quantitative limit or cap on the number of ERCs that can be banked, whether to limit inter-period banking, and whether ERCs should expire,[64] MRES believes there should be no limits placed on the life and acquisition of ERC by entities with compliance obligations under the CPP. If a rate-based Federal Plan were to create expiring ERCs, it would significantly reduce flexibility for affected EGUs and increase the complexity of tracking and trading systems. In turn, that will increase the compliance costs for affected EGUs and create genuine ratepayer impacts, as affected EGUs could no longer spread the cost of compliance over multiple compliance periods, but must recover those costs from ratepayers in a shorter period. Instead, affected EGUs must be allowed to use or sell an ERC regardless of the date it was issued (with perhaps a first-in, first-out (FIFO) requirement) to ensure the value of this regulatory compliance tool is not arbitrarily canceled and stranded. Placing limitations on banking of ERCs would increase potential electric reliability concerns, as affected EGUs could no longer rely on banked ERCs to meet emission standard requirements in the event of an unforeseen event that forces an affected unit to emit more CO_2 than anticipated. Because the success of the CPP rests largely on developing an efficient and liquid trading market, MRES strongly urges EPA to finalize its Federal Plan and Model Trading Rules with unlimited banking of non-expiring ERCs (and allowances).

f. The right to borrow ERCs from future compliance periods during the useful life of the RE or EE measure must be included to provide maximum flexibility and minimize compliance costs

The ability of affected units to obtain compliance instruments and to minimize costs in doing so can be facilitated only if EPA abandons its Proposals that would prohibit borrowing future ERCs or allowances that the EGU will acquire in a future compliance period as a means to meet current

---

62 *Id.* at 65,010.

63 "2013 Program Progress – Clean Air Interstate Rule, Acid Rain Program, and Former NO_x Budget Trading Program" and "Program Compliance" link (relating to the use of ARP and CAIR allowances), U.S. EPA (undated), available at: http://www3.epa.gov/airmarkets/progress/reports/index.html, and Program Compliance link available at http://www3.epa.gov/airmarkets/progress/reports/program_compliance_figures.html#figure1 (last accessed January 21, 2016).

64 80 Fed. Reg. at 65,010.

compliance obligations.[65] As with allowance borrowing, the Federal Plan should allow affected EGUs to borrow ERCs from future compliance periods during the useful life of the RE or EE measure. Under this approach, the Federal Plan would permit an affected EGU to borrow ERCs when it can establish its right to the ERCs (through ownership or contract) and that future borrowing will be limited to only the useful life (or contract term) of the RE or EE measure. In addition, the Federal Plan can include a true-up mechanism to reconcile the borrowed ERCs against actual future ERC generation. Allowing borrowing is a key way to maximize flexibility to meet compliance obligations of an individual affected EGU. This also enables the affected EGU to spread the cost of compliance over multiple compliance periods. Although allowing borrowing across compliance periods adds a level of complexity to the rate-based trading program, the benefits of borrowing to achieve the ultimate CO_2 reduction goals in a steady and workable manner far outweigh the costs of crafting a solution to address the added complexity.

g. The Federal Plan and Model Trading Rule should establish that EPA- or state-issued ERCs are presumptively valid if they satisfy the EPA or state eligibility standards to enable the effective operation of trading markets and eliminate uncertainty

EPA proposes that affected EGUs assume the risk that ERCs issued under the rate-based Federal Plan and Model Trading Rule might be invalid.[66] If liquid and fluent markets are to develop, they must have integrity and transparency. When purchasing an ERC on a trading market, an affected EGU cannot assess or monitor its validity, including whether paperwork errors occurred or whether the ERC generator perpetrated a fraud. The entire purpose of the market is to eliminate the need to perform case-by-case analysis in favor of freely-tradable compliance instruments that have the inherent integrity demanded by a market. The Federal Plan should be revised to establish that EPA- or state-issued ERCs are presumptively valid if they satisfy EPA or state eligibility standards. An effective and well-functioning ERC market requires that market participants have certainty that any ERCs being traded are valid. In addition, EPA notes that the proposed tracking systems will create a unique identifier (*i.e.*, serial number) for each issued ERC, allowing EPA to trace issued ERCs back to the ERC generator and conduct its own audits.[67] This puts EPA in the best position to pursue and take necessary action against an entity to which the ERC was improperly issued (*e.g.*, EPA could require the entity surrender additional valid ERCs to account for the improper ERC issuance).

---

65 *Id.*

66 *Id.* at 64,991.

67 *Id.* at 64,998.

8. The proposed Federal Plan provides insufficient credit for retirement of affected EGUs

a. Mass-Based: By arbitrarily limiting to 3-5 years the time in which a retired unit may receive allowance allocations, the EPA ignores the significant costs incurred if an affected EGU is forced to shut down prematurely before the end of its useful life, and may constitute an unconstitutional taking of private property

Under EPA's proposed mass-based Federal Plan, an affected EGU that retires may receive allowances for the initial three to five years in which it does not operate, depending on when the unit retires.[68] This very limited number of years for which a non-operating affected EGU may continue to receive allowances ignores the significant costs that will result if the owner of an affected EGU is forced to shut down a unit before the end of its useful life to comply with the CPP. Premature retirement inescapably results in economic losses because useful life is the ability of an asset to yield on-going economic value. Thus, shutting down an EGU prior to the end of its useful life results in losses for the owner – and ultimately the ratepayer. With public power electric utilities, the generating assets are fundamentally owned by the utility's customers (and there are no shareholders), with the utility acting as their agent. So, customers bear the economic costs of ownership, and also realize the economic benefits. As long as the going-forward variable costs of producing electricity with the coal plant are less than the all-in costs (fixed and variable) of viable replacements (market purchases, or resource acquisitions), the plant will yield economic benefits for customers. If the plant ceases operation during its economically useful life, customers will suffer an economic loss from electric rates that will be higher than they would have been it if the plant continued to operate. The loss borne by customers will be the same irrespective of the debt service schedule.

For MRES, if the owners of LRS are forced to retire one or two unit, or even the entire plant, before the end of the useful life of each unit, the owners and their consumer-owners will incur significant losses when these investments are stranded, while at the same time being forced to incur additional costs to replace the lost generation. LRS has a gross book value of about $1.2 Billion, and the Western Minnesota/MRES share of that is about $200 Million.

If a retired unit(s) is nonetheless allocated allowances for the duration of what would have been its useful life (as opposed to just 3-5 years), those allowances represent at least a portion of the stranded investment that can be recouped to manage compliance costs. The value of such allocations would not be anticipated to cover the entire stranded costs, but it could soften the blow and provide a way to realize some value associated with eliminating the production of CO_2 (and other criteria pollutants) over the balance of its useful life.

[68] *Id.* at 65,026-27. The total of between 3 and 5 years for which a retired unit could receive allowances under EPA's proposal is inclusive of the 2 years of non-operation that EPA proposes to use as the basis for concluding a unit has retired. *Id.*

For LRS, the stranded investment issue is not merely speculative, and it is compounded because the plant is subject to a mandate from EPA under the Regional Haze Rule to install Selective Catalytic Reduction (SCRs) on all three units at LRS in the near future. This will come at a cost of over $700 million to the six plant owners. For MRES, its share of this cost will be approximately $125 million. These investments must be made by 2019,[69] three years before the start of the interim compliance period of the CPP. If forced to retire a single unit at LRS, $250 million of consumer-owned investment to meet Regional Haze rules for that one unit will be stranded, on top of the economic value of the remaining useful life of the unit. Those costs will no longer be spread out over the 20-30 year remaining life of LRS, but must be recovered from ratepayers, a cost for which they will no longer receive any value.

The proposed Federal Plan can, and likely will, ultimately force many affected EGUs to shut down prematurely before their useful life has been exhausted. If EPA's actions force plant owners to give up valuable generating units, and provides no adequate compensation, the CPP will create a constitutionally invalid result. It would be an unconstitutional taking of private property without just compensation in violation of the Takings Clause of the Fifth Amendment to the United States Constitution.

EPA asks for comment on the number of years for which retired units should continue to receive allowances.[70] MRES requests EPA require that allowances be allocated to retired EGUs for a period sufficient to account for value of the remaining useful life of the EGU. This is necessary to account for the premature closure of power plants with years – and often, decades – of remaining useful life. In addition, allowing an owner of a non-operating affected EGU with years of remaining useful life to continue to receive allowance allocations from the retired EGU would mitigate the costs that the owner and its ratepayers would incur to replace the lost generation.

Finally, MRES also disagrees with EPA's proposal that an affected EGU be deemed retired after two years of non-operation, eliminating the ability to receive allocations of allowances and instead allocating those allowances to the RE set-aside.[71] An extended maintenance outage should not trigger an automatic forfeiture of allowances. EPA's generalization that a unit has retired simply because it has not operated for two years fails to consider that a major, unplanned maintenance outage can take 2 years or more to repair and return the unit to commercial operation or provide the unit access to transmission necessary for commercial operation, even for the newest, most efficient coal plants. For example, a major outage at the Sherburne County Power Plant in Becker County, Minnesota (owned by Xcel and Southern Minnesota Municipal Power Agency) took over 2 years to repair catastrophic damage to a turbine. A severe ice storm across the entire state of Nebraska in 2007 damaged the bulk transmission system so extensively that generators (including LRS) were required to reduce (or potentially cease) output for an extended period.

Another example includes the failure of a Generation Step Up (GSU) transformer, which converts electricity generated at a lower voltage to a higher voltage for transmission over the

---

[69] This date is subject to change, based on the stay granted by the 10th Circuit in the litigation over the Regional Haze Federal Implementation Plan. *See* note 1.

[70] 80 Fed. Reg. 65,027.

[71] *Id.* at 65,026-27.

bulk electric system. Laramie River Station has experienced two GSU failures during its lifetime (Unit 1 in 2000 and Unit 3 in 2015), rendering the respective unit unable to deliver energy to the electric system. While there was a spare GSU on-site, in each case it took months to remove the damaged equipment, install the spare GSU, and return to commercial operation. The damaged GSU was then shipped to the manufacturer, repaired, and returned to the plant, a process that took well over one year. Given the tens of millions of dollars of investment required to purchase a GSU, many EGUs maintain no spare so a GSU failure at one of those plants might well take over 2 years to repair. EPA should revise the Federal Plan to prevent maintenance outages from triggering an automatic forfeiture of allowances.

b. Rate-Based: EPA has arbitrarily failed to provide credit for retirement of EGUs that recognizes the value of such reductions to generate ERCs, and by failing to allow these reductions to generate ERCs, the EPA creates an unfair and potentially illegal or unconstitutional regulatory scheme

Under the proposed rate-based Federal Plan, EPA has arbitrarily provided no credit for units that retire that recognizes the value of such reductions to generate ERCs. Instead, EPA proposes to issue ERCs to affected EGUs only if they operate at a rate below the applicable rate-based emission standard.[72] EPA has not provided an adequate justification or explanation for not providing any such credit for retired EGUs. MRES requests that EPA establish a crediting mechanism that provides units that retire under a rate-based plan the ability to generate ERCs and with such credit equal to that provided under the mass-based plan. Not providing any mechanism in rate-based plans by which units that retire (or that reduce operations) could themselves generate ERCs for those reductions is inequitable and unreasonable. Failing to allow these reductions to generate ERCs creates a potentially illegal or unconstitutional regulatory scheme.

Providing credit to retired EGUs under a rate-based plan approach follows the CPP. EPA has already suggested in the CPP that one viable at-the-unit compliance strategy under a rate-based plan is to retire an EGU such that it no longer emits CO_2.[73] In addition, EPA has recognized the need to maintain equivalency between rate-based and mas-based CO_2 emission performance goals and the corresponding need to realign certain incentives under each approach.[74] The proposed Federal Plan's differing treatment of retired EGUs under a rate-based plan compared to a mass-based plan conflicts with EPA's assertion that the mass-based goals are an equivalent expression of the BSER.[75] Ultimately, EPA's failure to provide a crediting mechanism for units that retire under a rate-based plan internally contradicts its support of this compliance strategy in the CPP and its recognition of the value of giving EGUs the flexibility to adopt equivalent emission reduction strategies and measures that for them may be preferable to the alternative plan approach. EPA should allow these EGU retirements to generate ERCs equal to such credit provided to EGUs under the mass-based Federal Plan.

---

72 *Id.* at 64,990-91.

73 *See id.* at 64,834.

74 *See id*. at 64,822.

75 80 Fed. Reg. at 64,820.

c. EPA's Alternative Compliance Pathway for EGUs that agree to retire before a certain date requires important changes to ensure workability

EPA requests comment on an alternative compliance pathway it proposes could be available to units that agree to retire by December 31, 2029.[76] MRES supports giving affected EGUs the option to choose an Alternative Compliance Pathway under a mass-based and rate-based Federal Plan by which an affected EGU that commits to retiring by December 31, 2029, would be removed from the trading program and instead would comply with an enforceable unit-specific emission limit. The Alternative Compliance Pathway would provide affected EGUs flexibility to choose an alternative pathway while maintaining the overall stringency of the state goals.

For an affected EGU that chooses the alternative pathway under a mass-based Federal Plan, EPA proposes to determine the unit-level emission limit for the EGU "as an amount of emissions equal to the sum of the allowances that the unit would otherwise have been allocated for the Interim Period."[77] The owner or operator of the affected EGU that chooses this alternative pathway should be able to increase its unit-level emission limit by purchasing allowances and surrendering the allowances to EPA. This would give the affected EGU additional flexibility to address unforeseen circumstances that could cause its utilization to increase.

For EGUs that choose the alternative pathway under a rate-based Federal Plan, EPA proposes to institute a mass-based standard that is "unit-specific and is proposed to be the 2012 generation for the unit multiplied by the corresponding rate-based standard for the Unit in the compliance period. This will give a mass value for the year and would be multiplied by the number of years in the compliance period to give the standard for that compliance period."[78] EPA should specify that "compliance period" means the Interim Period (i.e., January 1, 2022 to December 31, 2029) to calculate the mass-based standard. In addition, if a retiring unit does not emit its assigned mass value upon retirement, the remaining mass value should be calculated back into ERCs and be distributed to the retiring EGU.

Last, limiting the calculations solely to the 2012 historical generation baseline fails to consider data anomalies that can occur in any year. The 2012 baseline may not accurately represent a unit's historical generation. If generation during 2012 is not reflective of a unit's typical operations, units should present more realistic data or information to EPA and have an alternative baseline established.

9. EPA must prevent market manipulation

In its proposed Federal Plan and the Model Trading Rules, EPA has failed to provide adequate mechanisms to prevent market manipulation. The fundamental basis of compliance under the

---

[76] *Id.* at 64,980.

[77] EPA Technical Support Document (TSD): Alternative Compliance Pathway for Units that Agree to Retire Before a Certain Date TSD, page 2.

[78] *Id.* at 4.

CPP is premised on developing efficient markets for trading compliance instruments, whether those be allowances or ERCs. The central role of trading in the structure of the CPP requires that EPA include provisions in the very establishment of the CPP and its trading mechanisms to proactively deter potential market manipulation. Failure to do so will further expose affected EGUs and ultimately utility customers to the risk of substantial cost increases. This threatens successful implementation of the entire CPP.

MRES recognizes the importance of tradable instruments as a means of compliance with the emission reduction requirements because there is no commercially available technology to reduce CO_2. MRES supports EPA's effort to create trading markets to facilitate the efficient use of such instruments. Developing broad and efficient markets is essential to minimizing the costs of compliance. In such nascent markets, competitiveness is essential and the potential for market manipulation which threatens the efficient operation of those markets must be addressed as part of the structural premise for allowance and ERC trading markets.

The Proposals acknowledge that "[a] transparent and well-functioning allowance or ERC market is an important element of a mass-based or rate-based trading program."[79] EPA states it "is evaluating the options for providing oversight of the allowance or ERC markets," which "could include engaging with other federal and state agencies as appropriate, and potentially with third parties, in conducing market oversight."[80] However, the Proposals lack details: they contain no provisions to describe the "options" under "evaluation" to ensure either transparency or efficient competition. The mere assertion by EPA it "*believes* that the ERC market and the allowance market would be competitive" and "the potential or likelihood of market manipulation is fairly low," is not enough when compliance with this first-of-its-kind regulation depends so heavily on effective markets.[81] That other emission control programs (such as the trading program for sulfur dioxide (SO_2) allowances) use trading platforms cannot justify failing to address manipulation here because those programs are based on different compliance approaches (and have their own notable limitations).

Here, EPA proposes that affected EGUs in any state covered by a Federal Plan could trade compliance instruments with affected EGUs in any other state covered by a Federal Plan or a state plan meeting the conditions for linkage to the Federal Plan.[82] Implementation of a Federal Plan or a model trading plan will involve trading of either Emission Rate Credits (ERCs) or allowances among and between affected EGUs in different states and regions, and with different market structures.

If these CO_2 allowance trading markets develop in a manner similar to other EPA allowance trading programs (*i.e.*, SO_2 allowances and the Regional Greenhouse Gas Initiative (RGGI)), it can be expected that entities other than owners of affected EGUs will participate in the markets as brokers or traders of ERCs or allowances, or offer tools intended to enable affected EGUs to hedge against price increases or volatility, such as futures, forward contracts, or other options.[83]

---

79 80 Fed. Reg. at 64,977.

80 *Id.*

81 *Id.* (emphasis added).

82 *Id.* at 64,976.

83 "Annual Report on the Market for RGGI CO_2 Allowances: 2014," *Potomac Economics* (May 2015), at 14-16.

In addition, there is also potential that investment firms and other financial entities will enter the CO_2 markets to trade in these instruments despite their having no compliance obligation under the CPP, and no direct relationship with or contractual obligations to affected EGUs or their owners. These facts create substantial risk of market manipulation, and EPA's "belief" that the CO_2 markets will spontaneously develop and that the electric industry's market structure, existing institutions, and existing regulatory oversight mechanisms will ensure transparent and competitive ERC and allowance markets ignores past experience.

a. Opportunities abound for potential market manipulation

Developing CO_2 markets for trading ERCs and allowances represents an opportunity for merchant generators, financial entities, and possibly others to create profits at the expense of affected EGUs that must purchase these instruments for compliance, and create artificial cost increases for ultimate retail consumers.

Merchant generators have inherently distinct motivations from those of affected EGUs with CPP compliance obligations, and those distinctions heighten the potential for market manipulation. Merchant generators are not load serving entities, their prices and earnings are not regulated by a state commission, and their objectives are to maximize profits. They operate primarily in wholesale markets operated by Regional Transmission Organizations or Independent System Operators (RTOs), where wholesale prices are subject to only minimal regulation by the Federal Energy Regulatory Commission (FERC). Owners of merchant generation have a financial incentive to purchase and sell allowances and ERCs in energy markets to maximize profit, not just to maintain regulatory compliance corresponding to an obligation to serve customers at reasonable rates.

A merchant generator might adopt a strategy to purchase allowances or ERCs in an amount far greater than their compliance obligation would require to prevent other EGUs that require ERCs or allowances from economically acquiring them, resulting in either an artificially inflated price or the inability to operate an EGU due to a lack of compliance instruments. Another opportunity for market manipulation exists when a single owner of multiple merchant plants in various states sells an ERC or an allowance from one EGU in its fleet to another at a high price to artificially create a cost-based justification for high offer prices into the CO_2 markets. This could cause a dramatic increase in the price paid for all ERCs or allowances, including those offered for sale by the single owner of the merchant generation fleet. Both price spikes and volatility threaten efficient market operation.

In addition, most financial entities[84] do not serve electricity load and do not even generate electricity; they have no compliance obligations under the CPP. Affected EGUs require allowances or ERCs to operate in compliance with this new regulation. The availability of these compliance instruments can be artificially limited by financial entities that see the CO_2 markets as a new opportunity to profit by purchasing these instruments to reduce the supply of allowances or ERCs and drive up the price purely for financial gain.

[84] Brokers and other third-party entities that provide a service in creating platforms for trading or hedges, such as futures contracts are distinct from, and not included in the discussion here of financial entities.

Enforcement actions for violations of the electricity market anti-manipulation rule[85] show that FERC's Office of Enforcement has assessed significant civil penalties for manipulation of the wholesale electricity markets – $875 million in civil penalties and $270 million in disgorgements just since 2010 – and that the perpetrators in these wholesale market manipulation actions have nearly all been financial entities (91 percent of all civil penalties and 94 percent of all disgorgements were by financial entities).[86] Many of these recent FERC anti-manipulation enforcement actions involved a financial entity taking a loss in one market, often a physical energy market, to obtain a greater benefit in a financial position, such as a swap or financial transmission right.

Besides these potential perpetrators of market manipulation, other entities might take advantage of the absence of mechanisms to prevent market manipulation to twist the CO_2 markets to further their own agenda and prevent the effective operation of such markets. If entities that have no CPP compliance obligation, no contract with the owner of an affected EGU, or provide no necessary service to facilitate trading or hedging (such as brokers), may acquire allowances or ERCs in the CO_2 markets, they could distort the markets by hoarding compliance instruments and withholding them from the free market entirely. Climate Change Activists might employ a strategy in a state or region to acquire allowances and ERCs in an amount great enough to restrict the ability of affected EGUs to operate at even reduced levels, forcing premature retirement of existing fossil-fuel units. If left unchecked, a single, well-funded entity could radically alter the entire compliance structure of the CPP by eliminating from the market compliance instruments altogether. While such action is not known to have occurred, given the significance of the CPP as the centerpiece of the nation's response to climate change, the potential for hoarding to prevent effective operation of CO_2 markets cannot be ignored. Although it is not possible to predict the extent to which merchant generators, financial entities, or others may act to manipulate the allowance and ERC markets, the potential for market manipulation plainly exists and must be addressed.

b. Mechanisms to prevent market manipulation

When finalizing the Federal Plan and Model Trading Rules, EPA should develop protections against market manipulation to minimize the possibility of price spikes, volatility, and hoarding in the ERC and allowance markets. Essential deterrents to market manipulation are the transparency of allowance and ERC trading price data, a price safety valve, and restricting the entities that can participate in the secondary market. These mechanisms are necessary to limit the potential for distortion of the price and availability of allowances and ERCs.

MRES joins APPA in recommending that, at an absolute minimum, EPA should require the reporting of all trades include the price at which the instrument was traded. Pricing data is necessary to ensure that any interested party can investigate whether there are anomalous patterns in prices, the degree and frequency of price spikes, overall price volatility, and the

[85] Both the prohibition on the manipulation of wholesale electricity markets ("anti-manipulation rule") and the prohibition on the submission of false information were adopted in the amendments to the Federal Power Act enacted by the Energy Policy Act of 2005.

[86] Compilation of data obtained by the American Public Power Association from Office of Enforcement, Federal Energy Regulatory Commission annual Reports on Enforcement.

relationship between such pricing data and ownership types. Requiring the disclosure of this information would provide perhaps the single most effective deterrent to entities that might otherwise engage in market manipulation.

While the proposed Allowance Tracking and Compliance System (ATCS) for ERCs and allowances would require identification of buyer and seller, dates of transfers, origin and type of ERCs, and serial numbers,[87] these elements are inadequate without the corresponding pricing data. The claim that brokers are better positioned than EPA "to obtain and disseminate timely, accurate price information" that "would reflect current market prices"[88] is not a sound reason to dismiss the importance of price disclosure.

The most essential data needed to deter market manipulation is not necessarily *immediate* market price information, it is the *public availability of pricing data itself*. Even with a time lag, tracking and reporting of prices allows monitoring of the market and the deterrence of market manipulation. EPA should add this one additional data point to the other ATCS reporting requirements to provide a central, public and transparent repository of market information. Without such a requirement, price data can be difficult to obtain (as has been the case with trading of SO_2 allowances[89]), and market monitoring will be structurally inhibited. MRES shares APPA's position that disclosure of pricing information is needed to empower EPA or a state or regional entity to monitor the CO_2 markets for collusion among bidders, imbalanced positions among participants, or other market manipulation. If such wrongful activity occurs, EPA should then allow states to adjust their programs as needed to create additional market and price transparency mechanisms, whether by modifying auction procedures or otherwise.

Besides price transparency, adding a price safety valve can also protect against manipulation of market trading programs. A price safety valve can provide states an important mechanism to abate short-term price spikes that cause higher prices for consumers and windfall profits for allowance holders, but no corresponding gains in emission reductions. Several states with renewable energy mandates have implemented the equivalent of a price safety valve to ensure price stability in REC markets. They often take the form of alternative compliance payment mechanisms that establish a ceiling on the cost of compliance.

Likewise, EPA should implement a similar mechanism[90] to carry out its obligation to ensure that short-term price spikes for allowances and ERCs can be mitigated by cost containment

---

87 80 Fed. Reg. at 64,997 and 65,029.

88 *Id.* at 64,998 and 65,030.

89 A January 2014 Congressional Budget Office (CBO) report notes that:

> "Trading of SO_2 allowances is largely done in private bilateral negotiations between two parties (*i.e.*, over the counter) and not on centralized, transparent exchanges. For that reason, spot price data for SO_2 allowances tend to be proprietary and difficult to obtain."

Market Efficiency and the U.S. Market for Sulfur Dioxide Allowances, Claudia Hitaj, Economic Research Service, United States Department of Agriculture, and Andrew Stocking, Congressional Budget Office, (January 2014), at 2.

90 One such mechanism is a ceiling-price alternative compliance payment (ACP) "by which a source could make a compliance payment to the state in lieu of achieving on-site reductions and allowing the state to use the funds towards energy system improvements (*i.e.*, greenhouse gas emission reductions outside the source)." This ACP concept was proposed by the National Climate Coalition in its "Comments on EPA's Proposed Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (December 2014).

mechanisms allowed under its Federal Plan. Section 111(d) clearly provides for EPA to consider cost of compliance, and providing states the option to use a price safety valve under the Federal Plan would enable EPA to more efficiently achieve its emission reduction goals. A price safety valve would also help ensure that entities with compliance obligations can avoid being forced into above-market contracts to procure renewable generation, protecting consumers from any manipulation that threatens to create unproductive overpayments for emissions compliance.

Finally, to protect against CO_2 market manipulation, EPA should restrict the entities that are eligible to buy and sell allowances and ERCs. Besides affected EGUs and entities with purchase power agreements with owners of affected EGUs, only brokers or other third-parties that directly trade with or offer futures contracts or other hedges directly to an affected EGU/owner should be permitted to buy and sell allowances and ERCs. As illustrated above, financial entities and others present a threat to consumers when they engage in manipulative activities, and there is a demonstrated record of significant enforcement actions in energy markets to date. Any entity that cannot demonstrate a relationship to an affected EGU or its owner as part of the registration process for the ATCS should be expressly prohibited from acquiring any interest in allowances or ERCs.

10. The proposed Clean Energy Incentive Program must be revised to effectively and fairly incentivize the quick development of both Renewable Energy, and of Energy Efficiency for low income communities

MRES serves no customers or load in Wyoming where its only affected EGU is located. The renewable energy resources listed above are in the states where MRES serves customer loads—not in Wyoming. The proposed CEIP is not well suited to promoting renewable generation development by utilities whose EGU is not in states where the utility owns renewable generation, or even in states with significant renewable energy potential. Also, any low-income energy efficiency projects that MRES might engage in as part of the CEIP would be in our member municipal communities. Again, this would be in states in which MRES has no affected EGU. Because MRES serves no load in Wyoming, opportunities for low income energy efficiency projects would not be possible.

As stated in the comments that MRES and other entities filed on the proposed CPP in December of 2014, the plan will strand MRES investments in renewable energy. Unfortunately, nothing in the final CPP rules changes this result. Current renewables "in the ground" are not included in compliance options for affected EGUs. Again, as several commenters stated last December, the CPP acts as a disincentive to renewable development prior to the implementation of state plans. With the uncertainty of how state plans will be developed and the uncertainty of whether a utility can trade across state lines, utilities are unwilling to invest in renewables unless they are assured that such renewables can offset affected EGUs—many of which are not in the same state as a utility's load or renewable energy development. To address this chilling effect on developing renewables under the CPP, the EPA has proposed the CEIP to "help sustain the momentum toward greater RE investment in the period between now and 2022 so as to offset any dampening

affects that might be created by setting the period for mandatory reductions to begin in 2022…".[91]

While the EPA intends to address many aspects of the CEIP design and implementation in subsequent proceedings, it has requested comments on several aspects of the CEIP. MRES addresses these below.

a. Definitions and Criteria for Clean Energy Incentive Program eligibility should promote early Renewable Energy and Energy Efficiency development

i. Allow eligibility for renewable energy and energy efficiency projects that commence operation after publication of the final Clean Power Plan Rule

The goal of the CEIP is to "help sustain the momentum toward greater RE investment in the period between now and 2022."[92] However, the CEIP creates a chilling effect to the development of RE by its design. The CEIP allows generation of wind and solar projects to receive allowances or ERCs, provided that the renewable projects commence construction after the submission of a final state plan to the EPA, or after September 6, 2018, for states that choose not to submit a final state plan by that date. Because only projects that commence construction after final submittal are eligible for early action allowances/ERCs, there is no incentive to invest in RE development until a utility or renewable energy investor can be assured that it would garner the most gain for its investment under the CEIP and/or the CPP. Because such investment must be predicated upon final plan submittal and state design of the administration of the allowances/ERCs, there is no incentive to develop RE in the years leading up to submission of a final state plan to the EPA. The end result is a delay in RE development. Further, even if a particular RE project were awarded early allowances/ERCs, it can only receive the allowances for generation in the years 2020 and/or 2021. Again, there is no incentive to operate the new project prior to 2020. This creates a perverse incentive to delay the development of RE and it contradicts the social preferences for environmental improvements to occur sooner rather than later (especially for long-lived atmospheric gases, such as CO_2).

The CEIP as proposed also creates a chilling effect on RE development by restricting eligibility to projects that start construction after September 2018 when a final state plan is submitted 2018 and awards bonus ERCs only for generation in 2020-2021. Planning utility-scale generation does not occur in a short while. The utility or the developer must determine a need for the power, calculate the economic soundness of the investment, secure financing and procure both land and equipment. The CEIP allows only a very limited window to make such determinations (assuming that the project would receive early allowances/ERCs).

Solar and wind generation are not added in a vacuum. For each utility-scale project under consideration, several factors must be studied and researched before development can begin. Transmission studies and interconnection studies must be undertaken before a new project can be

[91] 80 Fed. Reg. 64,670.

[92] *Id.* (emphasis added).

interconnected to the grid and to the area Regional Transmission Organization/Independent System Operator (collectively referred to as RTO). Financing the project is also a consideration that requires more time. An Investor Owned Utility (IOU), depending on the state it is operating in, would have to submit an Advanced Determination of Prudence to be approved by the state Utilities Board before either building a new renewable project or before entering a power purchase agreement for the RE. If the request by the IOU is opposed, then the matter can drag on in a contested case proceeding. The renewable project must also acquire sufficient land either by purchase or by lease, apply for and receive siting and construction permits. Again, if there is any opposition to the siting of the new renewable project, the delay may hinder the project's ability to complete construction and operate in 2020 to receive early action allowances/ERCs under the CEIP.

The CEIP should be available to all RE projects that become commercially operational after the publication of the final CPP rule (October 23, 2015). This would encourage utilities and developers to take steps now to invest in RE projects, while also providing credit to those that took initiative to act in response to the policy statements and preliminary rulemaking efforts set forth by the President and EPA to enact rules to limit CO_2 from the power sector.

ii. Allow issuance of early action allowances or emission rate credits for generation from new Renewable Energy resources that occurs between the publication of the final Clean Power Plan rule and 2022

Even though early action allowances/ERCs are only awarded for generation in 2020 and 2021, MRES would recommend that the EPA consider allowing utilities that commence commercial operation on a new RE facility between the publication of the final CPP rule and the 2022 compliance period to create and bank state-issued early action allowances/ERCs during this interim time period. Even if the RE is not eligible for the matching allowances/ERCs from EPA, all new utility-driven RE developed in that interim period should be rewarded and incentivized. This would not only encourage early RE investment by utilities, but it would make strides in reducing the CO_2 emissions from affected EGUs ahead of 2022. Also, because RE built in 2012 or earlier cannot count towards CPP compliance, much of those renewable units are now stranded investments that the ratepayers must pay for. To comply with the CPP, many of these "older" RE projects must be replaced with newer RE eligible for CPP compliance. By allowing early banking of such interim investment, it will alleviate at least some of the cost impacts on consumers.

iii. An eligible low-income energy efficiency project should be deemed to have "commenced operations" if the program is listed in the state-approved Technical Resource Manual

The CEIP proposes to incentivize Energy Efficiency (EE) in low-income communities provided that the EE project commences operation following the submission of a final plan or after September 6, 2018. The EPA has not given guidance on the meaning of "commences operation". MRES, like many utilities has been engaged in EE for some time. That engagement has included working with Minnesota and technical work groups on developing a Technical Reference Manual (TRM) and a "deemed savings" database. The TRM comprises a set of standard

methodologies and inputs for calculating savings impacts and cost effectiveness of EE programs. The TRM lists the many EE programs and their savings. MRES uses the Minnesota TRM to evaluate EE programs in Iowa, South Dakota and North Dakota, as well as Minnesota. So its usefulness transcends state borders. MRES recommends that any program in the TRM and is offered to an identified low-income community has "commenced operation"; whether that "offer" is made by way of a rebate, a mailer, or other option. Likewise, many utilities contract with third parties to implement EE programs. MRES would recommend that once a contract or similar agreement is executed with a third party by a utility with an affected EGU, the EE program has commenced operation.

However, like RE, the proposed design of the CEIP provides a disincentive for EE programs. Like RE, only savings in the years 2020 and 2021 may receive early action allowances/ERCs. Yet, EPA proposed this aspect of CEIP to address concerns expressed in filed comments that the CPP would have disproportional negative impacts on the lower income communities. The EPA proposed this action to help states take concrete actions now that would provide economic development, jobs and reduce electric bills in these affected communities.[93] If utilities cannot get credit for savings that occur between 2016 and 2020, such programs will probably not be fully implemented and available to these key communities until closer to 2020. Instead, MRES would recommend that EE programs that commence operation after publication of the final CPP rule can bank any allowances/ERCs created during this period for compliance with the CPP or to trade/sell in during the compliance period.

iv. All categories of renewable energy generation used to quantify Building Block 3 emission reductions as a component of the Best System of Emission Reduction in the final Clean Power Plan should be eligible under the Clean Energy Incentive Program

The proposed CEIP has limited eligible RE to wind and solar projects only, citing to the fact that such projects have shorter build-up times. While those technologies and resources can be installed in a relatively short time frame compared to other generation resources, there is no valid policy rationale to exclude other non-emitting resources that begin production after the adoption of the final CPP rule. In the final rule, EPA included several types of new RE generation in its determination of the BSER for CO_2 emissions from existing fossil fuel-fired EGUs: onshore wind, utility-scale solar PV, concentrating solar power, geothermal, and hydropower.[94] All measures should be eligible for the CEIP, not only wind and solar.

There are RE projects under development not based on wind or solar which will generate soon. The Red Rock Hydroelectric Project, under development by MRES and Western Minnesota, is a new non-emitting generation project near Pella, Iowa, that will provide 36.4 MW of renewable, baseload power beginning in 2018. There are over 80,000 non-powered dams in the United States, and those sites hold the potential for up to 85 GW of new, non-emitting baseload generation to power the clean energy future.[95] As we move forward to carry out the CO_2

---

93 *Id.*

94 *Id.* at 64,807.

95 "New Stream-reach Development: A Comprehensive Assessment of Hydropower Energy Potential in the United States," prepared by Oak Ridge National Laboratory for the US Department of Energy, April 2014.

reduction objectives of the CPP, it is essential that our nation look to renewable resources that provide baseload generation to ensure grid reliability, which will be increasingly important as more intermittent RE is developed. The CEIP should incentivize such projects, including RRHP, which will not go into commercial operation until well after the CPP became final in 2015, and after Iowa makes its initial state plan filing in 2016. States and utilities should be rewarded not only for constructing RE in 2018-2021, but also for having the foresight to construct larger, baseload renewable resources that will support the grid and will be around for decades to come.

The EPA has stated that it intends that a portion of the 300 million allowances/ERCs will be reserved for eligible wind and solar.[96] Questions raised at public meetings of the Minnesota Pollution Control Agency indicate some stakeholders are interested in whether the allowances/ERCs will be further allocated between wind and solar. MRES opposes allocating only a certain amount of allowances to one type of RE. Rather, RE allowances should be allocated without preference for one type of RE over another. If a state sets aside 50% of its CEIP allowances for RE, the state should be free to determine that it will award the allowances on a first come-first serve basis without regard to whether the RE is solar or wind (or hydropower). The CEIP should seek to incentivize RE resources regardless of the type and not engage in "picking winners" on RE technology. Further, states should be required to allocate CEIP bonus ERCs to only those projects that will be used for compliance by an EGU. By ensuring only utilities, or entities with a purchase power agreement with a utility with a compliance obligation, the CEIP will ensure that it can avoid market manipulation issues, described more fully above in Section 9.

v. Utility-owned or contracted renewable energy should be considered to "benefit" the state in which that utility has an affected Electric Generating Unit

The proposed CEIP provides that a state can participate in the CEIP only if the eligible projects are in or "benefit" the state on whose behalf the EPA is implementing the Federal Plan.[97] Yet, the EPA gives no direct guidance on what "benefitting" the state means. The Model Trading Rules state that RE in a mass-based state that would otherwise be eligible for the CEIP bonus credits in a rate-based state may, in fact, generate such ERCs for compliance if a rate-based state approves the project eligibility and subsequently issues ERCs under the rate-based state's requirements. MRES suggests that any EGU should be allowed to take advantage of any RE or EE program regardless of location to align with the goal of the CEIP to incentivize early investments in RE and EE. When a utility owns an RE resource or has an existing power purchase agreement for a specified RE resource, the ERC must be fully tradeable across state lines to ensure the utility can use it for compliance in the state where it has an affected EGU and compliance obligation.

For example, if a utility owns an affected EGU in North Dakota and develops new wind resources in Minnesota, those new wind resources should be eligible for the CEIP in North Dakota (assuming the state participates in the CEIP) to offset CO_2 emissions from the utility's affected EGU in North Dakota. If we assume in this case that North Dakota adopts a rate-based

[96] 80 Fed. Reg. at 64,829.

[97] *Id.* at 65,000.

approach and Minnesota alternatively adopts a mass-based approach, Minnesota's mass-based rules should not prohibit North Dakota from certifying a Minnesota wind project as eligible under the CEIP for ND bonus ERCs (respecting the principle to avoid double counting). All of the renewable attributes from the wind turbines are the property of the utility-developer.

In this example, the State of Minnesota must not be able to claim that the mere presence of the wind turbines in its state is sufficient to establish those resources benefit Minnesota. The RE generation and related attributes are the property of the utility-developer, and if a state is allowed to confiscate those attributes and compliance instruments to achieve the state compliance objectives, that action constitutes a taking for which the utility must be compensated (*see* Fifth Amendment constitutionality discussion in Section 3(c)(iii), above). Therefore, wherever a utility owns a RE resource or contracts for the purchase of generation from a RE resource through a power purchase agreement, the renewable attributes or early action allowances/ERCs must follow the utility with a compliance obligations, and be considered "for the benefit" of the state in which that utility wishes to offset emissions from an affected EGU.

vi. States should be allowed to define low-income communities

EPA has requested comment on what constitutes "low income communities" for the CEIP.[98] MRES has been involved in energy efficiency for years. Likewise, many agencies in the states in which MRES has members have also brought affordable and accessible energy programs to low income persons. MRES would suggest that it be left to each state to define what constitutes "low income." This would allow the state to define it in a way that encompasses existing low income programs (e.g. LIHEAP, CAP, weatherization programs, etc.). The state may expand the definition to allow CEIP low-income EE programs in areas not normally thought of as "low income communities." For example, at first glance, some would not consider rural America to encompass low-income communities. However, upon further examination, some rural agricultural areas come within state agency guidelines for low-income communities. The EPA has stated that the CPP should be flexible to meet its goals in a reliable and affordable fashion. This is one area in which the flexibility should be optimized by allowing states latitude.

b. EPA should streamline Evaluations, Measurement & Verification requirements and leverage existing tracking systems to track and verify Renewable Energy generation and Energy Efficiency savings for the Clean Energy Incentive Program

The CEIP does not specify whether the EM&V reporting requirements of the CPP would also be required in the CEIP to receive early allowances/ERCs. If EPA does so, MRES would again recommend against such a lengthy and burdensome process, and would request EPA streamline EM&V requirements and leverage existing tracking systems to efficiently track and verify RE generation and EE savings for CEIP. In the proposed Federal Plan, EPA proposes that all EM&V reporting would include documentation of completed EM&V under the plan submitted in the application for RE or EE projects.[99] The report would also be required to include documentation

[98] *Id.* at 65,024.

[99] *Id.* at 65,002.

that the generation has not been submitted in another state plan for credit, documentation that the RE MWh produced in a mass-based state was generated for load in a rate-based state, documentation that the RE produced in the mass-based state had its application approved to produce power for a rate-based state, and a verification report from a third party verifier.[100] If this reporting process were used in the CEIP process, it would add to the cost of the programs just as the application process would. Further, as stated in section 7(c) above, given the work already done in this region to track EE and RE results, a third party verifier is an unnecessary expense that will be borne by the very rate-payers that the CEIP proposes to assist. The point of the CEIP is to continue to reduce CO_2 emissions in the interim and to seek meaningful ways to decrease costs in low income communities affected by the CPP. A lengthy and complicated EM&V process would delay RE development and make both RE and EE projects more expensive.

c. Distribution of early action allowances and Emission Rate Credits

i. EPA should allow states to determine how the pool of allowances or Emission Rate Credits is distributed between the reserves for eligible Renewable Energy projects and Energy Efficiency programs in low-income communities

The CEIP proposes that the allowance/ERC pool set aside for low-income EE and for RE projects be divided between the two programs. EPA has asked for comments on how many allowances/ERCs should be set aside for EE and how many for RE. MRES recommends that each state make that determination. States and their stakeholders are in the best position to know which should be priority. In a state like Wyoming, RE development is restricted by the lack of RE siting and by a lack of sufficient transmission. In such a case, the state may allocate more of the early action allowances to low income communities rather than towards RE. Iowa has an excellent wind regime and transmission access. Therefore, Iowa may allocate more early allowance ERCs/allowances towards RE over EE.

ii. EPA should allow states to re-direct unused early action allowances/Emission Rate Credits into other reserve

As proposed under the CEIP, once a state has set aside its state allowances/ERCs for early action EE and RE programs, the EPA will then set aside matching allowances/ERCs sufficient for the state's EE and RE set aside pools. However, if any portion of either the EE or the RE state pools of early action allowances/ERCs go unused, the EPA would redistribute those set aside matching allowances/ERCs to other participating states. MRES urges that, prior to redistributing to other states, that the state originally holding those matching ERCs be allowed to re-direct the unused allowances/ERCs from one pool (e.g. EE) to the other pool (e.g. RE) for that state.

[100] *Id.* at 64,999.

iii. The pro rata distribution of allowances/Emission Rate Credits should be based on the output of CO_2 from affected Electric Generating Units, allocating more allowances/Emission Rate Credits to those states with the greatest emissions

Wyoming's 2012 emissions for affected EGUs was 49,998,736 short tons. Under a mass based system, it must be reduced to 38,528,498 by the 2022-2024 interim compliance period. In the proposed Federal Plan, the EPA proposes that Wyoming set aside 3,104,324 short tons for the CEIP program.[101] It is assumed the EPA would match Wyoming at the same level. This set aside represents 1% of the total federal allowance pool for CEIP of 300 million. Yet, Wyoming, home to several affected EGUs, is one of the most affected states under the CPP. According to the Electric Information Administration (EIA) data (Energy-Related Carbon Dioxide Emission at the State Level, 2000-2013, October 2015), when looking at carbon emissions from coal generation, Wyoming ranks 11th in the nation for CO_2 output from coal. Even though Wyoming will be one of the heavier-burdened states under the CPP, it receives relatively little relief under the CEIP. Wyoming is not well suited to renewable energy development. And, little of the power produced from affected EGUs is used in the state, which has a relatively small population. Wyoming is also not well suited to develop significant in-state EE to offset affected EGUs, especially in the interim period. Wyoming must seek CEIP allowances/ERCs from EE and RE projects that occur in other states. Therefore, MRES would recommend that EPA consider setting aside allowances in the federal pool to states based on the output from affected coal-fired EGUs in each state and allocate the allowances/ERCs to the states accordingly. The pro rata distribution should be based on the output of CO_2 from affected EGUs, with those states most affected receiving the most allowances/ERCs. Likewise, when looking at redistribution of unused allowances/ERCs, the EPA should distribute to the states with a larger number of affected EGUs.

d. EPA should revise the Clean Energy Incentive Program framework to prevent market manipulation and hoarding of allowances

The proposed CEIP provides that allowances or ERCs awarded by the EPA under the CEIP may be used for compliance with the CPP.[102] There is no requirement that any of the early action allowances or ERCs must be used for compliance or otherwise transferred to the affected EGUs. This is a very significant concern of MRES, as third party ownership of allowances/ERCs opens up the CEIP to market manipulation. A renewable developer that has no existing power purchase agreement with a utility with an affected EGU may receive CEIP allowances/ERCs which the entity simply holds on to until the allowances/ERCs expire. Or, a renewable developer may hold on to the allowances/ERCs and drive up the price. Also, because the allowances/ERCs are transferable, a renewable developer may sell the allowances/ERCs to a third party on a secondary market. That third party could retire the credits outright or sell the allowances/ERCs to EGUs at a high cost.

Allowing third party ownership of allowances/ERCs creates a higher risk of market manipulation. The lessons of ENRON should be remembered. Market manipulation in the

[101] *Id.* at 65,026.

[102] *Id.* at 64,675.

deregulated energy market led to manufactured shortages of energy and capacity that first led to sky-rocketing prices. Then, the manipulation led to actual energy shortages that resulted in brown-outs and rolling blackouts. The goal of the CEIP program is to generate RE and to stabilize rates in low income communities. If hoarding or other market manipulation occurs in the CEIP or in the CPP, it will have a negative impact on the cost of RE development and on the low income communities the CEIP proposes to protect.

Instead, the EPA should revise the CEIP to assure that affected EGUs and utilities with affected EGUs receive all allowances/ERCs. Utilities must meet demand, maintain high reliability, and ensure security of the nationwide grid. Utilities must be assured that they will have all of the generation needed to meet these legal obligations. The CPP and CEIP must provide sufficient allowances and ERCs to keep sufficient capacity and generation operating for reliability and security. Therefore, MRES recommends that any allowances or ERCs awarded under the CEIP must be held by or transferred to an owner/operator of an affected EGU at the time of the awarding of the allocation/ERC. Also, EPA should require that the allowance/ERC awarded in the CEIP must be used for CPP compliance by the end of 2024 (end of the first compliance period), as opposed to retiring the ERC without utilizing it for compliance. This will assist utilities in meeting their obligations to comply with the CPP and in meeting their obligations to provide reliable and cost effective power to the nation.

EPA comments in the Preamble that under previous air quality programs like the Acid Rain program, third parties were involved.[103] EPA states that specifically, the third parties were the manufacturers of the equipment needed to retrofit plants to meet the EPA requirements; therefore there should be no opposition to third party involvement in RE and EE development under the CPP. This is non-sequitur logic. Manufacturers of equipment under the acid rain program could not receive allowances. The manufacturers supplied equipment to assist utilities in compliance under the Acid Rain program and received a fair market value payment for the equipment—not allowances. Under the CEIP, however, financial entities, non-owners of affected EGUs, and other third parties may receive allowances/ERCs, and can withhold or retire without utilizing allowances/ERCs, creating significant potential for market manipulation (discussed in Section 9). The Proposals do not require they be transferred to the affected EGUs/utilities or used to facilitate compliance. These allowances/ERCs are essentially the only way that affected EGUs may comply with the CPP. To allow parties who have no compliance obligation to compete for those compliance mechanisms will only increase costs and jeopardize reliability.

e. The Clean Energy Incentive Program should give certainty to the utilities, to the rate-payers and to the reliability of the grid

The key to energy industry investment in RE and EE is certainty. Certainty in obtaining allowances/ERCs, certainty that the project will count for compliance, certainty that sufficient generation (renewable and fossil fueled) will be available for reliability, and certainty that the ratepayer will benefit from well-advised investment and planning. To give certainty to the multi-million-dollar investments needed to comply with the CPP by 2030 and beyond, and to give certainty and incentive for early investment in RE and EE needed for CPP compliance, several

[103] *Id.* at 64,772.

items in the CEIP should be modified. First, eligible RE should not be limited to wind and solar, but should include all renewable resources that commence operation after publication of the final CPP (October 23, 2015). Likewise, all EE projects for low-income communities that commence operation after October 23, 2015, should also be eligible for CEIP allowances/ERCs.

To streamline the EM&V process, EPA should rely as much as possible on existing EE and RE tracking systems used by states. Specifically, EPA should utilize existing regional tracking systems like M-RETS and should encourage states to use and optimize these existing systems. By using these existing tracking systems, trading between states would become easier and more transparent. It would also facilitate the use by an affected EGU of its RE or EE projects in other states to benefit the state hosting the EGU.

Finally, the EPA must ensure the development of a workable market and prevent hoarding and manipulation by requiring that all allowances/ERCs be held directly by the owner/operator of an EGU (a utility) or held by a third party under contract to develop RE or EE projects on behalf of an entity with a demonstrated compliance obligation. Market manipulation will only increase costs on ratepayers, especially those in low-income communities. Also, market manipulation means that the EPA cannot guarantee there will be sufficient allowances/ERCs available for the operation of generation to meet reliability and grid security.

11. Reliability must be addressed in the Proposals

The Federal Plan and the Model Trading Rule Proposals must each include a reliability mechanism to address unanticipated events that may disrupt the ability to maintain electric reliability. In the final CPP, EPA acknowledged that trading plans might "not [be] sufficient to address an immediate, unexpected reliability situation,"[104] and deemed it necessary to include a Reliability Safety Valve (RSV) in the CPP. In these Proposals, however, EPA has changed course and asserted that the timing and design of the Federal Plan will ensure that "implementation would not interfere with the power sector's ability to maintain electric reliability," especially given there are already standards and planning to ensure reliability.[105] If the CPP, and the Federal Plan and Model Trading Rule Proposals are lawful, reliability cannot be ignored.

Implementation of, and compliance with the CPP threaten to create significant strain on the electric system and create the potential for unexpected reliability events. It demands that EPA create an RSV mechanism to address unexpected events before they occur. Further, this risk applies equally to the Federal Plan as it does to state plans, despite EPA's claim that the "flexibility" of the Federal Plan makes an RSV unnecessary.

a. Omission of an Reliability Safety Valve in the Federal Plan is arbitrary and capricious

The design of the Federal Plan, and EPA's promises to meet with planning authorities during the comment period and to coordinate with DOE and FERC cannot eliminate the need to explicitly provide a means to ensure reliability of the electric system. The substantial reduction in

[104] *Id.* at 64,827.

[105] *Id.* at 64,981.

emissions mandated under the CPP will compel the retirement of fossil-fuel EGUs at an unprecedented level. Those retirements may be forced to occur before replacement infrastructure can be built, threatening regional reliability. EGUs that continue to operate to maintain resource adequacy are the very units that may experience unexpected reliability events that need an RSV.

EPA claims the Federal Plan needs no RSV because "unit-level operational decision-making" will be unaffected beyond the need to hold a sufficient number of allowances or ERCs.[106] This claim has two fundamental flaws. First, state plans are as likely as the Federal Plan to utilize market trading of compliance instruments. Second, the Federal Plan and state plans are equally vulnerable to the failure of the emission trading CO_2 markets to materialize and to operate efficiently, free from manipulation. Obtaining sufficient allowances or ERCs cannot be assumed to be a routine exercise or inherently flexible.

The magnitude of the emission reductions mandated in the CPP do not change based on whether they are implemented by a state plan or the Federal Plan. Both are equally likely to impose compliance obligations that lack sufficient flexibility for an affected EGU to acquire sufficient allowances or ERCs if a reliability event occurs. The suggestion that an RSV is only needed if an "unanticipated catastrophic emergency cause[s] a conflict between maintenance of electric reliability and inflexible requirements that a state plan might impose on an affected EGU or EGUs,"[107] assumes with no factual basis that such a conflict could never occur where a Federal Plan is implemented.

EPA's assumption that the CPP will spontaneously create an efficient, nationwide trading market which will then eliminate the need for an RSV[108] is both arbitrary and capricious. The trading program which supports compliance under the CPP, and is central to both the Federal Plan and Model Trading Rule Proposals, is unprecedented in scope and complexity. EPA cannot guarantee the market will materialize in a timely manner, nor can it guarantee there will be sufficient allowances or ERCs available to cover routine compliance obligations for all EGUs *and* to account for unexpected increases in CO_2 emissions when an EGU must be operated for reliability reasons. MRES has previously explained the risk that financial entities, merchant generators, or others may retire or withhold from the market compliance instruments to force EGUs into premature retirement or suspended operation for merchant generation.

In addition, even if allowances or ERCs are available to cover unanticipated emissions resulting from a reliability event, those allowances or ERCs may well demand exorbitant monopoly prices and unduly increase electricity costs for utilities and consumers alike. Given the potential for market manipulation, the absence of an RSV exacerbates the risk of price volatility and may make the cost of basic electricity service beyond the reach of vulnerable consumers. Even absent market manipulation, basic economic principles of supply and demand suggest that the unanticipated need for allowances or ERCs to maintain compliance will create price spikes any time a reliability must-run event occurs. The EPA trading programs are based on the assumption that efficient markets will develop, *i.e.* that compliance instruments will always be available and

106 *Id.*

107 *Id.* at 64,981-982.

108 *Id.* at 64,982.

will always be reasonably priced. The only way EPA can ensure these outcomes is to provide an RSV to address shortages and monopoly pricing if unexpected reliability events occurs.

b. An "emergency allowance" set-aside is an inequitable means to address reliability in the Federal Plan

EPA's suggestion it might consider addressing reliability in the mass-based Federal Plan by creating a pool of "emergency allowances" that can be used if no other allowances are available is inadequate and unfair. In the Preamble, EPA solicits comment on the possible "creation of an allowance set-aside for the purpose of making allowances available in emergency circumstances in which an affected EGU was compelled to provide reliability critical generation and demonstrated that a supply of allowances needed to offset its emissions was not available."[109] The suggestion is inadequate because it does not even purport to explain the number of allowances needed to create an adequate pool of emergency allowances, what events would constitute an emergency that would qualify for emergency allowances, or the eligibility criteria for an EGU to receive such allowances to ensure that units required to run to maintain reliability are not penalized for the associated emissions. Further, EPA does not even have a suggestion how to create a corresponding emergency pool of ERCs for a rate-based Federal Plan.

The idea of creating yet another set-aside by confiscating allowances otherwise allocated to affected units unfairly penalizes existing generation. It would make the mass-based goals more stringent because it would reduce the available allowances allocated to an affected EGU (besides other proposed set-asides). The condition that emergency allowances would be available only if an affected unit can prove that allowances are otherwise unavailable also suggests that utilities can be forced to acquire allowances in the market at virtually any price, exposing utilities and ultimate consumers to profiteering at the whim of the free market.

c. The Reliability Safety Valve must last longer than 90 days

The CPP allows state 111(d) plans to utilize the RSV to address unforeseen reliability events, but the limitation that the RSV can only be used for a period of up to 90 days[110] is inadequate. System emergencies can result from catastrophic failures of infrastructure which can persist for periods extending well beyond 90 days. A catastrophic failure of a GSU transformer can involve years, not days or months, for repair or replacement. LRS has experienced just such a failure twice. There was a spare GSU on-site in each case, which took about a month to remove the damaged equipment, install the spare GSU, and return to commercial operation. The damaged GSU was then shipped to the manufacturer, repaired, and returned to the plant, and the process took well over one year. Given the millions of dollars of investment required to purchase a GSU, many EGUs maintain no spare so a GSU failure at one of those plants might create a major generation shortage jeopardizing reliability for several years.

Besides unanticipated mechanical failures, severe weather can cause widespread damage throughout a region simultaneously. Floods, hurricanes, tornadoes, ice storms, and other acts of nature could affect multiple EGUs, the bulk transmission system, and distribution systems all at the same time. The ability to recover from such catastrophic reliability events depends on

---

109 *Id.*

110 *Id.* at 64,867.

available labor, materials, equipment, manufacturing availability and massive capital investments to repair damage. The lessons from Hurricane Katrina and Superstorm Sandy prove that a 90-day RSV is inadequate to respond to a reliability event. Likewise, a 48-hour notification requirement is also unrealistic in such circumstances, as communication infrastructure may be unavailable or significantly impaired in the initial aftermath, crippling the ability of utilities to provide notification in the short window of time, and preventing coordination among key entities, such as federal and state agencies, utilities, and regional transmission operators.

The Proposals must expand the availability of the RSV. While the CPP provides that reliability events of longer than 90 days can be addressed by either offsetting the associated increased emissions with additional allowances or ERCs, or by seeking EPA approval of a revision to the state plan, both are unworkable. In the first instance, compliance instruments might not be available or, if they are, might be exorbitantly priced (as detailed above). In the second instance, reaching a consensus with a state on the modification of the state plan, obtaining legislative approval (if necessary), and getting EPA approval might be difficult or impossible. Further, modification of a state plan may be sub-optimal compared to an extended period of time for the RSV. At a minimum, the RSV should be available for a default period of 180 days, and should be flexible to allow for extension where a demonstrated need exists.

d. Proposals must define process for coordination with reliability entities

The Proposals are far too vague in addressing the roles of the entities responsible for electric system reliability in the RSV and should be defined. EPA states it "will consult with planning authorities [and] work with the ISO/RTO Council to convene a face-to-face meeting for planning authorities with the EPA during the comment period to discuss any concerns or other feedback on the Federal Plan from those entities."[111] It says that EPA, DOE and FERC have agreed to coordinate reliability efforts and "have developed a coordination strategy that reflects their joint understanding of how they will work together to monitor implementation."[112] These nebulous representations are devoid of detail on this most critical issue.

In this brief nod to reliability, EPA does not mention NERC or the NERC regional representatives. The Proposals also use the terms reliability coordinators and planning authorities interchangeably, making it impossible to know with any certainty with whom they will consult, the means or frequency of consultation, or any procedures. Likewise, neither states nor affected units can be certain that EPA will acknowledge the authority of entities with legal responsibility to ensure reliability when addressing such matters. In finalizing the Proposals, EPA must disclose such details, and provide maximum flexibility for states and EGUs to provide the required supporting documentation from entities responsible for system reliability.

12. Conclusion

The unique interstate character of MRES, Western Minnesota, and their members, as well as their generating resources, reveals that the CPP and these Proposals have significant shortcomings. Taken together, the multistate nature of MRES and its members demonstrates that

111 *Id.* at 64,981.

112 *Id.* at 64,982.

for MRES and for small, regional municipal entities like it, these Proposals are unworkable in their current form. While the Proposals provide states and EGUs with a certain level of flexibility in choosing compliance pathways, that attempt at flexibility falls short of the structure for a workable and flexible implementation of the CPP. As States develop their compliance plans, they must be allowed to exercise that flexibility to deviate from the Model Trading Rule without forfeiting the ability for their plan to be considered "presumptively approvable." Requiring strict adherence to the Model Trading Rules for a state plan to be presumptively approvable discourages states from crafting a rule that considers its unique situation, let alone the specific issues facing individual EGUs (such as remaining useful life), utilities, or ratepayers.

Many difficulties posed by specific elements of the Proposals can be avoided with relatively minor changes to ensure the workability of the Proposals. MRES appreciates the opportunity to provide these comments on the Proposals and CEIP, and looks forward to continuing to work with EPA and the states where MRES is affected to develop plans to meet the emission reduction requirements of the CPP.

Dated January 21, 2016

MISSOURI RIVER ENERGY SERVICES

/s/ *Mrg Simon*

By: Mrg Simon, Attorney at Law, Director, Legal
mrg.simon@mrenergy.com
Derek Bertsch, Staff Attorney
derek.bertsch@mrenergy.com
Deb Birgen, Attorney at Law, Director,
Legislative and Government Relations
deb.birgen@mrenergy.com
MISSOURI RIVER ENERGY SERVICES
P.O. Box 88920
Sioux Falls, SD 57109-8920
605.338.4042