



August 25, 2016

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
EPA Docket Center, Mail Code: 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460
via www.regulations.gov

Comments of the National Association of State Energy Officials (NASEO) to the U.S. Environmental Protection Agency's (EPA) on the proposed Clean Energy Incentive Program (CEIP) Design Details, **Docket No. EPA-HQ-OAR-2016-0033**

Dear Administrator McCarthy,

The National Association of State Energy Officials (NASEO) appreciates the opportunity to provide the following comments for consideration by the Environmental Protection Agency (EPA) in relation to the proposed Clean Energy Incentive Program (CEIP) Design Details.¹

NASEO and our 56 governor-designated State and Territory Energy Office members have a history of working with their governors and legislatures to develop energy policies and programs that promote energy system reliability, spur economic development, diversify fuel mixes, provide economic benefits to consumers and businesses, and limit environmental impacts. NASEO has also facilitated collaboration among State Energy Offices, Public Utility Commissions, and environmental agencies (including air quality regulators) regarding the intersection of energy policies and programs and clean air efforts since the 1980s. The agreement reached on energy efficiency in May of 2014 by NASEO, the National Association of Regulatory Utility Commissioners (NARUC) and the National Association of Clean Air Agencies (NACAA) should be a useful guidepost to EPA.²

While NASEO has taken no position on the merits or legality of the Clean Power Plan (CPP) of which the CEIP is intended to be a component, we believe it is important for states that choose to create

¹ It should be noted that these comments do not supersede the comments or opinions of any individual state on the proposal. States' positions on aspects of the proposal vary significantly.

² NASEO, NACAA and NARUC, 2014, "Principles for Including Energy Efficiency in 111(d) of the Clean Air Act" http://www.naseo.org/Data/Sites/1/principles_3n_2014.pdf

compliance plans for consideration by EPA to have flexibility and the opportunity to craft least-cost compliance options that can support other state energy imperatives, including assuring energy reliability and affordability and supporting state economic objectives. We believe that end-use energy efficiency will often provide lower-cost or least-cost compliance opportunities that support such objectives.

Our comments under this docket build on those submitted by NASEO on December 14, 2015 under Docket No. EPA-HQ-OAR-2015-0734 concerning feedback on design and implementation of the Clean Energy Incentive Program (CEIP) and on January 21, 2016 under Docket No. EPA-HQ-OAR-2015-0199 concerning the proposed CPP Federal Plan and Model Rules.

Today we offer comments under the following 11 headings:

- **Definitions of low-income community**
- **Broadening eligibility criteria to allow energy efficiency to qualify under the Renewable Energy Reserve (i.e., non-low-income community) matching pool**
- **Clarify eligibility criteria to include combined heat and power (CHP) and waste-heat-to-power (WHP) as allowable energy efficiency measures under the Low-Income Community Reserve matching pool**
- **Advance the “commence operations” date for eligibility of low-income community projects**
- **Clarify that *projects* undertaken in accordance with the rule’s “commence operations” or “commence commercial operations” date thresholds but under existing *programs* are eligible for CEIP participation**
- **Clarify eligibility of low-income solar projects in §60.5373(e)(8)**
- **Clarify that low-income energy efficiency projects and measures that occur outside of buildings can qualify for CEIP given current language in §60.5373(e)(1)**
- **Clarification of language in CPP §60.5820 in light of the removal of §60.5815(c)**
- **Evaluation, measurement, and verification (EM&V) requirements**
- **Clarify the definition of “benefit a state”**
- **Explicitly signal that State Energy Offices, Public Utility Commissions, and other state agencies may certify or vet energy efficiency programs, projects, and measures and their evaluation**

Definitions of low-income community

We thank the EPA for heeding comments that we and other stakeholders offered supporting state flexibility to employ one or more existing federal, state, or local definitions of low-income communities and allowing inclusion of both geographically- and household-based definitions.

The ability of states to use one or more such existing definitions will allow states and prospective CEIP participants and stakeholders (energy efficiency and solar providers, individuals and households, building and facility owners and operators, public bodies and non-governmental organizations) to reduce administrative burdens associated with program participation. It will also allow the flexibility for inclusion of non-residential facilities under the CEIP as well as inclusion of low-income households and facilities serving such households that are physically located in non-low-income neighborhoods.

We note that EPA, while permitting state flexibility, has proposed several presumptively approvable definitions of low-income community. We recommend that EPA include as a presumptively approvable definition the criterion of households with incomes at or below 80 percent of area median income (AMI). This criterion has traditionally been used for federal housing assistance purposes. Use of such a household-level definition would allow the opportunity for the CEIP to reach all low-income households, including those located in wealthier communities. Poverty is both absolute and relative since costs of housing and other necessities vary. A definition based on AMI can capture both the absolute and relative components of poverty.

We also recommend that EPA's design details for the CEIP note that households participating in any of the following programs would meet the 80 percent AMI standard and not require a separate determination of income:

- Supplemental Nutrition Assistance Program (SNAP)
- Supplemental Security Income (SSI)/ Social Security Disability Insurance (SSDI)
- Temporary Assistance for Needy Families (TANF)
- Any resident in regulated affordable housing including:
 - Tax credit eligible units in Low Income Housing Tax Credit (LIHTC) buildings
 - Federal or state public housing
 - Federal property-based rental assistance such as Section 8, project-based Housing Choice Vouchers, Rent Supplement, or USDA Rental Assistance
 - FHA-insured multifamily residential properties under Section 236, Section 221d(3) BMIR, or Section 223(f)
 - HUD Section 202 Housing for the Elderly
 - HUD Section 811 Housing for the Disabled
 - Housing Opportunities for People with AIDS
 - Section 515 Rural Rental Housing
 - Properties financed by the National Housing Trust Fund
 - Any property with HOME Investment Partnerships Program funding
 - Properties funded by the Affordable Housing Program of any of the Federal Home Loan Banks
 - Households using Housing Choice Vouchers

Overly restrictive low-income definitions that are burdensome to document will impede the ability of states to expand energy efficiency in multifamily residences and make the CEIP's objectives more challenging to achieve.

Broadening eligibility criteria to allow energy efficiency to qualify under the Renewable Energy Reserve (i.e., non-low-income community) matching pool

We thank the EPA for expanding CEIP eligibility under the Renewable Energy Reserve beyond solar and wind energy to also include other forms of renewable energy. However, we feel that the incentive is still lacking because of its continued exclusion of energy efficiency.

Energy efficiency, as the EPA recognizes in its own analyses for the CPP and for other regulatory and non-regulatory programs, offers what is frequently the least-cost option for state emission reductions and for CPP compliance. However, multiple barriers posed by market imperfections (misaligned interests [e.g., the “landlord-tenant problem”], information asymmetries and uncertainties, and first cost concerns, among others) remain.

We feel that exclusion of energy efficiency, particularly zero-emissions end-use efficiency and efficiency in electricity transmission and distribution (T&D), from the 1:1 credit available under the Renewable Energy Reserve could unfairly impede energy efficiency under the CEIP and in the broader CPP. We do not understand why early action energy efficiency delivered by energy service companies, utilities, states, localities, and other parties should not be encouraged under the CEIP *except* under the low-income community portion of the program while renewable generation resources would be encouraged, despite energy efficiency delivering early action emissions reductions intended by the program.

We urge EPA to include energy efficiency as an allowable resource under the proposed Renewable Energy (non-low-income) Reserve on par with the 1:1 emission rate credit (ERC) or allowance match available to eligible renewable generation categories.

Clarify eligibility criteria to include combined heat and power (CHP) and waste-heat-to-power (WHP) as allowable energy efficiency measures under the Low-Income Community Reserve matching pool

CHP and WHP should be explicitly recognized as Low-Income Community Reserve CEIP-eligible energy efficiency approaches. They provide enhanced energy efficiency and reduced emissions compared to fossil fuel generated grid power. Omission of CHP and WHP as CEIP-eligible low-income community resources can have adverse impacts on opportunities for enhancing energy efficiency in low-income communities in support of the CEIP’s emissions reduction objectives. Such omission can also impede realization of other important benefits, such as to energy reliability, which can have serious implications for public safety, security, and health. This was illustrated abundantly by the impacts (and mitigation of impacts at CHP-equipped facilities) of Superstorm Sandy and other events.³

The EPA acknowledges and supports the implementation of CHP to benefit low-income communities while reducing emissions. For example, EPA cites the 2012 installation of a 400 kW CHP system at Glenside Homes by the Reading (Pennsylvania) Housing Authority as well as examples from the New Bedford and Watertown (Massachusetts) Housing Authorities.⁴ Beyond

³ There is a lengthy literature of CHP providing energy and power reliability benefits, including during Superstorm Sandy. One example is U.S. DOE, HUD and EPA, 2013, “Guide to Using Combined Heat and Power for Enhancing Reliability and Resiliency in Buildings,”

http://www1.eere.energy.gov/manufacturing/distributedenergy/pdfs/chp_for_reliability_guidance.pdf

⁴ EPA, 2014, “Combined Heat and Power: A Guide to Developing and Implementing Greenhouse Gas Reduction Programs,” pp. 6, 18 <http://www3.epa.gov/statelocalclimate/documents/pdf/CHPguide508.pdf>

[https://nepis.epa.gov/Exe/ZyNET.exe/P100HWRE.txt?ZyActionD=ZyDocument&Client=EPA&Index=2011%20Thru%202015&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%](https://nepis.epa.gov/Exe/ZyNET.exe/P100HWRE.txt?ZyActionD=ZyDocument&Client=EPA&Index=2011%20Thru%202015&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%20)

housing, there are various examples of CHP being implemented at hospitals, schools, municipal facilities, and other installations to provide economic, energy reliability and resilience, and emission reduction benefits.

We urge EPA to include CHP and WHP serving low-income communities as CEIP-eligible approaches under the end-use efficiency category.

Advance the “commence operations” date for eligibility of low-income community energy efficiency projects

EPA proposes that pertinent low-income community energy efficiency projects that “commence operations” on or after September 6, 2018 be eligible for CEIP participation. We recommend an earlier eligibility date be established, perhaps based on the date the proposal is finalized. Allowing an earlier eligibility date would provide additional early action incentive that can yield earlier and greater total emissions reductions.

Clarify that *projects* undertaken in accordance with the rule’s “commence operations” or “commence commercial operations” date thresholds but under existing *programs* are eligible for CEIP participation

EPA correctly proposed to clarify that eligible *projects* include *programs* that result in the deployment of CEIP-eligible resources.⁵ However, this attempted clarification combined with eligible resource definitions in §60.5880 introduces an ambiguity. It makes unclear whether a low-income community energy efficiency project commencing operations on or after September 6, 2018 or renewable energy project commencing commercial operations on or after January 1, 2020 under a pre-existing program can be eligible for the CEIP.

For example, would a low-income community energy efficiency project commencing operations in 2019 under the aegis of an energy efficiency resource standard (EERS) or a state’s low-income weatherization program established during a prior year qualify? We believe (and certainly hope) that EPA’s intent is that such projects would qualify.

Definitions of eligible resources in §60.5880 do contain the word “may” (“A ‘project,’ for purposes of the CEIP, may include a program that aggregates multiple projects.”), suggesting that the *program* need not conform to the rule’s commence operations or commence commercial operations dates. However, ambiguity and confusion remain.

We recommend that EPA clarify explicitly in the rule that projects commencing operations or commencing commercial operations (as appropriate) in accordance with the rule’s date thresholds but pursuant to an existing program that predates the rule’s date thresholds are eligible.

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⁵ 81 Fed. Reg. 42963

Clarify eligibility of low-income solar projects in §60.5373(e)(8)⁶

EPA proposes that eligible low-income solar projects “provide direct electricity bill benefits to low-income community ratepayers” (§60.5373(e)(8)). We believe that this wording is too restrictive and would disqualify many projects that would otherwise support the CEIP’s low-income community benefit intent.

For example, there are multifamily residences where residents do not have individual electric utility accounts and, so, are only indirectly utility ratepayers (via landlord-imposed or other charges covering utility costs). Low-income communities and residents can benefit from solar power projects that provide energy and reduce costs associated with building common areas rather than accruing to individual units’ and households’ utility charges. Also, the current wording would disqualify low-income solar projects that benefits low-income community schools, clinics, community centers, street lighting, and other facilities.

We urge the EPA to alter the rule’s wording to allow qualification of solar projects that benefit low-income communities more broadly than through “direct electricity bill benefits to low-income community ratepayers” and that qualification be commensurate with criteria used to qualify low-income community beneficial energy efficiency projects.

Clarify that low-income energy efficiency projects and measures that occur outside of buildings can qualify for CEIP given current language in §60.5373(e)(1)⁷

The CEIP proposed rule says that qualifying low-income energy efficiency projects “must save electricity in residences or buildings that are connected to the electric grid in the contiguous United States” (§60.5373(e)(1)). We are concerned that the “in residences and buildings” language will disqualify low-income beneficial energy efficiency projects that occur outside of buildings such as street lighting, other exterior lighting, and water and sewer pumping facilities. While the rule’s preamble notes EPA’s recommendation that states consider such projects as street lighting for CEIP inclusion (81 Fed. Reg. 42,966), the language of the proposed rule seems to disqualify projects that are not in “buildings.” We urge EPA to adjust wording to not limit qualifying low-income energy efficiency projects to only those that occur “in residences and buildings.”

Clarification of language in CPP §60.5820 in light of the removal of §60.5815(c)

We agree with EPA’s removal of §60.5815(c) concerning requirements for set aside allowances. We suggest that §60.5820 (What are my allowance tracking requirements?) be changed to be made consistent with the removal of §60.5815(c).

§60.5820 currently says states must provide public access “to all information that supports the eligibility of eligible resources and issuance of set aside allowances and functionality to generate reports based on such information, *which must include, for each set aside allowance, an eligibility application, EM&V plan, M&V reports, and independent verifier verification report.*” [Our emphasis.]

⁶ Comments under this heading also apply to language found in proposed §62.16245(c)(2)(ii)(H) and §62.16435(d)(2)(ii)(H).

⁷ Comments under this heading also apply to language found in proposed §62.16245(c)(2)(ii)(A) and §62.16435(d)(2)(ii)(A).

Some EM&V-related planning and reporting should be expected for set aside allowances under the CEIP since such allowances are provided in addition to the allowable state allowance cap. However, it does not seem to make sense to impose EM&V requirements for set aside allowances not associated with the CEIP in a state that opts for an emissions standard mass-based compliance plan (particularly for a mass-based compliance plan including New Source Complement to address potential leakage) and, thus, would not otherwise be required to implement EM&V-related requirements for CPP compliance. Any such non-CEIP set aside allowances would be under the state's mass cap and would not result in any additional emissions so should not be subjected to the burden of ERC-type EM&V rigor that would be required under a rate-based compliance plan.

Evaluation, measurement, and verification (EM&V) requirements

EM&V requirements under the CEIP should not be overly burdensome or expensive so as to dissuade participation.

To the extent possible EPA should allow states to rely on their existing EM&V processes and procedures under the CEIP, including use of existing Technical Reference Manuals, the International Performance Measurement and Verification Protocol (IPMVP), and deemed savings resources.

We understand the need to assure that energy savings are real, particularly under rate-based CPP compliance and for issuance of incentive ERCs or allowances under the CEIP. However, the desire for rigor must be balanced with the need to avoid costly and cumbersome processes that can impede energy efficiency investments and may militate toward greater use of emitting supply side compliance options. We recall that under the NO_x SIP Call a number of states created energy efficiency/renewable energy (EE/RE) NO_x set-aside allowances which in most cases were hardly utilized because transaction costs (EM&V and administrative requirements) were high relative to the value of the allowances. We fear a “perfect being the enemy of the good” scenario if EM&V and related processes are too cumbersome under the CEIP and the CPP generally.

We are also concerned that states that opt for mass-based targets (including those that choose to address leakage via the New Source Complement) and, thus, do not need to include EM&V in their state compliance plans, may be required to demonstrate to EPA their establishment of EM&V processes and systems at the level required for rate-based compliance pathways in order to participate in a mere two-year program. Overly burdensome EM&V requirements could discourage states from participating in the program.

We reiterate our recommendation that EPA allow states to employ existing EM&V processes and practices, including existing Technical Reference Manuals, the IPMVP, and deemed savings resources under the CEIP.

Clarify the definition of “benefit a state”

Under the proposed rule (at §60.16375), the following definition appears:

“Benefit a State, for purposes of the CEIP, means that electricity is generated or saved by an eligible CEIP projects with the intention to meet or reduce electricity demand in the CEIP participating State or Indian country located within the borders of the CEIP participating State.”

The difficulty with this definition is that it appears to disqualify energy efficiency projects that occur in a state or territory without affected electric generating units (EGUs) and not subject to the CPP nor directly able to participate in the CEIP. The definition of “benefit a state” ought to center on reducing *electric generation and associated emissions* in the CEIP participating state.

For a hypothetical example, under the current definition, a low-income community energy efficiency project in the District of Columbia could not qualify for allocation of allowances or ERCs (as appropriate) from Maryland, assuming Maryland participates in CEIP and opts to offer allowances or ERCs for District of Columbia projects that reduce Maryland generation and emissions for CPP compliance.⁸ Such projects would help reduce electricity generation and emissions, not electricity demand, in Maryland.

We suggest that “benefit a state” be defined in a manner to recognize that the benefit to the CEIP-participating state can be reduced generation and emissions.

Explicitly signal that State Energy Offices, Public Utility Commissions, and other state agencies may certify or vet energy efficiency programs, projects, and measures and their evaluation

In many states energy efficiency and other state energy policies may fall under the purview of agencies other than those responsible for air quality regulation, such as the State Energy Office (SEO) or the Public Utility Commission (PUC).⁹ Many air quality regulators (federal as well as state) are relatively unfamiliar with energy efficiency technologies, policies, and programs as well as related issues of EM&V.

As such, we recommend that the EPA state in its guidance or memoranda for the CEIP and the CPP generally that SEOs, PUCs, and other agencies with purview over pertinent policies and programs may serve as certifying or vetting agents for energy efficiency, renewable energy, and other energy matters for which they have oversight, responsibility, or jurisdiction. SEOs or other pertinent agencies can support air quality agencies’ development of compliance plans (e.g., assessing and projecting energy savings from policies and programs) and can oversee implementation and evaluation of relevant policies, programs, projects, and measures. Examples of the latter include

⁸ A similar hypothetical could be constructed concerning Vermont and nearby states that provide power to Vermont from affected EGUs.

⁹ Here PUC is also meant to refer to bodies with other names that serve the same or similar function such as Public Service Commissions and State Corporation Commissions.

SEO oversight and vetting of Energy Savings Performance Contracts (including those concerning public and assisted housing and such institutions as schools and hospitals serving low-income communities), low-income weatherization programs, and energy efficiency finance programs. Other examples include PUC jurisdiction over utility energy efficiency resource standards (EERS) and renewable portfolio standards (RPSs). SEO and PUC oversight of EM&V processes for programs under their purview as well oversight of privately operated energy efficiency registries are important functions for CEIP qualification and CPP compliance that in most cases could not be handled by the air quality agency.

We are concerned that if EPA does not explicitly state that SEOs, PUCs, and other pertinent bodies can serve such a certifying or vetting function then state air quality agencies and EPA itself (including Regional Office staff) will assume that they must provide such a function for areas in which they usually lack expertise and experience. The result would be inefficient implementation of the CEIP and CPP, higher costs for taxpayers and utility ratepayers, and likely less effective emissions reductions from underutilization of cost-effective energy efficiency options.

NASEO greatly appreciates the opportunity to provide our comments on the proposed CEIP Design Details. We look forward to continuing our dialogue with EPA and the states in the coming months.

Best regards,

A handwritten signature in blue ink, appearing to read "D. Terry", with a long horizontal stroke extending to the right.

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