

October 31, 2018

U.S. Environmental Protection Agency  
EPA Docket Center  
Attention Docket ID No. EPA-HQ-OAR-2017-0355  
Mail Code: 28221T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

RE: U.S. Environmental Protection Agency's (EPA's) proposed *Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program*, which was published in the *Federal Register* on August 31, 2018 (83 FR 44,746)

Dear Colleagues:

Thank you for the opportunity to comment on EPA's proposed "Affordable Clean Energy" (ACE) rule, which would replace the Clean Power Plan (CPP). On behalf of the undersigned local governments and public health agencies, we find that the proposed rule would be neither clean nor affordable for the people and local governments who bear the burden of experiencing and addressing the pollution and climate impacts that would result from this rule. EPA's own analysis reveals that replacing the CPP with ACE would cause up to 1,400 premature deaths annually and tens of thousands of missed school and work days due to exacerbated respiratory problems such as asthma.<sup>1</sup> We ask that the rule be withdrawn and local governments be given an appropriate and adequate role in any further rulemaking governing electric utility generating units (EGUs).

State and local governments were given the opportunity to participate in the development of the Clean Power Plan, and we were among those whose diverse range of approaches and political backgrounds informed that process. Paradoxically, the proposed ACE rule was formulated with no such opportunity to provide input from the local communities that will be affected and would bear the burden of such implementation.

The comments below cover the key objections we have to the ACE rule, which are: I) EPA's best system of emission reduction (BSER) analysis does not justify its candidate technologies, II) there is no emission standard to provide certainty for reductions or a sample plan to provide a framework for implementation, III) the proposed NSR applicability test for determining major modifications would result in significant emission increases, IV) the proposed ACE rule rewards states for failing to clean their power supply, and V) as a whole, the ACE rule would result in significant emissions increases and health impacts.

**I. EPA's BSER analysis does not justify its candidate technologies.**

The proposed rule sets forth a determination of the best system of emission reduction (BSER) for GHG emissions from coal-fired power plants in order to establish a framework for states to follow when developing plans for existing sources. This is being done under Section 111(d) of the Clean Air Act (CAA). In this proposed rule, BSER is described by EPA as "an 'inside the fence-line' determination that focuses on how sources can perform better and does not attempt to force an accelerated shift to renewables at the grid-wide level." "Inside the fence-line" refers to measures that can be carried out at the individual facility, rather than the "outside the fence-line" measures under the CPP that were applied across the

industry to all power plants.<sup>ii</sup> This drastic change in determining emission controls shifts the focus from overall CO<sub>2</sub> reductions from the power sector and, in the absence of any presumptively approvable guidance, severely limits the flexibility of states in choosing their emissions control path. The BSER list consists of only six options for “candidate technologies,” or heat rate improvements. The EPA does not explain the basis for selecting the “candidate technologies,” nor does it explain why only six technologies were chosen when the advance notice of proposed rulemaking (ANPRM) contained a list of more than twenty heat rate improvement (HRI) equipment upgrades and technologies.

**II. There is no emission standard to provide certainty for reductions or a sample plan to provide a framework for implementation.**

The EPA asserts that providing any standard-setting methodology would be restrictive; however, without such regulatory certainty and foundation, the implementation burden to states and the regulated community will be significant. Emissions standards are critical to reducing carbon pollution in addition to criteria pollutants from fossil fuel combustion. Furthermore, in the absence of meaningful federal action on climate change, many states are looking to clean energy advancements for the greenhouse gas reductions needed to limit global warming and protect human health and the environment. The lack of specificity makes the contribution of the ACE proposal to needed carbon reductions difficult to quantify. Moreover, without emissions standards, it is unclear how the proposed ACE rule will impact the plans of these states to take action.

**III. The proposed NSR applicability test for determining major modifications would result in significant emission increases.**

The proposed rule would very likely increase harmful emissions. Under the proposed ACE rule, EGU modifications are effectively exempted from New Source Review (NSR) permitting, via the change from an annual to an hourly emission rate increase trigger. Hourly increases are rare and are not an indicator of annual and lifetime emissions. Under the ACE rule, facilities would be free to increase their longer-term emissions, through increased operation<sup>iii</sup>, without NSR-required air quality analyses, pollution controls, and emissions offsets required for nonattainment areas. Crucially, the proposed ACE rule allows older EGUs to avoid emissions requirements based on “remaining useful life,” among other loopholes, even though the EPA’s models assign all affected EGUs equal heat rate improvements.

**Communities face potential harms from the ACE rule’s NSR-weakening provisions** that are particular to them. State and local air agencies must provide reliable and timely information to their communities so they can take the necessary steps to protect their health. Without adequate air quality analyses, these agencies would be unable to appropriately inform the public of potential health or environmental risks from exceedances of air quality standards. By allowing increases in annual emissions of criteria pollutants, the proposed ACE rule will interfere with the ability of state and local agencies to develop plans to achieve and maintain the National Ambient Air Quality Standards (NAAQS) and protect the Prevention of Significant Deterioration (PSD) increments.

**IV. The proposed ACE rule rewards states for failing to clean their power supply.**

The proposed ACE rule exonerates states that have been lagging in their responsibility to clean their power supply and allows them to continue to underperform, while other states proactively invest in reliable, affordable, and clean energy resources. This strategy is inequitable – economically and geographically, as pollution and climate change do not observe state lines, nor do they stay “inside the fenceline,” as the EPA’s approach presumes. The EPA’s Regulatory Impact Analysis (RIA) for the proposed ACE rule states that the rule would increase emissions of carbon dioxide (CO<sub>2</sub>) and air toxics.

Since these pollutants, particularly CO<sub>2</sub>, know no political boundaries, it's unacceptable for some states to continue to emit higher levels to the detriment of their neighboring states. Colorado has been decreasing emissions and retiring old coal-fired power plants while maintaining affordable rates for customers – most recently, Colorado's Public Utilities Commission (PUC) approved Xcel Energy's plan to retire two coal plants in favor of clean energy; that's 1,100 megawatts of wind power, 700 megawatts of solar power, and 275 megawatts of battery storage. Included in the plan are new job opportunities to replace those jobs in the retired coal plan.<sup>iv</sup> Colorado continues to be a leader in making clean energy investments to protect the health of our state. Likewise, California has prioritized economic and health benefits in its shift to renewable energy. California's clean energy industry provides more than half a million jobs and will prevent an estimated 3,000 premature deaths over the next decade. The EPA's permissive approach to regulating emissions in the energy generating sector will allow other states to fall short of these opportunities and to shirk their responsibility in protecting their own populations, as well as regional air and global climate.

#### **V. The ACE rule would result in significant emissions increases and health impacts.**

The EPA's own analyses show increases in criteria pollutants and carbon dioxide emissions relative to the CPP and poor economic justification for the CPP's replacement by the ACE rule. We have a specific public health concern about the EPA's judgement that allows attributing zero health benefits to fine particulate (PM<sub>2.5</sub>) concentrations below the PM<sub>2.5</sub> NAAQS and below the "lowest measured level" threshold, as defined in certain health studies. Levels of PM<sub>2.5</sub> and ozone at concentrations below NAAQS are still associated with adverse health effects,<sup>v</sup> and this should be reflected in any proposal governing these pollutants, which disproportionately impact disadvantaged communities.

The Denver Metropolitan/North Front Range (DM/NFR) nonattainment area continues to violate federal ozone standards. Due to ozone exceedances from the most recent summer, this region is faced with reclassification to serious nonattainment after 2019. Similarly, the Los Angeles-Long Beach region consistently ranks in the top 10 most polluted cities in the United States across all three major air quality metrics (ozone, year-round particle pollution, and short-term particle pollution). This pollution affects millions of people's lives. **The ACE rule undermines the most standard and critical levers states have to meet air quality standards through emissions reductions in the energy generating sector.** This will severely limit the number of tools states can use to manage air quality impacts to meet federal standards for ozone. By making the NSR hourly emissions increase test optional for states for the State Implementation Plan (SIP)-approved permitting programs, ACE introduces a competitive disadvantage for states that do not take this exemption. Furthermore, Colorado, like many other states, holds its agencies subject to statute<sup>vi</sup> providing that their air programs can be "no more stringent" than the federal rules. Hence, the ACE rule could create litigation risk if the exemption is not adopted. This leaves states with insufficient flexibility in achieving necessary emissions reductions.

#### **VI. Conclusion.**

The Intergovernmental Panel on Climate Change's (IPCC) recent projections reveal that we have just over a decade to make enormous GHG emissions cuts or face catastrophic consequences for our health, economy, and national security.<sup>vii</sup> The ACE rule will send us in the opposite direction. Local public health departments and governments in Colorado and California already find themselves on the front lines of the heat, drought, fire, flood, and invasive disease that impact all of our residents, especially those who are least able to afford such catastrophic events. It is here at the local level in our communities that we see the realities of climate change, as well as the health consequences of not taking appropriate action.

We respectfully ask that the proposed rule be withdrawn, and that local governments and public health agencies be given the opportunity to engage in the development of any rules that will so significantly impact our communities.

Thank you for considering our concerns. Please contact Boulder County Public Health Air Quality Specialist Collin Tomb at [ctomb@bouldercounty.org](mailto:ctomb@bouldercounty.org) or 303-441-1131 if you have any questions regarding these comments.

In health,



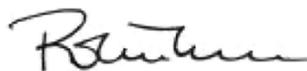
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<sup>i</sup> <https://www.epa.gov/airmarkets/analysis-proposed-ace-rule>

<sup>ii</sup> EPA, Proposed ACE Rule – Legal Overview, [https://www.epa.gov/sites/production/files/2018-08/documents/ace\\_legal\\_bser.pdf](https://www.epa.gov/sites/production/files/2018-08/documents/ace_legal_bser.pdf)

<sup>iii</sup> 83 Fed. Reg. at 44,781 (“it is possible that some individual units may experience an increase in annual emissions due to increases in operation”).

<sup>iv</sup> Colorado Energy Plan Fall 2018 Update <https://www.xcelenergy.com/staticfiles/xeresponsive/Company/Rates%20&%20Regulations/Resource%20Plans/CO-Energy-Plan-Fact-Sheet.pdf>

<sup>v</sup> Quian Di et al., Air Pollution and Mortality in the Medicare Population, *New England Journal of Medicine*, (June 29, 2017) and Qian Di et al., Association of Short-term Exposure to Air Pollution With Mortality in Older Adults, *Journal of the American Medical Association* (December 26, 2017).

<sup>vi</sup> Colo. Rev. Stat. §25-7-114.2

<sup>vii</sup> International Panel on Climate Change, “Global Warming of 1.5 °C - an IPCC special report on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty (Summary for Policymakers)” (October 6, 2018) [http://report.ipcc.ch/sr15/pdf/sr15\\_spm\\_final.pdf](http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf)