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December 14, 2015

EPA Docket Center
EPA Mail Code 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460

RE: Comments on the Environmental Protection Agency's Clean Power Plan's Clean Energy Incentive Program, Docket ID # EPA-HQ-OAR-2015-0734

The National Tribal Air Association (NTAA) is pleased to submit these comments regarding the EPA's Office of Air and Radiation proposal to establish the Clean Energy Incentive Program (CEIP) as part of the Federal Plans that are being developed. The proposed rule "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" would amend EPA rules at 40 CFR Parts 60, 62, and 78.

The NTAA is a member-based organization with nearly 100 principal member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of Indian Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important that EPA understands interactions with the organization do not substitute for government-to-government consultation, which can only be achieved through direct communication between the federal government and Indian Tribes.

EPA officials have prepared this proposed rule as part of implementing the Clean Power Plan for achieving energy efficiency and carbon reduction goals. The proposal includes detailed guidelines on what should be included in State plans, particularly for states that have regulated Electric Generating Units (EGU), and includes a proposed Federal Plan that would be finalized and would apply to all states and areas where a State plan is not approved. NTAA will be submitting comments on the proposed Federal Plan in the near future and will incorporate by reference these comments as the CEIP is part of the proposed Federal Plan.

The proposed CEIP provides incentives for early investment in wind and solar renewable energy (RE) for those states and parts of Indian country with

regulated EGUs that are governed by the Clean Power Plan. The CEIP would reward investments in energy efficient measures in low-income communities or renewable energy programs that reduce energy demand or generate clean energy in areas with EGUs. There are four EGUs in Indian country, which are power plants located on the lands of the Navajo Nation (two EGUs), the Fort Mojave Indian Reservation, and the Uintah and Ouray Reservation of the Ute Tribe.

In this action, EPA is proposing to find that it is necessary or appropriate to establish a federal plan for these three areas of Indian country. EPA reasons that Tribes may, but are not required to implement the Emission Guidelines (EG) as a tribal program, which under Sec. 111 of the CAA means that EPA is the regulator. Since State programs do not apply in Indian country, EPA writes that Sec. 111(d) of the Clean Air Act provides it the same authority as a state to prescribe regulations for existing sources and establish a Federal plan that would regulate the existing EGUs in Indian country. EPA reasons that the affected EGUs are located within the continental United States, are interconnected with the western electricity grid, and provide electricity to customers in several states. EPA is clear that it has authority on any Indian reservation to establish regulations and an implementation plan, and EPA must allocate the staff in the field who can administer the air quality programs that are needed on all the Indian reservations.

It is significant that EPA is recognizing that it is responsible for managing air quality in Indian country where it finds that regulations are “necessary or appropriate.” The result is that EPA is the “air agency” for almost all of Indian country. Where a tribe has not established a Tribal Air Program and has not been granted “treatment as a state” (TAS) to run an air program approved by EPA, then it is EPA’s responsibility to properly regulate air pollution sources in Indian country and address those sources whose emissions may be affecting air quality in Indian country. This is good reason for EPA to support and establish more tribal air programs.

NTAA has two comments for EPA to consider:

1. NTAA would like to see EPA provide ways for renewable sources on Indian lands to receive the necessary qualifications needed to participate in the programs, which will be set up for credit markets as incentives. In one EPA circular, it wrote: “Eligibility is limited to projects that commence construction, the case of low-income EE, following the submission of a final state plan to the EPA that contains provisions . . .” for CEIP participation. The threshold for being able to benefit from the CEIP incentives is pretty high, and only three (3) tribes are eligible, and they are not eligible for the state’s program. NTAA suggests, and feels it useful to discuss how the benefits of this program could be enjoyed by all communities, especially those who are not located on the three aforementioned areas of Indian country for which EPA is developing a Federal plan. While there may be qualifying wind and solar projects that may be constructed on reservations other than the three areas of Indian country, Tribes in other areas are unable to trade with other tribes outside of its geographical area. While the Clean Power Plan provides that qualifying projects which are located in or benefit a state that has submitted a final state plan, this places tribes into the position of working with states who will benefit from actions taken in Indian country, in an area which should be governed by a Federal plan for that reservation that extends the CEIP benefits to the tribe, not the state. EPA is making a

commitment to regulate Indian country where “necessary or appropriate,” one option is to adopt federal plans that can provide a means for members of all tribes to enjoy the benefits of CEIP participation by working with EPA and other Tribes. Finding ways to provide the CEIP incentives to all tribes with low income communities would be consistent with Gina McCarthy’s “Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples,” July 2015.

2. A second area concerns how EPA is working and consulting with Tribes to bring full air quality protection to Indian country communities. There are places described in the proposals that will include working closely with and consulting with the Tribes as EPA prepares the federal plan for reservations but the text does not call special attention to tribal consultation. NTAA expect that all communications will be in accordance with EPA’s Policy on Consultation and Coordination with Indian Tribes,” May 2011. NTAA requests that EPA carefully review the proposal and final rules to ensure that tribal consultation is clearly identified as part of the process in preparing a federal plan and in discussing with tribes how they may benefit from the CEIP. NTAA suggests that the Office of Air and Radiation and the EPA regional air programs develop consultation guidelines on how to engage in the CEIP process, such as how to review what requirements are “necessary or appropriate” in order for EPA to take on promulgating a FIP or a Federal plan.

Conclusion

In summary, the NTAA is pleased to provide the aforementioned comments and recommendations concerning the Proposed CEIP. NTAA supports this effort by EPA in an effort to control Greenhouse Gas Emissions, reduce carbon emissions, and exert federal authority where no state or tribe has used its authority.

On Behalf of the NTAA Executive Committee,

A handwritten signature in black ink, appearing to read "Bill Thompson".

Bill Thompson, Chairman, NTAA