Comments on the EPA's Proposed Federal Plan and Model Trading Rules
Docket ID: EPA-HQ-OAR-2015-0199

Submitted by:

Grand Canyon Trust

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BACKGROUND

The Grand Canyon Trust is a regional conservation organization based in Flagstaff, Arizona whose mission is to protect and restore the Colorado Plateau–its spectacular landscapes, flowing rivers, clean air, diversity of plants and animals, and areas of beauty and solitude. Established in 1985, the Trust has a long history of involvement in air quality issues, particularly as they relate to coal-fired power plants. The Trust was intimately involved in the installation of sulfur dioxide pollution controls on the Navajo Generating Station, the requirement that the Mohave Generating Station install updated pollution controls or shut down, the reduction in proposed pollutants from the expanded Springerville Power Plant, and the installation of better controls on the San Juan Generating Station.

However, air quality and energy are only two of many issues the Trust is involved in. We also have a highly successful Native American tribal program, a public lands program that seeks to address the impacts of climate change, and a forest restoration program. We are incredibly concerned about the impacts of climate change on the Colorado Plateau, which encompasses portions of Arizona, Utah, Colorado, and New Mexico. Climate change will affect both natural systems and human communities on the Colorado Plateau, and the Trust is committed to doing all it can to mitigate climate change by reducing CO_2 and adapt to a hotter, drier future by promoting progressive land management.

FEDERAL PLAN

1. The federal plan should include both a rate-based and mass-based approach.

To provide an opportunity for states to adopt portions of either a rate-based or mass-based federal plan and improve their opportunities for trading, EPA should create federal plans for both approaches. Given that EPA has already developed model rules for both approaches, it seems reasonable for the agency to develop both types of plans. If EPA decides to develop only a mass-based approach, we strongly urge that a more rigorous plan for addressing leakage be developed. At a minimum the RE set aside should be increased significantly.

2. The Clean Energy Incentive Program (CEIP) should reward early action as soon as possible after state plans are submitted.

We support the inclusion of the CEIP in the federal plan and model rules. However, EPA proposes that RE projects and EE programs be eligible for early action ERCs or allowances in 2020 and/or 2021[1], and we are concerned that waiting two years beyond the final date for states to submit final plans will provide a disincentive to RE and EE developers and providers. We suggest that EPA make CEIP projects and programs eligible for early ERCs and allowances after state plans are submitted and no later than the end of 2018.

3. States should be allowed to use EPA designated tracking systems.

The EPA should include a tracking and trading system in the federal plan for use by all states, should they desire to use it. In addition, the EPA should allow states to use an "EPA designated tracking system that is interoperable with an EPA administered system."[2] Doing so will ensure that developing a trading program is as easy as possible while ensuring rigorous tracking of ERCs or allowances.

4. States with mass-based federal plans should be able to trade with states that have their own mass-based plans and vice versa.

A robust trading program is essential to effectively and efficiently reduce CO_2 emissions, and allowing mass-based states with their own plans to trade with states covered by federal plans should be both allowed and encouraged.

5. RE projects in a mass-based state should be able to provide ERCs in a rate-based state through contractual agreements or power purchase agreements.

It is important that trading between states be as flexible and robust as possible without losing stringency for achieving required emission reductions. Contractual agreements and power purchase agreements should be allowed when determining if a project in a mass-based state is eligible for ERC's. It is critical that M&V requirements and the true-up at the end of the compliance period are thorough and rigorously enforced. In addition, EPA needs to clearly state that mass-based RE generation used in-state cannot also be traded for ERCs in rate-based states.

6. Should certain affected EGUs be allowed extra time on a case-by-case basis to comply?

We do not support providing any additional compliance time for any affected EGUs. While owners of affected EGUs may not know the exact details of the applicable compliance plans until the final state plan is submitted, they will have the additional four years after the 2018

[1] 80 Fed. Reg. at 64969-64970.
[2] 80 Fed. Reg. at 64977.

deadline to reduce emissions at an affected EGU. Owners will also have significant flexibility to achieve the required reductions by purchasing allowances or ERCs that may well cost less than their existing generation.

7. Encouraging training and certification of workers is beneficial, but requiring that workers be certified is an unnecessary constraint.

Training and certifying workers helps ensure that programs and projects are done correctly while developing a knowledgeable workforce for future efforts to reduce CO_2 emissions. However, most states and local governments have requirements for contractors that will ensure that smaller projects, such as distributed RE (see comment 2 in the rate-based section below), will be done properly and EE projects will need to be inspected by local government building code inspectors. Large contractors on EGU projects routinely require that workers are properly trained. Ultimately, the test of whether work was done properly will be the results of M&V, regardless of who worked on the project.

8. Banked CEIP ERCS should not be used to respond to reliability emergencies.

Given that EPA has provided tremendous flexibility to reduce emissions, particularly through trading and not requiring unit-specific emission limits, the likelihood of reliability issues is (as EPA points out) quite low. Should a reliability issue arise, there are many tools that grid operators and owners of affected EGUs can use to respond to an emergency. Given the likely scale of trading programs and the abundance of low-carbon resources, finding generation to respond to a reliability emergency should not be a problem. Consequently, we do not support the idea of using CEIP ERCs to respond to a reliability emergency.

9. EPA's approach for factoring in the remaining useful life of an affected EGU is acceptable.

We agree with the EPA's assessment that by its very nature, the federal plan (and by extension the Emission Guidelines) addresses the issues around the "remaining useful life" of affected EGUs:

> *Thus, the proposed federal plan is designed in such a way that it adequately, and inherently, takes into account the remaining useful lives of affected EGUs. It provides substantial compliance flexibility, including means of avoiding the need to make extensive capital investments in control technologies that could not be recouped during the remaining useful lives of a facility.*[3]

[3] 80 Fed. Reg. at 64983.

10. Native American tribes with no affected EGUs have unique characteristics that should be recognized and addressed in the final federal plan and model rules.

First and foremost, federally recognized Native American tribes are sovereign nations and EPA has an obligation to recognize that fact and be willing to work with them, as required by the federal-tribal trust relationship, to address the issues that are unique to them. Simply lumping tribal nations in with other vulnerable communities does not recognize their status as sovereign nations. Moreover, tribal communities have different demographic and geographic differences than other vulnerable communities, and are subject to particularly dramatic impacts caused by climate change.

> *Tribal communities possess unique vulnerabilities to climate change, particularly those impacted by degradation of natural and cultural resources within stablished reservation boundaries and threats to traditional subsistence lifestyles. Tribal communities whose health, economic well-being, and cultural traditions that depend upon the natural environment will likely be affected by the degradation of ecosystem goods and services associated with climate change. The 2009 Endangerment Finding record also specifically noted that Southwest native cultures are especially vulnerable to water quality and availability impacts.*[4]

Given the unique characteristics and vulnerabilities of Native American tribes, we propose that EPA include a tribal set-aside for renewable energy projects and energy efficiency programs in addition to the CEIP. At a minimum, a tribal set-aside should provide the opportunity for RE and EE projects on tribal lands to receive ERCs or allowances during a specified time frame at the beginning of each compliance period. This would give tribes a chance to develop projects and programs on their lands, but if they choose not to do so, the ERCs or allowances would be available to other providers. Such a set-aside should be included as part of both model rules. Moreover, EPA should revisit the structure of the CEIP in light of the federal-tribal trust relationship and ensure that tribal nations are not governed by the decisions made by the states in which their reservations are located. Instead, a tribal CEIP program administered by the EPA – rather than the states – should be created.

A tribal set-aside and tribal CEIP program are particularly important in states such as Arizona, which has 20 Native American tribes with no affected EGUs, a dire need for economic development, and the necessary land base for renewable energy projects.

[4] 80 Fed. Reg. at 65058.

RATE-BASED IMPLEMENTATION

1. Distributed RE and EE should be included in the federal plan and model rules.

The EPA requests comments on including distributed RE and demand-side generation as eligible measures for ERCs in the federal plan[5]. Customer-sited RE systems and EE projects undertaken at residential sites can potentially provide significant ERCs and/or allowances, particularly in southern Arizona where air conditioning is a large portion of the electrical load. In addition, the installation of RE systems and improvements to increase energy efficiency provide a strong message that everybody can do their part to help reduce CO_2.

While M&V for distributed generation may be somewhat more challenging than utility-scale renewable energy projects, determining MWhs generated or saved is not insurmountable. For example, as noted by EPA: *With respect to accounting and verification requirements, many existing state RE registries have provisions for monitoring the MWh of generation, which could meet Clean Power Plan requirements, such as requirements to use a revenue quality meter[6].*

Many utilities have developed EE programs to meet state requirements, and there are many companies that specialize in energy efficiency program EM&V. Utilities with EE experience and third-party companies that specialize in EE measurement and verification could assist states and inexperienced utilities in following the EM&V guidance and protocols established by the EPA under the Clean Power Plan.

2. Combined Heat and Power (CHP) should be included as an eligible resource in a rate-based federal plan and rate-based model rule.

The final EGs state that non-renewable resources that "deliver energy to or save electricity on the electric grid"[7] are eligible to receive ERCs, which is clearly the case with CHP. In addition, the EGs say that a "non-affected combined heat and power (CHP) unit, including waste heat power"[8] is eligible to receive ERCs. It's understandable that EPA wishes to keep the federal plan as simple and easy to administer as possible, but CHP should be included to ensure that the federal plan includes all least-cost emission reductions. The proposed model rule includes detailed requirements and an accounting mechanism for CHP that is relatively simple, so the barriers for including it in the federal plan are low.

[5] 80 Fed. Reg. at 64994.
[6] Key Topics and Issues: EPA Information Sheet
[7] 80 Fed. Reg. at 64950.
[8] 80 Fed. Reg. at 64950.

3. EPA should provide a tracking system for both ERCs and allowances.

We strongly support EPA's proposal to develop a tracking and compliance system for both rate-based and mass-based model rules[9]. Consistency and carefully tracking ownership of allowances and ERCs is critical to ensure a smoothly functioning market, and for successfully achieving emission reduction goals. Given the fact that EPA has significant experience administering other trading programs, it makes sense for it to administer one for the Clean Power Plan.

4. EPA should include EE as a compliance option in the federal plan.

EPA is soliciting comments on the incorporation of EE for the federal plan, and by extension, the EM&V associated with it[10]. To the extent that it is legally viable, we strongly support including energy efficiency as a compliance strategy in the federal plan. EPA has repeatedly stressed the importance of EE to achieve the goals of the Clean Power Plan, and it only makes sense to include it. Doing so will also increase the likelihood of states including it in their plans. EPA also asked for comments on how it might implement an EE program across multiple jurisdictions in a rigorous, straightforward manner with appropriate EM&V[11]. Many of the challenges could be overcome by establishing an EE project registry that could certify energy savings, convert MWh saved into tons of reduced CO_2, and track ownership of the allowances. Such a registry would also be beneficial for states. A starting point could be the nascent National Energy Efficiency Registry[12], funded by the Department of Energy and presently made up of The Climate Registry, six states, and the National Association of State Energy Officials.

MASS-BASED IMPLEMENTATION

1. Allowances should not be based on the historical generation of affected EGUs [65016].

EPA proposes to allocate most of the CO_2 allowances in the mass-based trading system to affected EGUs based on historical generation[13]. We strongly oppose this approach.

The decision of how to allocate allowances will likely have the single largest impact on the success of reducing CO_2 emissions through renewable energy, energy efficiency, and other eligible resources in a state adopting a mass-based approach. This is particularly true in Arizona, where the likelihood of an auction is incredibly small. Awarding allowances based on historical generation would have an immediate and dramatic chilling effect that would prevent private industry from achieving the emission reductions in the Clean Power Plan. Additionally, it would preclude the establishment of mechanisms that benefit customers or support RE and EE. In

[9] 80 Fed. Reg. at 64998.
[10] 80 Fed. Reg. at 65005
[11] 80 Fed. Reg. at 65002.
[12] The Climate Registry: http://www.theclimateregistry.org/thoughtleadership/energy-efficiency/
[13] 80 Fed. Reg. at 65016

addition, allowances have immediate financial value, and companies should not be rewarded for past pollution.

We support the following approaches for allocating allowances:

a. Auction Allowances: We understand that EPA does not wish to include auctioning allowances in the federal plan because revenues would have to flow to the U.S. Treasury. However, any guidance and support for auctioning allowances would greatly enhance the ability of the private sector and nonprofits interested in advancing clean energy to help achieve the emission reductions in the Clean Power Plan. Auctioning allowances and establishing a program similar to RGGI's is our preferred approach, although it will be extremely difficult to establish an auction in Arizona.

b. Allow RE/EE providers to Claim Allowances First: For states such as Arizona, where the chances of auctioning allowances is miniscule, the next best option is to allow RE/EE providers to claim allowances first for verified savings and give only the remaining allowances to generators based on historical generation. Doing this provides some certainty that private sector RE providers will be able to play a significant role in reducing emissions. As for EE, this approach helps address the misalignment between generators who profit from selling power and energy efficiency, which inherently reduces the need for power.

c. Distribute allowances based on annual generation, or output: Under this system of allocations, Arizona could provide allowances to generators every one to three years, based on their expected level of generation. We urge EPA to clarify that "generators" need not and should not be restricted to EGUs – it could and should include EGUs *and* renewable energy generators and energy efficiency providers. Through this method, clean energy resources are rewarded with allowances directly and would see an explicit economic incentive to provide clean energy in the market. Utilities that own or contract with clean energy resources – provided those contracts include any allowances earned by the clean energy provider – would be rewarded for their investments. In addition to providing direct incentives to clean energy providers, this allocation method may provide sufficient demonstration to EPA that the state is not allowing "leakage" from existing EGUs to new EGUs (if the state does not adopt the new source complement).

2. EPA's proposed approach to addressing leakage needs to be modified.

We believe that EPS's proposed approach for addressing leakage[14] needs to be improved and that the agency should perform a more detailed analysis to ensure that a simple set-aside will mitigate potential leakage. At a minimum, a true-up at the end of each compliance period should be required to ensure that leakage has not occurred, and if it has, to establish a method for mitigating it. One possible approach would be to allocate allowances for tons that were

[14] 80 Fed. Reg. at 65022

"leaked" to non-emitting sources for use in subsequent compliance periods, including the final compliance period.

3. RE, demand-side EE, and CHP should be included in any set aside to address leakage.
EPA proposes to use RE to address leakage concerns and solicits comments on including other resources[15]. In the final EGs, resources that qualify for ERCs include not only several RE technologies, but non-affected CHP units and demand-side EE[16]. As stated elsewhere in these comments, demand-side EE is a critical resource for reducing CO_2 emissions. While EPA is justifiably concerned that EM&V across several jurisdictions may be challenging, there are many EE programs in the country and many experts who could help EPA design a rigorous EM&V program. In addition, CHP is included in the final rule as a resource that is eligible to receive ERCs and allowances, and it has the potential to significantly reduce CO_2 emissions across the country while enhancing the reliability of the grid. In the final rule, EPA commits to assist states to tailor training activities to their needs for creating and using programs focused on CHP, RE, and EE[17]. All of these resources should be included in a set-aside for addressing leakage.

4. The proposed five percent set aside for RE to address leakage should be increased.
EPA relied upon onshore wind as the benchmark technology for determining that five percent represents a reasonable RW set-aside commensurate with the objective of mitigating emission leakage to new NGCC units[18]. To establish a reasonable maximum set-aside level, EPA relied upon utility-scale solar PV, reaching the conclusion that a 10 percent set-aside would mitigate leakage[19]. In the proposed federal plan and mass-based rule, EPA proposes to set-aside 5 percent for renewables to mitigate leakage. At a minimum, this should be increased to include some solar, since it is highly unlikely that all RE used to mitigate leakage will be onshore wind. This is particularly true in Arizona, where solar PV may well be the dominant RE technology. In addition, the likelihood of auctioning ERCs or allowances in Arizona is exceptionally low, according to the Arizona Department of Environmental Quality. This means that unless set-asides and other allocation schemes are adopted, there will be limited funding for RE and EE projects, making the RE set-aside to address leakage even more important. Given that a higher percentage in both the federal plan and the mass-based rule would be presumptive, and that Arizona will have to satisfy EPA that any plan it develops must address leakage, inclusion of a higher percentage in the federal plan and model rule will do a better job of incentivizing RE in Arizona.

[15] 80 Fed. Reg. at 65020
[16] 80 Fed. Reg. at 64950.
[17] 80 Fed. Reg. at 64705
[18] EPA Memo: Renewable Energy Set-aside Technical Support Document, August 2015, pg. 4
[19] Ibid., pg. 4

5. The RE set aside should not be available solely to owners of affected EGUs.

We strongly oppose "an additional potential condition that would limit the eligibility to project providers that are also the owners or operators of affected EGUs"[20]. As discussed elsewhere in these comments, the question of how allowances should be allocated is one of the most important questions associated with the implementation of the Clean Power Plan. The importance of this is amplified when applied to the proposed RE set-aside to address leakage. Just as trading is necessary to effectively reduce costs, allowing private entities, local governments, tribes, and NGOs to be eligible for the RE set-aside will incentivize clean energy and energy efficiency industries. Limiting it to only the owners or operators of affected EGUs will have a significant chilling effect on the long-term goal of reducing CO_2 emissions in the United States.

6. The proposed approach for reallocating allowances generated by retired EGUs to the RE set-aside is a good policy decision, however, the proposal provides too much time before reallocating them.

We strongly support EPA's proposal to reallocate the unused allowances by a shuttered EGU to the RE set-aside[21]. Doing so would continue to build a clean energy economy, which in turn would help lock in future emission reductions. At an absolute minimum, EPA should require that the unneeded allowances be used by the owner or operator for developing projects or programs that meet the eligibility criteria for the RE set-aside. If EPA decides it wishes to wait to reallocate allowances beyond the date when the EGU ceases operation, it should conduct an analysis to determine an appropriate time frame for minimizing the likelihood that an EGU would continue to operate simply to keep the allowances.

7. Monitoring and reporting of CO_2 mass and net generation should begin prior to the first compliance period.

EPA requests comments on requiring monitoring and reporting of CO_2 mass and net generation for the year before the initial compliance period begins[22]. We strongly support doing so, not only to establish a solid baseline, but also to help ensure that any problems in the monitoring and reporting system have been resolved. Should EPA require this approach, the EPA should include a method or protocol that addresses any potential issues with the CEIP.

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[20] 80 Fed. Reg. at 65023
[21] 80 Fed. Reg. at 65026
[22] 80 Fed. Reg. at 65032

We appreciate the opportunity to provide these comments. If EPA has any questions, comments, or wishes additional information, please contact:

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