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September 27, 2016

Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Attention Docket ID No. EPA-HQ-OAR-2016-0033

Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Via <http://www.regulations.gov>

Or

Email: a-and-r-Docket@epa.gov
Attention Docket ID No. EPA-HQ-OAR-2016-0033

Comments of the Alliance to Save Energy 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 Alliance to Save Energy (Alliance) appreciates the opportunity to comment on the proposed Clean Energy Incentive Program (CEIP) Design Details, a voluntary complement to the Clean Power Plan (CPP). Further, we thank the U.S. Environmental Protection Agency (EPA) for continuing to engage in an open stakeholder process that includes, and extends well beyond, the establishment of the CEIP non-regulatory docket.

The Alliance is a nonprofit coalition of bipartisan lawmakers, businesses, and environmental and consumer thought leaders that supports energy efficiency (EE) as a cost-effective energy resource to achieve a healthier economy, a cleaner environment, and greater energy security. The Alliance works with energy utilities, commercial and industrial organizations, public agencies, consumer and environmental organizations and others to promote EE as a least-cost energy resource and a means to mitigate the environmental impacts of energy use and achieve other benefits.

The CEIP Should Maximize the Greenhouse Gas Reduction Potential of Cost-Effective Energy Efficiency

For the CEIP as well as for all CPP protocols and programs, energy efficiency can help to offset the cost of compliance. Therefore, our comments focus on two areas of the CEIP regulations that, as currently constructed, have the potential to severely hamper the ability of states to utilize energy efficiency to reduce their GHG emissions and comply with the CPP cost-effectively. Specifically, we offer comments on:

- The need for equal treatment of energy efficiency in the pool of matching allowances or Emission Reduction Credits (ERCs); and,
- The concerns about evaluation, measurement, and verification requirements for mass-based states who wish to participate in the CEIP.

Additionally, we appreciate the changes that EPA has made with regard to qualification criteria for the Low Income Community Reserve, but we recommend additional clarifications that will enable states to more fully utilize this pool of matching allowances.

The Alliance continues to assert that energy efficiency should be encouraged equivalently under all CPP protocols and programs, including the CEIP

As stated in its comments, submitted to EPA on the CEIP¹ on December 15, 2015, and on the Proposed Federal Plan and Model Trading Rule,² on January 21, 2016, the Alliance continues to assert that EE should be encouraged equivalently under all CPP protocols and programs, including the CEIP. Efficiency is the easiest, fastest, and least-cost solution to reduce overall greenhouse gas (GHG) emissions from power plants. Supporting states to invest in early action to reduce GHG is the specific reason that the CEIP exists, yet half of the allowances are foreclosed to EE participation.

One remedy the Alliance offers is to enable both EE and RE to receive equal encouragement for both 1:1 credit in the Renewable Energy Reserve (RER) as well as 2:1 credit in the Low Income Community Reserve (LICR). In order to qualify for 1:1 credit in the RER, renewable energy technologies must meet the following criteria outlined by the EPA: (a) zero-emitting, (b) essential to longer-term climate strategies, (c) counteract the potential shift in investment from RE to natural gas in the lead up to the start of the interim performance period, and (d) require investment and deployment lead times of relatively shorter duration.³

If you follow the logic of the criteria for inclusion of a resource in the RER, energy efficiency handily meets all these definitions. EE is clearly a zero-emitting resource; it reduces the need for power, and with it, any emissions associated with that power. In this way, it fulfills electricity demand with zero incremental emissions. EE is certainly essential to longer-term climate strategies. It continues to be a least-cost resource, and the more that EE is deployed, the fewer zero-carbon resources will be needed to meet the remainder of electricity demand to help resolve longer-term climate issues. EE reduces the need for all types of generation, including natural gas resources. Deploying additional EE leading up to the initial interim compliance period would not create any incentive to shift from RE to natural gas generation. Finally, EE is inherently scalable and can be deployed on a time frame as short as it takes to change a lightbulb. But even the most complex EE project can be completed with reasonable investment and deployment lead times and relatively short total implementation durations.

Given that energy efficiency meets the specific qualification criteria defined by EPA in this proposal, it should be able to qualify for 1:1 credit in the RER. But we echo the American Council for an Energy-Efficient Economy's (ACEEE) observations on this matter about challenges that still persist:

Energy efficiency is a cost-effective resource; however, it will not automatically be deployed due to several existing barriers to implementation. In order to help offset the up-front cost associated with energy efficiency, we request that EPA offer the same incentive to energy efficiency that renewable energy receives under the CEIP.⁴

The comments of the National Association of State Energy Offices (NASEO) continue to develop this theme and to discuss the appropriateness of this change, which the Alliance supports:

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

¹ Please see Alliance to Save Energy, CEIP comments Docket ID No. EPA-HQ-OAR-2015-0734, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0734-0169>

² Please see Alliance to Save Energy, Comments on CPP proposed Fed Plan and Model Trading Rules - Docket ID No. EPA-HQ-OAR-2015-0199, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0199-0475>

³ 81 Fed. Reg. 42965

⁴ American Council for an Energy-Efficient Economy CEIP comments, internal footnotes omitted [ACEEE].

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.⁵

As EE meets all the criteria defined by EPA for the RER, there does not appear to be a principled reason to foreclose access to half of the allowances in the CEIP reserve, and thus EE should be provided an opportunity to compete for allowances, just as solar has the ability to compete for allowances in the LICR.

The Proposal's Evaluation, Measurement, and Verification Requirements Will Stifle Participation from Mass-Based States

In the proposed regulations, there is an explicit requirement for a state to submit an evaluation, measurement, and verification (EM&V) plan to qualify for matching CEIP allowances. Specifically, the regulations call for “[a]n EM&V plan required under paragraph (a)(3)(ii)(D) of this section that meets the requirements of § 62.16260;”⁶ The referenced section is the full, detailed CPP EM&V protocols for states pursuing a rate-based compliance strategy.

While this might not be a burden for states that are planning to utilize a rate-based compliance strategy, the EM&V requirements in § 62.16260 do not apply to states that are planning to use a mass-based compliance strategy, meaning they will have to develop and submit a plan solely for the two-year duration of the CEIP. Although the EM&V requirements in § 62.16260 can be considered best practices, it is entirely possible that a particular state’s EM&V protocols for existing EE programs might not perfectly match each requirement. Further, the mere requirement to submit an EM&V plan in a different format could trigger numerous administrative and financial burdens, which may discourage a state from participating at all in the early action program.

We can see some of these issues in practice by examining a specific state, in this case Maryland.⁷ Maryland implements an energy efficiency resource standard (EERS) under the name of EmPOWER Maryland (EmPOWER). Maryland’s four electric investor owned utilities and largest electric cooperative participate in EmPOWER, as does its largest gas-only utility. EmPOWER has been running EE and demand response programs since 2009, and is in the middle of its third, three-year program cycle.

Like many other states, Maryland uses a third-party evaluator to ensure that its EE program savings are being realized. In fact, Maryland goes one step further – each utility submits an EM&V report to the Public Service Commission (PSC) Staff through their own evaluators, and the PSC Staff also engages a second EM&V contractor to evaluate the evaluators. Additionally, Maryland had participated in the Northeast Energy Efficiency Partnership (NEEP) EM&V Forum⁸ to share best practices and support research on ways to improve EM&V protocols.

Robust and dense reports are produced annually. Program information is collected and assembled by the utility’s EM&V contractor, and submitted to the PSC Staff’s EM&V contractor. The utility EM&V reports have in the past extended to over 1,000 pages of analysis. Summary reports created by PSC Staff’s evaluator have themselves exceeded 100 pages. Reporting is done on a utility-by-utility, program-by-program basis. NEEPs Mid-Atlantic Technical Resource Manual (TRM)⁹ is used for standardization purposes. And after all information is compiled, the PSC holds public semi-annual hearings to discuss the performance and results of the programs.

All in all, Maryland has established a strong EM&V protocol for its EmPOWER programs. Since 2009, this protocol has been used to validate the savings from nearly \$1.8 billion in utility programs that have returned \$4.4

⁵ National Association of State Energy Offices CEIP comments [NASEO].

⁶ 81 Fed. Reg. 42978

⁷ The Alliance’s Senior VP of Research and Policy Kelly Speakes-Backman was a commissioner on the Maryland Public Service Commission and has first-hand experience on the EM&V protocols and procedures of that state. However, these comments do not reflect any official position of the State of Maryland regarding the CPP or CEIP.

⁸ <http://www.neep.org/initiatives/EM&V-forum>, accessed August 25, 2016.

⁹ <http://www.neep.org/mid-atlantic-technical-reference-manual-v5>, accessed August 25, 2016.

billion in lifetime energy savings.¹⁰ And yet, despite all of this work, the EmPOWER EM&V protocol cannot be used as-is to apply for the CEIP.

This presents a substantial challenge to a state like Maryland that may wish to participate in the CEIP. For example, Maryland is part of the Regional Greenhouse Gas Initiative (RGGI), the first mandatory market-based program in the United States to reduce greenhouse gas emissions from the power sector. In all likelihood, Maryland will use RGGI as its compliance pathway, thus choosing a mass-based compliance strategy. As such, Maryland would not have to submit a specific EM&V plan for its primary CPP compliance.

However, if Maryland or any of the other eight states participating in RGGI wish to participate in the CEIP, they will have to create a new plan to submit to EPA “that meets the requirements of § 62.16260” despite having a pre-existing EM&V protocol. And while the requirements of this section can be generally considered best practices, they do not precisely mirror the established EM&V protocols for Maryland.

For instance, the requirement of subsection (c)(7)(vi) state that:

EM&V plans must specify and document how the EM&V components in paragraphs (c)(7)(vi)(A) through (E) of this section will be analyzed, considered, or otherwise addressed in the quantification and verification of electricity savings.

(E) The interactive effects of EE programs, EE projects, or EE measures on electricity usage, which are increases or decreases in electricity usage at an end-use facility or premises that occurs outside of specific end-uses(s) targeted by the EE program, EE project, or EE measure (e.g., lighting retrofits to improve EE can reduce waste heat to the surrounding conditioned space, and therefore may increase the required electric heating load in a facility or premises).¹¹

This interactive effect was discussed during EmPOWER hearings before the Maryland Public Service Commission (PSC). However, it has not formally been introduced into the EM&V protocol of the programs. The EPA EM&V requirement would necessitate each utility’s evaluator to perform additional analysis that is not in the scope of work of the existing contracts, nor specifically required by the PSC. These changes would impart additional costs on Maryland ratepayers, for a program that is already well underway, is proven to be cost-effective, and is effective in lowering overall energy use.

Additionally, subsection (c)(7)(viii) states that:

If sampling will be used to quantify the electricity savings from an EE program, then the MWh estimates derived from sampling must have at least 90 percent confidence intervals whose end points are no more than +/-10 percent of the estimate, and the statistical precision of the associated estimates must be specified in the EM&V plan.¹²

If a state uses a sampling methodology other than the specific one used here, it would be required to update to a different (and potentially more expensive) sampling methodology just for the two years of the CEIP. While this level of specificity may be appropriate for a state’s CPP compliance requirements, it is overly burdensome for a state to participate in a two-year, voluntary incentive program designed to encourage early action.

Finally, subsection (c)(7)(iv)(B) discusses the use of deemed savings and the requirements of a TRM:

(B) If deemed savings are used, then the EM&V plan must specify that the deemed savings values will only be used for the specific EE measure for which they were derived. The EM&V plan must also specify the

¹⁰ Maryland PSC EmPOWER Standard Report of 2016, available at <http://www.psc.state.md.us/wp-content/uploads/2016-EmPOWER-Maryland-Energy-Efficiency-Act-Standard-Report.pdf>

¹¹ § 62.16260 (c)(7)(vi)

¹² § 62.16260 (c)(7)(viii)

name and Web address of the technical reference manual (TRM) in which all deemed electricity savings values will be documented. Prior to use in an EM&V plan, all TRMs must undergo a review process in which the public, stakeholders, and experts are invited—with adequate advance notification (via the internet and other social media)—to provide comment, have at least 2 months to provide comment, and in which all such comments and associated responses are made publicly available. All TRMs must also be publicly accessible over the full period of time in which they are being used in conjunction with an EM&V plan for the purpose of quantifying savings, and must be subsequently updated in the same manner at least every 3 years. The TRM must indicate, for each subject EE measure, the associated electricity savings value, the conditions under which the value can be applied (including the climate zone, building type, manner of implementation, applicable end uses, operating conditions, and effective useful life), and the manner in which the electricity savings value was quantified, which must include applicable engineering algorithms, source documentation, specific assumptions, and other relevant data to support the quantification of savings from the subject EE measure.¹³

As discussed above, Maryland uses the Mid-Atlantic TRM from NEEP. But Maryland cannot dictate to NEEP how they manage their review process, how and for how long they issue their TRM for comment, how often the TRM is updated, nor can it determine how robust their engineering algorithms or documentation requirements must be. If the Mid-Atlantic TRM does not meet all these requirements to the letter, and NEEP is unable to update it in time, then, taken at face value, this requirement would preclude the use of the Mid-Atlantic TRM, and with it any ability to use deemed savings. Simply stated, this would be a disqualifying requirement for Maryland’s participation in the CEIP given that deemed savings are the primary method of quantifying savings for many EmPOWER programs and measures.

Additional Administrative and Financial Burdens Can Be Avoided by Explicitly Allowing States to Use Existing EM&V Protocols

Even if the existing EM&V protocols of a state contained all of the same information that was required by § 62.16260, participating in the CEIP would still require unnecessary administrative and financial resources to create and submit a plan. The scopes of work for the EM&V contractors involved are often defined through specific, multi-year contracts. Developing a CEIP EM&V plan in the format required by EPA would be additional to existing protocol and plans.

Neither a utility’s procurement processes nor a state’s procurement processes are simple or short. At a minimum, any contract in place at the time the CEIP application is submitted would have to be modified to include a new scope of work. Depending on the scale and complexity of the newly required tasks (for example, designing and conducting an analysis of the interactive effects of lighting and heating is non-trivial), contract modification might not be allowed. In this case, a new procurement might need to be conducted, requiring even more time and expense, despite the fact that a perfectly robust EM&V protocol may already exist.

The Alliance recommends a simple solution for this issue: enable states with existing EM&V plans to use those plans as-is for the CEIP. Specifically, the Alliance recommends that EPA permit mass-based states that already rely in practice on EM&V protocols, such as established Technical Reference Manuals (TRMs), to submit those existing protocols for presumptive approval in order to participate in the CEIP.

It is highly unlikely that any state with an energy efficiency EM&V plan (which would necessarily mean that they also have an established EE program that is being evaluated) would produce one so weak as to be problematic, since that would be counter to standard utility regulatory principles of cost-effectiveness and prudence. While not every plan may include each of the ten sections and 17 subsections that are included in the CPP regulations, they have been approved by utility regulators or state officials to safeguard ratepayer-funded programs.

If the current regulations remain in place, the heavy administrative and financial burden associated with developing a new plan for a limited time opportunity may be too high for mass-based states. This would result in the very unfortunate result of less EE being deployed, and less GHG emissions being avoided.

¹³ § 62.16260 (c)(7)(iv)(B)

The Alliance Appreciates Changes that EPA Has Made in the Proposed Rule Regarding the Low Income Community Reserve and Offers Support for Certain Party Comments in this Matter

The Alliance appreciates EPA’s adoption of a flexible definition for the types of projects that would qualify for the Low Income Community Reserve (LICR), as recommended in our previous comments on the CEIP. In its proposed rule, EPA has allowed both an income-based definition and a geographic-based definition.¹⁴ The Alliance believes that this change will enable states to more successfully direct investment towards low income communities and businesses that serve those communities.

As to comments from other parties in this matter, we echo comments from the Third-Party Delivered Energy Efficiency Coalition that respectfully request clarification regarding the directive that a state “must apply the selected definitions consistently across the State.”¹⁵

States should be allowed to consider which definitions are best-suited for each particular EE approach, rather than applying a blanket “one size fits all” definition to a diverse pool of EE technologies. For example, a state could apply a geography-based federal definition for ESCO projects and an income-based state definition for a weatherization program.¹⁶

We support NASEO’s request 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.”¹⁷ This clarification will be critical for states that have already established EE *programs* targeted at low income communities to ensure that a future *project* will still be eligible for CEIP credits.

We also support the ACEEE recommendation that the definition of low income should be broadened to include an area median income (AMI) qualification option:

We support the flexibility offered to states to choose a definition for low-income communities. In addition to the four federal-level definitions proposed by EPA, we recommend that EPA include within the presumptively approvable regulatory text any household receiving federal housing assistance where program eligibility is set at 80% of area median income (AMI) or less. As poverty guidelines do not always reflect geographic variations in cost of living, this additional definition would capture households that are burdened by energy and housing costs because they live in expensive markets. In addition, this would help to minimize the administrative burden on program providers to verify applicants’ income levels and offer greater flexibility to states.¹⁸

On this specific issue, we agree with NASEO’s complementary comments on this topic noting that many federal programs already include the 80 percent of AMI:

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.¹⁹

Finally, we support NASEO’s recommendation that EPA “[c]larify 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).”²⁰ The Alliance believes that it would be inconsistent with the intent of the CEIP to exclude an otherwise qualifying measure that benefits the community simply because it is on the outside of a building rather than on the inside.

¹⁴ § 60.5373(c)(8)

¹⁵ § 60.5373(c)(8)(i)

¹⁶ Third-Party Delivered Energy Efficiency Coalition CEIP comments.

¹⁷ NASEO, *supra* note 4.

¹⁸ ACEEE, *supra* note 3.

¹⁹ NASEO, *supra* note 4. The list of programs referenced is available in its comments.

²⁰ *Ibid.*

In Conclusion

The Alliance sincerely appreciates the opportunity to comment on the proposed CEIP Design Details, and applauds EPA for holding an open stakeholder engagement process. This process of stakeholder input and recognition has been unprecedented. And, we commend EPA for its recognition and encouragement of EE as an important and extremely cost-effective emissions reduction strategy that can make significant contributions to environmental justice.

All of our comments and recommendations are offered with the goal to ensure that the final CEIP regulations will allow all states to use energy efficiency fully as a least-cost, effective means of jump-starting compliance with the Clean Power Plan.

Should there be any questions about these comments, please contact the undersigned at 202.530.2205 or ksbackman@ase.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kelly Speakes-Backman".

Kelly Speakes-Backman
Senior Vice President, Policy & Research
Alliance to Save Energy