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The State of Colorado appreciates the opportunity to comment on the above-referenced docket, including the U.S. Environmental Protection Agency's ("EPA's") proposed model trading rules for EPA's greenhouse gas ("GHG") emission guidelines for existing fossil fuel fired electric generating units ("Clean Power Plan"), Draft Evaluation Measurement and Verification ("EM&V") Guidance for Demand-Side Energy Efficiency ("EE"), and proposed revisions to EPA's framework regulations implementing Clean Air Act section 111(d).

Colorado supports the goal of reducing greenhouse gas emissions from the power sector, and also supports the flexibility provided to states in the Clean Power Plan. Colorado has made proactive efforts over the last decade to reduce GHG emissions in multiple sectors and is committed to meeting or exceeding the Clean Power Plan's carbon dioxide ("CO_2" or "carbon") reduction goals. Reducing air emissions is important for our health, environment, and economy.

As discussed in Colorado's comments on the proposed Clean Power Plan, EPA should support and incentivize early actions to reduce carbon emissions and should give them appropriate credit in the final rules. Colorado is in the process of developing a state plan that best meets the needs of our state, and supports the flexibility that is available to states. Colorado encourages EPA to incentivize early action and remove potential barriers to early action from the final rules. EPA should provide clarity to states and other stakeholders by quickly finalizing the model trading rules and EM&V guidance. EPA should also avoid unnecessary complexity in its final rules.

Colorado provides the following, specific comments on the proposed model trading rules, framework revisions, and draft EM&V Guidance. Colorado believes that these comments will help facilitate successful implementation of the Clean Power Plan by states.

I. EPA Should Quickly Finalize its Proposal

EPA proposed two approaches, rate-based and mass-based, to a federal plan for states that do not submit an approvable plan. EPA proposed to finalize a single approach for the federal plan. The type(s) of federal plan that EPA promulgates for states that do not submit an approvable state plan could potentially impact the eligibility of other states to trade with the federal plan states. The same is true for tribes. Colorado requests that EPA announce early which federal plan(s) EPA will finalize for states and tribes, in order to assist other stakeholders in planning and decision making.

Similarly, Colorado requests that EPA make its tracking and compliance system available for states as early as possible during state plan development to assist in planning and decision making. Colorado also requests confirmation that the EPA-administered tracking and compliance system will be available and operating for states that develop either a mass-based or a rate-based plan.

II. The Model Trading Rules Should Not Limit State Flexibility

EPA proposed rate-based and mass-based model trading rules that states may use to implement the Clean Power Plan. State programs that adhere to the model trading rule provisions are presumptively approvable.

States may also submit plans that differ from the model trading rule provisions, so long as the state demonstrates that the state plan requirements satisfy the emission guidelines. Colorado supports the flexibility for states to develop plans according to their specific state needs without being limited by the model rules.

Colorado supports the ability to trade with tribes under the Clean Power Plan. Colorado also believes that states should have the flexibility to trade with tribes or other states that adopt approved state-specific trading programs that might differ from the model trading rules. This includes, but is not limited to, the flexibility to trade with states that establish economy-wide carbon trading markets.

States should not have to fear that exercising their discretion, within the framework of the emission guidelines, over the design or implementation of state plans might impact their ability to participate in trading markets. Colorado therefore requests that EPA clearly state in the model rule that a state may choose to replace the federal plan's allowance distribution methodology with its own distribution provisions, without limiting the state's ability to trade or to gain approval of a trading ready plan.

The Clean Power Plan requires state plans to include provisions for accrediting independent verifiers. Colorado requests that EPA allow states to recognize independent verifiers accredited by EPA according to the federal plan or other states according to EPA-approved state plans, without requiring additional state review and accreditation.

III. Clean Energy Incentive Program ("CEIP")

Colorado has been a leader in the development of renewable energy ("RE") resources. Colorado believes the initiatives of Colorado utilities to act before implementation of the Clean Power Plan should be recognized.

Therefore, Colorado requests that RE and EE projects that qualify for the CEIP begin earning allowances or emission rate credits ("ERCs") for all generation or electricity savings that occur after the state plan is submitted to EPA, rather than only generation or savings occurring in 2020 or 2021. Colorado also asks EPA to award matching allowances or ERCs for such pre-2020 generation or savings. Colorado is concerned that, without earlier recognition, there may be a disincentive to initiate RE or EE before full credit can be taken in 2020.

Similarly, Colorado requests that EPA clarify project eligibility by using a different term than "commence construction" (for RE) and "commence implementation" (for EE). These terms are potentially confusing because they are not defined in the model trading rules or emission guidelines. Under the new source review ("NSR") program, commence construction means a contractual obligation or physical onsite construction. That definition is inappropriate for the CEIP. Colorado suggests EPA base the eligibility of an RE or EE project on the date, after September 6, 2018, or after submittal of a state plan, that the project commences to deliver or save electricity on the electric grid.

The model rules indicate that the Administrator will determine whether communities are low income, but do not specify criteria for doing so. States should not be bound by any criteria EPA might establish, but should instead be allowed to define low-income as appropriate for their state. For example, many states have experience working with low-income communities through implementation of the federal Weatherization Assistance Program and low-income utility programs, and have developed mechanisms for determining and verifying income. Colorado believes that EPA should allow states to use those, and other, existing programs to define low-income for the purpose of the CEIP. If EPA determines that EPA must define low-income, Colorado requests that the definition recognize that low-income is defined differently in each state and include both geographic and household thresholds. A geographic threshold would allow EE to benefit communities beyond the residential market, such as including resources shared by the community. Colorado suggests the established 2/3 threshold commonly used for federal income qualification for multi-family buildings could be applied at the

community level (i.e., census tracts where 2/3 of households qualify as low income under the household threshold). A household threshold would allow income qualified members of any community to benefit from the CEIP. Colorado recommends households at or below 80% of area median income.

Colorado also requests that states be given the flexibility to determine how their portion of EPA's matching 300 million allowances or ERCs are to be allocated between RE and EE in their state. Colorado cannot predict the relative number or size of eligible RE and EE projects, and believes that a federal limit on the portion of matching allowances or ERCs going to either RE or EE projects would limit the effectiveness of the CEIP.

Colorado believes that RE that directly benefits low-income communities should be eligible for matching allowances under the CEIP, in the same manner as low-income EE projects. Only the portion of the RE that benefits the subset of low-income users in a community, such as with a community shared-solar project, should be eligible for matching allowances. However, similar to the geographic or community threshold proposed above for low-income EE, for a community-shared RE project in which at least 2/3 of the subscribers qualify as low-income, the entirety of the RE should be eligible for matching allowances.

Colorado requests EPA include a broad set of renewables as eligible sources under the CEIP, including small hydropower, woody biomass, combined heat and power, and coal mine methane (see Colorado's comments on biomass and CMM below). Like many western states, Colorado's water resources are vital to health and economic prosperity. After many years of collaboration, Colorado finalized its first state water plan in 2015. Colorado's water plan is likely to spur new water storage projects, in addition to the recent 20 MW of new hydropower generation since 2011, which may create additional hydropower opportunities in Colorado. For example, in 2015 eight hydropower projects filed notices of intent with the Federal Energy Regulatory Commission. Therefore, Colorado requests EPA include this wider range of RE as potentially eligible under the CEIP.

IV. Rate-based Trading Program

Emission Rate Credit Revocation

When discussing improperly issued ERCs in the preamble to the emission guidelines, EPA says that state plans must "include provisions making clear that an affected EGU may only demonstrate compliance with an ERC that represents the one MWh of actual energy generation or savings that it purports to represent." 80 Fed. Reg. 64662, 64907 (Oct. 23, 2015). Colorado agrees that the states and EPA should have enforcement authority regarding improperly issued ERCs, and believes that liability should rest with the entity to which the ERCs were issued, not EGUs that may have relied on the ERCs to demonstrate compliance. EPA takes this approach in the model trading rule. Colorado requests clarification that a state plan need not place the risk of ERC revocation on EGUs that in good faith purchased or relied on improperly issued ERCs. Without certainty that an ERC will be considered valid after it is recorded, the regulated community and other Clean Power Plan participants may be subject to unnecessary risk.

Eligible Renewables

The Clean Power Plan and model rules define wind, solar, hydropower, qualified biomass, and certain other resources as eligible to generate ERCs. Colorado and four other states treat coal mine methane ("CMM") as a RE resource for purposes of their renewable or alternative portfolio standards. Similar to biomass, CMM can replace generation from affected EGUs and prevent other GHGs from reaching the atmosphere. By beneficially using or destroying methane that would otherwise be vented or seep from coal mines, CMM can result in a net reduction of GHG emissions. CMM can also directly benefit the economy of the communities dependent on the coal industry. Therefore, Colorado requests that EPA include CMM as a potentially eligible resource for generating ERCs.

Similarly, woody biomass is an eligible resource for Colorado's Renewable Energy Standard. This promotes forest health, avoids the use of fossil fuels for electric generation, and reduces the release of CO2 from decomposing wood. While biomass electricity generation is a small portion of Colorado's electricity production, the use of woody biomass protects watersheds and residences and is a key end-use within a sustainable forest management plan. However, because biomass generation technologies and feedstocks vary, Colorado requests that EPA allow states the ability to determine the eligibility of different biomass generation. In addition, if EPA elects to define qualified biomass, Colorado requests EPA include sustainably managed woody biomass on a list of pre-approved qualified biomass.

V. Mass-based Trading Program

EGU Retirement

EPA proposed in the model trading rules that an affected EGU that has ceased operations for two consecutive calendar years will not receive allowances for the next compliance period. Colorado requests that EPA confirm that a state has the authority to develop its own allowance allocation approach, including the specific authority to develop its own allowance allocation approach for retired EGUs.

Clean Energy Incentive Program

The Clean Power Plan provides that a state's participation in the CEIP is optional. However, in the proposed model rules EPA says "that a state that chooses to replace the federal plan allocations with a state-determined approach must include a CEIP set-aside." 80 Fed. Reg. 64662, 65026 (Oct. 23, 2015). Colorado requests that EPA clarify whether a state must include a CEIP set-aside only when a state replaces the allowance allocation approach in the federal plan that EPA promulgated for that state or whether a state must also include a CEIP set-aside if the state develops an allocation approach that differs from the mass-based model trading rule allocation approach.

Leakage

A mass-based state plan must address potential emission leakage, which according to EPA occurs where shifts in generation to unaffected fossil fuel-fired EGUs result in increased emissions relative to the best system of emission reduction for existing EGUs. States may use a method identified by EPA to address leakage, or adopt their own "equivalent method." EPA does not provide great detail concerning the credible analysis a state must include supporting this demonstration, and Colorado requests that EPA be flexible and reasonable concerning the level of analysis required.

In addition, in its assessment of a state's demonstration, EPA should not consider the generation from all new natural gas combined cycle ("NGCC") units as leakage. There are valid reasons for constructing new NGCC units other than to displace existing NGCC, and Colorado believes states should be allowed to develop new NGCC for those reasons. For example, generation from new NGCC units may be necessary to compensate for the retirement of existing coal-fired EGUs, to back up new RE projects, or to meet demand growth. Such generation should not be considered as leakage. In these, and potentially other, situations it is difficult to precisely determine what generation is being displaced. Further, new NGCC units are more efficient, thus lower emitting, and cost-effective than shifting generation to some existing NGCC units. Colorado believes the reduction in emissions and savings to rate-payers, comparing new NGCC units with existing NGCC units, should be supported.

Renewable Energy ("RE") Set-aside

EPA proposed two additional components of allowance allocation under the mass-based model rule to address the risk of leakage to new unaffected units, an output-based allocation and an RE allocation. An RE project is eligible to receive RE set-aside allowances for uprated newly installed electrical generation beyond nameplate capacity or new electrical savings measures installed or implemented after January 1, 2013. EPA further states that RE set-aside allowances may be issued only for the difference in generation between an uprated nameplate capacity and the nameplate capacity prior to the uprate, or the difference in nameplate capacity between a relicensed permit and a prior permit.

Colorado believes that a replacement RE project should be eligible to receive allowances for the full amount of generation rather than the generation incremental to the replaced RE project. RE projects often have a limited life span, approximately 15-20 years for a wind farm project, and RE replacing those projects should be fully credited. Further, there is a practical problem with determining which portion of a replacement project is incremental and who should potentially receive allowances for that incremental generation. Therefore, Colorado requests that EPA clarify that new generation at an existing RE project and replacement RE projects are eligible to receive allowances for the full generation of the project.

Colorado also requests that EPA include a broad set of renewables as eligible sources, including small hydropower, woody biomass, combined heat and power, and coal mine methane (see Colorado's comments on biomass, CMM, and hydropower above).

VI. Framework Regulations (Subpart B)

Actions by the Administrator

EPA proposed to amend the framework regulations for section 111(d) plans to require EPA to approve or disapprove a state plan within 12 months after EPA receives the complete plan. Colorado requests that EPA also include a provision similar to EPA's approval of the Clean Power Plan initial submittal, whereby the state plan will be considered approved unless EPA notifies the state that the state plan is disapproved within that 12 month timeframe. Colorado believes this additional provision will provide certainty to states, EGUs, and other entities potentially subject to this complex federal requirement, as well as other emission guidelines.

Calls for Plan Revisions

EPA proposed to amend the framework regulations and include a mechanism for EPA to make calls for plan revisions similar to the SIP-call provisions of the Clean Air Act Section 110(k)(5). EPA's intent of this mechanism is to initiate a process to improve state plans when they are not meeting program objectives or when a state is not implementing its approved state plan.

Colorado appreciates EPA's intention to ensure that a state is implementing and enforcing the standards in the Clean Power Plan. However, Colorado is concerned about the resource implications of frequent 111(d) plan revisions. Currently, a state must revise a 111(d) plan when EPA revises an emission, monitoring, recordkeeping, or reporting requirement in an emission guideline. Adding a "plan-call" provision on top of the existing requirements to revise a 111(d) plan would require a significant level of state effort and resources. Therefore, Colorado requests that EPA clearly specify the criteria under which EPA may use the plan-call mechanism.

VII. Evaluation Measurement and Verification ("EM&V")

Colorado has a strong commitment to energy efficiency as exemplified by our statutory mandate enacted in 2007 that highlights emission reductions and increased energy efficiency. In the preamble to the Clean Power Plan, EPA recognizes that states have well established EE programs with significant EM&V infrastructure already in place. Given the experience gained in Colorado with EM&V, we offer the following, specific comments.

Location of EE Measures

Guidance provided by the EPA is more expansive than the EM&V requirements outlined in the model rules. Colorado also notes that the model rules appear to preclude certain measures anticipated in the guidance such as EE point-of-sale rebates or distributor incentive programs (which do not have identified consumers) by requiring that the EM&V identify the location of each discrete measure. Colorado requests EPA recognize EE measures such as point-of-sale rebate measures in the model rules by clarifying that "the location of each discrete measure" may not mean a specific, physical location.

Common Practice Baseline and Savings Measurement

Colorado is concerned that the common practice baseline approach creates a moving target which can create regulatory uncertainty, and potentially disincentivize early actions such as increasing building code requirements. Colorado suggests EPA clarify that the common practice baseline will be established as of the time the project is approved. If necessary, the common practice baseline could be revisited in the next compliance period. Colorado believes this clarification will provide greater project certainty for both the EE provider and the state.

Similarly, Colorado requests that EPA clarify in the model rules that gross savings will be used to determine the EE energy savings. The EM&V guidance specifies the use of gross savings rather than net savings, but the model rules do not specify how electricity savings should be quantified.

Periodic Review

The model rules state that EE programs, projects, and measures must be quantified in intervals sufficient to ensure the savings are accurately and reliable quantified, specifically every 1, 2, or 3 years. The guidance also references this time frame for review of consumer-funded EE programs, but in the context of "determining the frequency of conducting EM&V." Colorado requests that EPA clarify in the guidance that the "quantification" is a technical evaluation of the EE program savings, rather than a full EE program evaluation, which evaluates program delivery and not energy savings.

Effective Useful Life ("EUL") Adjustment

EPA's draft EM&V guidance requires the adjustment of EE EUL if future persistence and/or degradation studies show that energy savings are not generating the savings as the calculations projected. Colorado is concerned that this requirement may disincentivize investment in EE projects, and state plan reliance on such projects, due to potential retroactive invalidation of assumed savings. For example, if a study released a few years into an EE project shows that the benefits are half of what was originally calculated, the new, and previously unknown, study could potentially end an EE program due to the lack of return on investment, and therefore the associated air quality benefits. In turn, this may hinder regulatory certainty in compliance due to the inability to rely on EE projections. Instead, Colorado believes that the EUL should be calculated based on the information available at the time the project is approved. If necessary, the EE EUL could be revisited in the next compliance period to inform savings going forward.

State Plan EM&V

Colorado is concerned that the guidance may disincentivize new EE technologies and methodologies by specifying that other means of meeting the EM&V requirements in a state plan must be as stringent as the presumptively approvable approach. Considering the rapid development of EE measures, Colorado suggests EPA clarify in the guidance that alternative state EM&V requirements may be approvable if they adequately meet the minimum criteria EPA established for EM&V in the Clean Power Plan.

VIII. Conclusion

Colorado remains committed to reducing emissions of CO_2 and other pollutants in a timely and cost-effective manner, while ensuring reliability and affordable electricity. Colorado supports EPA's efforts to develop model trading rules that allow states the flexibility necessary to reduce emissions in a way that is appropriate and achievable for the states' unique environments and economies.

Thank you for the opportunity to submit these comments.

Sincerely,

Larry Wolk
Executive Director and Chief Medical Officer
Colorado Department of Public Health and Environment

Joshua B. Epel
Chairman
Colorado Public Utilities Commission

Jeffrey Ackermann
Director
Colorado Energy Office