# TCEQ LogoNational Comments

# Executive Review Summary

**TCEQ Proposed Comments On:** Proposed Rulemaking: Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program; EPA Docket ID No. EPA-HQ-OAR-2017-0355

**Overview of Proposal:**

On August 31, 2018, the United States Environmental Protection Agency (EPA) issued a proposed rule in the *Federal Register* concerning state guidelines for greenhouse gas (GHG) emissions from existing electric utility generating units (EGU) under Federal Clean Air Act (FCAA), §111(d), also identified as the Affordable Clean Energy (ACE) rule. As proposed, the ACE rule would establish the best system of emission reductions (BSER) without specifying the exact standards of performance for EGUs. States would set unit-specific standards of performance expressed as mass of carbon dioxide (CO2) per unit of energy (e.g., pounds of CO2 per megawatt-hour) when developing state plans to submit to the EPA. The proposal also includes revisions to the implementing regulations for state plans developed under FCAA, §111(d) and for the New Source Review (NSR) permitting program. The proposed ACE rule establishing emission guidelines for GHG emissions from existing EGUs would serve as a replacement to the EPA’s Clean Power Plan (CPP) rule that was finalized October 23, 2015. The EPA has also proposed a repeal of the CPP rule, which was published in the *Federal Register* on October 16, 2017.

**Summary of Comments:**

### *A. General Comments*

1. While the Texas Commission on Environmental Quality (TCEQ) supports some elements of the proposed revisions to the implementation rules and the proposed ACE rule, as discussed in these comments, the TCEQ maintains that any replacement to the CPP rule is premature while the EPA is reconsidering the FCAA, §111(b) rule in 40 Code of Federal Regulations (CFR), Part 60, Subpart TTTT.

### *B. Proposed ACE Rule*

1. The TCEQ supports the EPA’s proposed interpretation of BSER and determination of heat rate improvement (HRI) as the BSER for affected coal-fired EGUs.

2. The proposed ACE rule imposes a substantial burden on regulatory agencies and permitting authorities responsible for implementation, and on regulated facilities.

3. The TCEQ disagrees with the EPA’s estimated information collection request (ICR) cost impact to states derived from the expected recordkeeping and reporting burden associated with developing, implementing, and enforcing a state plan to limit CO2 emissions from existing EGUs. The EPA should reevaluate the costs to the states after engaging with state agencies to better determine the impacts.

4. The complex nature of the work required to determine the standards of performance for each affected unit and develop a state plan may require that up to five years be allowed for state plans to be submitted.

5. Some of the state plan content requirements proposed in 40 CFR §60.5740a(a)(4) should be removed because the requirements are unnecessary and place significant burden on the states.

6. The state plan content requirements should not include open-ended provisions that allow the EPA to require states to submit any information the EPA deems necessary.

7. The EPA should clarify whether the ACE rule applies to only coal-fired steam generating units, consistent with its BSER determination, or if it applies more generally to any fossil fuel-fired steam generating unit that otherwise meets the applicability criteria.

8. The EPA should remove the phrase “and always has been” from the exemption in §60.5780a(a)(2).

9. The EPA should clarify in the rule language at §60.5755a that the percentage ranges of HRI potential for the measures listed in Table 1 of the preamble are only provided to illustrate the EPA’s estimated potential for these measures and their inclusion as candidate technologies for the EPA’s BSER determination, but they are not the actual percentages that would apply to all affected sources.

10. States may not have the authority to either require the shutdown of an affected source by a compliance deadline or to set a dual standard including an emission standard that is applicable only if an affected source does not shut down.

11. The TCEQ supports and recommends allowing states to implement averaging and emissions trading programs as alternative compliance program options for affected coal-fired EGUs.

12. Electrical grid reliability is a critical “other factor” that states should and can evaluate when considering remaining useful life of a unit and setting standards of performance. The EPA should explicitly state in the final rule that states can consider grid reliability.

### *C. Proposed Emission Guideline Implementation Rules*

1. The TCEQ supports the EPA’s proposed definition of “emission guideline” in 40 CFR §60.21a(e).

2. The TCEQ supports the proposed increase in the time allowed for state plans to be developed and submitted to the EPA.

3. The TCEQ supports the concept of allowing electronic submittals of state plans as an option but recommends that the EPA allow state plans to be submitted either electronically or in traditional paper format. If the EPA develops a new platform for accepting state plans electronically, the TCEQ recommends that the platform be flexible enough to accept a wide range of document formats.

4. While the TCEQ supports establishing a completeness review of state plans and specifying administrative criteria for completeness, some of the EPA’s criteria for completeness are unnecessary and should be removed from the rule.

5. The proposed provisions regarding compliance schedules longer than 24 months in 40 CFR §60.24a(d)(1) and the increments of progress steps proposed in §60.21a(h) are unnecessary and create practical implementation issues with state plan development.

6. The EPA should provide additional clarification as to the deadlines and timing associated with proposed §60.27a(g)(1), relating to the EPA's determination of completeness for a submitted state plan.

7. The TCEQ is concerned that in many cases, the 12 months provided by proposed 40 CFR §60.28a for states to submit a revised state plan will not be sufficient. In addition, it is not clear how the proposed 12-month deadline of §60.28a would work in cases where the EPA publishes notice of a revision to an emission guideline within the three-year state plan development period after publication of the original final emission guideline.

### *D. Proposed NSR Permitting Revisions*

1. The proposed addition of an hourly emission increase test for purposes of major NSR applicability would require state rulemaking to implement and would create an inconsistency with how major NSR applicability functions for non-EGU sources.

### *E. Regulatory Impact Analysis (RIA)*

1. The TCEQ appreciates the EPA’s inclusion of cut-points in the co-benefits analysis and the EPA’s sensitivity analysis. The TCEQ again encourages the EPA to further consider important methodological aspects of the underlying epidemiology literature and models and to quantify and clearly communicate uncertainty in the final analysis.

2. The EPA should use the appropriate statistical concentration-response (C-R) function (relative risk, not hazard ratios) when calculating putative health effects from changes in pollutant concentrations.

3. In order to minimize uncertainty, the EPA should revise its method for selecting epidemiology studies that are used to quantify health impacts in benefits calculations.

4. Because of the well-documented regional heterogeneity of fine particulate matter (PM2.5), use of national effect estimates obscures associations from the original research.

5. The study by Woodruff et al. (1997) is inappropriate for calculating PM2.5-induced mortality. The EPA should remove benefits calculated using this paper in its final benefits calculation.

6. The TCEQ continues to question the necessity of calculating co-benefits.

7. If the EPA continues to calculate co-benefits in RIAs, the TCEQ urges the EPA to develop a public accounting mechanism that ensures benefits are not double-counted among different rules.

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**Deadline (Submittal Due Date):** October 31, 2018