COMMENTS BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY REGARDING UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; CLEAN ENERGY INCENTIVE PROGRAM DESIGN DETAILS; PROPOSED RULE; DOCKET ID NO. EPA-HQ-OAR-2016-0033

I. Summary of Proposed Rule

On June 30, 2016, the United States Environmental Protection Agency (EPA) proposed a rule for the Clean Energy Incentive Program (CEIP), an early action incentive program associated with the Clean Power Plan (CPP) rule even though the CPP rule was stayed by the United States Supreme Court on February 9, 2016. The proposed rule would establish design details for the CEIP as well as the specific amount of shares from the EPA matching pool for each state as tons of carbon dioxide (CO_2) for mass-based allowance programs or emission rate credits (ERC) in megawatt-hours (MWh) for rate-based programs. The ERCs or allowances generated from renewable energy projects and low-income community projects (both renewable energy and energy efficiency) could then be used for compliance by affected existing electric generating units (EGU) subject to either a state plan or a federal plan for the CPP rule. The proposed design details include: implementation and administration provisions for the CEIP; plan requirements for states participating in the CEIP; and eligibility criteria for renewable energy and low-income community projects.

II. Comments

A. General Comments

A-1. The Texas Commission on Environmental Quality (TCEQ) and Public Utility Commission of Texas (PUCT) disagree with the EPA's interpretation of its authority regarding the CPP rule and the United States Supreme Court's stay of the rule.

In the proposal, the EPA asserts that "[s]tates have the authority to continue moving forward on their own volition with the design of state plans, and *the EPA retains the authority to continue working with states as they do so.*"[1] The EPA further cites to Federal Clean Air Act (FCAA), §§102 and 103 as authority to work with states. The EPA then states that its action in the proposal "is consistent with, and the EPA's authority to proceed with this action is unaffected by, the Supreme Court's orders in *West Virginia, et al., v. EPA, et al.*, No. 15A773 (February 9, 2016)."[2] The EPA further argues that the United States Supreme Court stay is distinct from an injunction, which directs the conduct of a particular actor; and that the EPA was not enjoined from further work with state partners in the development of frameworks to reduce CO_2 emissions from affected EGUs.[3]

[1] 81 *Fed. Reg.* 42940, 42942 (June 30, 2016).
[2] *Id.*
[3] *Id.*

The TCEQ and PUCT disagree with the EPA's assertion that FCAA §§102 and 103 contravene the direct order of the United States Supreme Court. The TCEQ and PUCT do not agree with the EPA's interpretation of the stay granted by the United States Supreme Court on February 9, 2016 or the EPA's interpretation of its continuing authority, as discussed in the rule proposal. The States of West Virginia and Texas identified this disagreement in a letter from Attorneys General Morrisey and Paxton to Janet McCabe dated May 16, 2016. Attorneys General Morrisey and Paxton also sent a letter to the National Association of Regulatory Utility Commissioners and the National Association of Clean Air Agencies on February 12, 2016, addressing the effect of the stay. The TCEQ and PUCT incorporate the discussion in the February 12, 2016 and the May 16, 2016 letters (attached) in these comments.

As Attorneys General Morrisey and Paxton stated in their May 16, 2016 letter, any effort by the EPA to force states to take actions on the CEIP or the carbon trading rules by setting deadlines for state action—including deadlines for notice-and-comment—while the stay is in place would clearly violate the United States Supreme Court's order. Additionally, Attorneys General Morrisey and Paxton noted in the February 12, 2016 letter that further actions would "suggest that the EPA was attempting to render the stay a nullity, by punishing ex post those States and state agencies that had relied in good faith on the Supreme Court's decision to halt the Rule to ensure orderly legal process."

For the EPA to assert that the United States Supreme Court's order only affected their ability to enforce the CPP and did not prevent them from continuing to work with states, craft additional related rules, or amend the CPP ignores the foundation upon which the stay was granted.

A-2. While the CPP rule is stayed by the United States Supreme Court, the timeline of the program and all related programs are uncertain. The EPA should not finalize any design details for the CEIP that include uncertain dates, particularly when the eligibility date is already viewed as challenging.

The EPA's attempt to maintain the project eligibility dates and compliance period dates cannot be finalized in the design details for the CEIP. In the rule preamble, the EPA says that states are no longer required to indicate participation in the CEIP by September 6, 2016 due to the stay. The timeline for the CPP rule is now in a state of uncertainty. Since the stay is the reason for discontinuing the September 6, 2016 participation requirement, it is not appropriate to maintain the current eligibility dates or the compliance period dates in this proposed rule. These dates may not allow for states, energy providers, and other groups to have enough time to implement plans or infrastructure required to comply with the CEIP requirements if the stay is lifted. Keeping these dates has the potential to create unnecessary hardship on states, renewable energy providers, and groups trying to provide energy efficiency to low-income communities.

A-3. The EPA has never allowed for public comment on the size of the EPA matching pool and is in violation of the Administrative Procedures Act (APA).

Even though the proposed rule covers many aspects of the CEIP, the EPA indicates that they are not reopening the size of the matching pool as finalized in the final CPP rulemaking (81 FR 42950). However, the reality is that the size of the EPA matching pool of CO_2 tons for the CEIP was never open for public comment in the first place. The EPA included the CEIP concept and the 300 million ton pool at adoption and has never allowed states or the public any opportunity to comment on the size of the EPA matching pool. The APA, United States Code Title 5, §553, requires the EPA to give interested persons an opportunity to comment on its rulemaking activities. Just because the EPA included the CEIP in response to comments about incentives does not allow the EPA to circumvent the APA requirements for public comment. Furthermore, while the APA allows agencies to claim an exception to the APA rulemaking requirements, the EPA has not made such a claim regarding the CEIP, much less met the requirements in §553 for claiming an exception. Because the EPA has not complied with the APA for the CEIP rulemaking, the EPA should withdraw all aspects of the CEIP and re-propose the program, but only after the CPP rule litigation has been resolved.

A-4. The proposed CEIP, as part of the implementation of the EPA's CPP rule emission guidelines, would incentivize the renewable energy sources that the EPA prefers without consideration for state-specific energy policy decisions.

As the TCEQ and PUCT have previously commented on the proposed rules for the CPP emission guidelines and the federal plan/model trading rules, collectively, these rulemakings are an attempt to require states to comply with the EPA's vision of establishing a national energy policy, without Congressional approval or endorsement. A state's renewable energy standards and the fuel mix of the fossil fuel-fired power generation fleet are not a system of emission reduction but are in fact energy policy decisions. The EPA is taking a mix of energy policies from the states, selecting the policies that it prefers, and imposing those policies onto the states by incorporating those energy policies into the state goal calculation under the guise of best system of emission reduction. The CEIP and the design details in this proposal are simply a continuation of the EPA's unprecedented attempt to require and incentivize the types of renewable energy sources it prefers. Texas, by the nature of its geography, does not have access to strong hydropower resources, which the EPA has preferentially selected as a renewable energy resource eligible for allowances and ERCs. The EPA's fixation on mandating certain technologies appears to evince a bias for certain industries and could result in perverse incentives to construct and operate certain technologies, even in states for which such technologies may not be economically or geographically optimal. In addition, if the EPA really intended for the CEIP to incentivize early action, it would not impose burdensome evaluation, measurement, and verification (EM&V) requirements, apply arbitrary implementation start dates, or attempt to micromanage the split of the state's pool of early action allowances or ERCs.

B. CEIP Design Details

B-1. The EPA should grant greater flexibility to the states for the apportionment of the matching pool. A 50/50 split of the pool is arbitrary and neglects the unique energy needs of each state.

A 50/50 apportionment of the matching pool of renewable energy projects and low-income community projects does not allow for the flexibility that may be necessary to cater to each state's individual needs. The EPA should refrain from micromanaging how the states divide shares of the matching pool. Instead, the EPA should allow for each state to make better use of its own resources by granting flexibility to decide how to award the matching allowances or ERCs. It is the states that are going to be processing the additional pool of ERCs or allowances, not the EPA. The states are better aware of the types of projects likely to be implemented and the projects that will benefit the greatest from the incentives provided under the CEIP, depending on the landscape of a particular state. States that have more access to land and greater solar use potential may find more benefit to installing a greater number of renewable energy projects for the CEIP, while states with greater and denser low-income communities may find the low-income community projects to be a better way to implement the CEIP.

The TCEQ and PUCT recommend that the EPA provide full discretion to the states concerning the award of matching allowances or matching ERCs in order to give states the ability to facilitate the greatest incentive for the most beneficial projects or programs. If the EPA objects to states possessing full discretion involving the distribution of matching awards, then the TCEQ and PUCT recommend that the EPA use the 40-40-20 alternative that is mentioned in the preamble. This option would at least allow for states to have discretion over 20% of the matching pool. This alternative is preferable to the arbitrary 50/50 split in the proposed rule.

B-2. It is not appropriate for the EPA to restrict the number of CEIP early action and matching allowances or emission rate credits for wind or solar projects based on the extension of the tax credits.

The EPA requested comment on whether it was appropriate to limit the number of CEIP early action and matching allowances or ERCs available to wind or solar projects in light of the tax credit extensions (81 FR 42952). The fact that a particular wind or solar project might receive a federal tax credit should have no bearing on whether the project is eligible to receive a credit or allowance under the CEIP. The EPA's stated purpose for the CEIP is to encourage and reward earlier implementation of clean energy projects. The federal tax credits actually help achieve the EPA's purpose by encouraging more wind and solar energy projects, yet the EPA is soliciting comments on whether companies that receive those credits should be penalized by either limiting their eligibility or excluding them altogether. The EPA provides no technical or legal basis for treating these projects differently from other potential participants in the CEIP. Furthermore, many energy-related projects receive government assistance and tax benefits, including energy efficiency programs. The United States Internal Revenue Service (IRS) allows tax credits for residential energy projects such as solar electric projects and solar water heating as well as nonbusiness qualified energy efficiency

improvements such as insulation and exterior windows and doors (Department of Treasury, IRS Instructions for Form 5695, January 4, 2016). It is unknown if the EPA also intends to limit or exclude potential low-income community projects where the resident benefits from IRS tax credits or a local government rebate program. The TCEQ and PUCT oppose restricting either renewable energy or low-income community projects under the CEIP based on tax credits or any other government incentives. However, the EPA's CEIP rule would be arbitrary at the most fundamental level if the EPA imposes restrictions on renewable energy projects that receive tax credits and not for energy efficiency projects that also receive tax credits. The EPA states that its objective with the CEIP is to "incentivize reductions in emissions that might otherwise not have occurred" (81 FR 42965). By EPA's own admission, it wishes to incentivize projects that are uneconomic given the current financial landscape (of which tax credits are a part), which is very likely to result in a misallocation of capital to uneconomic projects that cannot be supported by market forces. This is capital that could be better invested elsewhere to increase the production possibility of society and contribute to economic growth.

B-3. The EPA needs to clarify state authority issues related to the CEIP and tribal lands.

The EPA is proposing under 40 Code of Federal Regulations, Part 60, §60.5373(c)(10) that a state plan may not prohibit an eligible CEIP project from receiving early action allowances or ERCs on the basis that the project is located in Indian country (81 FR 42971). However, in the final CPP rule under proposed §60.5745(a)(9), the EPA requires states to demonstrate that they have the legal authority and funding to implement and enforce each component of the state plan submittal. The requirement to demonstrate legal authority in §60.5745(a)(9) appears in conflict with the EPA's proposed requirement that states may not prohibit an eligible CEIP project that is located in Indian country. State agencies do not have authority over tribal lands and therefore have no legal authority to enforce any aspect of the CEIP for projects located on tribal lands. States are also required to include actions in the state plan that would be taken if a CEIP allowance or ERC was found to be improperly issued. Such a circumstance may entail performing an investigation if, for example, the state received a complaint that energy efficiency improvements at a location on tribal lands were not installed as represented. State investigators would have no legal authority to enter tribal lands to perform such an investigation. If the EPA is assuming that because the CEIP is voluntary a person or business located on tribal lands is somehow granting authority to the state when they choose to participate in the program, the TCEQ and PUCT find this assumption highly questionable. The EPA indicates in preamble to the proposed rule that the CEIP would not be an infringement on tribal sovereignty (81 FR 42967). The EPA should clarify that states have no enforcement authority obligations under the CEIP for projects located on sovereign tribal property.

B-4. The EPA should include reapportionment provisions in the CEIP.

Although the EPA cites multiple reasons in the preamble for not including reapportionment provisions in the proposed rule, when considered together, these reasons do not provide a valid rationale for excluding reapportionment provisions. Reapportionment would allow for the award of more early action allowances or ERCs

for eligible projects in states that have exhausted their initial share of the pool. If a state refused to accept its share of the reapportionment based on timing/uncertainty concerns, those allowances or ERCs could simply be retired.

First, the EPA offers two main reasons for not including reapportionment provisions: timing considerations and wind/solar tax credits. The timing considerations of concern are associated with the uncertainty of when EPA would know that additional matching allowances or ERCs are available based on which states "opt in" to the CEIP. However, "opting in" is not as simple as that terminology would imply. For a state to "opt in," many planning decisions would already be made at the state level, and a state would have to submit CEIP provisions as part of its approvable state plan. Even if this information was known and the reapportionment pool was determined after the beginning of the CEIP project eligibility period, states could still award these additional early action allowances or ERCs, especially if they had a surplus of eligible project applications.

The EPA also mentions that wind and solar tax credits may impact the "imperative for reapportionment," thus determining that reapportionment is unneeded. This rationale implies that the EPA does not believe that the CEIP provides any incentive to these types of sources because they are already sufficiently incentivized by these real monetary incentives. As noted in the previous comment, these projects should remain eligible for the CEIP. However, if the EPA concludes that wind and solar projects that receive tax credits should be excluded from CEIP eligibility or be awarded a fraction of allowances or ERCs with an applied adjustment factor, because such projects receiving tax credits may already be induced by those incentives rather than the CEIP, the EPA should then allow for reapportionment of EPA matching allowances or ERCs among the CEIP-participating states. The EPA has never opened for comment nor sufficiently justified the size of the CEIP matching pool, so it remains unclear whether the size of the pool is appropriate for actually achieving the EPA's goal of incentivizing any early action beyond what is already planned.

The EPA also mentions administrative concerns with completing the reapportionment after the known participants are determined, but before the program begins, thus adding an element of uncertainty after a state has begun implementing CEIP. However, as noted above, even if the beginning of the eligibility period has passed, states could still award early action allowances or ERCs if they have eligible projects, or they could ultimately refuse the reapportionment if it proved too complex to implement, and their share could simply be retired.

The EPA also cites the supposed possibility of a "double-disadvantage" prompting states to opt into the CEIP to prevent other states from receiving their share of the pool, but not actually implementing the program. The EPA fails to offer a realistic example or scenario that could possibly lead to this result. In order for a state to even participate in the CEIP, by the EPA's own design, the state must submit a state plan that must meet all requirements to implement the program, and this state plan must be approved by the EPA. A perceived competitive disadvantage compared to other states for matching allowances or ERCs with unknown monetary value hardly seems

like a convincing reason to expend the considerable resources necessary to implement the CEIP.

Finally, the EPA concludes by stating that it expects most states to participate anyway, so the unused pool would be small. However, the size of the unused portion is insufficient reason to not reapportion those shares to states that could use them for eligible early projects. Again, this conclusory assertion by the EPA highlights the lack of technical justification for the size of the matching pool. The EPA should include reapportionment provisions in the CEIP, and if so, the TCEQ and PUCT agree with the EPA's proposed approach to reapportion matching allowances or ERCs among the states on a pro-rata basis, and any matching allowances or ERCs not awarded from a state's matching allowance or ERC apportionment by January 1, 2023 should be retired.

B-5. The EPA should apply the proposed adjustment factor to only those eligible ERC resources that received early action ERCs so as to not penalize natural gas combined cycle (NGCC) resources that could also qualify as eligible ERC resources.

For states to fully account for the issuance of early action ERCs during the first interim step of the plan performance period and thus maintain stringency of CO_2 emission performance by affected EGUs as required by the emission guidelines, the EPA proposes as its presumptively approvable approach to apply an adjustment factor to the quantified and verified MWh reported by each eligible ERC resource, regardless of whether that resource received early action ERCs under the CEIP. Under this proposed method, the EPA may disincentivize NGCC resources that otherwise plan to generate additional eligible MWh in order to secure ERCs for their additional generation. The EPA notes that the proposed method would reduce the number of ERCs issued to eligible ERC resources that did not participate in the CEIP. The EPA further recognizes that these eligible ERC resources would not have received early action incentives through the CEIP, and they would also experience a reduction in the potential incentives they could otherwise receive during the plan performance period.

The EPA should not penalize NGCC resources simply because they could not participate in the CEIP. The TCEQ and PUCT strongly urge the EPA to allow owners and operators of eligible NGCC resources to generate eligible MWh and receive ERCs during the plan performance period by increasing utilization and not apply a reduction in the potential incentives they could otherwise receive for the incremental generation. As of June 1, 2016, Texas has approximately 59,000 megawatts (MW) of NGCC capacity currently permitted with an approximate 5,300 MW of additional NGCC capacity with pending air permit authorizations. According to the U.S. Energy Information Administration, NGCC resources in Texas produced approximately 116,600,000 MWh of net electric power in 2014 of the state's total net electric power generation of approximately 397,200,000 MWh.

B-6. The EPA's proposed rule text concerning the requirement for eligible renewable energy projects to be connected to and deliver energy to the electric grid effectively omits residential and community rooftop solar deployment. In proposed §§62.16245(c)(2)(i)(A) and 62.16435(d)(2)(i)(A), the EPA should remove the

constraint that solar renewable energy projects deployed on residential or community rooftops must deliver energy to the electric grid in order to be considered eligible CEIP renewable energy projects.

Imposing the condition that all renewable energy projects or programs must deliver energy to the electric grid for the purpose of satisfying CEIP renewable energy project eligibility practically eliminates the deployment of residential and community rooftop solar projects. The TCEQ and PUCT anticipate that many residential and community installations would result in on-site power generation and subsequent on-site consumption with the net effect of a small quantity of electric power sent into the grid. Consequently, the TCEQ and PUCT do not expect many, if any at all, project providers to commence residential or community rooftop solar projects exclusively for the purpose of generating electricity for energy to the electric grid. It is the TCEQ and PUCT's observation that these specific types of projects exist with the objective of reducing the customer's withdrawal of power from the grid. This would result in a very small differential amount, if any, of electric power delivered to the electric grid. The EPA's proposed rule provision would effectively compel these renewable energy project types to generate surplus electric power with the possible goal of attaining an almost negligible amount of potential credits, either in the form of allowances or ERCs.

The TCEQ and PUCT strongly advise the EPA to revise the proposed rule provisions to enable residential and community rooftop solar projects to reasonably engage in the CEIP. The EPA could exempt residential and community rooftop solar projects from the requirement to deliver energy to the electric grid or establish a separate rule provision absolving them from the constraint. The EPA's proposed rule misses the value of the on-site electricity use, which may be all of the electricity generated, in light of the EPA's proposed rule regarding potential rooftop solar technologies.

B-7. The EPA should revise the proposed rule text regarding the requirement for low-income community renewable energy projects to be connected to and deliver energy to the electric grid to make it similar to the proposed rule text for low-income community energy efficiency projects. In proposed §§62.16245(c)(2)(ii)(F) and 62.16435(d)(2)(ii)(F), the EPA should remove the words "and deliver energy to" to make clear that residential or community rooftop solar implemented in a low-income community could also participate in the CEIP.

As part of the requirements for projects or programs to be eligible to receive early action allowances or ERCs from the CEIP and related EPA matching allowances or ERCs, the EPA proposes that a low-income community renewable energy project must be a solar resource implemented to serve a low-income community that provides direct electricity bill benefits to low-income community ratepayers. Such projects must also be connected to and deliver energy to the electric grid to receive awards from the low-income community reserve based on the energy generation that exclusively benefits low-income ratepayers. However, the EPA failed to explain how exactly it expects an eligible project provider implementing solar renewable energy in a low-income community to connect to and deliver energy to the electric grid so that the electricity generated by a solar renewable energy resource is exclusively dispatched to a low-income ratepayer located in a low-income community, furthermore providing direct electricity bill benefits to a low-income community ratepayer. These conflicting

requirements seem to indicate that the EPA does not understand how the electric grid works. A renewable energy source that is connected to the electric grid cannot direct the generated electricity to only certain low-income communities in this manner. If the EPA believes that distributed, rooftop, or community solar technologies are well-suited for implementation in low-income communities, the EPA should seriously consider the dynamics of electric grid infrastructure and the delivery of generated electricity in the context of the EPA's proposed rule text. The TCEQ and PUCT disagree with the EPA's apparent assumption that electricity generated by a solar renewable energy resource and provided to the electric grid can be directed to a low-income community with the result that the low-income community ratepayer does not receive generation from any other resource. The only electricity generated from rooftop solar that can be controlled in such a manner is that which is directly consumed onsite and not provided to the grid and, as discussed in TCEQ/PUCT Comment B-6 (page 7), the EPA does not appear to even allow for the generation of ERCs or allowances from such solar projects.

As a way for states to determine the benefits delivered to low-income community ratepayers, the EPA should view solar renewable energy projects in low-income communities as energy efficiency projects to facilitate electricity savings, in MWh, in residences or buildings that would also be connected to the electric grid. Applied as an energy efficiency project, a low-income community ratepayer could still obtain direct electricity bill benefits in the form of reduced bills due to on-site generation displacing electric power consumption from the grid.

B-8. The proposed October 23, 2015 cut-off date for definitions of "low-income community" is unnecessary.

States are required to establish a definition of a "low-income community" during the process of implementing the CEIP. The proposed rule would restrict that definition to one that was established before October 23, 2015, which was the publication date of the final emission guidelines. However "routine updates" are allowed to existing definitions as long as those definitions were established before October 23, 2015. There appears to be no reason for this date other than regulation for regulation's sake. If the concern exists that states might generate an unfair definition of low-income community in response to this rule, why are "routine updates" to existing definitions allowed? Because the proposed rule does not define what constitutes a "routine update," a state could potentially create an entirely new definition and call it a "routine update." Moreover, this concern is unnecessary since the chosen definition must also be approved by the EPA. So long as a definition of "low-income community" is approved by the EPA, a state should have the freedom to create said definition at any time before the state plan is submitted to the EPA.

B-9. The EPA gives little reasoning as to why low-income community energy efficiency projects have a different eligibility period than renewable energy projects.

The EPA is proposing to allow low-income community energy efficiency projects additional time to generate early action allowances or ERCs due to comments received from other parties. The proposal provides an "extended ramp-up period for projects" as the justification for extending the allowance or ERC generation period for these

types of projects, but it lacks discussion of the differences expected between renewable energy projects (both low-income community and other renewable energy projects) and low-income community energy efficiency in terms of need for more time. Further clarification is requested as to why low-income community energy efficiency projects warrant this "ramp-up period" and the other CEIP-eligible renewable energy projects should not receive the same time adjustment consideration.

B-10. The EPA should apply EM&V requirements for low-income community renewable energy generation projects that are more consistent with EM&V requirements for the low-income community energy efficiency projects.

Qualifying renewable energy generation at low-income residences should be measured and credited as electricity produced, not electricity sent to the grid. The EM&V requirements should align with the CEIP energy efficiency EM&V, and focus on measuring the net reduction in electricity use delivered to customers from the grid. For multistory apartment buildings, a rooftop photovoltaic system is less likely to generate more electricity than is used as the number of floors of the building increases. Crediting only the electricity sent to the grid misses the value of the on-site electricity use, which may be all of the electricity generated. Crediting all of the renewable energy generated at low-income residences is also consistent with the stated goal of providing credit for projects that result in "energy generation that exclusively benefits low-income ratepayers." Aligning EM&V requirements for the energy efficiency component and the renewable generation component would result in greater clarity, transparency, and reduce the administrative burden on states of creating and applying varying EM&V standards.

B-11. The EPA should revise the proposed requirements to remove the 60-day waiting period prior to the issuance of matching ERCs or allowances.

It is unclear why proposed §60.5373(f)(1) requires a 60-day waiting period between the time the state issues the early action ERC or allowance and the time when the EPA issues the matching allocation. The proposed rule should be revised to allow the state and matching ERCs or allowances to be issued at the same time with EPA review preceding this action. This would provide more certainty for the recipients that the state-issued ERCs or allowances are valid when received. The EPA has not provided any justification for why the state would need to issue ERCs or allowances before the EPA has reviewed the project. The EPA should also clarify the proposed requirement that matching ERCs must be issued on "a regular established schedule" (81 FR 42958) and justify why this provision is necessary. Moreover, the EPA should clarify its process for holding state transfers from the matching EPA account, including how long it could hold such transfers, and provide clearly stated guidelines for a state or an eligible recipient to appeal such a hold. Such guidelines would improve market certainty, transparency, and participation in these programs.

B-12. The EPA should clarify the system requirements for records related to the early action ERCs or allowances but not specify the exact mechanism by which states must make records available.

The EPA should clarify the recordkeeping requirements in proposed §60.5865(e) to explain what is required for records to be "readily available for expeditious review." If a state plans to develop their own system for recordkeeping it is important that this information be available as early as possible to allow for record system development. However, the specific mechanism that records are made available should be left to the state.