Ronald A. Brisé Chairman



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December 13, 2013

Ms. Janet McCabe Acting Assistant Administrator Office of Air and Radiation Environmental Protection Agency Mail Code: 6101A 1200 Pennsylvania Ave., NW Washington, DC 20460

Re: Considerations in the Design of a Program to Reduce Carbon Pollution from Existing Power Plants

Dear Ms. McCabe:

The Florida Public Service Commission (FPSC) appreciates the opportunity to provide input to the U.S. Environmental Protection Agency (EPA) in its efforts to develop a proposed rule addressing carbon emissions from existing electric generating units pursuant to the Clean Air Act (CAA), Section 111(d). The FPSC believes it is necessary to include states in the process of developing EPA guidelines because states are in the best position to know the details of the particular electricity markets, energy consumers, and the existing energy-related policies in their respective states. Herein, the FPSC expresses its desire that the EPA acknowledge states' authority and responsibility to develop plans as afforded under the CAA. State implementation plans should afford electric utilities with the flexibility to meet any standards in a cost-effective manner and allow for the consideration of all compliance options.

The FPSC is charged with ensuring that Florida's electric utilities provide safe, reliable service for Florida's consumers in a cost-effective manner. The FPSC has regulatory authority under Chapter 366, Florida Statutes (F.S.), over Florida's five investor-owned electric utilities, including aspects of rates, operations, and safety. This statute also provides the FPSC with more limited authority over safety, rate structure, and planning for Florida's 35 municipally-owned and 18 rural electric cooperatives. Further, Section 366.015, F.S., encourages the FPSC to participate in federal proceedings that affect the utilities we regulate.

The FPSC recognizes the necessity and role of the EPA to address public health and environmental measures. The FPSC is concerned, however, that the EPA's future rule for existing fossil-fueled power plants has the potential to reduce fuel diversity, adversely impact reliability, and increase costs for Florida's energy consumers. In order to minimize these impacts, each state in Ms. Janet McCabe Page 2 December 13, 2013

developing its implementation plan should have the ability to choose compliance options to meet air emissions standards that best fit the state's unique electric system and load profile. Florida's utilities should have the greatest possible level of flexibility in their generation fuel source mix when seeking to comply with relevant carbon standards. A diversified fuel supply can enhance system reliability and significantly mitigate the effects of volatile fuel price fluctuations, extreme weather events, and unplanned plant outages.

The EPA should also consider the efforts already made by the states and utilities, which have had the effect of reducing CO₂ emissions, when designing its guidelines for existing power plants. In Florida, investments made by utilities in repowerings, nuclear uprates, and other generating unit efficiency improvements have had a beneficial impact on air quality. The Florida Department of Environmental Protection estimates Florida's average CO₂ emissions profile, for power produced in Florida, decreased from 1,835 pounds per megawatt-hour (lbs./MWh) in 2000 to 1,291 lbs./MWh in 2012. The FPSC asserts that the EPA guidelines for existing electric generating units should avoid setting a performance level that is based on a national uniform approach and instead recognize the varying characteristics of specific states and regions of the U.S. Finally, the EPA should avoid a one-size-fits-all mandate and provide guidelines that allow states to incorporate existing programs that have been successful in reducing greenhouse gases into their state implementation plans.

The FPSC appreciates the opportunity to provide input into EPA's development of proposed standards for CO₂ emission reductions from existing sources. To avoid regulations that adversely affect fuel diversity, reliability, and costs to Florida's customers, the FPSC urges the EPA to consider the attached responses to its questions posed to the states on September 23, 2013 (Attachment A). The FPSC also supports the general principles for federal environmental regulations as established in the National Association of Regulatory Utility Commissioners' (NARUC) resolution, entitled "Resolution on Increased Flexibility with Regard to the EPA's Regulation of Greenhouse Gas Emissions from Existing Power Plants." The resolution was approved by the Board of Directors of NARUC at its 2013 Annual Meetings in November 2013, and is included (Attachment B).

Thank you for considering our concerns.

Sincerely,

Ronald A. Brisé Chairman, Florida Public Service Commission

Attachments

The Florida Public Service Commission's Responses to EPA's Questions to States Regarding the Design of a Program to Reduce Carbon Pollution from Existing Power Plants

What actions are states, utilities, and power plants taking today that reduce CO_2 emissions from the electric power system?

The current landscape of CO_2 emissions from the power sector in Florida is encouraging. Through a combination of repowering as a result of low natural gas prices, demand-side management goals, and efficiency improvements, Florida's utilities have reduced their average CO_2 emissions per megawatt-hour produced. The Florida Department of Environmental Protection estimates Florida's average CO_2 emissions profile, for power produced in Florida, decreased from 1,835 pounds per megawatt-hour (lbs./MWh) in 2000 to 1,291 lbs./MWh in 2012. Additionally, the FPSC has policies in place that are designed to, among other goals, improve environmental conditions by encouraging the generation of renewable energy, encouraging efficient operation of electric baseload generating units, and reducing and controlling growth in peak demand and electricity consumption.

- Standard Offer Contract: Designed to implement requirements under the Public Utility Regulatory Policies Act, Section 366.91(3), F.S., requires that each investor-owned utility continuously offer to purchase capacity and energy from renewable energy generators. Under this requirement, each investor-owned utility must file with the FPSC by April 1 of each year a standard offer contract based on the next avoidable generating unit or planned purchase. Requiring a standard offer contract ensures that renewable energy generators have a place in Florida's energy sector.
- Net Metering and Expedited Interconnection of Customer-Owned Renewable Generation: The FPSC has adopted rules that require the expedited interconnection and net metering of small customer-owned renewable resources. This program is designed to promote the development of small customer-owned renewable generation, particularly solar and wind energy systems. As of December 2012, Florida recorded 5,296 total

connections of customer-owned renewable generation delivering 18,674,866 kilowatthours in 2012 to Florida's investor-owned, municipal, and rural electric cooperative utilities.

- Generating Performance Incentive Factor (GPIF): To encourage the efficient operation of electric baseload generating units, the FPSC sets targets for electric generating utilities that include heat rate improvements. The FPSC has the authority to reward utilities that reach their targets and penalize those utilities that do not reach their targets. This policy encourages utilities to engage in supply-side energy efficiency improvements, thus reducing average fuel consumed per MWh at the plant level.
- Demand-side Management Programs (DSM): The Florida Legislature enacted the Florida Energy Efficiency and Conservation Act (FEECA) in 1980, with an emphasis of reducing the growth rates of weather-sensitive peak demand, reducing the growth rates of electricity consumption, and reducing the consumption of expensive resources such as petroleum fuels. To accomplish these objectives, FEECA requires the FPSC to establish goals and the electric utilities to implement DSM programs to meet those goals. Additionally, in 2009 the FPSC directed the FEECA utilities to spend 10 percent of their historic energy conservation cost recovery expenditures on solar water heating and solar photovoltaic pilot programs. Collectively, the FEECA utilities have been successful in meeting demand and energy reduction goals, which may have contributed to reductions in Florida's CO₂ emissions.
- Utility Efforts: EPA guidelines should allow states to give credit to utilities for past actions to improve their overall generating efficiency that have had a beneficial impact on air quality. Florida's utilities have invested in generation efficiency improvements, repowerings, and nuclear uprates, which have had a beneficial impact on Florida's average CO₂ emissions profile. Additionally, in an effort to further reduce CO₂ emissions, an experimental project is underway in Florida to evaluate the feasibility of incorporating Carbon Capture technology.

What level of flexibility should be provided to states in meeting the required level of performance for affected electric generating units contained in the emission guidelines?

The FPSC believes that EPA guidelines for CO_2 emissions reductions (EPA guidelines), under the CAA Section 111(d), must allow states the opportunity to provide electric utilities the flexibility to choose the most efficient, least-cost compliance option to meet public health and environmental goals. Additionally, EPA should consider the efforts made by the states and utilities to curb CO_2 emissions when designing its guidelines for existing power plants and give credit for early actions taken by electric utilities. In order to minimize costs, each utility should have the ability in a state implementation plan to propose compliance options to meet air emissions standards that best fit the utility's unique system and varying load profiles. Because a diversified fuel supply can enhance system reliability and significantly mitigate the effects of volatile fuel price fluctuations, extreme weather events and unplanned plant outages, it is important that utilities have the greatest possible level of flexibility in their generation fuel source mix when seeking to comply with relevant carbon standards.

Which approaches to reducing CO_2 emissions from power plants should be included in the evaluation of the "best system of emission reduction" that is used to determine the performance level(s) that state plans must achieve?

The EPA states that "there are a number of ways to reduce CO_2 emissions from existing power plants that might be included in an evaluation of the best system of emission reduction." The FPSC asserts that EPA should avoid a one-size-fits-all mandate and provide guidelines that allow states to incorporate existing programs into their state implementation plans. One approach, which includes flexibility for electric utilities to choose the most efficient, least-cost compliance option, would be to set a level of emission performance based on onsite actions that affected sources could potentially achieve through supply-side energy efficiency improvements. EPA's guidelines should also devise a mechanism that provides utilities with the opportunity to receive credit for CO_2 reductions achieved through the implementation of DSM programs. DSM programs can have a secondary benefit of lowering CO_2 emissions from power plants by reducing the amount of fossil fuels used for electricity generation. EPA's guidelines should not include requirements of offsite actions such as DSM programs because the success of DSM programs is not entirely under the control of the affected source. States should also have the discretion to provide flexibility to comply with any standards utilizing renewables, including utility-owned renewables, utility purchases from renewable generators, and customer-owned renewables.

What should be the form and specificity of the performance level(s) in EPA guidelines? (Ratebased or mass-based? Separate levels for each subcategory of sources, or one level for the covered sources in the state? A uniform national level, or different levels by state/region based on an established evaluation process?)

The FPSC takes no position on certain aspects of the form and specificity of the performance level(s) in EPA's guidelines, such as using a "rate-based" or "mass-based" standard of performance. The FPSC asserts that EPA guidelines should avoid setting a performance level that is based on a national uniform approach and recognize the varying characteristics of specific states and regions of the U.S. For example, electricity usage in Florida is impacted by the state's unique weather, customer base, and high reliance on electricity for cooling and heating. Florida has the highest number of cooling degree days of any state in the continental U.S., indicating the greatest need for air conditioning in the summer months. Our state's high proportion of residential customers comprises almost 89 percent of Florida's electricity customers, and includes a large population of senior citizens on fixed incomes. Compared to other states, Florida's customers rely more heavily on electricity to meet their energy needs, rather than the direct use of natural gas or other fuels for cooling and heating. Approximately 85 percent of Florida's residential customers' energy needs are met with electricity.

As with the EPA requirements for new power plants, EPA guidelines for existing sources should include separate levels for different sources. Additionally, the FPSC supports EPA's decision to exclude modified power plants from the revised new source rule and treat modified power plants as existing sources. Section 111(b) of the CAA requires the EPA to set emission standards for affected new, modified, and reconstructed sources. The FPSC maintains, however, that modified plants should be treated like existing sources under the guidelines of Section

111(d) since modified plants have the same limited options to reduce emissions as existing sources. Had modified plants been included in the new source rules, carbon capture and sequestration (CCS) might have been required at Florida's coal- and oil-fired units, and some natural gas-fired units. The added costs of CCS would result in some units being retired prematurely without allowing utilities the lead-time necessary to make cost-effective adjustments in their generation fleet.

Further, pursuant to Section 366.8255, F.S., Florida's investor-owned electric utilities have the opportunity to petition the FPSC for rate relief for prudently incurred costs to comply with new environmental requirements. The FPSC has implemented this statute through an annual Environmental Cost Recovery Clause. Between base rate proceedings, Florida's investor-owned electric utilities will have the opportunity to recover the costs associated with EPA regulations through this cost recovery clause, subject to FPSC review. Recovery of these compliance costs through a cost recovery clause, as allowed by Florida law, will have a near immediate rate impact on Florida's consumers.

El-2 Resolution on Increased Flexibility with Regard to the EPA's Regulation of Greenhouse Gas Emissions from Existing Power Plants

WHEREAS, A reliable, affordable energy supply is vital to the nation's future economic growth, security, and quality of life; and

WHEREAS, Compliance with expected environmental regulations regulating greenhouse gas (GHG) emissions will affect ratepayers differently depending upon each State's existing generation, energy resources, electricity market and State commission decisions; and

WHEREAS, States have jurisdiction over the reliability and affordability of electricity provided to retail customers; and

WHEREAS, Incorporating flexibility in the implementation of EPA regulations to allow for unique State or regional strategies can lessen generation cost increases because of improved planning, greater use of energy efficiency and demand-side resources, and orderly decisionmaking; and

WHEREAS, NARUC at this time takes no position regarding the merits of EPA rulemakings for the purpose of regulating GHG from new or existing power plants; and

WHEREAS, In 2009, President Obama made a pledge that by 2020, America would reduce its greenhouse gas emissions in the range of 17 percent below 2005 levels; and

WHEREAS, The Regional Greenhouse Gas Initiative implemented by nine States is recognized as reducing emissions and provides a net consumer and economic benefit; and

WHEREAS, Ten States have successfully implemented market-based emissions trading systems applicable to the electrical power sectors for the purpose of reducing emissions; and

WHEREAS, Many States have: 1) implemented mandatory and/or voluntary renewable portfolio/energy standards, 2) implemented energy efficiency and/or peak load reduction programs, 3) experienced significant retirements of coal based generating plants and/or 4) mandated emission reductions programs; all of which have already contributed to a reduction in GHG emissions; and

WHEREAS, It may be in the best interest of ratepayers to maintain the operation of certain existing coal-based electricity generating plants that meet environmental performance requirements for priority pollutants for a period of time; and

WHEREAS, On June 25, 2013, the President issued a memorandum to the U.S. EPA Administrator directing the EPA to:

- Issue proposed carbon pollution standards, regulations, or guidelines, as appropriate, for modified, reconstructed, and existing power plants by no later than June 1, 2014;
- Issue final standards, regulations, or guidelines as appropriate for modified, reconstructed and existing power plants by no later than June 1, 2015;

 Include in the guidelines addressing existing power plants a requirement that States submit to the U.S. EPA the implementation plans required under Section 111(d) of the Clean Air Act and its implementing regulations by no later than June 30, 2016; and

WHEREAS, The President instructed the EPA, in its efforts to address GHG emissions from modified, reconstructed and existing power plants to engage directly with States, and expressly recognized that States "will play a central role in establishing and implementing standards for existing power plants;" and

WHEREAS, The President instructed the EPA to work with State agencies to "promote the reliable and affordable provision of electric power through the continued development and deployment of cleaner technologies and by increasing energy efficiency, including through stronger appliance efficiency standards and other measures;" *and*

WHEREAS, Section 111(d)(1)(A) requires the EPA to establish a procedure under which each State shall submit to the Administrator a plan which establishes standards of performance for existing sources; and

WHEREAS, Section 111(d)(1)(B) requires: (1) the plan submitted by the State to provide for the implementation and enforcement of such standards of performance and (2) the Administrator to permit a State, in applying such standards of performance, "to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies;" *and*

WHEREAS, The States rely on EPA to issue a procedure under Section 111(d) that reflects the best system or systems of emission reductions that has been adequately demonstrated at affected facilities; *and*

WHEREAS, State utility regulators have jurisdiction over decisions regarding integrated resource planning and/or resource adequacy, processes which ultimately determine the mixes of fuels and resources in State generation portfolios, which differ from State to State; *and*

WHEREAS, States have different mixes of fuels and resources in their existing generation portfolios; and

WHEREAS, States have achieved different levels of GHG reductions to date, and have diverse economies and face different economic conditions, including States with energy intensive manufacturing industries that provide goods for the entire nation; *now, therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners, convened at its 125th Annual Meeting in Orlando, Florida, urges the EPA, in developing any emissions guidelines for regulating carbon emissions from existing power plants, to recognize the primacy of States to rely on both State utility and environmental regulators to lead the creation of emission performance systems that reflect the policies, energy needs, resource mix, economic conditions of each State and region; *and be it further*

RESOLVED, That the guidelines should be flexible enough to allow States individually or regionally to take into account, when establishing standards of performance, the different makeup of existing power generation in each State and region; *and be it further*

RESOLVED, That the States need EPA under the relevant statutory factors, to issue guidelines that avoid GHG emissions reductions that are not feasible; *and be it further*

RESOLVED, That the guidelines should provide sufficiently flexible compliance pathways or mechanisms that recognize State and regional variations to achieve the most cost-effective emissions reductions in each State; *and be it further*

RESOLVED, That the guidelines recognize and credit States' emissions reduction achievements to date, recognize any and all existing State emission reduction programs, and shall not intrude on the States' jurisdiction over decisions regarding integrated resource planning and/or resource adequacy or otherwise mandate specific modifications to the mix of fuels and resources in existing and future State generation portfolios.

Sponsored by the Committee on Electricity Recommended by the NARUC Board of Directors November 19, 2013 Adopted by the NARUC Committee of the Whole November 20, 2013.