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GENERAL MEMORANDUM 14-088

EPA Proposed Rule for Carbon Emissions in Indian Country; Comments Sought on How to Credit Renewable Energy and Efficiency Investments

On November 4, 2014, the Environmental Protection Agency (EPA) issued a proposed rule to establish guidelines for reducing carbon dioxide (CO₂) emissions from *existing* fossil fuel-fired electric generating units (EGUs) in Indian Country and in U.S. territories (the "Indian Country Proposal"). With respect to *Indian reservations where there are no existing EGUs*, EPA seeks comments on how CO₂ emissions that are avoided through investments in renewable energy and energy efficiency on such reservations could be included in the plans that states are required to adopt to meet their emissions reduction goals and, presumably, what Indian Country investors would receive in exchange. The proposed rule is here: www.gpo.gov/fdsys/pkg/FR-2014-11-04/pdf/2014-26112.pdf. *The deadline for submitting comments on the Indian Country Proposal is December 19, 2014. A public hearing has been scheduled in Phoenix, AZ, on November 19, 2014.*

Background. The Indian Country Proposal supplements the rule that EPA proposed on June 18, 2014, to establish guidelines for Greenhouse Gas (GHG) emissions from existing electric generating units (the "Clean Power Plan Proposed Rule").¹ The Clean Power Plan Proposed Rule is designed to reduce CO₂ emissions from power plants in the range of 30 percent below 2005 levels by 2030. The basic approach of the Clean Power Plan Proposed Rule is to require each state in which there are covered EGUs to adopt a plan. EPA refers to these plans as "section 111(d) plans," after the section of the Clean Air Act that serves as the basis for rule. EPA recognizes that there are two primary approaches for reducing CO₂ emissions from EGUs: (1) reducing the carbon intensity of covered EGUs, generally by improving their efficiency; and (2) reducing the amount of carbon emitted from covered EGUs by using them less, such as by meeting demand for electric power in other ways.

For the purpose of developing section 111(d) plans, EPA breaks these two basic approaches down into four "building blocks": (1) making existing fossil fuels plants more efficient; (2) using more low-emitting power sources (i.e., switching from coal to natural gas combined cycle plants); (3) using more zero-emitting power sources (e.g., more wind and solar power); and (4) using electricity more efficiently (including "demand side" management). Each state's, territory's and tribe's plan is supposed to consider the use of four building blocks. This approach allows for a great deal of flexibility.

¹ See our General Memorandum 14-051 of July 11, 2014. EPA has established a website for this rulemaking proposal: www2.epa.gov/carbon-pollution-standards/clean-power-plan-proposed-rule. *The deadline for filing comments on the Clean Power Plan Proposed Rule is December 1, 2014.*

Indian Reservations without Fossil Fuel Power Plants. While the Indian Country Proposal is almost entirely concerned with three reservations where there are existing EGUs, EPA has also asked for comments on one set of issues relating to Indian reservations that do *not* have existing EGUs and which, as such, are not directly covered by the proposed rule. The Clean Power Plan Proposed Rule is intended to help drive a transition in our national economy away from fossil fuel-fired electricity and toward efficiency and renewable energy (building blocks 3 and 4). State plans adopted under section 111(d) of the Clean Air Act generally will not apply within Indian reservations, since states lack jurisdiction to implement such plans within reservations. For reservations without existing EGUs, there will be no requirement to develop section 111(d) plans. In requesting comments on this set of issues, EPA writes:

The EPA requests comment on whether areas without affected EGUs may participate in multi-jurisdictional plans. . . . The EPA also requests comment on how CO₂ emissions avoided through RE [renewable energy] generating sources, demand-side management energy efficiency measures, and other new low- and non-emitting electricity generation from areas without affected EGUs could be used to adjust or credit CO₂ emission rates in states required to develop CAA section 111(d) plans.

The issue of a tribe without an existing ECU on its reservation may participate in a multi-jurisdictional plan seems particularly important. Section 111(d) plans that include building blocks 3 and 4 will help drive investments in renewable energy and efficiency throughout the country. On the EPA website for the Clean Power Plan, there is a "Toolbox" for states.

<http://www2.epa.gov/cleanpowerplanttoolbox>. Many of the tools in that toolbox make use of federal assistance programs for state and local governments. There is no comparable toolbox for tribal governments. Participation by a tribe in a multi-jurisdictional plan could be one way to adapt the tools designed for state programs so that they deliver benefits in Indian country.

With respect to crediting investments in Indian Country in renewable energy and energy efficiency, EPA also seeks comments on this point regarding reservations that do have existing EGUs. In that context, EPA also asks if the inclusion of such investments should be "dependent upon whether or not the tribe has adopted a CAA section 111(d) plan or EPA has made a finding and adopted a federal plan for that area of Indian country." How EPA resolves this issue in the final rule would seem to have implications for how EPA treats reservations without existing EGUs. Thus, if a reservation that does have an existing EGU must be covered by a section 111(d) plan for investments in renewable energy and efficiency to get credit, that would seem to imply that reservations without existing EGUs would also have to be included in a plan, and such a plan would have to be multi-jurisdictional.

Will the absence of section 111(d) plans contribute to Indian reservations being left behind in the transition toward an efficient, renewable energy economy? Will it become a practical necessity for tribes to join in multi-jurisdictional plans? Tribes may want to file comments on how this issue should be addressed in the final rule, to ensure that CO₂ emissions reductions resulting from investments in Indian Country are fully credited and financially incentivized.

Indian Reservations with Existing EGUs. The Indian Country Proposal would apply to the four known existing EGUs located on lands of three tribes: the Navajo Nation, the Ute Tribe of the Uintah and Ouray Reservation, and the Fort Mojave Tribe. The Indian Country Proposal has two main elements: (1) Emission rate-based CO₂ goals specific to each U.S. territory and area of Indian country that has affected EGUs; and (2) guidelines for the development, submission and implementation of plans to achieve the goals. For each area in Indian Country with an existing EGU, the Indian Country Proposal lays out specific CO₂ goals, without prescribing how each area should meet those goals. In calculating each CO₂ goal, the EPA took into consideration each area's fuel mix, its electricity market and other factors that are relevant to application of the four building blocks. Thus, each goal reflects the unique conditions for each area of Indian Country for attaining emission-rate based goals.

The Indian Country Proposal follows the same methodology as was described in the Clean Power Plan Proposed Rule, with modifications to make it fit the framework of EPA's Tribal Authority Rule (TAR) (40 C.F.R. § 49.7), which implements the provisions of the Clean Air Act authorizing EPA to treat tribes like states. Under the TAR, a tribe can request EPA to treat it in the same manner as a state for purposes of adopting a tribal implementation plan for its reservation. The Indian Country Proposal provides that a tribe with an existing EGU on its reservation may choose to adopt a section 111(d) plan, but it would not be required to. The Indian Country Proposal also offers the option for a tribe to enter into a multi-jurisdictional plan with adjacent states or tribes for reducing GHG emissions. In the absence of a tribal plan, EPA would be responsible for developing a plan if it determines that a plan is necessary to meet the emissions goal.

EPA requests comment on numerous aspects of the proposed rule, including the procedure for computing goals for areas of Indian Country with affected EGUs; the proposed interim goals that would apply over a 2020-2029 phase-in period; whether the methodology proposed is appropriate for Indian Country, or if adjustments or other approaches for the application of building block 3 would be more appropriate; area-specific historical data for affected EGUs in Indian Country to which the building blocks are applied in order to compute the area's goals; and area-specific data for Indian Country used to develop the area-specific data inputs for building blocks 3 and 4. In addition, EPA requests comment on whether there are other affected EGUs in Indian Country.

Please let us know if we may provide additional information regarding the Indian Country Proposal, the Clean Power Plan Proposed Rule, or related matters.

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