



STATE OF INDIANA

Michael R. Pence, Governor



December 1, 2014

EPA Docket Center
United States Environmental Protection Agency (U.S. EPA)
Mail Code: 2822T
Attention: Air Docket ID EPA-HQ-OAR-2013-0602
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

The State of Indiana via the undersigned agencies appreciates the opportunity to comment on the proposed rule entitled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (EGUs) (June 18, 2014, 79 Fed. Reg. 34830). Indiana urges U.S. EPA to withdraw the proposed rule for multiple reasons.

While Indiana urges U.S. EPA to withdraw the proposed rule for multiple reasons as set forth below, the State of Indiana respectfully requests that U.S. EPA take into consideration the technical corrections and comments outlined in the attachments to this letter if it proceeds in finalizing the rule. These comments are the result of a thoughtful, collaborative process between multiple Indiana state agencies with expertise in environmental, utility and natural resource issues.

The U.S. EPA lacks the authority to regulate existing EGUs pursuant to Section 111(d) of the Clean Air Act (CAA). The U.S. Supreme Court has noted¹ that where a source category is regulated under Section 112 of the CAA, U.S. EPA may not employ Section 111(d) to further restrict emissions from those existing sources. Since existing EGUs are regulated under Section 112 of the CAA, the proposed rule exceeds U.S. EPA’s statutory authority.

¹ *Am. Elec. Power Co. v. Connecticut*, 131 S. Ct. 2527, 2537, fn 7 (U.S. 2011).

In addition, U.S. EPA is relying on proposed regulations² that are not yet finalized as the predicate rules for new and modified EGUs. These rules are likely to be subject to legal challenges, and, if they are invalidated, any attempt to regulate existing EGUs under Section 111(d) of the CAA will further lack a statutory basis.

Furthermore, U.S. EPA does not have the authority under Section 111 of the CAA to require facilities to reduce emissions via action beyond the fence line and beyond the control of the affected sources. This proposed rule purports to implement control measures under the Best System of Emission Reductions (BSER) for Building Blocks 2, 3, and 4, but these measures are not under the direct control of the affected sources and are, therefore, not applicable under Section 111 of the CAA.

Granted, the proposed rule does not explicitly require that states implement any or all of the building blocks proposed by U.S. EPA. However, the manner in which U.S. EPA applied BSER to each building block to establish the goal for each state does require states to implement strategies beyond what can be achieved through a single building block. As a result, the statewide average emission rates proposed by U.S. EPA would be impossible to meet by implementing the only building block that can be legally implemented and enforced, that being Building Block 1. Clearly, the proposed rule is intended to regulate activities beyond the fence line and beyond the control of the affected sources. Federal law does not authorize this intent.

Indiana is in the process of developing a comprehensive energy plan. This plan is aimed at achieving the dual goals of long-term sustainability and cost-efficiency, while promoting economic vitality. The proposed rules are not consistent with our goals of affordable and reliable energy. Indiana is concerned that the proposed rules will lead to Hoosiers, particularly those in low income socioeconomic brackets, losing heat and power because they will not be able to pay for the rising utility costs. Indiana is also concerned that U.S. businesses will be unable to compete in a global economy due to the higher electricity rates, and that worldwide greenhouse gas emissions may actually increase due to the relocation of manufacturing operations from the U.S. to other countries with less restrictive regulations.

If you have any questions or need additional information, please contact Tom Easterly, Commissioner for the Indiana Department of Environmental Management, at (317) 232-8611.

² “Carbon Pollution Standards for Modified and Reconstructed Stationary Sources: Electric Utility Generating Units,” (June 18, 2014, 79 Fed. Reg. 34960); “Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units” (January 8, 2014, 79 Fed. Reg. 1430).

Respectfully,

Attachment D – Indiana EGU Information –
Nameplate Capacity



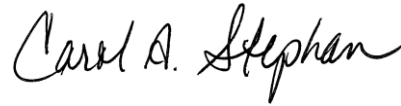
Thomas W. Easterly, *Commissioner*
Indiana Department of Environmental Management



Tristan Vance, *Director & Chief Energy Officer*
Indiana Office of Energy Development



A. David Stippler, *Utility Consumer Counselor*
Indiana Office of Utility Consumer Counselor



Carol A. Stephan, *Commission Chair*
Indiana Utility Regulatory Commission



Cameron F. Clark, *Executive Director*
Indiana Department of Natural Resources

Attachments:

- Attachment A – Technical Comments
- Attachment B – Indiana EGU Information – MWh
by Unit 2010-2012
- Attachment C – Indiana EGU Information – CO₂
Emissions by Unit 2010-2012

