



Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Matthew H. Mead, Governor

Todd Parfitt, Director

December 1, 2014

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Mail Code 28221T
1200 Pennsylvania Ave., NW
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Submitted electronically via www.regulations.gov
Attn: **Docket No. EPA-HQ-OAR-2013-0602**

Re: Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units

Dear Administrator McCarthy:

The Wyoming Department of Environmental Quality (WDEQ) appreciates the opportunity to comment on the Environmental Protection Agency (EPA)'s Carbon Pollution Emission Guidelines for Existing Sources: Electric Utility Generating Units; Proposed Rule, 79 Fed. Reg. 34,830 (June 18, 2014) (Proposed Rule). WDEQ's comments pertain to the technical and regulatory merits of the Proposed Rule. The State of Wyoming is providing additional comments in separate submittals to the docket. None of the comments made in this submittal in any way preclude comments submitted under a separate State of Wyoming submission to the docket.

This proposal is one of three proposed regulations developed in response to the June 25, 2013 Presidential Memorandum that directed EPA to address carbon pollution from new power plants and to issue "standards, regulations, or guidelines, as appropriate, which address carbon pollution from modified, reconstructed, and existing power plants." A proposed New Source Performance Standard (NSPS) was signed and published on January 8, 2014, in which EPA proposed carbon dioxide (CO₂) emission limits from electric utility generating units (EGUs) constructed after January 8, 2014. 79 Fed. Reg. at 1,430 (Jan. 8, 2014). Subsequently, on June 18, 2014 EPA proposed two more rulemakings pertaining to EGUs – this 111(d) proposal related to existing sources, and a 111(b) proposal related to modified and reconstructed sources. In this action, EPA is proposing state-specific emission goals for CO₂ from the power sector, as well as guidelines for states to follow in developing plans to achieve the state-specific goals.

Wyoming is a leader in developing and providing energy. Net electricity generation from Wyoming totaled nearly 49.6 million Megawatt-hours (MWh) in 2012, with nearly two-thirds of this electricity consumed beyond the State's borders. *U.S. Energy Information Administration*. (August 21, 2014)

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Wyoming's integral role in energy production provides WDEQ with a well-informed perspective from which to evaluate the Proposed Rule and its potential consequences. WDEQ's review finds that the Proposed Rule is fundamentally flawed and should be withdrawn principally because EPA lacks statutory authority to proceed with this rulemaking. Moreover, the Proposed Rule does not satisfy the statutory requirements of Section 111(d). In the event that EPA chooses not to withdraw the Proposed Rule, WDEQ provides the following comment on the Proposed Rule, including identification of errors and assumptions in EPA's calculation of Wyoming's goal.

WDEQ also identified instances where it would be beneficial for EPA to provide further guidance or clarification. Before going final with the two 111(b) actions and this Proposed Rule, WDEQ requests EPA provide opportunity for further public evaluation and comment of these interrelated proposed regulations.

I. Background

Congress's primary purpose in creating the Clean Air Act (CAA) was to "protect and enhance the quality of the Nation's air resource so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1). Congress recognized that "air pollution control at its source is the primary responsibility of States and local governments," but that states nonetheless benefit from "Federal financial assistance and leadership." 42 U.S.C. § 7401(3) and (4). The need for cooperative federalism undergirds the mechanisms of air pollution control established by the CAA.

Section 111(d) of the CAA establishes a framework within which the EPA Administrator and states work together to control air pollutants from categories of existing sources, subject to certain limitations. This section allocates most of the implementation responsibility to the states, which are obligated to create plans establishing standards of performance for sources located within their borders, and delegates a relatively minor role to the Administrator.

The Administrator first creates regulations to establish a procedure by which states can submit implementation plans to establish standards of performance for certain sources. 42 U.S.C. § 7411(d)(1). In doing so, the Administrator must permit states to consider a source's "useful life" when determining by how much, and in what manner, a source must control its emissions. 42 U.S.C. § 7411(d)(1). The Administrator also calculates emissions guidelines based on her determination of the best system of emission reduction (BSER), taking certain statutory factors into consideration. 42 U.S.C. § 7411(a)(1). A State must then construct a plan that limits emissions from all of the relevant sources within its borders based on a case-by-case application of state-determined standards of performance. 42 U.S.C. § 7411(d)(1). Because an approved plan is federally enforceable, EPA may enforce any aspect of the plan that the state fails to properly enforce. 42 U.S.C. § 7411(d)(2)(B). The Administrator is authorized to promulgate Section 111(d) regulations only for existing sources that are not regulated under Sections 108 or 112, and, even then, only if the analogous new sources are regulated under Section 111(b).

In the Proposed Rule, EPA establishes a strict carbon-emission goal for each state, which must be achieved no later than 2030. EPA also proposes the establishment of interim goals, to be achieved starting in 2020. According to the Proposed Rule, the BSER for controlling carbon emissions from fossil fuel-fired EGUs is a combination of four different “building blocks.” The state goals incorporate EPA’s generalized assumptions about how each of the four building blocks impact carbon emissions. The Proposed Rule requires states to submit a plan to EPA utilizing some, all, or none of the building blocks in order to achieve EPA’s proposed state goal by EPA’s proposed compliance date.

Building Block 1 involves increasing heat rate efficiency at affected sources. The additional three building blocks contemplate actions by state and private actors whose only relation to the affected sources is that they are connected to the same electricity grid. Building Block 2 substitutes electricity produced by coal-fired EGUs with electricity produced by natural gas-fired EGUs. Building Block 3 substitutes renewable energy (RE) and nuclear energy for energy produced by either coal or natural gas. Building Block 4 reduces demand-side energy consumption, regardless of how the energy may be produced.

II. EPA lacks statutory authority to proceed with this rulemaking.

As a threshold matter, EPA may not proceed with the Proposed Rule because it lacks the statutory authority to do so. The CAA establishes that EPA may not regulate an existing source under Section 111(d) after it has regulated the affected source under Section 112 or has regulated the pollutant under Section 108. Congress has already directed EPA to regulate EGUs under Section 112. EPA attempts to evade Section 111(d)’s mandate against double regulation of sources by alleging a statutory ambiguity that does not exist. Even if there was a statutory ambiguity, EPA may not interpret an ambiguity to find such broad regulatory authority without clear congressional authority. Finally, the CAA requires that lawful regulations for new and modified sources exist before EPA promulgates regulations for existing sources.

a. EPA may not regulate electric utility generating units under Section 111(d) because the 1990 Amendments required EPA to regulate them under Section 112, if at all.

The plain language of the CAA mandates that EPA may not regulate a source category under both Section 112 and Section 111(d).

“The Administrator shall establish regulations ... for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title[.]”

42 USC § 7411(d)(1). EPA acknowledges this limitation in the plain language of Section 111(d). “EPA [can] not regulate any air pollutant from a source category regulated under section 112.” Rule Legal Memorandum at 26. Section 112 directs EPA to regulate electric generating

units under Section 112. “The Administrator shall regulate electric steam generating units **under this Section [112].**” 42 U.S.C. § 7412(n)(4) (emphasis added). As a result, EPA cannot proceed with this Proposed Rule because it is outside the scope of its authority.

b. EPA cannot interpret a drafting error as a statutory ambiguity.

EPA claims authority for this Proposed Rule based on its new interpretation of a purported ambiguity in Section 111(d), which it had previously acknowledged to be “a mere drafting error.” 79 Fed. Reg. 34,830, 34,853 (June 18, 2014); 70 Fed. Reg. 15,994, 16,031 (Mar. 29, 2005). The fact that EPA advances this interpretation more than two decades after Congress adopted the language in question raises red flags. *Utility Air Regulatory Group v. Env'tl. Protection Agency*, 134 S. Ct. 2427, 2444 (2014) (“When an agency claims to discover in a long-extant statute an unheralded power to regulate ‘a significant portion of the American economy,’ we typically greet its announcement with a measure of skepticism.”) (internal citations omitted). Although EPA may interpret ambiguous portions of the CAA, it may not create ambiguity to justify a predetermined result.

When Congress passed the 1990 Amendments to the CAA, the House version included Section 111(d) as published in the United States Code. The Senate version, however, replaced an internal reference to 7412(b)(1)(A) with a reference to 7412(b), with no additional changes. The previous version of 7412(b)(1)(A) required EPA to publish a list of hazardous air pollutants, and the current version of 7412(b) is a list of hazardous air pollutants. The Senate version reads:

The Administrator shall establish regulations...for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) or 7412(b) of this title...
Pub. L. No. 101-549, § 108(g), 104 Stat. 2399, 2467 (1990).

However, the Senate version did not make it into the United States Code because the codifier found that the conforming amendment “could not be executed.” Revisor’s Note, 42 U.S.C. § 7411. The codifier regularly leaves non-substantive conforming amendments out of the United States Code when he discovers a conflict between a substantive change and a non-substantive conforming agreement.¹

EPA claims that there is a conflict between the House and Senate versions of Section 111(d). Indeed, when there is an internal conflict in the CAA, EPA may construct a harmonious interpretation to give meaning to the conflicting segments. *Citizens to Save Spencer County v. Env'tl. Pro. Agency*, 600 F.2d 844, 873 (U.S. App. D.C. 1979) (“Under the circumstances of the present case, it was the greater wisdom for the agency to devise a middle course between inconsistent statutes so as to give maximum possible effect to both.”). However, an actual change to a statute controls over an incorrectly updated reference, leaving no conflict, and no justification

¹ For examples, see, Brief of the States of W. Va., Ala., Alaska, Ky., Neb., Ohio, Okla., S.C., and Wyo. as *Amicus Curiae* in Support of the Petitioner, at 11 – 12, footnote 6, *In Re: Murray Energy Corp.*, No. 14-1112 (D.C. Cir., 2014).

for agency interpretation. *Am. Petroleum Institute v. SEC*, 714 F.3d 1329, 1336-37 (D.C. Cir. 2013) (holding that Congress's failure to properly update an internal cross-reference in the Dodd-Frank Wall Street Reform and Consumer Protection Act did not create an ambiguity).

EPA may not create an ambiguity where one does not exist in order to "tailor" the CAA to suit its "bureaucratic policy goals." *Utility Air Regulatory Group* at 2444; *Brown* at 1315 ("No matter how 'important, conspicuous, and controversial' the issue, and regardless of how likely the public is to hold the Executive Branch politically accountable, an administrative agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress.") (internal citations omitted). The clear statutory language controls and EPA cannot offer a contrary interpretation.

c. EPA may not exercise such expansive authority without express Congressional direction.

Even if Section 111(d) were ambiguous, EPA still could not bring about such an "enormous and transformative expansion" of its authority without a clear congressional directive to do so. *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 213, 231 (1994) ("Congress...does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."). Congress has not authorized EPA to exercise such broad authority, and EPA may not do so on its own accord.

Recently, the Supreme Court overturned portions of EPA's greenhouse gas regulations. *See, Utility Air Regulatory Group* at 2449. In that case, EPA sought to regulate sources that emitted greenhouse gases under the Prevention of Significant Deterioration and Title V programs. For these programs, EPA's regulatory authority applies to sources that emit over the 100- and 250-ton threshold limit. If EPA regulated greenhouse gases using this threshold limit, then its regulatory authority would have expanded from hundreds of large, industrial facilities to thousands upon thousands of industrial, commercial, and even residential facilities. Justice Scalia wrote that EPA's interpretation was *per se* unreasonable because it "would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization." *Utility Air Regulatory Group* at 2432. Justice Scalia's reasoning was informed by a prior case in which the Court found that judicial reasoning must be "guided to a degree by common sense as to the manner in which Congress is likely to delegate a policy decision of such economic and political magnitude to an administrative agency." *MCI* at 231.

EPA claims authority for this extraordinarily broad Proposed Rule based on a new interpretation of a twenty four-year old provision of the CAA, meant to regulate the emissions of specific pollutants from specific source categories. EPA now seeks to control the behavior of actors whose only connection to the affected sources named in the Proposed Rule is that they too are connected to the electric grid. EPA's interpretation is "per se unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization." *Utility Air Regulatory Group* at 2432. The Proposed Rule exceeds the common-sense limits placed on the regulation of existing sources under the CAA.

d. EPA may not regulate an existing source under 111(d) unless it has finalized lawful regulations for new and modified sources under 111(b).

Section 111 establishes a clear process through which States and EPA may regulate new and existing sources. First, the Administrator must publish and periodically revise a list of stationary source categories that contribute significantly to air pollution or are reasonably likely to endanger public health or welfare. 42 U.S.C. 7411(b)(1)(A). Then, the Administrator must publish standards of performance for new sources within each of the categories. 42 U.S.C. 7411(b)(1)(B). Once there are lawful standards of performance for new sources of a particular category, assuming all other 111(d) requirements are met, then, and only then, may the Administrator propose standards of performance for existing sources under 111(d). 42 U.S.C. 7411(d)(1).

There are currently no lawful standards of performance for fossil fuel-fired electric generating units. The Administrator proposed standards of performance for new sources on January 8, 2014, and modified sources concurrent with this rulemaking. However, each of these proposed rules has significant problems, which we have outlined in our previous comments, and EPA will not likely finalize the proposed rules any time soon.²

Without the predicate rules in place, the Proposed Rule cannot move forward. EPA may not regulate existing sources under 111(d) until it has effectively regulated the same category of new and modified sources.

III. EPA may not promulgate the Proposed Rule because it does not comply with the requirements of Section 111(d).

EPA has not adhered to the clear statutory obligations established for Section 111(d) rulemaking. First, the plain language of Section 111(d) requires emissions control to occur at the sources themselves, and not beyond their fence lines, and this Proposed Rule extends beyond the fence lines of affected sources. Second, Section 111(d) requires the Administrator to consider certain factors before determining that BSER has been adequately demonstrated, but in this Proposed Rule, the Administrator failed to consider non-air environmental impacts. 42 U.S.C. 47111(a)(1). Third, Section 111(d) directs the Administrator to permit states to consider the remaining useful life of any particular source when applying a standard of performance, which the

² Letter from Governor Matthew H. Mead to The Honorable Gina McCarthy, Re: Docket No. EPA-HQ-OAR-2013-0495-Standard of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units, May 9, 2014; Letter from Todd Parfitt, Wyoming Department of Environmental Quality Director, to Administrator Gina McCarthy, Re: Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units; Docket No. EPA-HQ-OAR-2013-0495, May 9, 2014; Letter from Governor Matthew H. Mead to The Honorable Gina McCarthy, Re: Docket No. EPA-HQ-OAR-2013-0603. Carbon Pollution Standards for Modified and Reconstructed Stationary Sources: Electric Utility Generating Units; Letter from Todd Parfitt, Wyoming Department of Environmental Quality Director, to Administrator Gina McCarthy, Re: Carbon Pollution Standards for Modified and Reconstructed Stationary Sources: Electric Utility Generating Units.

Administrator has instead made impossible by the creation of hard deadlines by which to achieve emission reductions. 42 U.S.C. 4711(d)(1). Finally, once the Administrator approves a state's plan, the plan becomes federally enforceable. 42 U.S.C. 4711(d)(2)(B). EPA proposes to include components in the BSER that are well-beyond its statutory authority. This is an improper attempt to increase its authority. The Proposed Rule does not comply with Section 111(d) and may not proceed.

a. The Proposed Rule extends beyond the fence lines of affected sources.

The CAA does not allow EPA to transfer responsibility for pollution control beyond the fence line of an affected source. Section 111(a) includes the definitions EPA must use when reading later portions of Section 111 of the CAA. Standard of performance is defined as:

A standard for emissions of air pollutants which reflects the degree of emission limitation achievable **through the application of** the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

42 U.S.C. § 7411(a)(1) (emphasis added). Logically, this definition requires BSER to control emissions from a particular source, and not to control all tangentially related industrial actors, or consumers of the affected source's end product. The definition discusses the emission limitations achievable through "application of the best system of emission reduction." This must mean application of the BSER to an affected source. If the BSER could be applied beyond a particular source, then there is no logical reason to have specific systems of emission reduction for different source categories.

All of the previous 111(d) rulemakings have provided guidance on "end of the stack" pollution control. Not a single 111(d) rulemaking created a cap on emissions meant to be enforced outside of the fence lines of the sources in question. This Proposed Rule is unique among 111(d) regulations for its creation of a strict emissions limit with proposed control measures that extend beyond the fence line of the source in question. This is a clear indication of EPA's overreach.

The following analogy demonstrates the absurdity of applying 111(d) regulations beyond the affected source's fence line. EPA currently regulates total reduced sulfur emissions from Kraft pulping mills under its Section 111(d) authority. 40 CFR 60, Subpart BB. If EPA could draft 111(d) regulations that applied outside of the affected source, then it could determine that the BSER for Kraft pulping mills would be a combination of (1) increased paper recycling and (2) increased production of paper products made out of alternative fibers. This type of broad control over wood pulp-produced paper would clearly exceed the power granted by Congress to EPA to control air pollution from sources, such as Kraft pulping mills. Similarly, EPA does not have the statutory authority to regulate carbon emissions by focusing on end-users of electricity and rival producers of electricity.

b. EPA did not consider non-air environmental impacts when determining that the best system of emission reduction was adequately demonstrated.

The Administrator must consider the potential negative impacts associated with any BSER prior to determining that it is adequately demonstrated. This includes the cost of achieving emission reductions, the non-air environmental impacts, and the energy requirements. 42 U.S.C. § 4711(a)(1). If Building Block 3 is implemented in the manner contemplated by the Proposed Rule, there will be significant and unique non-air environmental impacts to Wyoming. The Administrator failed to consider these impacts of the Proposed Rule in direct violation of the CAA.

Building Block 3 envisions replacing carbon-intense electric generation with low- or zero-carbon generation. Currently, Wyoming produces 4,369,107 MWh of wind energy per year, 85% of which is exported to South Dakota, California, Utah, Oregon, Washington, and Idaho. If the states that import wind energy from Wyoming wish to increase their consumption of wind power, it is likely that they will seek to purchase more wind energy from Wyoming. Similarly, EPA's calculation of Wyoming's goal is premised on increased consumption of wind energy within the State, increasing the pressure on Wyoming to develop more wind projects for in-state use. The effect of Building Block 3 will be to increase the development of wind energy projects in Wyoming.

One of Wyoming's greatest challenges in siting wind farms and the accompanying transmission lines is the need to protect the habitat of the Greater Sage-Grouse (*Centrocercus urophasianus*). Wyoming is dedicated to protecting the Greater Sage-Grouse, which lives in the sagebrush steppes of our State. Wyoming has devoted significant resources towards developing a conservation plan for this species. One of the important safeguards for this species is protection of its core habitat areas. The level of wind infrastructure development imagined by the Proposed Rule would negatively impact significant portions of the Greater Sage-Grouse's core habitat. This oversight is not limited to the Greater Sage-Grouse; EPA has also failed to consider the environmental impact to other species such as bald eagles and bats. Section 111(d) requires the Administrator to consider such non-air environmental impacts prior to determining what constitutes the BSER. The Administrator has failed to do so in the Proposed Rule.

c. The Proposed Rule does not permit States to consider the remaining useful life of any particular source to which the Proposed Rule will apply.

EPA proposes to require that all states strictly adhere to a carbon emission limit on a specified schedule. However, Section 111(d) mandates that EPA allow states to consider the remaining useful life of a source when applying standards of performance to that particular source. 42 U.S.C. § 7411(d)(1).³ With a strict carbon emission limit in place, states cannot exercise their

³ The relevant language in Section 111(d) states that, "Regulations of the Administrator under this paragraph **shall permit the State** in applying a standard of performance to any particular source under a plan submitted under this paragraph **to take into consideration**; among other factors, **the remaining useful life of the existing source** to which such standard applies." 42 U.S.C. § 4711(d)(1) (emphasis added).

statutorily mandated discretion. EPA is without authority to deny states this statutory right, and therefore, may not proceed with this rulemaking.

EPA claims that the breadth of the proposed BSER imbues these regulations with so much flexibility that states do not need to alter the strict emission limits. This claim is false because states are entitled to flexibility over time, which the Proposed Rule does not allow. To meaningfully take the remaining life of a source into consideration, states must be able to lengthen the compliance time to the source's anticipated retirement date. Strictly limiting emissions by a compliance schedule denies states the ability to take the remaining useful life of any source into consideration.

d. EPA proposes a BSER that cannot be federally enforceable.

Building Blocks 2, 3, and 4 of the proposed BSER contain measures well beyond EPA's statutory authority. Yet, once EPA approves a state plan, all of those measures will nonetheless become federally enforceable. 42 U.S.C. § 4711(d)(2)(B). With this Proposed Rule, EPA seeks to gain control over aspects of the economy that are not within its jurisdiction.

Building Blocks 2 and 3 relate to replacing electricity produced by coal-fired units with energy produced by natural gas-fired units and RE facilities. EPA seeks to use these building blocks as a means to remove states' ability to control intrastate electricity markets and to mandate that utilities dispatch electricity based on lowest carbon emissions. EPA further uses these building blocks to exert authority over company-level decisions regarding whether to invest resources in developing specific types of energy resources.

With Building Block 4, EPA intends to reduce carbon emissions through energy efficiency improvements made by end-use consumers of electricity. Reductions in consumer energy consumption are personal choices made outside the purview of the CAA. EPA cannot reasonably argue that Congress intended to allow EPA to control such minutia about the personal lives of ordinary people when it drafted legislation to allow EPA to control emissions from existing stationary sources.

The Supreme Court has shown no tolerance for agency overreach without clear Congressional approval. *Utility Air Regulatory Group* at 2444 ("EPA's interpretation is...unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization.") The proposed BSER is beyond the jurisdiction of EPA and does not comport with Section 111(d).

IV. Wyoming's proposed state goal is arbitrary and capricious

WDEQ is deeply concerned about the calculations that resulted in Wyoming's emission goal. The Wyoming Public Service Commission (PSC) has provided an in-depth analysis of the outright errors and unreasonable assumptions that undergird EPA's calculation of Wyoming's proposed state goal. See, PSC LETTER NUMBER 14-178, submitted to Docket ID No. EPA-

HQ-OAR-2013-0602 on November 21, 2014. (PSC Letter) WDEQ agrees with and incorporates that analysis herein. EPA proposes state goals based on a state-specific analysis of available efficiency gains from each of the four building blocks. Wyoming's state goal as proposed by EPA is based upon clear errors and irrational assumptions. As a result, EPA's proposed action is arbitrary and capricious.

V. BSER Building Block 1 – Heat Rate Improvements

BSER Building Block 1 is the only component of BSER within the regulatory jurisdiction of EPA and WDEQ. Even as WDEQ considers this block within its regulatory jurisdiction, there is no precedent for requiring reduced heat rates through a NSPS.

a. EPA's heat rate improvements are not representative for Wyoming sources.

The goal for heat rate improvement (HRI) in the Proposed Rule is too high. A HRI of 2% is a more realistic challenge for Wyoming's EGUs. EPA's position that the coal fleet average net heat rate can be reduced by 6% under BSER Building Block 1 is based on a hypothetical scenario and not based on real-world data and examples. EPA relied upon apparent HRI for EGUs in Wyoming that were in error. Heat Rate Improvements Rev 091514. The first example where erroneous data resulted in incorrect HRI is data reported for Dave Johnston Unit 4. New pollution control equipment was installed on Unit 4 in 2012 that required relocation of the flue gas flow monitoring equipment. Heat rate data collected after the monitoring equipment was relocated and calibrated showed an apparent 21% HRI for 2012. WDEQ reviewed subsequent submittals and determined that heat rate data, prior to the relocation of the monitoring equipment, was in error and grossly overstated. WDEQ's evaluation found that the HRI was only about 1%. Second, at Jim Bridger Unit 3, a reported 11% HRI was found to be in error because the difference in heat rates was later attributed to a re-calibration of a flow monitor. WDEQ review confirmed there was no HRI for Unit 3.

According to the utility industry, based on historical data and real-world experience, potential HRI resulting from an EGU overhaul could restore a range of less than 1% to a maximum of 2.8% of a unit's net heat rate that has degraded since the last overhaul. EPA's expectation of a sustainable fleet-wide improvement of 6% therefore, is unrealistic and not consistent with real world application.

Turbine upgrades provide the best opportunity for significant HRI. See EPA's GHG Abatement Measures Document and PSC Letter. Wyoming's fleet of existing EGUs has largely accomplished turbine upgrades, making further HRI upgrades difficult to achieve. The WDEQ issued authorizations starting in 2007 to PacifiCorp Energy and Basin Electric Power Cooperative for turbine upgrades at their Jim Bridger and Laramie River Station facilities, respectively. The majority of the upgrades have been completed over the last five years. Because turbine replacement is typically done on a 30 year cycle, it is unreasonable to expect that either Jim Bridger or Laramie River Station could economically introduce and sustain a further 6% reduction in CO₂ emissions by 2019. If EPA chooses to move forward with the rule and the establishment of state

emissions goals, Wyoming must be given flexibility to establish achievable HRI goals that are based on unit-specific performance, and the flexibility to choose a baseline period most representative of the unit's operation.

b. State goals should be based on a 3-year average.

EPA proposed a compliance period of a rolling three year average while using a single year, 2012, to determine the baseline for this Proposed Rule. If EPA is going to base compliance on a three-year rolling average, then the baseline for this Proposed Rule must also be based on a three-year average to ensure consistency for the proposed emission reductions. EPA must commit to a consistent timeframe for the baseline and compliance in this proposal.

If EPA chooses to use a three-year average for the baseline emission limit in this proposal, careful consideration should be given to the data used. WDEQ found discrepancies with regard to several EGUs. The supplemental CO₂ emissions data from 2010 and 2011 provided by EPA in October, 2014 indicated that CO₂ emissions from the three coal-fired EGUs at the Laramie River Station were equal, which differs from the data available in the EPA Air Markets Program. <http://ampd.epa.gov/ampd> (October 31, 2014). Furthermore, WDEQ notes that the hours of operation for the three EGU units range from 6,877 to 8,422 in 2010 and 7,135 to 8,385 in 2011 making equivalent CO₂ emissions from these three units statistically impossible. Table 1 summarizes WDEQ's findings.

Table 1 – 2010 and 2011 Laramie River CO₂ emission discrepancies				
	EPA Air Market Program Data - CO₂ values (short tons)		EPA technical document emission values (short tons)	
	2010 Emissions	2011 Emissions	2010 Emissions	2011 Emissions
Boiler				
Unit 1	5,085,978	4,972,287	4,543,847	4,494,663
Unit 2	4,166,537	5,276,827	4,543,847	4,494,663
Unit 3	5,472,229	4,670,952	4,543,847	4,494,663

Additionally, WDEQ notes discrepancies between the supplemental EPA technical data and the EPA Air Markets Program for CO₂ emissions in 2011 for the Wygen I and the Wygen II facilities. These differences are summarized in Table 2.

Table 2 – 2011 CO₂ emission discrepancies for Wygen facilities			
Location	EPA Air Market Program Data (short tons)	EPA technical document values (short tons)	Difference (short tons)
Wygen I	936,970	910,393	26,577
Wygen II	911,702	876,289	35,413

The scope of this proposed rule is unprecedented and requires the utmost diligence in insuring the information used is accurate. If EPA does not use reliable data, then it is acting in an arbitrary and capricious manner. WDEQ urges EPA to perform a thorough quality assurance review of any data that it relies upon.

c. EPA's expectation to have improvements in place by 2019 is unrealistic.

The proposed HRI for EGUs under BSER Building Block 1 are assumed to be in place in 2019 in order to meet interim state goals starting in 2020. EPA's expectation is unreasonable given the proposed timetable for submittal and approval of state plans; the timeframes needed to plan, design, and install the systems and equipment needed for HRI; and the very nature of HRI projects.

At the latest, states must submit complete plans, including HRI proposals, to EPA no later than June 30, 2016 for single-state plans or June 30, 2017 for multi-state plans. Timeframes for review of these state plans by EPA, which could be as late as June 30, 2018 under the Proposed Rule, further contract the time available for design and installation. As an example, the typical timeframes for utility industry planning, design, and installation of control equipment and systems associated with Best Available Retrofit Technology (BART) exceeded 30 months for even the most minor of modifications such as the installation of low-NO_x burners. Response to Comments Received on BART Applications, PacifiCorp Energy letter to WDEQ dated September 16, 2009. The time needed for full implementation of HRI projects would be similar.

Additionally, HRI projects by nature are most effective immediately after installation and degrade in effectiveness with time. As a result, maintaining target HRI over a long-term period will be an ongoing process likely involving more frequent replacement of ancillary equipment. This, along with the unrealistic timeframes for design and installation by 2019, creates an unachievable goal for HRI. EPA should reconsider the timing associated with HRI implementation and revise the Proposed Rule to allow for a gradual implementation of the achievable HRI that is determined on a unit-specific basis.

d. EPA's use of net generation as a measure for pollution standards creates unfair comparisons and unjustifiably punishes utilities for other pollution control improvements.

The Proposed Rule would penalize affected sources for continuing to improve air quality independent of CO₂ regulation. The use of net generation does not adequately account for the parasitic load resulting from the installation and operation of pollution control equipment that is necessary to meet other Clear Air Act requirements and EPA regulations, such as Regional Haze. For example, a unit that can produce a maximum generation capacity of 500 MW may be required to install selective catalytic reduction to reduce NO_x emissions, which reduces the maximum capacity by 5 MW. The unit is now only capable of generating 495 MW at the maximum heat input. In order to maintain the same CO₂ emission rate, in pounds of CO₂ per MWh, the unit will likely have to reduce the heat input to offset the capacity reduction of 5 MW. The PSC commented further on this paradox that results in generating more CO₂ emissions per MW because units may

be required to run less efficiently at reduced heat rates. See PSC Letter. Additionally, other Federal Subparts like 40 CFR 60 Subparts IIII, JJJJ, and KKKK already set emission limits and standards based on capacity and gross output. EPA must maintain consistency with regulations that are already in place and not punish affected sources for other improvements to air quality.

VI. BSER Building Block 2 – Re-Dispatch

a. EPA relied on erroneous information for Cheyenne Prairie Generating Station (CPGS).

EPA's information in the document "Wyoming: Goal Setting Comments for Proposed Clean Power Plan" is in error. The document identifies the capacity of Black Hills Power's CPGS combined cycle units as 220 MW. However, the units' output capacity is actually 95 MW. Air Quality New Source Review (NSR) Permit CT-12636 lists the units as 100 MW based on maximum design. The Wyoming Industrial Siting permit lists the units as 95 MW, which is based upon as-built performance. The discrepancy is due to different operating capacity at high altitude. The actual name plate capacity of the CPGS combined cycle units is 100 MW; however, in Cheyenne, WY (elevation approximately 6,000 feet) the combined cycles achieve a 95 MW net output. To compare, the combined cycles in Pueblo, CO (elevation approximately 4,000 feet) achieve 100 MW net generation output. These are the exact same units operating in two different environments, impacted by elevation and air density, both of which reduce output. EPA may not rely on incorrect information to establish regulations. The calculation of Wyoming's goal should reflect the 95 MW capacity for CPGS.

b. EPA did not consider the purpose of CPGS (renewable energy backup) and incorrectly assumes that it can be preferentially re-dispatched.

The preferential re-dispatch of power from the CPGS is unrealistic and outside of EPA's jurisdictional authority. EPA assumes that NGCC can be preferentially re-dispatched, up to 70% of the unit's capacity, to reduce demand for power from EGUs with higher CO₂ emissions rates. This assumption is incorrect for CPGS. The intended operation of CPGS is to operate as a peaking unit with base-load capability to further enable renewable generation (wind, solar, and other renewable resources). EPA erroneously assumes re-dispatch of up to 70% does not result in additional costs to the operators or rate payers. In fact, there would be additional costs associated with higher fuel rates for the NGCC turbines, increased maintenance cost, and costs for equipment that may no longer be necessary if CPGS is re-purposed. EPA's assumption that CPGS can be preferentially re-dispatched is wrong.

VII. BSER Building Block 3 – Renewable Energy (RE)

As previously stated in this letter, Building Block 3 is an improper application of BSER, as it goes beyond the affected source. EPA cannot set a renewable portfolio standard (RPS) for Wyoming, as this goes beyond the jurisdiction of EPA. However, WDEQ reviewed the options suggested by EPA for this Building Block and is providing comment regarding inconsistencies in

EPA's analysis, the baseline date, the growth rate for RE, the timeline for meeting an RE goal, a realistic RE goal in light of the growth, and the actual technical potential available for RE in Wyoming.

a. The RE goal basis is inconsistent with compliance options for Wyoming.

As previously mentioned, WDEQ is an energy exporting state; roughly two-thirds of the electricity generated in Wyoming is consumed by users outside of Wyoming's borders. U.S. Energy Information Agency (August 21, 2014). EPA did not account for this in the baseline data used to establish the State's goal, as all of the electricity generated in the state from both fossil fuel and RE was used to establish the CO₂ lb/MWh rate for 2012. The assumptions made in the goal calculation should be based on reasonable options for demonstrating compliance in the future. Therefore, many questions have been raised about how the "credit" from RE would be distributed among the states for purposes of demonstrating compliance in the future. Based on calls with EPA staff, WDEQ understands that Wyoming would bear the burden of carrying all the fossil fuel energy produced in the state regardless of where it is consumed and receive no credit for any RE produced in Wyoming that is consumed out of state. This would put the state at an extreme disadvantage in any negotiation with other states regarding multi-state plans. EPA's accounting method disadvantages energy exporting states like Wyoming, making compliance with the Proposed Rule impossible. EPA must use a consistent accounting method in establishing state goals and compliance options.

b. Appropriate baseline date for renewable energy development.

Wyoming is an energy exporting state and therefore it is reasonable to look at the RPS start dates for the states in the region that depend on Wyoming's energy. WDEQ has evaluated the RPS start dates for the various states in the region and when each of the RPS programs began, as these initiatives fueled the need for RE in that state. EPA incorrectly established a baseline year of 2012 for RE, which shows an inflated outlook of RE in Wyoming.

The interest in and growth of RE in Wyoming began in 2004 as the result of RPS requirements from other states. The RE in Wyoming in 2012 is a result of RE development from 2004-2012. As such, WDEQ determined 2004 to be the accurate and most appropriate baseline year of Wyoming's RE before outside influences began impacting the state's resources.

c. Unrealistic growth of renewable energy.

EPA's proposed RE growth is unreasonable because it did not consider how states with RPS set their goals, including the start date of the RPS and how much RPS were already in place at the times the goals were set. Table 3 details this consideration and is cited as the source used by EPA in its GHG Abatement Measures on page 4-10 in support of the RE Levels Derived from RPS Requirements. The data in Table 3 is from the Database of State Incentives for Renewables & Efficiency (DSIRE), RPS Data Spreadsheet. <http://www.dsireusa.org/rpsdata/index.cfm> (April,

2013). Table 3 data shows timeframes in concert with the set goals and provides perspective for the growth states found reasonable on an annual basis.

Table 3: RPS Goals and Average Growth Rates by States in the Western Region						
State	Starting RPS (%)	Start Year (yyyy)	Target RPS (%)	Target Year (yyyy)	Annual Growth rate	Avg Annual State Growth Rate
Arizona	1.2500%	2006	10.50%	2025	0.4868%	0.3663%
	0.0750%	2007	4.50%	2025	0.2458%	
Total			15.00%			
California	14.0000%	2004	33.00%	2020	1.1875%	1.1875%
Total			33.00%			
Colorado	2.8800%	2007	27.00%	2020	1.8554%	1.0385%
	0.1200%	2007	3.00%	2020	0.2215%	
Total			30.00%			
Montana	5.0000%	2008	15.00%	2015	1.4286%	1.4286%
Total			15.00%			
Nevada	5.7000%	2005	23.50%	2025	0.8900%	0.4750%
	0.3000%	2005	1.50%	2025	0.0600%	
Total			25.00%			
New Mexico	5.0000%	2006	8.40%	2020	0.2429%	0.1919%
	2.0000%	2011	4.00%	2020	0.2222%	
	2.0000%	2011	6.00%	2020	0.4444%	
	1.0000%	2011	1.00%	2020	0.0000%	
	0.1500%	2011	0.60%	2020	0.0500%	
Total			20.00%			
Oregon	5.0000%	2011	25.00%	2025	1.4286%	1.4286%
Total			25.00%			
Washington	3.0000%	2012	15.00%	2020	1.5000%	1.5000%
Total			15.00%			
Average Annual RE Growth Rate for West Region						0.9520%

Table 3 Key	
	State RPS Total from Table 4.2 GHG Abatement Measures Document p 4-11
	Raw data footnoted on GHG Abatement Measures Document p. 4-10 www.dsireusa.org/rpsdata/index.cfm
Annual Growth Rate	$(\text{Target RPS} - \text{Starting RPS}) / (\text{Target year} - \text{Start year})$

The average annual growth rate in the West Region for states that have a RPS is 0.95%. The most aggressive growth directive came from Washington at 1.5% annually, which considered its baseline year to be 2012. No state with an RPS initiative considered a 6% growth rate, even though they envisioned increasing demand for electricity and had the legislation in place to encourage RE development. Further, state RPS are established state goals and EPA's data does not indicate if those goals are being achieved. Thus, WDEQ considers a reasonable RE growth to be the average annual RPS growth rate of the West Region, which is 0.95%. Wyoming cannot support a 6% annual RE growth rate.

When establishing the goal for Wyoming's reduction in CO₂ emissions from power plants, EPA failed to consider the inter-dependency that some states located in the western region have on the same utility system. The demands on the energy system are not exclusive to the supply residing within the state borders. What is uniform is the need for reliable (time-of-dispatch) energy to sustain the system that may be supporting multiple states. On the west side, Wyoming shares a utility system (PacifiCorp) with Idaho, Utah, Washington, Oregon, and Northern California. In that relationship, Wyoming customers constitute less than 10% of the total, and Wyoming energy is less than 20% of the system's total. On the northeast side, Wyoming shares a utility system (Black Hills Corporation) with South Dakota and Montana. On that system, Wyoming customers represent less than 4% of the total customers served. These facts are significant in the development of RE resources, as they demonstrate that Wyoming is not creating the demand for more resources, and, therefore, those new resources would not be invested into on behalf of Wyoming. The fact that base load and reliability were not part of EPA's analysis makes the analysis incomplete.

d. Deadline of 2030 did not consider NEPA process.

RE and transmission projects take many years to permit. These projects can be very controversial because they involve siting and building above-ground structures, often in areas of significant wildlife use. EPA did not consider the time and expenses involved in the permitting process when it analyzed the economics of RE development. RE development in the State is dependent on land ownership and transmission availability. Over 48% of the land in Wyoming is federal land, which triggers the NEPA process. RE projects can be built on private land with the owner's consent and customary monetary compensation. However, even projects on private land trigger the NEPA process when a U.S. Fish and Wildlife Service (FWS) Eagle Take Permit is required. Golden eagles are prevalent throughout Wyoming, so most of the wind projects on private land require an Eagle Take Permit.

The time involved for permitting the development of renewable energy can be significant in Wyoming, as the permitting involves not only the facility but also the transmission required to move RE generation. The permitting process for RE and transmission is particularly time intensive, as it involves the NEPA process and it has been WDEQ's experience that wind projects often involve multiple NEPA processes. The NEPA process adds considerable time to RE projects and has increased in duration for the most recent transmission and wind projects in Wyoming. NEPA processes for wind facilities and transmission lines have a proven track record of taking at

least eight years. In some cases, even after such a lengthy approval process, only a partial decision is rendered, allowing only a portion of the project to move forward. Further time may be necessary should additional Environmental Impact Studies (EIS) or Environmental Assessments (EAs) be required for other federal agencies. For example, if the Wyoming Bureau of Land Management (BLM) requires an EIS for a decision regarding a wind facility or transmission line on federal land, the elements of the BLM's analysis do not automatically satisfy an EIS process stipulated by the FWS for an Eagle Take Permit. In addition, the research conducted by Wyoming BLM does not necessarily cover the elements for the transmission line that extends to a neighboring state. Thus, the other state's BLM office may require additional analysis prior to issuing a permit for the entire project.

To further illustrate the timing needs associated with these types of projects, WDEQ can point to the Power Company of Wyoming, LLC's Chokecherry and Sierra Madre Wind Energy Facility. This facility, on federal land, was considered a high priority project and placed on a federal 'fast-track' process. A notice of intent was issued in 2008, and a decision from the BLM was issued in 2012; however, the FWS required an additional NEPA process for an Eagle Take Permit. That decision is not anticipated until 2016. If approved, it will authorize only half the facility to be constructed. Additional approval from FWS will be required to build the entire facility, as planned. The process is taking 8 years for partial approval on a fast-tracked project.

The NEPA process for transmission lines has a similar timeline. TransWest Express and Gateway West, both federal 'fast-track' projects, began the NEPA process in 2008. Both are still awaiting a final decision. TransWest Express anticipates a decision in 2015, and a complete decision on Gateway West is expected in 2016.

The necessary evaluation of wildlife limitations, land ownership, and federal permitting add significant time to the development of RE resources. This is the reality of the time required to obtain federal permitting for RE and transmission projects in Wyoming. Once the lengthy NEPA process is complete, the Right of Ways and local permitting processes can begin, which also require at least an additional year. A project may not begin construction until it has received all of the necessary state, federal, and private approvals. It is unrealistic for Wyoming to build RE and transmission projects within the timeline proposed in Building Block 3.

e. EPA's assumed land available for development was too high.

EPA relied on the U.S. Renewable Energy Technical Potentials: A GIS-Based Study (Study), which assessed the amount of land available for RE development. The Study detailed that the largest technical potential in Wyoming was for wind energy, and the amount of land available for such development was 110,415 km². However, the Study failed to consider high-priority environmental conflicts specific to Wyoming that greatly reduce the actual amount of land available for such development, such as protection of the Greater Sage-Grouse, other designated critical habitats, and other protected areas of cultural and historical significance. WDEQ has determined that the land available for wind energy development is remarkably smaller than the amount outlined in the Study.

One of Wyoming's greatest challenges in siting wind energy and transmission projects is the need to protect the habitat of the Greater Sage-Grouse. This species is under consideration to be listed on the Endangered Species List by the FWS. Wyoming is dedicated to protecting the Greater Sage-Grouse, which lives in the abundant sagebrush steppes of our state. The State has devoted significant resources towards developing a conservation plan for this species. One of the important safeguards includes protection of its core habitat areas. Wyoming Governor Matthew Mead issued an Executive Order on June 2, 2011 that continues support of the State's Core Area Strategy for sage-grouse conservation. EO 2011-5. The Executive Order identifies the species' core habitat areas and effectively removes 15,263,210 acres (61,768 km²) of Wyoming land from wind energy development. This impact could grow depending on a FWS decision expected in mid-2015 regarding the listing of the Greater Sage-Grouse. If the species is listed, then there will be substantially less land available for any development.

When the areas of land restricted from development for designated core habitat areas and other protected areas are compared to the land identified for wind development, as illustrated in Figures 1 and 2, the conflict is evident. Specifically, 3,563,040 acres (14,419 km²) of Wyoming land classified as Wind Potential Class (WPC) 4 or higher cannot be developed for environmental reasons.

Figure 1, as represented below, identifies the land with WPC 4 and higher and considered commercially viable for energy generation. The map has no exclusions for protected lands. The map in Figure 2 illustrates the reduction in land available for development. The Greater Sage-Grouse core area, as well as cultural and historical lands that are protected and unavailable for development, have been removed.

Figure 1: Wind Potential Class 4 and Higher in Wyoming

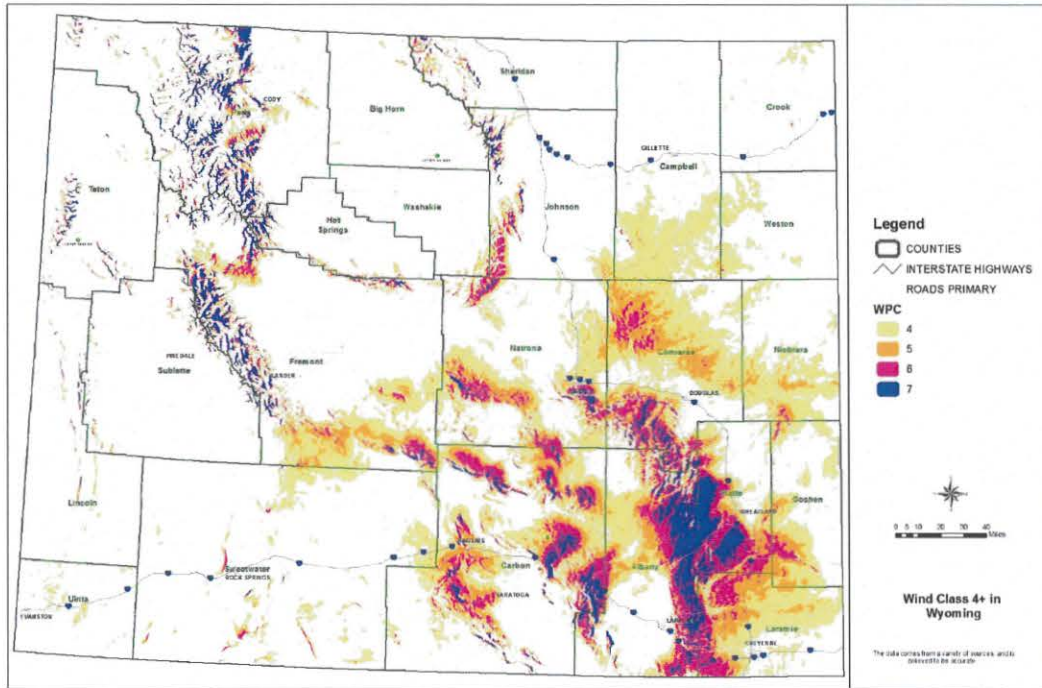


Figure 2: Wind Class 4 and Higher Available for Development in Wyoming

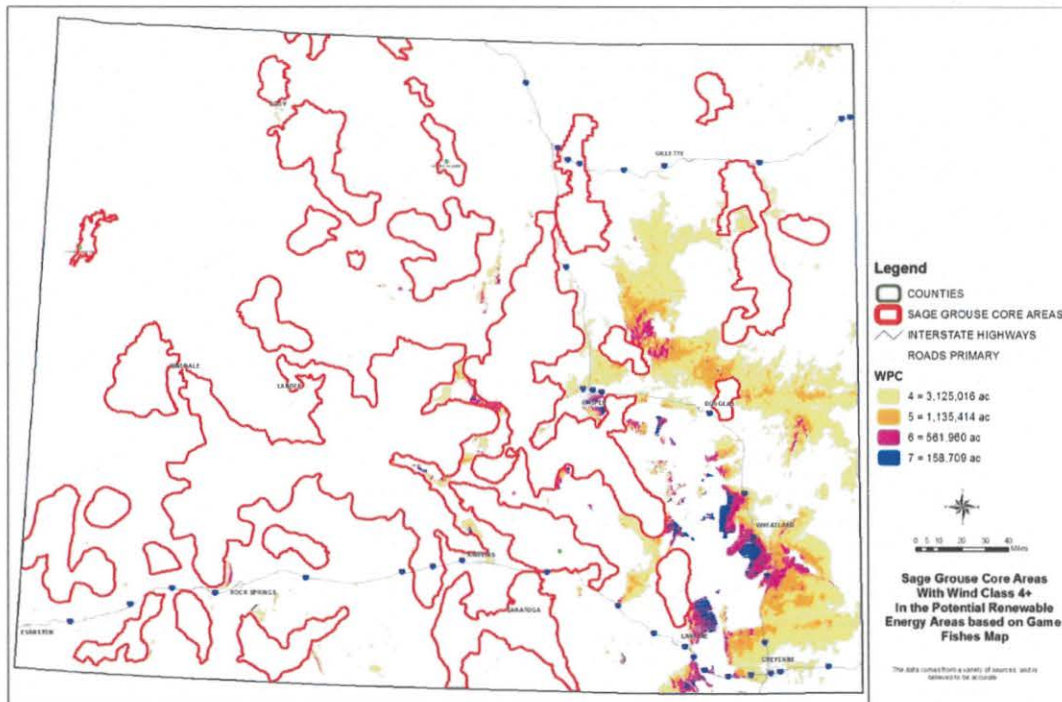


Table 4 quantifies the land actually available for wind energy development.

Table 4: Land Outside Protected Areas			
	WPC	Acres	km²
Greater Sage Grouse Core Area with Wind Class 4+ Based on Wyoming Game & Fish Map	4	3,125,016	12,647
	5	1,135,414	4,595
	6	561,960	2,274
	7	158,709	642
	TOTALS	4,981,099	20,158

The Study identified 110,451 km² available for wind development. In reality, only 20,158 km² are potentially available for wind development. Accounting for the wind farms already built or permitted in this area (1,888 km²), the total available land is further reduced to 18,270 km², or 16.5% of the total land available for wind development. EPA has relied upon an incomplete study to determine the technical potential of RE in Wyoming. EPA must adjust the State's goal to account for the realistic technical potential for Wyoming.

Wyoming is receiving conflicting messages regarding RE development from the FWS and EPA. FWS is telling Wyoming not to disturb large areas of land in order to guard against habitat fragmentation. EPA is telling Wyoming to develop as much wind energy as possible. Wind energy facilities are very large and disturb greater land areas than EGUs, which have much smaller footprints. These two federal agencies are giving Wyoming directives that are directly at odds with each other.

f. Hydroelectric generation should be counted as RE.

EPA does not count hydroelectric generating resources toward Building Block 3. This is inconsistent because hydroelectric generating resources produce zero-carbon electricity. EPA should count hydro generation as part of the RE resources.

VIII. BSER Building Block 4 – Demand Side Energy Efficiency

The Wyoming PSC submitted extensive comment on Building Block 4 - Demand Side Energy Efficiency. See PSC Letter. EPA set goals for this Building Block relying on broad inferences from state successes with energy efficiency (EE) programs. Using broad inferences to the most recently available Energy Information Administration data, EPA calculated specific goals by tying these together. EPA did not actively pursue additional state-specific data to refine their calculations. EPA's overall method has resulted in a goal which is too ambitious for Wyoming. Based upon the PSC's analysis of annual growth rates in energy efficiency, a value of 3.77% is more realistic for Wyoming.

IX. Summary of State Goal Calculation

As noted in Section III.a. of this comment letter, WDEQ does not believe EPA has the authority to consider emissions reductions beyond the fence line in a BSER analysis. However, if EPA decides to proceed with a BSER analysis that includes Building Blocks 2 through 4, then it must consider that a state goal of no less than 2,215 pounds of CO₂ per MWh is a more representative and realistic state goal for Wyoming, as evidenced by WDEQ's and PSC's analysis of the Propose Rule. The state goal of 2,215 is derived by adjusting inputs to EPA's model as follows and as supported by the WDEQ and PSC analyses:

Adjust Building Block 1 from 6% to 2% and incorporate a 3 year baseline (2010-2012) of 2,343 lbs CO₂/MWh.

Correct Building Block 2 to 95 MW

Adjust Building Block 3 from a 6% escalation factor to a 1% escalation factor

Adjust Building Block 4 from a cumulative savings of 9.73% to 3.77%

X. Additional Concerns

a. Timing for State Plan

The timing in the Proposed Rule is unrealistic. Every plan (single or multi-state) could potentially be a multi-state effort. WDEQ needs to understand how EE and re-dispatch in other states affect each State's ability to meet its goal. The timeframe outlined in the proposal does not account for this state interaction, and must be factored into the timelines by EPA to allow states to work together to create viable plans. WDEQ is also concerned that EPA will be unable to review all of the plans in the twelve-month timeframe without completely disregarding its other obligations under the Clean Air Act. The timeframe in the Proposed Rule is impracticable because states need additional time to negotiate and draft effective multi-state plans, and EPA needs sufficient time to perform thorough reviews of all submitted plans.

b. 111(b) additional rulemaking

EPA noted in the Proposed Rule that regulations proposed under 111(b) for modified and reconstructed sources affect the implementation of state plans under 111(d) and requested comment on the interdependency of 111(b) and 111(d). See 79 Fed. Reg. 34,852 (June 18, 2014). Accounting for any 111(b) actions only adds to the complexity of a state plan and increases the administrative burden. States must be given the discretion to address 111(b) interdependencies on a case-by-case basis if EPA requires an analysis of 111(b) as part of the approval process for 111(d) state plans.

c. Notice of Data Availability (NODA)

In the NODA published on October 28, 2014, EPA solicited comment on a variety of issues in addition to commenting on the June 18, 2014 proposal regarding carbon emission guidelines for EGU units. WDEQ provides comment in the paragraphs below on issues brought forth in the NODA.

Regarding Building Block 2 and NGCC re-distribution, EPA solicited comment on whether to establish some minimum value as a floor for the amount of generation shift for purposes of Building Block 2. EPA also solicited comment on what this value should be, and how this approach (to add a minimum requirement for states that currently have little or no NGCC capacity) should relate to the proposed approach in the June 18, 2014 proposal. WDEQ does not believe there should be a minimum value as a floor regarding a generation shift of current fossil fuel generation to NGCC. This obstructs flexibility that EPA has championed in the June proposal, and establishing a NGCC minimum for Wyoming is beyond the scope and jurisdiction of any regulatory authority under Section 111(d) of the CAA. WDEQ believes if EPA is going to continue with the methodology of Building Block 2, EPA should only use the output of CPGS (95 MW) in this step of the proposal.

Additionally, EPA requested comment on various issues regarding the costs and potential benefits of co-firing natural gas at existing coal plants. WDEQ believes requiring any co-firing at any existing coal plants is another obstruction to both innovation and flexibility in meeting the proposed requirements of this rule.

EPA also requested comment and justification on several assumptions regarding a new, regionalized approach for RE generation that has been suggested in other comments. WDEQ believes it is impractical to justify a change to regional groupings when the data used for individual states is in question. Additionally, WDEQ is not able to comment on other stakeholder proposals that involve Wyoming, as such proposals will not be available until after the comment period. Therefore, WDEQ does not have the best available data to accurately determine any potential regional groupings in just over a month, when EPA has had over a year to develop and hone the regional groupings utilized in this proposal. To further comment on other potential groupings that EPA is seeking comment on, WDEQ believes that any state which becomes "isolated," if a new regional grouping is accepted, should be allowed to stay isolated given the unique characteristics and challenges that led the state to not be grouped in the first place. In continuing the regional grouping of states, WDEQ believes Wyoming should not be grouped with other states for purposes of NGCC, RE development, or a combination thereof, due to Wyoming's unique energy portfolio, current infrastructure, and land ownership issues. WDEQ believes any change to the regional grouping of states is inappropriate and only adds further obstacles to state flexibility. EPA should focus on ensuring the NGCC and RE potential in each individual state is correct.

In short, WDEQ believes any changes to the current BSER structure in the original proposal requires this proposal to be re-proposed for additional comment. EPA may not ask for additional comments on alternate methodologies so late in the commenting period without

allowing additional time for a thorough evaluation. WDEQ believes there should be more time to respond to these additional requests for comment, which stem from earlier comments by other stakeholders responding to this proposed rule. To ask for this quantity of comments on alternate proposals at this time, for both the Proposed Rule and the NODA, suggests that EPA has not adequately defined BSER. Thus, EPA must re-propose this rule after reviewing all the comments received by December 1, 2014 for this rule and the supporting literature therein.

d. Public Comment Period

Due to the quantity of requests for comment, and the level of detail EPA is seeking comment on, this proposal more resembles an advanced notice of proposed rulemaking. In addition to the challenge of assessing a lengthy rule proposal of such premature condition, WDEQ had little time to fully evaluate the subsequent NODA published on October 28, 2014, nor the Technical Support Document (TSD) on conversion from rate based to mass based state goals released on November 6, 2014. Due to the heightened public interest in this, and the 111(b) proposed rules, WDEQ anticipates that the EPA will receive extensive comments and data, which will likely influence and change the rule. Moreover, the interdependency of all three rule proposals does not allow them to be severable. Fundamental pieces of these rules are dependent on each other, and a decision made for one rule could have consequences in another. As such, this and the 111(b) rule proposals should be changed to follow the intent and authority as specified in Section 111 of the CAA and re-proposed jointly.

XI. Conclusion

EPA lacks the statutory authority to proceed and must withdraw the Proposed Rule. Assuming that EPA has the statutory authority to proceed with the Proposed Rule, EPA has failed to follow the requirements of Section 111(d). In the event that EPA chooses to move forward with the Proposed Rule they must do so in a reasoned and rational manner as outlined above.

Thank you for the opportunity to provide comment on this Proposed Rule. Please feel free to contact me at 307-777-7937, or Steven Dietrich, Air Quality Division Administrator, at 307-777-7391, should you have any questions regarding these comments.

Sincerely,



Todd Parfitt
Director

cc: Honorable Matthew H. Mead, Governor
Al Minier, Chairman, Wyoming Public Service Commission
Peter K. Michael, Wyoming Attorney General
Steven A. Dietrich, Administrator, Air Quality Division