

Environmental Protection Agency
EPA Docket Center (EPA/DC)
Mailcode 28221T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

December 1, 2014

Dear Administrator McCarthy:

We appreciate the opportunity to provide comments to the EPA's Clean Power Plan, Docket ID No. **EPA-HQ-OAR-2013-0602**. The **Center for Earth, Energy and Democracy (CEED)** submits these comments on behalf CEED, and the leadership body of the Midwest Environmental Justice Network, **Little Village Environmental Justice Organization**, and the **East Michigan Environmental Action Council**. We also submit these comments to the Proposed Rule with the additional signatories listed from around the country including the **Climate Justice Alliance**. The comments refer collectively to these environmental justice and climate justice leaders and groups as environmental justice and climate justice advocates." Environmental justice and climate justice advocates are supportive of rules and policies, which provide for, and ensure, just and equitable environmental and public health conditions.

Our comments also support and affirm the *Principles of Environmental Justice*, the *Principles of Climate Justice*, and a human rights framework that includes the *American Declaration on the Rights & Duties of Man*, the *United Nations Declaration on the Rights of Indigenous Peoples*, and the *United Nations Guiding Principles on Internal Displacement*.

Environmental justice and climate justice advocates in the Midwest region of the United States recognize that climate change has already resulted in important environmental and health impacts. According to the latest research on climate change and the Midwest, average annual temperatures have risen, the number of major heat waves has increased; there are fewer cold snaps; ice and snow are melting sooner in the spring and arriving later in the fall; and heavy rains are twice as frequent than they were a century ago, with increasing risk of flooding.¹ To what degree these will worsen depends upon how complex environmental processes and societal activities unfold. As we are becoming more aware, climate change is impacting a wide range of conditions in our communities including human health, water availability, energy systems, food and agriculture, ecosystems,

¹ IPCC. 2014. *Climate Change 2014: Impacts, Adaptation, and Vulnerability*. Fifth Assessment Report of the Intergovernmental Panel on Climate Change; DeGaetano, A.T. and Allen, R.J. 2002/ Trends in twentieth-century temperature extremes across the United States. *Journal of Climate* **15**: 3188-3205; Kunkel, K, Andsager, A. and D. Easterling, 1999. *Long-Term Trends in Extreme Precipitation Events over the Conterminous United States and Canada*. American Meteorological Society. Volume 12: Union of Concerned Scientists. *Confronting Climate Change in the U.S. Midwest*. July 2012.

transportation, and social networks.² We also know that change is happening and that the effects of climate change are interrelated with other environmental, social and economic conditions, which create disproportionate vulnerabilities on Indigenous, low-income and communities of color, herein referred to as environmental justice communities. These include demographic increases in younger and senior populations of color which present higher sensitivities to changes in air quality³ exacerbated health concerns including high rates of asthma and respiratory illness in already high-risk populations⁴; income disparity trends, as we have recently witnessed low-wage workers experience the largest drop in wages which are impacted by increasing energy burdens at the household level⁵; energy access as low and moderate-income households already pay a higher percentage of their income for energy and the energy affordability gaps in Illinois and Minnesota totaled \$1.479 and \$622 million respectively⁶; housing, where for example, affordable housing has reached crisis proportions as in 97% of Minnesota counties there is a shortage of affordable and available units for extremely low income renters and over half of households earning less than \$50,000 per year paid more than they can comfortably afford for housing⁷ and neighborhood social capital, as historically poor neighborhoods have been more vulnerable than affluent areas to effects of reduced public spending⁸

These community differences can contribute to health disparities given the disproportionate access to energy and environmental sustainability resources and exposures to unhealthy conditions. Living near toxic waste dumps, freeways and other sources of exposures that are harmful to health is highly correlated with race as well as socioeconomic status.⁹ Racial segregation and past U.S. Indian policy also means that Indigenous, Blacks, Latino are more likely than Whites to live in poor-quality housing, posing a greater risk of cumulative exposure to environmental conditions that can

² White House Council on Environmental Quality. 2010. *Progress Report of the Interagency Climate Change Adaptation Task Force: Recommended Actions in Support of a National Climate Change Adaptation Strategy*; Union of Concerned Scientists. July, 2012. *Confronting Climate Change in the U.S. Midwest*.

³ See for example, Knowlton, K., Rosenthal, J., Hogrefe, C., Lynn, B., Gaffin, S., and Goldberg, R., Rosenzweig, C., Civerolo, K., Ku, J-Y., and Kinney, P.L. 2004. "Assessing Ozone-Related Health Impacts under a Changing Climate." *Environmental Health Perspectives*. 112(15):1557-1563.

⁴ Braverman, P.; Egerter, S.; An, J.; William, D. 2011. *Neighborhoods and Health*. Robert Wood Johnson Foundation. <http://www.rwjf.org/en/research-publications/find-rwjf-research/2011/05/neighborhoods-and-health.html>; Respiratory Health Association of Metropolitan Chicago. 2011. *Asthma in Chicago: Disparities, perspectives and interventions*

⁵ Minnesota Budget Project. September, 2012. *Economic Security*. Accessed at <http://www.mnbudgetproject.org/research-analysis/economic-security>

⁶ Fisher, Sheehan & Colton (FSC) developed a model that estimates the "home energy affordability gap" on a county-by-county basis for the entire country in an effort to quantify the gap between "affordable" home energy bills and "actual" home energy bills, http://www.homeenergyaffordabilitygap.com/01_whatIsHEAG2.html

⁷ Rosenberg, L.. October 1, 2013. *Housing Affordability by Region*. Minnesota Housing Partnership.

⁸ Williams, D.R. and C. Collins. 2001. Racial residential segregation: a fundamental cause of racial disparities in health. *Public Health Report*. v.116(5); Sep-Oct.

⁹ National Environmental Justice Advisory Council, Cumulative Risks/Impacts Work Group. 2004. *Ensuring risk reduction in communities with multiple stressors: Environmental justice and cumulative risks/impacts*. Washington, DC: U.S. Environmental Protection Agency; Williams, D.R. and C. Collins. 2001. Racial residential segregation: a fundamental cause of racial disparities in health. *Public Health Report*. v.116(5); Sep-Oct.

contribute to poor health. Additionally, approximately 40% to 45% of Black, Latino, and Native individuals live in poor neighborhoods¹⁰

Some of the most severe climate change-related weather disasters in the U.S. have had a disproportionate impact on low-income communities. Clearly, many aspects of the current system have failed to meet the needs of vulnerable populations in the U.S. Already vulnerable communities pose a unique challenge for mitigating climate change. For this reason, the Council on Environmental Quality has established as one of its climate adaptation national goals to “(p)rioritize the most vulnerable: adaptation plans should prioritize helping people, places and infrastructure that are most vulnerable to climate impacts and be designed and implemented with meaningful involvement from all parts of society”¹¹

1. Environmental Justice Review and Analysis

The proposed Clean Power Plan, and any activities associated with its compliance should ensure that environmental justice communities (the most vulnerable), receive just and equitable benefits from reduced carbon and co-pollutant emissions; the benefits of increased energy efficiency and renewable energy; and are not disproportionately burdened or affected by potential increases in costs such as increases in EGU and co-pollutant emissions and/or energy burdens. It is critical that EPA provide adequate assessments of the distribution of costs and benefits on environmental justice communities of all components of the CPP.

In Section 3.1 Incorporating Environmental Justice into Rulemaking Plan, the EPA’s *Plan EJ 2014*, calls for the development and implementation of “guidance to incorporate environmental justice into the fabric of its rulemaking process. EPA’s authority to create and enforce regulations that put our nation’s environmental laws into effect is one of the Agency’s most important and powerful tools for protecting our environment and the health of our people. . . .EPA’s regulatory authority combined with the mandates of EO 12898 charge EPA with responsibility to ensure that, as we develop Agency actions, we consider environmental justice issues during the Agency’s rulemaking process.”¹²

According to its own EJ Pan 2014, a component of the agency’s rulemaking is “to address the needs of overburdened communities by decreasing environmental burdens, increasing environmental benefits, ... to build healthy, sustainable, and green communities. This priority recognizes that Title VI of the Civil Rights Act and EPA’s civil rights program is a

¹⁰ Committee on Public Health Strategies to Improve Health. 2011. *For the Public's Health: Revitalizing Law and Policy to Meet New Challenges*.

¹¹ White House Council on Environmental Quality. 2010. *Progress Report of the Interagency Climate Change Adaptation Task Force: Recommended Actions in Support of a National Climate Change Adaptation Strategy*.

¹² EPA. September 2011. *Plan EJ 2014*. Office of Environmental Justice. U.S. Environmental Protection Agency, pg. 8

critical component in advancing environmental justice.”¹³ The plan further heralded “a new era of outreach and protection for communities historically underrepresented in EPA decision making” and calls for “include[ing] environmental justice principles in all of our decisions.”¹⁴

EPA, however, has not performed the analysis required by Section 1-101 and 3-302 of Executive Order 12898 and the agency’s Plan EJ 2014.¹⁵ Executive Order *Section 3–302, Human Health and Environmental Data Collection and Analysis* states that “To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a): (a) each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.”¹⁶

In its CPP Regulatory Impact Analysis, EPA generally provides that there will be co-benefits from reductions in criteria and hazardous air pollutants. It also states that as a result load shifting to gas-fired EGUs, “increased utilization may make periods of relatively high concentrations more frequent.” However, the agency also stipulates that it “cannot exactly predict how emissions from specific EGUs would change as an outcome of the proposed rule due to the state-led implementation ... it is not practicable to determine whether there would be disproportionately high and adverse human health or environmental effects on minority, low income, or indigenous populations from this proposed rule.”¹⁷ EPA provides justification by citing studies by DOE/NETL comparing cost and performance of coal- and NG-fired generation, in which it was assumed SO₂, PM (and Hg) emissions to be “negligible.” Therefore, EPA concludes that local air quality “is likely to be affected very little.”¹⁸ EPA, however, has not conducted an adequate analysis to determine if co-pollutants will increase in the local areas with increased gas-fired plant utilization. As one of the most significant rules promulgated by EPA to address the significantly challenging environmental and human health threat of climate change, EPA should not base such

¹³ EPA. September 2011. *Plan EJ 2014*. Office of Environmental Justice. U.S. Environmental Protection Agency, pg. 1

¹⁴ EPA. September 2011. *Plan EJ 2014*. Office of Environmental Justice. U.S. Environmental Protection Agency, pg. 43

¹⁵ Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations. Federal Register Vol. 59, No. 32 (February 11, 1994); EPA. September 2011. *Plan EJ 2014*. Office of Environmental Justice. U.S. Environmental Protection Agency

¹⁶ Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations. Federal Register. Vol. 59, No. 32. (February 11, 1994).

¹⁷ Carbon pollution emission guidelines for existing stationary sources: electric utility generating units. 79 Fed. Reg. 34950 (proposed June 18, 2014)

¹⁸ Carbon pollution emission guidelines for existing stationary sources: electric utility generating units. 79 Fed. Reg. 34950 (proposed June 18, 2014)

determinations on ‘assumptions. Rather EPA should base such determinations of potential environmental justice effects using informed best practice methodologies

Using the pending draft Environmental Justice Technical Review guide, EPA should employ analyses using the same baseline and regulatory option scenarios conducted in support of the rule to determine distributional impacts. This should include modeling potential changes in co-pollutants and GHGs due to shifts in load capacities across geographic regions, conducting cumulative impact assessments to determine the effects of projected increases in frequency of periods of high concentration; and benefit-cost and economic impact analyses to assess the distributive impacts of all proposed options including efficiency and renewable implementation options proposed should be conducted in support of the rule.

At minimum, and as per its own draft *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*, EPA should: 1) determine and identify exposures, relevant health and environmental outcomes, and other relevant effects on environmental justice communities in its baseline; 2) assess differences in exposures, relevant health and environmental outcomes, and other relevant effects on environmental justice communities; 3) inform the extent to which a potential environmental justice concern is created or mitigated for the affected stressors for each proposed compliance option and/or activity provided in the CPP; 4) assess how estimated differences in these exposures, relevant health and environmental outcomes, and other relevant effects across population groups increase or decrease as a result of each option compared to the baseline.¹⁹

The EPA should assess, and require states to assess, if and to what extent, any of the compliance options to meet the CPP would create new disproportionate impacts, exacerbate existing impacts and would “[p]resent opportunities to address existing disproportionate impacts on minority, low income, or indigenous populations that are addressable through the action under development.”²⁰

EPA should prepare an expanded environmental justice analysis of the Clean Power Plan that adequately supports these conclusions and that identifies any specific disproportionate impacts or “EJ concerns” (as defined in the ADP Interim Process Guide). In other words, as the agency’s own guidance provides, EPA should assess in detail whether any aspect of the proposed rule (most obviously, the increased utilization of fossil fuel-fired EGUs—both of coal-fired and natural gas-fired plants) would create new disproportionate impacts or exacerbate existing disproportionate impacts on minority or low-income populations, and also, whether any aspect of the proposed rule (for example, increased renewable energy generation) would “[p]resent opportunities to address existing disproportionate impacts on minority, low income, or indigenous populations that

¹⁹ EPA. 2013. *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*. U.S. Environmental Protection Agency. pg. 44.

²⁰ EPA. July 2010. *Action Development Process: Interim Guidance on Considering Environmental Justice During the Development of an Action*, Environmental Protection Agency, pg 6.

are addressable through the action under development.”²¹ If the proposed rule would result in environmental or socio-economic impacts, or would add to cumulative impacts to minority and low-income populations that already face environmental hazards, EPA should include measures to avoid or mitigate these impacts in the final rule. If, after performing the analysis, no such impacts would result, the agency should adequately support the basis of its conclusions.²²

2. Rate-based versus Mass-based targets

The CPP targets carbon emissions, a critical U.S. GHG contributor. The CPP relies on a performance targets based on the carbon intensity of each state’s fuel mix for power generation.²³ While we support that reductions in carbon intensity of the U.S. economy should be achieved, performance targets should be defined on the bases of absolute carbon emissions. Because the possibility that reductions in carbon intensity can still result in increases in absolute carbon emissions, both goals should be addressed in the rule. As environmental justice advocates we support a vibrant U.S. economy that meets the needs of all the nation’s residents, but economic growth should not sacrifice long-term public health and environmental sustainability. This requires that economic goals and environmental goals work symbiotically. Therefore, EPA should develop guidance and require states demonstrate verifiable absolute carbon reductions, *and* that absolute carbon reductions be achieved in environmental justice communities.

3. Carbon Capture and Storage

EPA solicits comment on all aspects of applying CCS to existing fossil fuel-fired EGUs (in either full or part). In its request for comment on all aspects of carbon capture and storage (CCS), we support CCS **NOT** be a component of the BSER for CO₂ emissions from existing fossil fuel-fired EGUs. Externalities associated with CCS, which include EPA’s assessment of heat rate improvements showing CO₂ emission reductions were relatively limited, and therefore should preclude its use as a compliance option. The National Energy Technology Laboratory (NETL) concluded that by 2030, the “average daily national freshwater withdrawals required to meet the needs of U.S. thermoelectric power generation could range from 112 billion gallons per day to 154 billion gallons per day, and the freshwater consumption resulting from U.S. thermoelectric power generation could range from 4.7

²¹ EPA. July 2010. Action Development Process: Interim Guidance on Considering Environmental Justice During the Development of an Action, Environmental Protection Agency, pg 6.

²²As noted in *Sierra Club’s comments*, EPA’s draft *EJ Technical Guidance* provides that EPA’s regulatory analyses of a policy aimed at strengthening an environmental standard have often assumed that there would be no environmental justice” concerns because the regulation is expected to reduce environmental burdens. This is also the case with the proposed Clean Power Plan. In the guidance, EPA recognizes that “this assumption may lead to erroneous conclusions,” and thus recommends preparing a basic analysis that supports conclusions with regard to potential distributional effects, in order to improve the transparency of the rulemaking process and provide the public with more complete information regarding the expected effects of the policy. EPA should (at the very least) follow its own guidance in this respect.”

²³ Carbon pollution emission guidelines for existing stationary sources: electric utility generating units. 79 Fed. Reg.34832 (proposed June 18, 2014).

billion gallons per day to 5.5 billion gallons per day.²⁴ The same analysis concluded that retrofitting plants for carbon capture would increase freshwater withdrawal by 6 billion gallons per day and consumption by 4.3 billion gallons per day by 2030. In addition, other health and economic costs associated with large-scale coal extraction including the direct and indirect effects of coal mining and mountain top removal require that a just energy transition to renewable and energy efficiency must not be impeded.²⁵ These and other environmental externalities, including of continued reliance on coal through CCS will simply shift one environmental problem with another. Therefore, we re-affirm July 2011 letter to then EPA Administrator Jackson, signed by scientists and environmental justice advocates outlining their concerns on CCS.²⁶

4. Biomass and Waste-to Energy

We support the comments in the letter submitted by **GAIA**²⁷ and others. EPA asserts that climate pollution from burning waste and biomass “are likely to have minimal or no net atmospheric contributions of biogenic CO₂ emissions” and therefore are not considered harmful emissions in the CPP. However, a growing body of evidence suggests that waste incineration and biomass have long term climate consequences includes a 2014 study of U.S. biomass energy emissions found that burning biomass is worse for the climate than burning coal.²⁸ This adds to the many studies that have found that biomass energy is more carbon-intensive than coal, and that the life-cycle emissions associated with various sources of biomass and waste fuels are much greater than those of fossil fuels.²⁹ According to EPA’s own database³⁰, burning municipal waste is the most carbon intensive form of energy generation, producing over twice the amount of CO₂ per unit of energy than coal plants. This has been corroborated by recent studies comparing the emissions of waste incinerators and coal plants in Maryland and New York.³¹ Pollution control exemptions for

²⁴ Carney, Barbara , Thomas Feeley, and Andrea McNemar. (no date). *Power Plant-Water R&D Program*. National Energy Technology Laboratory.

²⁵ Hansen E., Collins A., Hendryx, M., Boettner, F. and Hereford A. 2008. *The Long-term Economic Benefits of Wind Versus Mountaintop Removal Coal on Coal river Mountain, West Virginia*. Downstream Strategies: Morgantown, WV.

²⁶ For a discussion of EJ issues related to CCS see EJ and Science Initiative letter on CCS, April 11, 2011. Accessed at http://www.tesc.edu/watson/institute/documents/EJ_ccs_letter_signed.pdf; Tyree, S. and M. Greenleaf. 2009. The Environmental Injustice of “Clean Coal”: Expanding the National Conversation on Carbon Capture and Storage Technology to Include an Analysis of Potential Environmental Justice Impacts, *Environmental Justice* 2(4):167-171.

²⁷ Sign on Letter to Stop Biomass and Waste Burning in the Clean Power Plan. Submitted December 1, 2014.

Accessed at <https://docs.google.com/forms/d/1EySC02Nr6lqEcKxGcjZlJdeGYso3pZAdPGKTIw6PtQ0/viewform>

²⁸ Partnership for Policy Integrity. April, 2014. *Trees, Trash and Toxics: How Biomass Energy has Become the New Coal*.

²⁹ Manomet Center for Conservation Sciences, Biomass Sustainability and Carbon Policy Study, June 2010; *UK Department of Energy and Climate Change, Life Cycle Impacts of Biomass Electricity in 2020*, July 2014.

³⁰ EPA eGRID 2010 *Emissions Data for U.S. Electric Power Plants*. Accessed at <http://www.energyjustice.net/eGRID>

³¹ *Waste-to-Energy Incinerators Pollute More Per of Hour of Energy than Coal-Fired Power Plants and Are Not Renewable*. Accessed at <http://environmentalintegrity.org/archives/6709>; NY Department of Conservation, Comments to New York State Public Service Commission in the Matter of the application of Covanta Energy Corporation, August 19, 2011.

power plants using waste derived fuels and forestry and agricultural feedstocks,³² should not be a component of the CPP. Such exemptions are opposed by the scientific community as demonstrated by a June 19th, 2014 letter signed by over 90 scientists stating that “only when bioenergy results in additional carbon being sequestered above and beyond the anticipated baseline can there be a justification for concluding that such energy use results in little or no increase in carbon emissions.”³³

5. Interstate emissions trading programs

In its stakeholder comment summary, EPA stated that some groups thought that the EPA should put forward a model rule for an interstate emissions credit trading program that could be easily adopted by states who wanted to use such a program for its plan (pg. 59); and that at stakeholder meetings, some commenters noted that trading programs like RGGI have been successful at reducing GHGs. In the proposed CPP, EPA cited California’s emissions trading program established through the Global Warming Solutions Act (AB32) and the Regional Greenhouse Gas Initiative as viable examples of effective carbon trading schemes. EPA further stated that other commenters provided specific BSER proposals based on trading and/or emissions averaging approaches. In compliance with Executive Order 12898, *EPA’s Action Development Process: Interim Guidance on Considering Environmental Justice During the Development of an Action Plan*, and its draft *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*,³⁴ EPA should document to what extent environmental justice stakeholder groups were consulted, both in scope and quantity of engagement, specifically on interstate emissions trading programs. Consultation with the power industry, including utilities, power generators, and state regulatory authorities does not and should not constitute representation or “meaningful engagement” of environmental justice stakeholders. Disproportionate engagement and opportunity for input/engagement among stakeholders provides for unequal access to EPA’s rulemaking process.

In response to EPA’s request for comment on carbon trading in state plans to achieve emissions reductions, we do not support market-based mechanisms or carbon trading as a method for state compliance. EPA states, in reference to Building Block 2 – Redispatch that “[i]n the context of the integrated electricity system, where the operation of affected EGUs of multiple types is routinely coordinated to provide a fungible service, and in the context of CO₂ emissions, *where location is a less important factor than is the case for other pollutants*, the EPA believes that a measure that takes advantage of that integration to reduce CO₂ emissions from the overall set of affected EGUs is readily encompassed within the meaning of a “system of

³² November 19th *Memo from Janet G. McCabe, Assistant Administrator*, EPA Air and Radiation, Accessed at <http://www.epa.gov/climatechange/downloads/Biogenic-CO2-Emissions-Memo-111914.pdf>

³³ Letter to Joe Goffman, Senior Counsel, EPA Office of Air and Radiation. Accessed at www.caryinstitute.org/sites/default/files/public/downloads/news/2014_06_epa_biomass_carbon.pdf

³⁴ EPA. July 2010. *EPA’s Action Development Process: Interim Guidance on Considering Environmental Justice During the Development of an Action Plan*; EPA. *Assessing Environmental Justice in Regulatory Analysis: Draft*. 2013. Accessed at yosemite.epa.gov/sab/sabproduct.nsf/0/0f7d1a0d7d15001b8525783000673ac3!OpenDocument&TableRow=2.0

emission reduction” for CO₂ emissions at affected EGUs *even if the measure would increase CO₂ emissions from a subset of those affected EGUs. (italics added)*.³⁵ We submit that both in re-dispatch and emissions budget trading programs, location *is important*. The potential of re-dispatch and trading schemes in combination, can have disproportionate impacts on environmental justice communities. The disproportionality of both costs and benefits of implementation of AB32 and RGGI have not been adequately documented or demonstrated, including identified issues such as exacerbation of pollution “hot-spots” in environmental justice communities.³⁶ Increased in a subset of EGU’s has the potential for disproportionate burden on environmental justice communities as a result of its implementation. In fact preliminarily, such mechanisms both in terms of pollution reduction and renewable and energy efficiency enhancement potentially result in disproportionate impacts. EPA states that through 2012, the “RGGI states invested approximately \$460 million of proceeds into energy efficiency programs. The participating RGGI states estimate that those investments are providing benefits to energy consumers in the region of more than \$1.8 billion in lifetime energy savings.”³⁷ Yet, In New York, a RGGI state for example, the Home Energy Affordability Gap for income vulnerable households has increased between 2011 and 2013 to \$4,199,921,779, an increase of approximately \$99,000,000. At the same time, approximately 25,000 less heating/cooling average annual bills were covered by LIHEAP. Average dollar amount by which actual home energy bills exceeded affordable home energy rose from \$1,774 to \$1,821 per household.³⁸

According to its summary report Regional Investment of RGGI CO₂ Allowance Proceeds, 2012 cumulative revenue from RGGI totals \$707, 225, 905, of which 18% (\$127,300, 663) is dedicated to what can be defined as environmental justice populations for rate relief and efficiency.³⁹ It is also reported that more than 17% of cumulative RGGI investments to date, fund direct bill assistance programs in the region.⁴⁰ Direct bill assistance programs provide rate relief to electricity consumers in the RGGI region. This means that potentially, less than 1% of energy efficiency investments have benefitted environmental justice households. Further analysis on the disproportionate effects of current energy efficiency and renewable programs are necessary before they are identified as model options for compliance. We fully support affordable energy as a basic human right. However, environmental justice must include access to affordable energy efficiency and renewable energy services and

³⁵ Carbon pollution emission guidelines for existing stationary sources: electric utility generating units. 79 Fed. Reg. 34882, 34883 (proposed June 18, 2014).

³⁶ Kaswan, A. 2008. Environmental Justice and Domestic Climate Change Policy. *ELR News and Analysis. Environmental Law Institute.*

³⁷ Regional Greenhouse Gas Initiative. February, 2014. *Regional Investment of RGGI CO₂ Allowance Proceeds, 2012.Executive Summary.* Pg. 61

³⁸ Fisher, Sheehan & Colton (FSC) developed a model that estimates the "home energy affordability gap" on a county-by-county basis for the entire country in an effort to quantify the gap between "affordable" home energy bills and "actual" home energy bills, http://www.homeenergyaffordabilitygap.com/01_whatIsHEAG2.html

³⁹ Regional Greenhouse Gas Initiative. February, 2014. *Regional Investment of RGGI CO₂ Allowance Proceeds, 2012.Executive Summary.* Pg. 2

⁴⁰ Regional Greenhouse Gas Initiative. February, 2014. *Regional Investment of RGGI CO₂ Allowance Proceeds, 2012.Executive Summary.* Pg. 2

equitable distribution of incentives must be made available to middle and upper income populations. By delegating energy services to environmental justice households in effect to programs of rate relief, provides unequal and inequitable access to renewable energy and energy efficiency.

In addition, as stated “all existing state emission budget trading programs addressing GHG emissions include out-of-sector, project based emission offsets, which may be used to cover a portion of the compliance obligation of affected sources.”⁴¹ Environmental justice advocates do not support use of offsets as a method of compliance obligations by states, either domestically or internationally. Given that the environmental and health burdens of power plant generation has a legacy of pollution given the location of generating units, emissions reductions and health and environmental outcomes should be based on those affected by the operations of EGUs in their community.

6. *Nuclear energy*

We **do not** support use of nuclear energy, either through extension of existing plant operations or new plant construction as an option for meeting state targets. EPA identifies nuclear power as a low- and zero-carbon generating capacity. However, nuclear costs, the extensive legacy and future environmental issues associated with nuclear power make it an unacceptable option for long-term health and environmental sustainability.

A Union of Concerned Scientist study reported that subsidies for nuclear power ranged from \$.29 to \$1.08 per kWh (13% to 70% share of the market price) for investor owned utilities and \$1.53 to \$5.77 (26% to 98% share of the market price) for public owned utilities.⁴² The report found that in total, the estimated “value of legacy subsidies to nuclear power were at least 7.5 ¢/kWh— equivalent to nearly 140 percent or more of the value of the power produced from 1960 to 2008.” Legacy subsidies ranged from 139% to 142%. These extensive public subsidies identified by the report which include for capital formation, shifting of accident risks, and the costs of waste management make it clear that nuclear a viable zero or low carbon alternative is not based on efficient market-based determinations for energy options. More importantly, the public obligation to protect the health and environment, a non-market EPA and governmental obligation, makes nuclear power unacceptable as an alternative.

The pollution legacy of historical and ongoing nuclear power has not yet been addressed. Nuclear Regulatory Commission actions in September 2014 allowing for continued “temporary” storage of nuclear waste paving the way for nuclear plant license extension do not adequately resolve the critical problem of permanent waste storage. In Indian Country, the effects of uranium mining and milling activities from as early as the 1950s are still unresolved and pose present health risks to these communities. More than 500 abandoned

⁴¹ Carbon pollution emission guidelines for existing stationary sources: electric utility generating units. 79 Fed. Reg. 34910 (proposed June 18, 2014).

⁴² Koplw, D. February 2011. *Nuclear Power: Still Not Viable Without Subsidies*. Union of Concerned Scientists. Cambridge, MA. Pg. 104.

uranium mine exist with “thousands of mine features such as pits, trenches, holes, etc., and homes and drinking water sources with elevated levels of uranium, radium and other radionuclides.”⁴³ In conjunction with the naturally elevated levels of uranium, selenium, arsenic, and other elements associated with mine and mill sites on the Navajo nation means that the health and environmental effects due to exposure to these elements can include lung cancer, bone cancer, and impaired kidney function.⁴⁴ Until these nuclear legacy issues are adequately addressed, any further expansion in nuclear generating capacity that results in increased nuclear waste should not be included in the CPP. While climate change is a critical environmental issue that demands EPA regulation, to utilize nuclear power, which requires a storage system that must be managed for 10,000 years is not a suitable alternative.

7. State Compliance and Guidance

We affirm the New Jersey Environmental Justice Alliance (NJEJA) position on requiring state guidance to ensure environmental justice concerns are an integral component of compliance plans. NJEJA, in its comments states that “[b]ased on this standard the Clean Power Plan in its current form fails to ensure meaningful involvement of EJ communities in the development of state implementation plans. This is true because it is not clear if the Clean Power Plan requires a state to have even one hearing for the general public⁴⁵ and it does not specifically mention the involvement of EJ communities at all. EPA should either place a robust EJ participation requirement in the Clean Power Plan itself that states must follow or require states to develop and submit an EJ participation strategy as part of their state implementation plans, which would make the participation strategy subject to EPA approval.”⁴⁶ States vary widely in their stakeholder outreach to environmental justice stakeholders; often do not engage environmental justice stakeholders to the degree they engage industry, utilities, or other environmental organizations; have begun developing analyses and options for compliance without meaningful engagement or adequate analysis of the environmental justice implications.

Conclusion

In conclusion, we fully support EPA’s efforts to regulate carbon emissions. We also urge EPA to fully embrace its authority and public responsibility to regulate in a manner that upholds just, equitable, and sustainable rules and policies. The cornerstone of a democratic government is that it is vested with responsibilities altogether different from economic market. Markets have no obligation for justice, equity or fairness. In order for the CPP to be an effective and equitable

⁴³ *Federal Actions to Address Impacts of Uranium Contamination in the Navajo Nation Five-Year Plan Report*. January 2013. Pg. 2

⁴⁴ *Federal Actions to Address Impacts of Uranium Contamination in the Navajo Nation Five-Year Plan Report*. January 2013. Pg. 2

⁴⁵ As stated in comments by the New Jersey Environmental Justice Alliance Clean Power Plan. 79 Fed. Reg. 34900 indicates that a hearing is required but 79 Fed Reg. 34915 seems to state that no hearing is required on an “initial plan”. Perhaps a hearing on the final plan is necessary but to the degree the requirement for a hearing is unclear in the Clean Power Plan it needs to be clarified. However, in any case, a more robust public participation process needs to be developed that specifically involves EJ communities in the development of state implementation plans.

⁴⁶ New Jersey Environmental Justice Alliance. Comments submitted on the Clean Power Plan, December 1, 2011.

rule, we call for measures that will support and enhance equitable and just federal and state implementation so that all communities and residents will have healthy and sustainable communities where they live, work and play.

We also support the comments submitted by the **New Jersey Environmental Justice Alliance (NJEJA)**; **Global Alliance for Incinerator Alternatives (GAIA)**; *Section VI:A-G Environmental Justice* submitted by the **Sierra Club**, (**however we do not support carbon-trading schemes in any form as an option for compliance**); and *Section: Environmental Justice and Overburdened Communities* submitted by the **Union of Concerned Scientists** (**however we do not support carbon-trading schemes in any form as an option for compliance**).

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