

May 12, 2017

Sarah Rees
U.S. Environmental Protection Agency
Office of Regulatory Policy and Management
1200 Pennsylvania Avenue, N.W.
Mail Code 1803A
Washington, D.C. 20460
(submitted via regulations.gov)

Re: Regulatory Reform Docket in response to Executive Order 13777

Dear Ms. Rees:

The Clean Energy Group appreciates the opportunity to comment on the regulatory reform process initiated by Executive Order 13777, seeking input on regulations that may be appropriate for repeal, replacement, or modification.¹

We believe that there are opportunities for streamlining existing EPA regulations and reporting requirements without sacrificing important public health and environmental protections. For this letter, we focus our comments on changes that we believe can be made under EPA's existing legal authority.

We also believe that there are regulations that should not be changed or eliminated because they provide important public health benefits at reasonable cost. Since 1990, the electric power sector has sharply reduced its air emissions. Notably, the industry has reduced its sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions by 91 percent and 82 percent, respectively, relative to 1990 levels. The electric sector has reduced its aggregate SO₂ and NO_x emissions to less than 1.5 million tons and roughly 1.2 million tons in 2016, respectively. Programs established by the Clean Air Act have been a big part of this success story with measured improvements in ambient air quality. This tremendous progress has been accomplished while maintaining a reliable and affordable electric system, with a significant expansion in clean energy generation.

We have compiled our recommendations based on input from the individuals that are directly responsible for environmental regulatory compliance, environmental permitting, and emissions reporting at a wide range of electric generating facilities.

Again, we appreciate the opportunity to comment and look forward to continued engagement as the Task Force continues its work.

¹ Austin Energy, Calpine Corporation, Capital Power, Consolidated Edison, Inc., Entergy Corporation, National Grid, New York Power Authority, NextEra Energy, PG&E Corporation, and Tenaska.

Air Permitting

New Source Review (NSR) is one of many programs established by the Clean Air Act to reduce emissions of air pollutants—particularly "criteria air pollutants".² The primary function of the NSR program is to ensure that new or substantially modified sources achieve emission rates that reflect the performance of best-available emissions control technologies (BACT or LAER). There have been repeated efforts since its inception to change the program based on the view that the NSR program is complicated and may serve as an impediment to facility upgrades that improve energy efficiency and reliability.

In 2001, President Bush's National Energy Policy Development Group directed EPA to conduct a 90-day study of the impact of NSR regulations. The Agency's review of the NSR program was broad-based. EPA held four public hearings, had individual meetings with over 100 groups representing the public, industry and State and local agencies, and reviewed over 130,000 comments from private citizens, environmental groups, state officials and industry representatives. Based on its review, EPA concluded that the NSR program was not significantly impeding investment in new power plants. An informal survey of our members found that this is still the case today.

In considering options to simplify or improve the NSR program, ideally, we would like to see nationwide caps on emissions with the flexibility of trading, rather than relying on project-by-project permitting reviews. However, we recognize that this would require Congressional action.

In the absence of legislative action, we do think it would be helpful if EPA developed an updated set of guidelines on the application of NSR to new and modified sources given the numerous past reform efforts and legal decisions interpreting EPA's authority under the Clean Air Act. We think this would be helpful for industry and state permitting authorities to ensure consistent application of the rules across jurisdictions.

We also understand that the NSR program will be part of EPA's regulatory review. Today, gas turbine manufacturers offer upgrade packages to improve unit efficiency.³ However, the NSR rules will sometimes force a facility owner to only partially implement the performance upgrade or limit dispatch in order to avoid triggering NSR thresholds and upgrading controls. Depending on the location, this may result in the dispatch of other less efficient units once operational limits are reached. We recommend that EPA examine the extent to which NSR may be discouraging efficiency upgrades and if there are legally durable regulatory options to propose for comment, while recognizing the existing case law.

Two areas to consider evaluating include: (1) the methodology used for determining whether a physical change or change in the method of operation at a facility results in an emissions increase; and (2) potential opportunities to account for the reductions in emissions that have occurred through the installation of advanced pollution control technologies. Additionally, we would encourage EPA to evaluate whether the geographic limitations on the sourcing of offsets could be expanded, particularly as industry has continued to reduce its air emissions and offsets become harder to procure. In the Ozone Transport Region (OTR), for example, New York and certain other Northeast states have reciprocal trading agreements that limit the extent to which Emission Reduction Credits (ERCs) can be

² When we refer to New Source Review, we are referring to both the Prevention of Significant Deterioration (PSD) permitting program and non-attainment New Source Review.

³ See, for example, the Siemens 3-dimensional Turbine Blades & Vanes (Si3D) and General Electric's Advanced Gas Path (AGP) product offerings.

traded across state lines. Given the region's coordinated efforts to address ozone nonattainment, it may be possible to expand these ERC trading boundaries within the region in a more coordinated fashion.

Finally, on December 20, 2016, EPA finalized several changes to the Guideline on Air Quality Models (40 CFR 51 Appendix W), which is used by industry to perform air quality modeling in support of certain types of air permit applications for new and modified sources. We think there are helpful changes made to the guidelines, and the guidelines should go into effect on May 22, 2017, as planned.

Mercury and Air Toxics Standards

In 2011, EPA issued the Mercury and Air Toxics Standards (MATS) for coal- and oil-fired power plants. The standards went into effect for most power plants in April 2015; three years after the rule was published in the Federal Register. On April 15, 2014, the U.S. Court of Appeals for the D.C. Circuit fully upheld the rule. Virtually all facilities subject to the rule have now installed pollution control equipment, switched to cleaner fuels, or retired generating units to comply with the rule. While there are opportunities to streamline the monitoring and reporting requirements under the rule, the emissions standards of the rule should remain in force. Experience has shown that the current standards are achievable, and modifying the rule could be extremely disruptive to the industry, particularly if EPA was forced to recalculate the standards based on an updated database of stack test data (i.e., Section 112 requires that emissions limits for existing sources reflect the average emission rates achieved by the best performing 12 percent of the existing sources for which the Administrator has emissions information and the D.C. Circuit has circumscribed how EPA must perform this calculation). Regulatory certainty is critical for electric utilities as they plan their future investments. To have a major regulation, like MATS, suddenly revised or overturned could result in major stranded investments and ongoing regulatory uncertainty without any benefit to ratepayers, since the controls have already been built and installed. Further, we believe the standards should remain in place even if EPA decides to review the benefits and costs of the rule, given the substantial investments that have been made to comply with the rule.

Under the existing rule, certain affected facilities are required to perform quarterly stack tests to demonstrate continuous compliance with the rule. Stack testing on this frequency can be costly and burdensome to power plant operators. In some cases, often due to the decreased utilization of these units, facilities are required to run simply to complete the necessary testing on schedule, burning additional fuel and increasing emissions. Stack testing for a single oil-fired generating unit can cost in excess of \$60,000 per year, or more than \$15,000 per quarter, and most plants have multiple generating units. EPA should consider whether performance tests could be performed less frequently to reduce the costs of the rule, while still ensuring that the standards are being achieved.

Air Toxics Reporting Requirements

In 1997, EPA expanded the Toxics Release Inventory (TRI) reporting program to include electric generating facilities and six other industrial source categories, including metal mining, coal mining, commercial hazardous waste treatment, chemical and allied products, petroleum bulk terminals, and solvent recovery services. With respect to the electric generating sector, reporting is limited to "facilities that combust coal and/or oil for the purpose of generating electricity for distribution in

commerce". Facilities submit annual reports on their chemical-by-chemical releases to the environment as well as chemicals that are managed through recycling, energy recovery and treatment.

In expanding the program, EPA relied on the authority provided in the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) section 313(b)(1)(B), which states: "The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Classification Code to which this section applies is relevant to the purposes of this section."

Under the TRI program, natural gas-fired combustion turbine facilities are required to submit reporting forms if they burn even a very limited quantity of ultra-low sulfur distillate fuel oil (No. 2) as a backup fuel. In the latest reporting year, there were many locations with natural gas-fired combustion turbines that reported to the TRI database.

EPA could streamline the TRI reporting program for combustion turbines by (1) eliminating the reporting requirements for units that burn No. 2 distillate fuel oil, or (2) establishing an appropriate minimum threshold quantity of oil that would trigger reporting requirements. For example, in Part 75, a unit where natural gas accounts for at least 90 percent of the unit's average annual heat input in the previous three calendar years is classified as a gas-fired unit, not an oil-fired unit.

Greenhouse Gas Reporting Requirements

In accordance with 40 CFR Part 98 Subpart D (The Mandatory Greenhouse Gas Reporting Program) (GHGRP), Electricity Generation is required to submit reports to EPA on their greenhouse gas emissions by March 31 for the previous calendar year. Companies use the Electronic Greenhouse Gas Reporting Tool (e-GGRT) to report GHG data directly to EPA. This includes emissions of all greenhouse gases. However, this effort is duplicative of the EPA requirement to report carbon dioxide (CO₂) emissions as well as fuel use and other operating parameters to the Air Markets Program Database, in accordance with 40 CFR Part 75. In fact, the EPA uses the Part 75 reporting as the final data and will flag errors in the e-GGRT system if the reported emissions do not match the Part 75 data. EPA could streamline the GHG reporting requirements by simply importing the Air Markets Program Database into the GHG reporting database, rather than requiring a separate reporting process. Companies must also calculate and report their emissions of other GHGs (CH₄ and N₂O) for the GHGRP using default emission factors multiplied by the mass or volume of fuel combusted. This added step could be completed by EPA based on the fuel consumption data reported to the Air Markets data.

Timely Permitting Decisions

In addition to these regulatory reforms, we believe that permitting decisions for energy infrastructure projects could be made on a more timely basis. Permitting delays can significantly impact the economics of a project, and we would encourage EPA to consider options or strategies for streamlining permitting reviews and approvals. This may include clear guidelines, establishing deadlines for the review of permit applications, and adequate staffing.

If you have any questions about these comments, please do not hesitate to contact me at vanatten@mjbradley.com or Carrie Jenks at cjenks@mjbradley.com, and we would welcome the opportunity to meet with EPA staff to discuss our comments further.

Sincerely,

A handwritten signature in black ink that reads "Christopher E. Van Atten". The signature is written in a cursive style with a large, prominent initial 'C'.

Christopher E. Van Atten
The Clean Energy Group

cc:

Samantha Dravis
Brittany Bolen
Mandy Gunasekara
Sarah Dunham