

STATE OF FLORIDA

ART GRAHAM
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Public Service Commission

October 30, 2018

Mr. Andrew Wheeler, Acting Administrator
U.S. Environmental Protection Agency
Attention: Docket ID No. EPA-HQ-OAR-2017-0355
EPA Docket Center (EPA/DC)
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Acting Administrator Wheeler:

**Re: Emission Guidelines for Greenhouse Gas Emission From Existing Electric Utility
Generating Units; Revision to Emission Guideline Implementing Regulations; Revisions to
New Source Review Program**

The Florida Public Service Commission authorized on October 30, 2018, the filing of the attached comments on EPA's August 31, 2018, proposed rule on carbon dioxide emissions from existing fossil fuel-fired generating units. The staff contact on these comments is Mr. Cayce Hinton, Director of Industry Development & Market Analysis, who can be reached at 850-413-6950.

Sincerely,

A blue ink signature of Art Graham.

Art Graham
Chairman

AG/kcl

cc: Commissioner Julie I. Brown
Commissioner Donald J. Polmann
Commissioner Gary F. Clark
Commissioner Andrew Giles Fay

**UNITED STATES OF AMERICA
BEFORE THE
ENVIRONMENTAL PROTECTION AGENCY**

Emission Guidelines for Greenhouse Gas Emission From Existing Electric Utility Generating Units;
Revision to Emission Guideline Implementing Regulations; Revisions to New Source Review
Program

Docket ID No. EPA-HQ-OAR-2017-0355

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

The Florida Public Service Commission (FPSC) respectfully requests consideration of the comments provided herein on the proposed Emission Guidelines for Greenhouse Gas Emission from Existing Electric Utility Generating Units, also referred to as the Affordable Clean Energy rule (Proposed Rule). The FPSC recognizes the necessity and role of the U.S. Environmental Protection Agency (EPA) in addressing public health and environmental issues. The FPSC notes that in February 2011, the National Association of Regulatory Utility Commissioners (NARUC) approved a resolution entitled “Resolution on the Role of State Regulatory Policies in the Development of Federal Environmental Regulations.” The resolution states ten broad principals EPA should consider when developing new environmental rules. These ten principles are:

- Avoid compromising energy system reliability;
- Seek ways to minimize cost impacts to consumers;
- Ensure that EPA’s actions do not impair the availability of adequate electricity and natural gas resources;
- Consider cumulative economic and reliability impacts in the process of developing multiple environmental rulemakings that impact the electricity sector;

- Recognize the needs of states and regions to deploy a diverse portfolio of cost-effective supply-side and demand-side resources based on the unique circumstances of each state and region;
- Encourage the development of innovative, multi-pollutant solutions to emissions challenges as well as collaborative research and development efforts in conjunction with the Department of Energy;
- Employ rigorous cost-benefit analyses consistent with federal law, in order to ensure sound public policy outcomes;
- Provide an appropriate degree of flexibility and timeframes for compliance that recognizes the highly localized and regional nature of the provision of electricity services;
- Engage in timely and meaningful dialog with state energy regulators in pursuit of these objectives; and
- Recognize and account for, where possible, state or regional efforts already undertaken to address environmental challenges.

The FPSC believes that these stated principals are just as important in the current EPA rulemaking process as they were in 2011. Therefore, the FPSC respectfully suggests that EPA take these principles and the comments listed below into consideration when developing the proposed rules.

I. FPSC Jurisdiction

The FPSC is charged with ensuring that Florida's five investor-owned electric utilities provide

safe, reliable energy for Florida's consumers in a cost-effective manner. The FPSC additionally regulates 35 municipal electric utilities and 18 rural electric cooperative utilities regarding safety, rate structure, and oversight of generation and transmission planning.

In Florida, the FPSC has exclusive jurisdiction to require electric power conservation and reliability measures within the coordinated electric power grid for operational and emergency purposes.¹ The FPSC's exclusive jurisdiction includes the planning, development, and maintenance of the coordinated electric power grid to assure an adequate and reliable source of energy and to avoid uneconomic duplication of generation, transmission, and distribution facilities.² The FPSC is charged with determining the need for all new steam electric generating facilities and solar generation over 75 megawatts.³ The FPSC has the responsibility of allowing recovery of prudently incurred environmental compliance costs by investor-owned electric utilities, such as costs incurred in compliance with the Clean Air Act.⁴

In 1980, the FPSC developed a generating performance incentive factor program (GPIF) for investor-owned utilities that encourages utilities to maximize heat rate efficiency of electric baseload generating units.⁵ Unit specific heat rate and availability targets are set annually through a formal hearing procedure, and the FPSC has the authority to reward utilities that reach their targets and penalize those utilities that do not.

¹ Section 366.04(2)(c), Florida Statutes

² Section 366.04(5), Florida Statutes

³ Section 403.519, Florida Statutes

⁴ Section 366.8255(2), Florida Statutes

⁵ Order No. 9558, in Docket No. 800400-CI, issued September 19, 1980, *In re: Investigation of Fuel Cost Recovery Clause Application to Investor-owned Electric Utilities*.

II. FPSC Response to Certain EPA Solicitation For Comments

Reliability, Diversity, Flexibility, and Cost-effective Compliance (C-14, 20, 22, 23)

EPA requested comments on other factors not explicitly included in the proposed rule and potential compliance implementation measures. The FPSC respectfully asserts that the Proposed Rule need not identify all factors, technologies, or compliance measures that may be discovered through the rigor of a site-specific review at affected existing generating units (EGUs). Additional general criteria and guidance would not be superior to allowing states to act on the information acquired through site-specific reviews of affected EGUs. As such, each state should be afforded flexibility and discretion in their efforts to address cost-efficient solutions that respond to that state's respective strategic interests while satisfying federal environmental performance requirements.

The process of establishing a standard of performance for affected EGUs should be based on a determination of the best standard of emission reduction (BSER) that considers factors such as technical feasibility^{6,7} and costs.^{8,9} The resulting standard of performance requirements must be technically achievable and based on relevant and adequate data.^{10,11} Furthermore, "To be achievable, a standard must be capable of being met under the most adverse conditions which can reasonably be expected to recur."¹² Thus, a site-specific review of each affected EGU must

⁶ *Essex Chemical Corp v. Ruckelshaus*, 486 F. 2d 427, 433-434 (D.C. Cir 1973)(stating that an achievable standard is one which is within the realm of the adequately demonstrated system's efficiency and which need not necessarily be routinely achieved within the industry prior to its adoption), *cert denied*, 416 U.S. 969 (1974).

⁷ 60.24a(e)(2), FR 44805

⁸ *Portland Cement Association v. Ruckelshaus*, 486 F. 2d 375, 385, 402 (D.C. Cir. 1973), *cert. denied* 417 U.S. 921 (1974).

⁹ 60.24a(e)(1) at FR 44805

¹⁰ *Essex Chemical Corp v. Ruckelshaus*, 393 (D.C. Cir 1973).

¹¹ 60.24a(e) at FR 44805

¹² *White Stallion Energy Ctr., LLC v. EPA*, 748 F. 3d 1222 (S.D. Cal. 2014), citing to *Nat'l Lime Association v. EPA*, 627 F. 2d 416, 431 n. 46, 200 US App. DC 363 (D.C. Cir. 1980).

be undertaken to adequately identify all relevant unique factors supporting an affected EGU's standard of performance.

The Proposed Rule should disregard factors that a state's review may show to be relevant in determining the standard of performance. For example, a site-specific BSER review should take into account not only the potential for incremental heat rate improvements but also recognize the potential for heat rate variability. Data from Florida's GPIF program shows a general heat rate improvement since inception but also that the efficiency of an EGU does vary over time. Consequently, cost-effective options addressing heat rate variability should also be considered in determining the standard of performance of a particular EGU.

Additionally, Florida currently imports all of its fossil fuel by rail, barge, truck, and pipeline. Florida's unique geography results in exposure to extreme weather events that make it vulnerable to interruption of delivery for one or more fuel types. Therefore, fuel supply security, reliability, and diversity are strategic factors that impact safe, reliable, and cost-effective electric service in Florida. Not all states share the same strategic interests. Consequently, each state must be afforded great latitude and discretion when determining which actions are cost-effective for its affected EGUs. The FPSC believes the appropriate general criteria expressed in the Proposed Rule should be that states establish an affected EGU's compliance measures, timeline, and standard of performance based on consideration of site-specific factors guided by, but not limited to, EPA's published BSER.

However, if the Proposed Rule is intended to bar states from pursuing cost-efficient compliance measures that are not specifically identified in the rule, then the FPSC respectfully suggests that EPA consider revising the Proposed Rule to remove the unnecessary constraint on state flexibility and discretion. The FPSC believes that the Proposed Rule should avoid unnecessary tension between EPA's efforts establishing public health and environmental guidelines, pursuant to Section 111(d) of the Clean Air Act, and a state's discretion in achieving cost-efficient environmental performance.

III. Conclusion

It is critical to economic regulators, like the FPSC, that the Proposed Rule does not fetter a state's due-diligence in identifying cost-efficient environmental compliance that serves the public interest. Flexibility to assess all available environmental compliance options promotes reliability of the electric grid and diversity of fuel resources, which are also in the public interest.