The Business Council for Sustainable Energy®

November 1, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
via www.regulations.gov

Dear Administrator McCarthy:

On behalf of the Business Council for Sustainable Energy (BCSE), I am pleased to submit the enclosed comments on the proposed Clean Energy Incentive Program (CEIP) Design Details **Docket No. EPA-HQ-OAR-2016-0033**. The Council is a coalition of companies, trade associations and stakeholders from the energy efficiency, natural gas and renewable energy sectors. It also includes independent electric power producers, investor-owned utilities, public power, commercial end-users and environmental and energy market service providers. Founded in 1992, the Council advocates for policies at the state, national and international levels that increase the use of commercially-available clean energy technologies, products and services. The coalition's diverse business membership is united around the revitalization of the economy and the creation of a secure and sustainable U.S. energy system.

The Council commends the Administration for undertaking this effort to incentivize early investments in clean energy in anticipation of the Clean Power Plan compliance period. The Council's comments focus largely on maintaining a clear and streamlined program that states can use with flexibility to achieve emissions reductions.

The Council looks forward to continuing to work with the Administration on the CEIP and Clean Power Plan process going forward.

Sincerely,

Lisa Jacobson
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Executive Summary

The Business Council for Sustainable Energy appreciates the opportunity to comment on the Clean Energy Incentive Program (CEIP) as part of the Clean Power Plan. The Council is a coalition of companies and trade associations from the energy efficiency, natural gas and renewable energy sectors, and also includes independent electric power producers and investor-owned utilities, equipment and product manufacturers, project developers, and energy and environmental service providers.

Founded in 1992, the Council advocates for policies at the state, national and international levels that increase the use of commercially available clean energy technologies, products and services. The coalition's broad-based business membership is united around the revitalization of the economy and the creation of a secure and sustainable future for America.

The Council's comments offer perspectives and recommendations in several areas that will bolster the benefits and effectiveness of the CEIP. The Council would like to acknowledge the input received from numerous trade associations and partner organizations, including American Council for an Energy Efficient Economy, Aclara, AJW, Inc., the American Biogas Council, the American Gas Association, the American Wind Energy Association, the Biomass Power Association, NASEO, and the Solar Energy Industries Association. Of note, as a diverse business coalition, not all BCSE members take positions or endorse the recommendations expressed in this submission.

The Council commends EPA for including the CEIP in its final Clean Power Plan and applauds its intent to incentivize early investments in clean energy, with a special emphasis on low-income communities. We also appreciate EPA's decision to release more details on the CEIP as a proposed rule, enabling opportunity for comments, as we believe that the proposed design of the CEIP could be improved to more effectively incentivize a broader spectrum of carbon reduction activities prior to the start of the Clean Power Plan compliance period.

The Council believes it is important that the final CEIP reflect the original intent and goals outlined for the CEIP in the final Clean Power Plan. The CPP final rule indicates that the CEIP "responds to the urgency of meeting the challenge of climate change" by encouraging emissions reductions before 2022 and by incentivizing "the kinds of measures and technologies that are the essential foundation of longer-term climate strategies." The final rule also mentions that benefits of the CEIP include "incentives to reduce energy bills early in the implementation of the guidelines…supporting early investment in renewable energy generation technologies [that] could accelerate the rate at which the costs of these technologies fall over the course of the interim performance period… [and] provide affected EGU's and states with additional emission reduction resources to help them achieve their state plan obligations." Creating a program that adheres to these foundational principles and that is easy and worthwhile for states to participate in is of paramount importance.

Remembering that one of the original goals of the CEIP is to incentivize clean energy development in low-income communities, the Council also advocates for making the program responsive to the needs and characteristics of those communities and of the technologies that are particularly suited to helping lower costs for residents of these low-income areas.

The CEIP should also maintain its original goals of a clear, simple, easy to administer program that would help states jumpstart their emissions reductions before the compliance period. Maintaining equal treatment of renewable technologies and energy efficiency technologies, as well as flexibility in how states use the program to achieve the stated goals is vital to the success and impact of the CEIP. For example, EPA could establish the amount of credits available for low-income and non-low-income communities and allow the states to select from the full portfolio of emission reduction activities within each category. Adopting a technology neutral approach would allow states to focus on the emission reduction activities most appropriate in their jurisdictions.

In addition, EPA's proposal of a different system for appropriating credits – based on a floor for each half of the program with the remaining credits being appropriated at the states' discretion – is another way to provide a structure to incentivize renewable and energy efficiency technologies, while giving states the room to implement the program in the most effective way for them. Our comments are intended to reflect these goals and priorities.

In order to achieve EPA's stated goals to "incentivize certain early emission reduction projects," the CEIP should be implemented in a manner that is complementary to the many state and federal policies that drive clean energy deployment. There are a multitude of programmatic and market drivers that come together to determine whether a project moves forward. The CEIP should be designed to reinforce these programs and trends in the market. The CEIP will be transformative if it can amplify the current market drivers, as this will spur states and market participants into early action, resulting in development above and beyond business as usual.

The value of the CEIP as a complementary policy is especially apparent where substantial barriers to development exist. In many cases, existing programs and incentives are insufficient to drive these projects and the CEIP can serve as the tipping point for ensuring these projects are realized.[1] As a complementary policy, the CEIP can help to amplify current policies, providing the extra support necessary to drive clean energy development that may otherwise not be viable.

In addition to the more detailed comments below, the Council makes the following recommendations to more fully realize the carbon reduction potential of the CEIP.

<u>Cross-Cutting Recommendations:</u>

- **Set the eligibility date for renewable technology and energy efficiency projects to when states submit their initial plans**. Allowing states to include more projects by expanding the eligibility period will strengthen the program and result in more robust emissions reductions.
- **Allow projects to start earning credits upon submittal of the state plan**. As with increasing the number of projects eligible, increasing the amount of time during which projects may earn credits

[1] *See* NYSERDA, NY-Sun Initiative Quarterly Performance Report to the Public Service Commission, Quarter Ending June 30, 2016 (Aug. 2016), *at* https://www.nyserda.ny.gov/-/media/Files/Programs/NYSun/2016-Q2-Quarterly-Report.pdf citing six low-income solar systems installed in second quarter of 2016, compared to 5,506 non-low-income solar systems installed during same time period.

will give the program more value. The program's value is diminished by not taking advantage of the years leading up to 2020.

- **Provide for reallocation of unused credits**. Allowing unused credits to be reallocated to states that wish to use them will take full advantage of the value of those credits instead of wasting their value by retiring them.

Renewable Energy Section Recommendations:

- **Expand the eligible technologies under the renewables section to include the full portfolio of renewable energy technologies, specifically including biomass, biogas, and waste to energy technologies.** Including the full range of carbon-reducing energy technologies will fulfil the intent of the CEIP and give states more flexibility in jumpstarting their carbon reductions.

Low-Income Section Recommendations:

- **Clarify the eligibility standards as applied to programs versus projects.** Various projects within a larger low-income program might be already in existence. EPA should clarify whether other projects within that program are still eligible if they meet the eligibility date requirement.
- **Clarify the threshold for states updating their definitions of low-income communities**. These definitions will need to be periodically updated, and giving states guidelines on what constitutes an updated versus a new definition will remove uncertainty and encourage full participation in the CEIP.
- **Allow states with mass-based plans to use existing evaluation, measurement, and verification protocols for energy efficiency**. Doing so will enable these states to avoid the time and cost of developing additional EM&V protocols just for the CEIP program.

Cross-Cutting Recommendations to Increase the Value of the CEIP

The following cross-cutting recommendations are aimed at increasing the value of the CEIP, and therefore the likelihood that states will elect to participate. Ensuring that each credit issued under the CEIP results in as much investment in clean energy projects as possible prior to the CPP compliance period will mean a more robust program and more emission reductions, fulfilling the original goals of the program.

Eligibility Period

Under the proposed rule, renewable energy projects are eligible under the CEIP if they commence commercial operation on or after January 1, 2020. Under this timeline, new projects are incentivized to delay putting projects into operation to ensure they will be eligible for the CEIP. This is in opposition with the stated goal of the CEIP to incentivize early adoption of emissions reduction measures. The Council therefore proposes that projects be eligible if they commence commercial operation on or after the date of a state's initial filing expressing intent to participate in the CEIP.

Banking Period

Similarly, the period during which eligible projects may earn CEIP credits should be expanded beyond the two year period of 2020-2022. The Council suggests allowing projects to begin banking credits upon the submittal of a state's final plan. This will serve to increase the value of the program by removing uncertainty surrounding factors that affect the value of the CEIP credits. If project developers are uncertain about the value of the credits, they might refrain from construction until the program period begins, leaving them unable to take advantage of the full two years of the program. Allowing projects to bank credits starting at submittal of a final plan will therefore allow the CEIP to be implemented to the fullest extent.

Reallocation of Unused Credits

The Council recommends that EPA allow unused credits to be reallocated to states that wish to use them. Reallocation will enable states to take full advantage of the value of those credits. If credits are retired instead of reallocated, the value they represent is lost and cannot be used to further the goals of the CEIP. While the Council understands that there may be administrative hurdles to overcome in a reallocation scheme, it believes that there are significant benefits to be gained. The more credits that states can use for emissions reductions, the closer we are to achieving the stated goals of the CEIP.

Renewable Energy Projects Under the CEIP

The Council believes that a strong CEIP can incentivize states to begin emissions reductions prior to the compliance period of the Clean Power Plan, and increase the use of clean energy, especially renewable energy and energy efficiency technologies. In keeping with the structure of the Clean Power Plan, the CEIP should provide flexibility to states as they determine how best to take advantage of the opportunities the CEIP provides. EPA should seek parity among renewable energy sources in the CEIP. The Council therefore believes that the full portfolio of available energy efficiency and renewable energy technologies should be able to participate in the CEIP, provided they meet the other CEIP criteria. The CEIP can maintain a reasonable level of structure and definitiveness while still allowing states to choose from available carbon reduction technologies, and doing so will make the program stronger. The added clarity on structure and technology options will result in greater administrative simplicity, and greater chance that states will elect to participate in the program.

The Council applauds the decision in the proposed rule to include geothermal and hydropower under the renewable energy section of the program. This is a step in the right direction of allowing states the flexibility to use the renewable technologies that best serve their carbon reduction goals. The CEIP should give states further flexibility by including biomass, biogas, and waste to energy as eligible technologies. Many states are looking to these technologies as ways to comply with the Clean Power Plan, but may be discouraged from doing so if they are not included in the CEIP.

Additionally, these technologies meet the criteria for inclusion in the CEIP as outlined by the proposed rule: they can be considered "zero emitting" by EPA's own standards, they are essential to longer term climate

strategies, and they require lead times of relatively shorter duration given the time-limited nature of the CEIP.

EPA has evaluated CO2 emissions from biogenic fuels using a life-cycle analysis in most (if not all) other cases, so to exclude biomass here because it is a "low-carbon emitting source" is an inconsistent approach.[2] Specifically, EPA issued a *Framework for Assessing Biogenic Carbon Dioxide for Stationary Sources*, in which it found that "the use of biomass feedstocks derived from the decomposition of biogenic waste in landfills, compost facilities or anaerobic digesters did not constitute a net contribution of biogenic CO2 emissions to the atmosphere." The Council suggests that this indicates that biogas and anaerobic digestion technologies are in fact "zero-emitting."

Biogas and anaerobic digestion technologies also fulfil the criterion of being essential to the success of our long-term climate strategies. EPA's Waste Reduction Model (WARM), used to help estimate emissions reductions from waste management practices, outlines best methodologies for managing our organic waste material in ways that do not produce large amounts of harmful greenhouse gases.

Finally, biomass/biogas requires relatively shorter lead times, which enable them to work within the timeline of the CEIP. For example, power plants can buy renewable natural gas already in production from anaerobic digesters, and landfills with gas capture, and new anaerobic digesters can be developed in about 18 months to 3 years.

The Supreme Court stay of the Clean Power Plan introduces uncertainty for eligibility dates. It is therefore even more important for EPA to allow states the flexibility to choose which types of renewable energy projects to credit. Because the time period in which the CEIP projects will be credited and deployed is uncertain, states need the flexibility of having all available renewable technologies eligible for inclusion in the program.

Low-income Projects under the CEIP

EPA should also give states flexibility in determining which actions it would like to credit under the low-income portion of the CEIP. As mentioned above, flexibility is necessary for states to take full advantage of the CEIP's benefits. When discussing demand-side energy efficiency measures, EPA should include mention of natural gas and propane direct use and combined heat and power energy efficiency activities, in addition to the options already listed.[3] EPA should also explicitly list water efficiency projects and programs carried out in (or for the benefit of) low-income communities.

While we understand EPA's list of demand-side efficiency measures is illustrative rather than exclusive, not including a broader list of options could create uncertainty in the states as to whether direct use natural gas or combined heat and power are eligible, and states will be less likely to take advantage of their carbon

[2] For further detail on including biomass in the CEIP, please see the Biomass Power Association's comments.
[3] In the Proposed Rule, Footnote 89, p. 42965, lists "typical examples of energy efficiency measures in homes". Direct use natural gas and propane, combined heat and power, and water efficiency projects are not included in this list, but should be.

reduction potential. Ensuring states have the full range of tools to reduce carbon output while benefiting low-income communities is an essential aspect of the CEIP.

EPA should also make clear that new and emerging technologies can also be eligible. Technologies are evolving at a rapid pace, and technologies that are already proven and being widely used in some states still aren't on the radar in others. From the time when states submit their plans to the start date of the CEIP, many more states could become aware of those advanced technologies that could and should help generate credits under the CEIP. States should have the flexibility to adopt those technologies and have them count for CEIP purposes. The Council firmly believes that far from creating undue administrative burden for EPA, this approach will simplify the program by adding clarity and definitiveness about what technologies are eligible, while making clear for states the level of choice they have in administering the CEIP.

Defining Low-income Communities

The Council and its members commend EPA for creating flexibility for the states in defining "low-income communities." Allowing states to choose an existing local, state, or federal definition, or one used under a utility-administered program in the state gives the flexibility required to meet the diverse circumstances that exist for each state's low-income communities. Letting states choose an existing geographical or household definition, or a combination of the two, will help states maximize the effectiveness of the CEIP and eliminate administrative burdens that would create barriers to program adoption. It will also allow the flexibility for inclusion of non-residential facilities under the CEIP as well as inclusion of low-income households and facilities serving such households that are physically located in non-low-income neighborhoods.

However, EPA has agreed that in order for states to continue to respond to the needs of their communities, these definitions will need to be periodically updated. The proposed rule provides that "routine updates of underlying federal or state data do not constitute a new definition for the purposes of this action." We suggest that EPA make clarifications as to the difference between an existing definition and a new definition. Setting parameters for what constitutes creating a new definition versus updating an existing one will provide states with the certainty necessary to fully implement the CEIP.

Additionally, the Council supports the idea that states should have the flexibility to choose different low-income definitions for different types of energy efficiency projects. For example, a state could apply a geographic definition for an ESCO project and an income-based definition for a weatherization program. Allowing states to avoid blanket definitions when working with a diverse set of projects would enhance the states' ability to take full advantage of the wide range of efficiency measures.

Evaluation, Measurement, and Verification for Energy Efficiency

The Council would like to comment in response to EPA's proposal that energy efficiency evaluation, measurement and verification ("EM&V") protocols under the CEIP be the same as what is required under the Clean Power Plan. The Council was among the majority of commenters referenced in the proposed rule who recommended that EM&V requirements should "be flexible and transparent, should not be overly

burdensome (i.e., the cost of the EM&V should be balanced with the accuracy and reliability of the results), should not present a significant disincentive to participation in the CEIP, and that states that already have robust quantification and verification processes in place should be allowed to rely on these processes." We would like to repeat that recommendation here.

In the proposed rule, EPA indicates that the state plan requirements "apply regardless of whether a state is allocating early action allowances under a mass-based emission budget trading program or issuing early action ERCs under a rate-based emission trading program." In states adopting mass-based approaches, state plans are not required to contain EM&V criteria unless they elect to participate in the CEIP. We recognize that EM&V is critical for determining the effectiveness of energy efficiency, and most states already have some form of EM&V process in place for evaluating utility ratepayer-funded energy efficiency programs, which have been vetted and approved under rigorous regulatory oversight. EPA should consider allowing states with mass-based plans and already existing EM&V protocols – including existing Technical Reference Manuals, the IPMVP, and deemed savings resources under the CEIP – to continue their existing protocols instead of requiring costly and time-consuming changes that will only be in effect for the short two-year period of the CEIP.

The state of Maryland provides an excellent example of a state with robust and functioning EM&V criteria that, in choosing whether to participate in the CEIP, would have to weigh the time, expense, and administrative burden of creating a new protocol to conform to the CPP requirements. The Alliance to Save Energy has submitted comments on the CEIP to EPA that discuss this example in detail.[4] The comments describe Maryland's energy efficiency resource standard, administered by EmPOWER Maryland, which has run energy efficiency and demand response programs since 2009. Maryland, like many states, also uses a third-party evaluator to ensure that its energy efficiency program savings are being realized. Maryland regularly shares best practices and supports research in the Northeast Energy Efficiency Partnership. The Alliance's comments go on to say:

> All in all, Maryland has established a strong EM&V protocol for its EmPOWER programs. Since 2009, this protocol has been used to validate the savings from nearly $1.8 billion in utility programs that have returned $4.4 billion in lifetime energy savings. And yet, despite all of this work, the EmPOWER EM&V protocol cannot be used as-is to apply for the CEIP…And while the requirements of this section can be generally considered best practices, they do not precisely mirror the established EM&V protocols for Maryland…Simply stated, this would be a disqualifying requirement for Maryland's participation in the CEIP given that deemed savings are the primary method of quantifying savings for many EmPOWER programs and measures.

Given that the CEIP is a voluntary pathway for early emission reduction activity, placing barriers to participation in the face of states undermines the impact and potential success of the program. The Council suggests that the CEIP can maintain the necessary standards for participation while also removing barriers to entry by allowing states' existing EM&V protocols to be presumptively approvable.

[4] See comments to EPA by the Alliance to Save Energy, submitted September 28, 2016.

Conclusion

The Council appreciates the opportunity to comment on the CEIP design details proposed rule. There is an obvious potential benefit to the CEIP for renewable energy and energy efficiency development and deployment. We believe that with the suggestions in these comments, the CEIP can be improved to more effectively incentivize a broader spectrum of carbon-reducing technologies, and more widespread adoption in low-income communities, prior to the compliance period. BCSE would like to be viewed as a resource to EPA during this process to help ensure the full portfolio of clean energy technologies and their full emissions reduction potential are recognized in the CEIP.