Suwannee Valley Electric Cooperative
Lighting the way since 1937

Michael S. McWaters
Executive Vice President & CEO

December 1, 2014

U.S. Environmental Protection Agency

Office of Air and Radiation

Submitted Electronically to Docket ID No. EPA-HQ-OAR-2013-0602

Comments on EPA's Proposed Carbon Pollution Emission Guidelines for Existing Sources

We are pleased to comment on the Environmental Protection Agency's (EPA's) proposal for Carbon Pollution Emission Guidelines for Existing Stationary Sources in the Electric Utility Generating Units category, 79 Fed. Reg. 34,830 (June 18, 2014) (hereinafter the "Proposed Rule"). We are a member of the National Rural Electric Cooperative Association (NRECA) and associate ourselves with the comments and recommendations submitted by NRECA in this rulemaking.

Background:

As part of the Administration's effort to reduce CO2 emissions, EPA has proposed three rulemakings under the authority of Section 111 of the Clean Air Act. Two of these rules address new sources, or sources that are considered new because they are modified or reconstructed, under the authority of Section 111(b). On June 18, 2014, EPA issued the Section 111(d) existing source rule, which poses the greatest risk of imposing harmful costs and requirements on rural electric cooperatives. EPA's aggressive approach in interpreting both the statute and its own longstanding regulations makes the rule illegal and unachievable for numerous legal and technical reasons. For the reasons outlined below and by reference in the detailed comments submitted by NRECA, we urge EPA either to abandon the rule as beyond its legal authority or to substantially revise it to comply with the law recognizing the technical and policy limitations.

P.O. Box 160 • 11340 100th Street • Live Oak, FL 32064 • mmcwaters@svec-coop.com
(386) 330-5616 • 800-447-4509 • Fax: (386) 362-3488 • www.svec-coop.com

Comments on the Statute and the Proposed Section 111(d) Existing Source Emission Guidelines:

Section 111 of the Clean Air Act requires that "standards of performance" be set for stationary sources of certain non-hazardous air pollutants. Such standards are to be based on the "best system of emission reduction" (BSER) which must be adequately demonstrated and take into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements. Unlike new sources where EPA sets the standards of performance itself, the requirement for existing sources limits EPA to establishing the "procedures" under which *the individual States* (1) submit plans that establish standards of performance for existing sources within the State; and (2) apply those standards of performance to specific sources after taking into consideration "among other factors, the remaining useful life of the existing source…." Under longstanding EPA regulations, these factors include (1) unreasonable cost of control resulting from plant age, location, or basic process design; (2) physical impossibility of installing necessary control equipment; and (3) other factors specific to the facility or class of facilities that make application of a less stringent standard or final compliance time significantly more reasonable. EPA failed to follow this approach and leaves states with little choice but to adhere strictly to EPA's proposed guidance if they hope to comply.

1. EPA lacks statutory authority to issue the rule.

First, the statutory language of Section 111(d) is a product of differing House and Senate versions. Under the Senate version, unless a particular air pollutant emitted by existing sources was regulated by one of several other listed Clean Air Act provisions, existing sources emitting that pollutant could be regulated under Section 111(d). In contrast, the House version prohibits existing sources from being regulated under Section 111(d) if the existing sources are regulated under Section 112.

Under prevailing rules of legislative construction and case law regarding harmonization of conflicting statutory provisions, the House provision controls. Effective in 2012, EPA already regulates coal-fired power plants under Section 112 air toxics authority in the Mercury and Air Toxics Standard.

P.O. Box 160 • 11340 100th Street • Live Oak, FL 32064 • mmcwaters@svec-coop.com
(386) 330-5616 • 800-447-4509 • Fax: (386) 362-3488 • www.svec-coop.com

Therefore, EPA has no authority to regulate existing coal-fired power plants a second time under Section 111(d).

Second, Section 111(d) requires EPA to issue a valid *new source performance standard* under Section 111(b) before issuing an existing source standard. Based on flaws in the proposed NSPS and modified/reconstructed source standard, it is doubtful that either of the provisions will be lawfully finalized. Therefore, EPA has not satisfied this prerequisite to issue the Section 111(d) rule.

2. EPA has overstepped its legal authority in the joint federal-state process for establishing existing source standards of performance.

EPA has no statutory authority to define the "best system of emission reduction" in a way that goes "outside the fence" of a generating unit in ways that go beyond the technological or operational improvements that can be made at that individual source. For decades, EPA has acknowledged and abided by this interpretation of BSER in its longstanding regulations and prior standards. By requiring utilities to employ measures such as re-dispatch to other types of generation, adopt renewable energy sources and require consumers to reduce their demand for electricity through energy efficiency measures, EPA has ranged far beyond its statutory authority.

Second, regardless of its apparent disregard for the definition of BSER, EPA's authority under Section 111(d) is limited to determining what systems of emission reduction have been adequately demonstrated. The States have the primary role of establishing, based on EPA-determined BSER guidance, the actual standards of performance that will apply to individual sources in their borders. In each of these case-by-case decisions, the state must consider source-specific factors including the remaining useful life of each source, the reasonableness of the associated costs, and physical and technical feasibility of control. This process is consistent with the plain language of the statute and the EPA's own longstanding regulations. Again, EPA's proposal ignores the statute by setting fixed limits

for the States rather than limiting their involvement to that of reviewing state plans to ensure they comply with the Act.

3. EPA's "power grab" undermines States' authority and will disproportionately impact small utilities such as cooperatives.

There are a multitude of problems caused when EPA usurps the States' proper role of determining where and how to establish individual source emission limits, especially for the cooperatives. EPA established four "building blocks" that represent their interpretation of BSER. These include: 1) heat rate efficiency improvements of 6 percent 2) A 70% capacity factor for existing natural gas combined cycle units to displace coal-fired capacity 3) additional renewable requirements and treatment of nuclear power generation, and 4) a nationwide 1.5 percent annual end-use energy efficiency improvement. While the actual reduction goals vary considerably from state to state, these requirements are binding and give states little leeway in how they could achieve EPA's goals.

If EPA should go ahead with this rule as proposed, the limited generation portfolio of rural electric cooperatives, the heavy reliance of many cooperatives on coal-fired generation, and other practical realities limit cooperatives' ability to either cost-effectively implement or technically achieve many of the limits in EPA's building blocks.

As NRECA details in their comments, EPA has significant flaws in each of the building blocks that undermine their legitimacy in establishing goals that the states can achieve. To remedy this flaw, EPA will need to reassess what is achievable under each Building Block for each state and recalculate the goals accordingly. This will help mitigate some of the challenges faced by cooperatives and other utilities with EPA's proposed limits.

4. The emission reduction targets EPA has set are unattainable.

P.O. Box 160 • 11340 100th Street • Live Oak, FL 32064 • mmcwaters@svec-coop.com
(386) 330-5616 • 800-447-4509 • Fax: (386) 362-3488 • www.svec-coop.com

There are significant policy and technical impediments that make implementation of this proposal impractical and likely impossible. Starting with the exclusive role of the Federal Energy Regulatory Commission (FERC) in determining how energy is dispatched, the proposed rule impermissibly requires States to regulate dispatch in contravention of FERC authority. Next is the inability of the States to regulate based upon environmental rather than economic dispatch when such decisions are controlled by regional transmission organizations and independent system operators whose boundaries are not contiguous with state borders. Further there is the potential impact of the rule on the reliability of the supply of electricity.

Lastly, there are numerous faulty assumptions on which each of the Building Blocks is based. These faulty assumptions include such critical issues as limitations on source efficiency improvements, natural gas availability and existing natural gas generation capacity, shortages of transmission infrastructure for required additional renewable generation, arbitrary treatment of nuclear power, and the unrealistic assumptions regarding future potential reduction in electricity demand based on energy efficiency programs.

5. The rule is unworkable, given the timeframe EPA proposes.

Even if all the other issues are resolved in EPA's favor, the rule is unworkable given the timeframes that EPA has set for compliance. First, the time frames EPA proposes are absurdly short, particularly given the complexity of the tasks EPA has assigned the States. Recognizing this complexity, EPA should give the States at least five years to develop a state implementation plan ("SIP") for a single State and seven years to develop a multi-state SIP, rather than the maximum of two and three years, respectively, that EPA has proposed. The Agency should also provide an extra three years for developing any SIP upon a demonstration of reasonable progress toward development of a SIP. Second, EPA should allow the States to adopt compliance deadlines that are based on the remaining useful lives of each of the designated existing facilities. Third, given the extensive legal, regulatory, and physical changes that must occur first, EPA should give the States until 2035 to achieve compliance with any emission reduction

targets, and EPA must abandon the interim targets it has proposed, as it will be impossible for States to meet those.

6. EPA should provide an exemption from New Source Review.

To the extent the rule requires units to undertake heat-rate improvements, those projects should be exempt from additional review under the statute's New Source Review (NSR) program. It makes little sense to require such review where the very purpose of the heat-rate improvement is to *reduce* emissions.

7. The Proposed Rule would constitute a regulatory taking for which compensation would be required.

Finally, because the proposal as it stands would likely result in the premature closure of existing power plants, the proposal's requirements amount to a regulatory taking requiring compensation because of the premature closures and uneconomic curtailment it will require.

Conclusion:

We appreciate this opportunity to comment. We urge EPA either to abandon the rule as beyond its legal authority or to substantially revise it to comply with the law recognizing the technical and policy limitations.

Sincerely,

Michael S. McWaters

P.O. Box 160 • 11340 100th Street • Live Oak, FL 32064 • mmcwaters@svec-coop.com
(386) 330-5616 • 800-447-4509 • Fax: (386) 362-3488 • www.svec-coop.com