

Third-Party Delivered

Energy Efficiency Coalition

Comments on EPA's
Clean Energy Incentive Program Proposed Rule

(Docket ID: EPA-HQ-OAR-2016-0033)

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I. INTRODUCTION AND BACKGROUND ON THE THIRD-PARTY DELIVERED ENERGY EFFICIENCY COALITION

The Third-Party Delivered Energy Efficiency (TPDEE) Coalition welcomes the opportunity to submit comments on the U.S. Environmental Protection Agency's (EPA) Clean Energy Incentive Program (CEIP). The TPDEE Coalition will address specific issues outlined in the "Clean Energy Incentive Program Design Details" proposed rule, which requests stakeholder input on the design and mechanism of the CEIP. The Coalition has been an active participant in proceedings involving the CPP, having submitted comments on the proposed CPP, Federal Plan, Model Trading Rules, Clean Energy Incentive Program (CEIP), and Evaluation, Measurement, and Verification (EM&V) Guidance. The Coalition has remained heavily engaged with EPA on critical issues surrounding energy efficiency (EE), state compliance plans, and carbon markets in the Final Rule.

The TPDEE Coalition is comprised of important segments of the third-party delivered EE sectors, including energy service companies (ESCOs) and industrial energy efficiency (IEE) entities. ESCO members include Ameresco, Energy Systems Group, Honeywell, Ingersoll Rand/Trane, Johnson Controls, Lockheed Martin, Schneider Electric, Siemens, and United Technologies, as well as the National Association of Energy Service Companies (NAESCO). IEE companies and organizations that provide or promote IEE activities include ABB, Danfoss, Eaton, General Electric, Ingersoll Rand/Trane, Lutron, National Electrical Manufacturers Association, Rockwell Automation, Schneider Electric, and Siemens. Collectively, TPDEE projects complement traditional utility-led efficiency approaches while ensuring reliable, predictable, and quantifiable greenhouse gas (GHG) reductions.

The TPDEE Coalition embraces EPA's creation of the CEIP, which will make additional allowances or emission rate credits (ERCs) available to states in order to encourage early reductions from wind, solar, and demand-side EE projects. TPDEE measures and projects complement and support the objectives of the CPP and CEIP by cutting electricity demand, lowering the cost of compliance for states, reducing carbon dioxide (CO₂), creating jobs, and accelerating the deployment of clean energy. Importantly, TPDEE projects and approaches can provide states greater flexibility in meeting their CPP compliance goals through low-cost GHG abatement measures while supporting local economies. With a few key changes, the Coalition believes that EPA can ensure that the CEIP will better facilitate the opportunity for the CPP to meet its objective without delay—and to enable states and market actors to utilize the most cost-effective options to reduce GHG emissions from the nation's power generation sector.

II. TPDEE APPROACHES AND MEASURES WILL PLAY A SIGNIFICANT ROLE IN THE CEIP AND CPP

The following section provides descriptions of two different types of TPDEE projects that we expect to play a central role in implementing the CEIP and CPP.

Performance Contracting: Performance-based contracting (PC) for energy savings provides a one-stop procurement process that enables building owners to use savings from avoided energy consumption to pay for new energy-efficient equipment and services. PC is regarded as a turnkey mechanism to undertake and complete energy savings projects without reliance on capital funds. PC projects are developed and installed by ESCOs, and tend to be focused on achieving significant

energy reductions (typically between 15-30% and in some cases 30-60%) through comprehensive energy retrofit projects, customarily at multi-building facilities. Approximately 85% of ESCO revenue comes from a combination of what is commonly known as the “MUSH” market (municipalities, universities, schools, hospitals) and the federal buildings market.

Growing rapidly in the past few decades, the U.S. ESCO sector is now a mature industry that provides EE savings via market-based, third-party delivered and verified projects. Investment in PC is approximately equal to spending in ratepayer EE programs. The energy savings guarantee is unique to PC – federal and state laws require ESCOs to guarantee that improvements will generate sufficient energy cost savings to pay for the project over the term of the contract. The guarantee is an integral aspect of PC as the ESCO bears the financial risk for the performance of the project. To accomplish this, rigorous measurement and verification (M&V) is conducted on the installed energy conservation measures (ECMs) and retrofitted buildings in a project. Lawrence Berkeley National Laboratory (LBNL) has estimated that an additional 17 billion square feet is immediately available in “ESCO-addressable” buildings, which represents the near-term untapped market potential for PC.

Industrial Energy Efficiency: The industrial sector, which includes manufacturing, mining, construction, and agriculture, accounts for roughly one-third of all end-use energy demand in the United States and remains the largest energy user in the U.S. economy. Studies have estimated that there is the potential to cost-effectively save 18-20% of industrial energy use. Reductions in industrial energy consumption of this magnitude, whether delivered through ratepayer or private-sector initiatives, present an enormous opportunity to contribute to state compliance with the CPP. Importantly, savings associated with private-sector delivered IEE can provide benefits under any approach adopted by states, significantly reduce GHGs, and provide states with low-cost compliance options that can contribute in a meaningful way to compliance with 111(d) goals.

To help meet their EE policy goals, states are increasingly looking to tap the large cost-effective resource potential in U.S. industry. IEE, delivered through the use of an energy management system and participating in the Department of Energy’s Superior Energy Performance (SEP) program, is one possible method to measure and verify private-sector delivered IEE savings. Organizations that implement and certify their facilities under this program will meet the target-setting, reporting, monitoring, and verification requirements for an approvable compliance pathway. Ensuring that the nation’s industrial sector (and manufacturing base in particular) remains competitive by encouraging the elimination of wasteful energy spending is a key public policy goal that can bolster local economies, create jobs, and make states attractive destinations for industry.

With appropriate incentive, we believe that the CPP and the CEIP can drive greater market activity in all TPDEE projects and approaches and help states and EPA reduce the carbon intensity of the power sector more quickly and cost-effectively.

III. OVERVIEW OF KEY POINTS

On June 30, 2016, EPA issued the “Clean Energy Incentive Program Design Details” proposed rule and has requested comment (Docket No. EPA-HQ-OAR-2016-0033).¹ The CEIP incentivizes early investments in renewable energy (RE) generation, as well as in demand-side energy efficiency (EE) measures and solar projects implemented in low-income communities, that generate carbon-free megawatt hours (MWh) or reduce end-use energy demand during 2020 and/or 2021. The Coalition supports the establishment of the CEIP, and we believe that the recommendations below will serve to ensure maximum participation in the program for both state and market actors.

Specifically, we ask EPA to address the following issues:

1. Setting the Project Eligibility Start Date at October 23, 2015
2. Moving Forward the Start Date for Generation Eligibility
3. Keep the Proposed Definition of “Commence Operation,” But Move Forward the Eligibility Date to October 23, 2015
4. Clarify that a State May Select Different Definitions for “Low-income Community” for Demand-side EE Eligibility
5. Achieving Parity with Solar Projects by Allowing Demand-side EE to Earn 1 Matching Credit/Allowance, Regardless of Geographic Location
6. Ensure that Newly Expanded Low-Income Reserve is Sufficient to Incentivize EE Projects

1. THE TPDEE COALITION STRONGLY URGES EPA TO SET THE DEMAND-SIDE ENERGY EFFICIENCY PROJECT ELIGIBILITY START DATE AT OCTOBER 23, 2015

Project Eligibility Start Date: Under the CEIP as currently proposed, only demand-side EE projects that commence operation on or after September 6, 2018 may be eligible to earn CEIP credits. We strongly urge EPA to move the CEIP project eligibility date to October 23, 2015 (the date the CPP was published in the Federal Register). This earlier start date would allow any EE project that commences operation after 10/23/15 to qualify for CEIP credits for savings it generates in the CEIP period (currently limited to 2020-2021). Moving the date by which an EE project must “commence operation” in order to be eligible to receive allowances/ERCs under the CEIP is essential to ensure that new EE projects and investments are not delayed until 2018. Moreover, setting a uniform project eligibility start date for projects in all states would provide certainty, consistency, and fairness for demand-side EE providers and industries regardless of their location. The Coalition specifically recommends establishing October 23, 2015 as the eligibility date as it would parallel other elements of the CEIP, such as the requirement that states “utilize a low-income housing definition that was established prior to the publication of the final CPP.” Setting a consistent eligibility date would harmonize CEIP guidelines—simplifying the process for states and tribes as they determine eligibility of EE projects for their state plans.

In addition, since renewable generation, such as the installation of rooftop solar panels, can also be included in PC projects, we encourage a harmonization of the eligibility dates for EE and RE. In the Proposed CEIP, EPA proposes to revise the date for RE project eligibility to projects that

¹ Clean Energy Incentive Program (CEIP) Design and Implementation, <https://www.regulations.gov/docket?D=EPA-HQ-OAR-2016-0033>.

commence commercial operation on or after January 1, 2020. RE generation that commences commercial operation after 10/23/15 should also be eligible to earn CEIP credits in the CEIP period. As currently proposed, a PC project could begin commercial operation on January 1, 2019 and earn CEIP credits for the EE portion of the project, but not the RE portion of the project. In this scenario, the project owner has a perverse incentive to delay commercial operation until the RE eligibility period. As an added benefit, by setting the same eligibility date for all technologies, EPA immensely simplifies the overall program and provides additional clarity for states, tribes, and clean technology providers.

2. THE TPDEE COALITION STRONGLY URGES EPA TO MOVE THE START DATE FOR CEIP CREDIT GENERATION

Generation Eligibility Timeframe: Under the CEIP's current framework, only demand reductions achieved during 2020 or 2021 would be eligible for CEIP credit. The Coalition strongly urges EPA to allow eligible projects to start earning credits for a period of time longer than the two years prior to the compliance period. This earlier timeframe will ensure the CEIP does not unintentionally delay EE projects that are currently under development or new projects which will commence planning prior to 2020. With an earlier generation eligibility date, the CEIP will afford TPDEE developers and their respective customers (such as state and other public building owners) more planning time to implement eligible CEIP projects, including those in low-income communities. In the IEE context, a longer generation window also provides an incentive for proactive manufacturers and industries that seek to implement standalone industrial efficiency projects.

As currently structured, the CEIP's proposed timing creates a near-term disincentive and disruption of market activity leading up to 2020. Many EE developers or providers may delay projects until 2018 in order to take advantage of the CEIP, diminishing the program's effectiveness. Pulling back the project eligibility start date and providing a longer timeframe in which to earn CEIP credits will send a clear, affirmative market signal to EE—which will translate into accelerated deployment and full realization of CEIP goals.

3. THE TPDEE COALITION SUPPORTS THE DEFINITION OF "COMMENCE OPERATION," BUT REQUESTS THAT EPA MOVE THE ELIGIBILITY START DATE TO OCTOBER 23, 2015

As stated in the Proposed Rule, EE projects in low-income communities are eligible to participate in the CEIP based on when those projects "commence operation." EPA has proposed to define "commence operation" as the date on which an EE project or program is delivering quantifiable and verifiable electricity savings. The coalition supports this definition of "commence operation," as many TPDEE measures deliver quantifiable and verifiable electricity prior to the completion of an EE project.

As mentioned in the comments above, we request that projects that commence operation on or after October 23, 2015, instead of September 6, 2018, be eligible for the CEIP. Moving the eligibility date, in concert with the new "commence operation" definition, would allow a broad range of demand-side EE projects and programs to qualify for the CEIP – and reward early EE actors that have commenced projects prior to 2018.

4. THE TPDEE ASKS EPA TO CLARIFY THAT STATES MAY SELECT DIFFERENT DEFINITIONS FOR “LOW-INCOME COMMUNITY” FOR DEMAND-SIDE EE ELIGIBILITY

The Coalition is pleased that EPA has granted states flexibility to select a definition of “low-income community” that exists under federal, state, and local law, or under a utility-administered program in the state. This approach recognizes that many different types of TPDEE projects and measures can deliver benefits and cost savings to low-income communities. We urge EPA to keep this provision in the final CEIP as it will capture demand-side EE projects and measures implemented in residences, businesses, public and commercial buildings, manufacturing and industrial facilities, and infrastructure located in low-income communities.

In Part 60 of the CEIP Proposal, EPA states the following:

You [the state] may select different definitions for low-income community eligibility that consider geographic scale and/or different types of projects, but you must apply the selected definitions consistently across the State.²

We interpret this language to mean that states are afforded the flexibility to choose definitions unique to each particular type of EE project or program. The Coalition applauds this approach. States should be allowed to consider which definitions are best-suited for each particular EE approach, rather than applying a blanket “one size fits all” definition to a diverse pool of EE technologies. For example, a state could apply a geography-based federal definition for ESCO projects and an income-based state definition for a weatherization program. We ask EPA to further clarify this language for states and provide examples of how this can be applied in state plans, as some states may find the current framing ambiguous. Clarifying this approach would further the inherent flexibility in the CPP and allow for the greatest number of TPDEE projects and approaches to qualify for the CEIP.

5. THE TPDEE COALITION STRONGLY URGES EPA TO ACHIEVE PARITY WITH SOLAR PROJECTS BY ALLOWING DEMAND-SIDE EE TO EARN 1 MATCHING CREDIT/ALLOWANCE, REGARDLESS OF GEOGRAPHIC LOCATION

The TPDEE Coalition urges EPA to treat EE and RE equally under the CEIP. In the coalition’s prior comments on the CEIP, we recommended that EPA allow for all RE and demand-side EE projects to be eligible for 1 CEIP credit regardless of their location, and that both RE and EE be eligible for 2 CEIP credits if projects are located in low-income communities. Unfortunately, EPA employed this recommendation for solar alone.

The coalition believes that demand-side EE is deserving of the same treatment in the CEIP afforded to solar. As the agency itself has stated, EE is an important, proven compliance strategy that can substantially and cost-effectively lower carbon dioxide emissions from the power sector. Expanding the scope of eligibility for demand-side EE measures beyond those implemented in low-income communities will unleash the full potential of GHG-reducing activities, strengthen grid

² 81 Fed. Reg. 42,971 (June 30, 2016).

reliability, provide states additional flexibility, and prevent leakage to new fossil-fired electric generating units.

For the reasons outlined above, the Coalition urges EPA to treat EE on par with solar projects. These additional credits will ensure deployment of a wide range of low and zero-emitting EE programs and projects in low-income communities. We support the policy goal of expanding clean energy investments across low-income communities, but do not believe solar and EE should be treated differently in this regard.

Finally, EPA should seek parity among all RE sources in the CEIP, rather than only permitting wind, solar, geothermal, and hydropower to be eligible. PC projects, IEE projects, and above-code building efficiency measures, for example, may include different types of RE technologies, all of which should earn CEIP credits if they are able to meet the other criteria established under this program.

6. THE TPDEE COALITION ASKS EPA TO ENSURE THAT THE NEWLY EXPANDED LOW-INCOME RESERVE IS SUFFICIENT TO INCENTIVIZE EE PROJECTS

EPA proposes to create a total pool of 300 million matching allowances in its CEIP program, with the pool divided evenly between the renewable energy reserve and the low-income community project reserve. EPA will only distribute matching allowances to states that elect to participate in the CEIP, and participation in the program is optional for states. EPA is also proposing to determine each state's pro rata share of the pool based on CO₂ reductions from 2012 levels.

In establishing the size of the total reserve, EPA should create an appropriate balance between early action and the value of activities during the compliance period. Early action should be credited, but not flood the market and reduce the value of future savings. EPA's rationale to set the CEIP pool at 300 million tons seems reasonable. However, we recommend that EPA reserve the right to adjust the figure if it fails to incent early action, or otherwise distorts the market for RE and EE in unanticipated ways. In addition, EPA should make clear that states have the right to go beyond the federal "floor." While EPA's "match" is defined, states should have the right to offer credit for further early action (without an EPA match). The Coalition also supports EPA's approach to distributing CEIP credits among states based on a pro-rata share of reductions from 2012 baseline. A pro-rata distribution approach will provide a larger share of credits for states with the greatest demand, while mitigating the risk of flooding the credit market in states that need fewer credits.

Finally, the Coalition urges EPA to consider the size of the matching pool and ensure that it is sufficient to cover the newly expanded low-income community reserve. The CEIP will greatly benefit from sending a strong market signal that encourages demand-side EE providers to implement projects in low-income communities. Thus, the Coalition asks EPA to ensure that the CEIP creates meaningful market incentives that will create an incentive for EE projects that qualify for the program.