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The Honorable Gina McCarthy
Administrator, United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

To Be Submitted via: A-and-R-Docket@epa.gov

RE: Docket ID No. EPA-HQ-OAR-2013-0602

Comments to the EPA and States on the Proposed Clean Power Plan Regulating Existing Power Plants under Section 111(d) of the Clean Air Act

Dear Administrator McCarthy:

The Federal Performance Contracting Coalition (FPCC) appreciates the opportunity to provide the Environmental Protection Agency (EPA) with comments on the Clean Power Plan (CPP) proposal. The FPCC's comments will focus on the use and benefits of privately delivered energy efficiency and of Energy Savings Performance Contracting (ESPC) in the Federal government.

The FPCC is a coalition of energy service companies approved by the Department of Energy and/or the U.S. Army Corps of Engineers to participate in delivering ESPCs in the Federal space. We represent approximately 95% of the ESPC activity within the Federal government, and our members include: Ameresco, Constellation Energy, Energy Services Group, Honeywell, Johnson Controls, Lockheed Martin, Noresco, Schneider Electric, Siemens Government Technologies, and Trane/Ingersoll Rand.

We have been in existence for more than 16 years and provide a place for super contract holders to address barriers and opportunities in Federal ESPCs. Since our inception, we achieved permanent authority for ESPCs, modified statutes to address technological advancements, supported efforts to continually improve energy efficiency of Federal buildings, and most recently, worked with the Administration to achieve a significant increase in the use of performance contracting over the past two and a half years.

Our comments will reflect the FPCC's focus of providing energy efficiency (EE) through ESPCs. These comments will expressly echo some that were included in the submissions to EPA by the Energy Efficiency Strategy Group, the Business Council for Sustainable Energy (BCSE,) and the Alliance to Save Energy (ASE.) Further, we fully endorse the comments submitted by the ESCO Coalition and have used language directly from their Executive Summary to create our own submission.

The FPCC commends EPA for the inclusion of energy efficiency (EE) as an emissions reduction and compliance approach in the proposed CPP. And while we appreciate that EPA provided significant discussion in its Technical Support Documents (TSD) on how utility-run energy efficiency programs could be credited under the CPP, we strongly believe EPA should also issue clear guidance for crediting ESPC programs and projects that deliver energy efficiency through third-parties and non-utilities.

It is important that state plans account for these privately delivered and non-utility energy efficiency improvements, which are outside of the ratepayer programs. EPA should provide guidance on how this crediting should work, and address states' and stakeholders' questions about enforceability, by clarifying the relationship between enforceable requirements in a plan, and the broad measures that may be used to meet such requirements, thus ensuring state flexibility.

When the third-party work is done through ESPCs, the ESCO reduces energy consumption of its customers by installing new energy efficient equipment at their facilities. This investment is paid off over time with the resulting savings from the customers' utility bill. The performance of the newly installed equipment, and the resulting energy savings for its customer, is contractually guaranteed by the ESCO. The performance of the project is measured and verified (M&V) by professionals, using internationally established protocols. This rigorous level of M&V is the foundation of the ESPC guarantee.

It appears that the energy efficiency elements of the Clean Power Plan were developed primarily with utility energy efficiency programs in mind, despite the fact that energy efficiency investments through performance contracting approximate those made through utility programs. For example, performance contracting projects and utility programs saw around \$12 billion of investment in 2012, with approximately half coming from performance contracting projects. Expressly allowing performance contracting to be a compliance option in the Clean Power Plan would significantly enhance state options for low-cost and rigorously verified GHG reductions. It would also bring into the effort those companies most focused on producing energy efficiency results.

Including performance contracting projects as an allowable compliance option for state plans is straightforward and consistent with the Clean Power Plan. It builds upon past inclusion of performance contracting projects in approved state implementation plans for National Ambient Air Quality Standards. In addition, all 50 states have adopted performance contracting enabling legislation, which provides states with an excellent platform on which to build an effective compliance plan. However, additional guidance is needed for states to have confidence that EPA will recognize energy efficiency savings and distributed renewable energy generation delivered by performance contracting projects, and approve state plans that include them. The guidance should provide states with needed clarity on the following items:

1. **Identify Approvable Pathway.** Without limiting state flexibility, EPA can offer clarifying guidance to enable states to include performance contracting project-related emission reductions in their 111(d) compliance plans.

2. **Recognize All Existing Programs.** EPA should acknowledge – as it did with energy efficiency resource standards, etc. – that existing state performance contracting activities provide a potentially substantial contribution to 111(d) compliance.
3. **Targeting Sources of Energy Savings.** EPA should clarify how this requirement applies to performance contracting projects. We recommend that the states be required only to identify building types (e.g. state-owned, hospitals, universities etc.) targeted for performance contracting and a reasonable estimate of savings to be achieved from anticipated PC projects.
4. **Aggregation of ESPC-Created Emission Reductions.** EPA should describe approvable approaches for aggregation of PC project-related GHG reductions for use in 111(d) compliance. A national registry could serve this purpose, providing efficiency and the greatest degree of consistency in all aspects of inclusion of project-related GHG reductions in 111(d) compliance. Alternately, a state energy office (or another designated Agency) can collect (directly or via a third party) data from all PC projects in the state and determine the avoided emissions achieved.
5. **Clarify Approvable Approach for Key Compliance Criteria.** EPA can assist states by identifying approvable approaches for key compliance criteria that will facilitate inclusion of performance contracting project-related emission reductions. Key compliance criteria for which EPA should identify approvable approaches include M&V protocols, auditing requirements for state performance contracting projects, performance contracting program evaluation methods, and corrective measures.
6. **Existing Facilities/Installations.** Emissions reductions from performance contracting projects that are validated by an approved M&V approach and persist into the compliance period should be eligible to contribute to 111(d) compliance regardless of when the measure was installed.
7. **Create Incentives for Immediate Action to Reduce Emissions.** EPA should provide states with flexibility to take credit for actions taken after the Clean Power Plan was proposed and before the interim compliance period begins (2020) and count that credit toward achievement of the state's compliance obligation. This early-action provision would help ensure that the states have an incentive to reduce carbon emissions prior to 2020 and eliminate an unintentional incentive to delay EE projects until after 2020.
8. **Contributions to Future Avoided Emissions.** Avoided electricity consumption should be allowed to count toward 111(d) compliance for performance contracting projects subjected to proper M&V.

9. **Identify Remedies for the 111(d) State Energy Efficiency Penalty.** EPA should address and resolve the energy efficiency penalty created when energy efficiency projects are implemented in electricity-importing states. As proposed, the rule would leave stranded and uncounted the emission reductions created by energy efficiency in an importing state because neither the importing state, nor the generating state, could claim credit for emissions reductions equal to 100% of those created by the energy efficiency program or project.
10. **Encourage the Use of Tradable Credits.** EPA should support the development and use of single-state and multi-state credit programs and other market-based systems. This will encourage the use of the least-cost compliance options, which, in many cases, will involve comprehensive energy retrofits.

Finally, states should be permitted to include emission reductions from Federal and public housing authority ESPC projects which occur in their respective states. This Federal data could be provided by a national registry or other database administered by the Federal Energy Management Program at DOE.

The FPCC appreciates the opportunity to provide the EPA with its comments on the proposed Clean Power Plan and hopes they will be helpful as EPA reviews and finalizes the rule. Should there be any questions, please contact Jennifer Schafer, Executive Director, of the FPCC at 202-554-5828 or jasca@cascadeassociates.net.

Sincerely,



Jennifer Schafer
Executive Director
Federal Performance Contracting Coalition