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U.S. Environmental Protection Agency Affordable Clean Energy Rule: October 31st Arkansas Department of Environmental Quality Comments on Proposal

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The Arkansas Department of Environmental Quality (“ADEQ”) submitted October 31st comments to the United States Environmental Protection Agency (“EPA”) on its proposed rule:

Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program (also known as the Affordable Clean Energy [ACE] Rule)

See 83 Fed. Reg. 44746 (August 21, 2018).

The ACE rule would replace the 2015 EPA Clean Power Plan (“CPP”) which the federal agency has proposed to repeal. The CPP had been stayed by the United States Supreme Court.

EPA has described the ACE rule as having several components, which include:

- Determination of the best system of emission reduction for greenhouse gas emissions from coal-fired power plants
- A list of candidate technologies states can use when developing their plans
- A new preliminary applicability test for determining whether a physical or operational change made to a power plant may be a major modification triggering New Source Review
- New implementing regulations for emission guidelines under Section 111(d) of the Clean Air Act

The opponents of the CPP have argued that the rule exceeded EPA’s legal authority. Likewise, opponents of the proposed ACE rule have made the same argument.

Arguments in favor of the ACE rule have included:

- States retain authority to make key decisions
- Flexibility
- Needed revisions to Clean Air Act New Source Review
- Remaining useful life considerations are permitted
- Improved regulatory processes

Opponents’ arguments have included:

- A low bar is set for emission reductions
- No numerical standards or targets for greenhouse gas reductions
- States have wide latitude to establish their own performance targets
- United States citizens will incur a net cost
- Major changes to permitting rules could lead to additional increase in emissions

ADEQ's October 31st comments on the ACE rule notes, by way of introduction, that it:

. . . applauds the strides that EPA has made in its relationship with the states as well as in pursuing a reasoned and restrained interpretation of the Best System of Emission Reduction. ADEQ submits these comments in the hope of enhancing that cooperative relationship with EPA by providing greater flexibility and practicality to the states in the finalized version of the ACE rule. Similarly, ADEQ hopes that these comments will further enable EPA to achieve the goals of section 111(d) of the Clean Air Act while providing states with the opportunity to pursue a least-cost approach to achieving those goals in implementing a greenhouse gas emissions plan.

The ADEQ comments also conclude that EPA's revised interpretation is "consistent with past EPA practice in setting standards of performance and emission guidelines under section 111 of the Clean Air Act. . .". Further, support is expressed for changes in timing which are stated to be sensitive to the states' administrative processes (necessary to develop and adopt 111(d) state plans). The comments include recommendations that are characterized as allowing "greater flexibility for states in the implementation of the Proposed Rule consistent with section 111 of the CAA and in recognition of the substantial expertise in both the environmental and energy sector that states possess."

The components of ADEQ's comments include:

1. Introduction
2. ACE Background Legal Authority, and Affected Sources
3. State Plan Development
4. 111d Implementing Regulations
5. New Source Review
6. The Rebound Effect
7. Conclusions

A copy of the comments can be found [here](#).