

August 13, 2018



Submitted via Regulations.gov

Mr. Andrew Wheeler
Acting Administrator, Environmental Protection Agency
U.S. Environmental Protection Agency,
Mail Code 1101A
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RE: Comments of the American Public Power Association on the U.S. Environmental Protection Agency’s Advanced Notice of Proposed Rulemaking, “Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process,” (EPA-HQ-OA-2018-0107; 83 Fed. Reg. 27, 524)

Dear Acting Administrator Wheeler:

The American Public Power Association (Association or APPA) appreciates this opportunity to comment on the U.S. Environmental Protection Agency’s (EPA or Agency) Advanced Notice of Proposed Rulemaking (ANPRM), entitled “Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process.”¹

The Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. APPA represent public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve, and the 93,000 people they employ. Our Association advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

The issue of how EPA considers costs and benefits in rulemakings is of interest to public power utilities, as our customers bear the direct costs of environmental controls installed to comply with rulemakings promulgated under the Clean Air Act (CAA), Clean Water Act (CWA), and the Resource Conservation and Recovery Act (RCRA), in particular. Generally, EPA is required to prepare a cost-benefit analysis, called a Regulatory Impact Analysis (RIA), for significant regulatory actions under Executive Order 12866. The Association supports EPA’s efforts to streamline analytical methods across statutes where appropriate, as different statutes may require EPA to adopt different approaches to cost-benefits analyses depending on which statutory provision is chosen.

The ANPRM poses several questions for comment. The questions range from potential approaches for increasing consistency and transparency in considering costs, to comments on whether and how these regulations, if promulgated, could also prescribe specific analytic

¹ 83 Fed. Reg. 27,524 (June 13, 2018).

approaches to quantifying costs.² The Association offers comments related to the use of “co-benefits” or “ancillary cost” in any benefit-cost analysis.³

Previously, EPA has relied heavily on coincidental “co-benefits” from reducing criteria pollutants that are not the subject of the proposed action. Co-benefit reductions create the impression of a benefit-cost justification for many air regulations that are not intended to address criteria pollutants, such as fine particulate matter (PM_{2.5}). Co-benefits from separately-regulated criteria pollutants should not be reported as part of the total benefits estimate in an RIA, nor should they be included in any summary table about the net benefits and benefit-cost ratios of a new regulation. The RIA is an assessment tool used to inform the public and policy makers on the variety of impacts that can be anticipated to result from each new rulemaking. Including co-benefit as part of a rule’s net benefits may lead to confusion. For example, when discussing the benefits of the Proposed Mercury Air Toxic Standards for Electric Generating Units (Proposed EGU MACT), the EPA Administrator noted that the new standards “will assist in preventing 11,000 heart attacks, 17,000 premature deaths, 120,000 cases of childhood asthma symptoms and approximately 11,000 fewer cases of acute bronchitis among children, 12,000 emergency room and hospital visits and 850,000 lost work days each year.”⁴ All of these quoted benefits come from EPA’s predicted PM_{2.5} co-benefits, and not from any reductions in air toxics that are the targeted pollutant. EPA’s reliance on co-benefit estimates thus undercuts the transparency that the RIAs are supposed to bring to assessments of the impacts of new rules. Co-benefits can be addressed as sensitivity cases, similarly to the representation in the RIA for the Clean Power Plan Repeal Proposal.⁵ Further, any co-benefit sensitivity analysis should include any incremental risk relative to the cut points, (at the NAAQS, and at the lowest measured level) at which science shows that risks begins to accrue rather than by simply zeroing out risks that are below that cut point.

EPA should reform the way it defines its baselines of emissions for each RIA and provide more temporal information on benefits and costs to eliminate problems of double-counting. EPA has argued it does not double count the PM_{2.5} benefits because it includes all existing regulations in the baseline of the emissions from each of its RIAs for other rules. However, EPA’s process for preventing double counting has been problematic for several reasons. Many RIA’s are being prepared simultaneously or before an existing rule is implemented, resulting in inaccurate baseline assumptions.

Double counting also results from EPA’s practice of reporting costs and benefits for a single year when baseline emissions are expected to decline after the year selected. For example, PM_{2.5}, SO₂, and NO₂ have continued to decline after 2016 because there are specific NAAQS standards for each of those pollutants that will take effect between 2011 and 2020. This trend would be true even in the absence of the EGU MACT. However, in the RIA for the EGU MACT, EPA reports

² Id.

³ 83 Fed. Reg. 27,527.

⁴ Quote from Administrator Jackson in EPA Air News Release (HQ), “EPA Extends Public Comment on Mercury and Air Toxics Standards,” June 21, 2011. (In the RIA for the final EGU MACT rule the “17,000 premature deaths has been reduced to 11,000, but this quote was made before the RIA for the final EGU MACT was released in December 2011).

⁵ EPA, Regulatory Impact Analysis for the Review of the Clean Power Plan: Proposal, Tbl. 3-13, EPA-452/R-17-004, October 2017. EPA-HQ-OAR-2017-0355-0110 (Draft RIA).

its PM_{2.5} co-benefits only for 2016, at a point in time where PM_{2.5} levels are declining through 2019 (which is the latest attainment date for the 2006 PM_{2.5} NAAQS). Thus, there must be a declining trend in baseline risks, and hence the EGU MACT's PM_{2.5} co-benefits were much smaller than EPA reports in the RIA for the single year, 2016. In contrast, the annual costs that EPA reports for that rule will not be declining. Choosing 2016 as the single year for reporting the benefits and costs from the EGU MACT gives an overstated impression of the size of the benefits relative to their costs. If benefits and costs are reported for only a single year, that year should be selected as one in which all other regulations in the baseline will be fully implemented.

The Association appreciates EPA's efforts to increase the consistency, and usefulness of RIAs and cost benefit analysis in general. We look forward to commenting on the Agency's future proposals. Please contact Ms. Carolyn Slaughter at 202-467-2943 (cslaughter@publicpower.org) with any questions regarding these comments.

Sincerely,

A handwritten signature in black ink that reads "Carolyn Slaughter". The signature is written in a cursive, flowing style.

Carolyn Slaughter
Director, Environmental Policy
American Public Power Association