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Attention: Ms. Carrie Wheeler
U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards
Air Quality Policy Division, (C504-01)
Research Triangle Park, NC 27711
Docket ID No. EPA- HQ- OAR-2015-0355

RE: Comments of the American Public Power Association on the U.S. Environmental Protection Agency's Proposed Rule, Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for GHG Emissions Under the PSD Program (81 Fed. Reg. 68,110, October 3, 2016).

Ms. Wheeler:

The American Public Power Association (APPA) welcomes the opportunity to submit the following comments on the U.S. Environmental Protection Agency (EPA or Agency) proposed rule entitled "*Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for GHG Emissions Under the PSD Program*" (Proposed Rule).[1] As explained below, EPA should not adopt a Significant Emissions Rate (SER) below 75,000 ton per year (tpy) carbon dioxide equivalent (CO_2e).

APPA is the national service organization for the more than 2,000 not-for-profit, community-owned electric utilities in the United States. Collectively, these utilities serve more than 48 million Americans in 49 states (all but Hawaii). We assist our members in providing reliable electric service at a reasonable price with appropriate environmental stewardship. Most public power utilities are owned by municipalities, with others owned by counties, public utility districts, and states. APPA members also include joint action agencies (state and regional entities formed by public power utilities to provide them wholesale power supply and other services) and state, regional, and local associations that have purposes similar to APPA. Collectively, public power utilities deliver electricity to one of every seven electricity consumers in the country. We

[1] 81 Fed. Reg. 68,110, October 3, 2016

serve some of the nation's largest cities, including Los Angeles, CA; San Antonio, TX; Austin, TX; Jacksonville, FL; and Memphis, TN. However, most public power utilities serve small communities of 10,000 people or less. APPA participates on behalf of its members collectively in EPA rulemakings and other proceedings under the Clean Air Act (CAA or Act) that affect the interests of public power utilities.

Public power utilities provide over 15 percent of all kilowatt-hour sales of electricity to consumers. All APPA utility members are load-serving entities (LSEs) with the primary goal of providing customers in the communities they serve with reliable electric service at the lowest reasonable cost, consistent with good environmental stewardship. This orientation aligns the interests of APPA utility members with the long-term interests of the residents and businesses in their communities. Moreover, 90 percent of public power utilities meet the definition and qualify as small businesses under the Small Business Act and the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA).[2]

Introduction and Background

APPA has an interest in this rulemaking on behalf of its members. APPA member utilities own and operate electric generating units (EGUs), including fossil-fuel fired EGUs, that generate electricity for residential, commercial, state, and local government customers. Carbon dioxide (CO_2) and other greenhouse gases (GHGs) are emitted from fossil-fired EGUs, thus EPA's Proposed Rule to regulate CO_2 and other GHGs in the PSD program will affect APPA members. In addition, APPA has participated in other related GHG rulemakings affecting the electric utility sector. APPA commented on EPA's Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule).[3]

The Proposed Rule is in response to the June 23, 2014, U.S. Supreme Court's decision in *Utility Air Regulatory Group (UARG) v. EPA* and the April 10, 2015, Amended Judgement by the U.S. Court of Appeals for the District of Columbia Circuit (D. C. Circuit) in *Coalition for Responsible Regulation v. EPA*. The Proposed Rule seeks to ensure that neither PSD nor Title V rules requires a source to obtain a permit solely because the source emits or has the potential to emit (PTE) GHGs above the applicable threshold. In addition, EPA has proposed a SER or *de minims* level of 75,000 tpy CO_2e for GHG under the PSD program, below which Best Available Control Technology (BACT) would not be required for a source's GHG emissions.

APPA is a member of the UARG, and we support UARG's comments and APPA member's comments in this rulemaking docket.

[2] 5 U.S.C. § 211
[3] 74 Fed. Reg. 55,292 (Oct. 27, 2009), Docket: EPA-HQ-OAR-2009-0517.

EPA Should Not Adopt a SER Level Below 75,000 tpy CO_2e

The courts have recognized EPA's authority to create *de minimis* exemptions, including for specific pollutants under specific regulatory programs. Most recently, in the *UARG* decision, the U.S. Supreme Court agreed that EPA could require BACT for GHG emissions if the stationary source was otherwise subject to the PSD permitting program. In its decision, the U.S. Supreme Court said for these "anyway sources," EPA could require compliance with BACT "only if the source emits more than a *de minimis* amount of greenhouse gases."[4,5] As a matter of sound public policy, it is important for EPA to establish a *de minimis* exemption for GHG emissions. In particular, setting a GHG PSD *de minims* limit too low would subject public power utilities to severe administrative burdens without additional GHG emission reduction benefits.

The Proposed Rule summarizes key findings from the Agency's data review and analysis supporting the proposed SER level. EPA's analysis concludes the SER level should not be any lower than 75,000 tpy CO_2e because a lower value would not add substantial sources of GHG.[6] The proposed SER level is consistent with the approach established in Step 1 of the Tailoring Rule and with the thresholds that EPA and other permitting authorities have been using for several years. The proposed SER of 75,000 tpy CO_2e is least likely to cause confusion for regulated entities and for permitting authorities. APPA supports, at a minimum, the continued use of 75,000 tpy CO_2e as an appropriate SER threshold. However, the Proposed Rule precludes stakeholders from commenting on a GHG SER level greater than 75,000 tpy.[7] We ask the Agency to reconsider taking comment on establishing a SER level greater than 75,000 tpy CO_2e in a separate rulemaking for the reasons discussed below.

A Higher SER Value Is Warranted

EPA's data review and analysis supporting its proposed SER value is problematic for a number of reasons. The analysis seeks to justify the pre-determined value of 75,000 tpy CO_2e rather than following the agency's prior practice of calculating SER values as 20 percent of the New Source Performance Standards (NSPS).[8,9] Using this NSPS-based calculation for a modeled 600 megawatt (MW) natural gas fired plant would result in a SER value that is approximately 320,000 tpy CO_2e.[10] Further, the Agency's review reveals that GHG emissions from a variety of "anyway sources" subject to GHG BACT review were generally well above the 75,000 tpy CO_2e threshold.[11] A review of EPA's equivalency analysis of PSD NOx SER values illustrates that for a range of emission source configurations, GHG emissions ranged from 17,529 typ CO_2e for

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[4] *UARG v. EPA, 134 S. Ct.* 2449 (2014)
[5] The term "anyway source" under the Tailoring Rule referred to sources that would be triggering PSD permitting requirements for non-GHG, conventional pollutants anyway regardless of any of their projected related GHG emissions.
[6] 81 Fed Reg. 68, 137.
[7] 81 Fed. Reg. 68,113.
[8] 81 Fed. Reg. 68,123.
[9] 80 Fed. Reg. 64510, October 23, 2015.
[10] Equivalent to 20 percent of a hypothetical 600 MW plant operating at a capacity factor of 60.8 percent and emitting 1,000 lb/MWh-g CO_2.
[11] 81 Fed. Reg. 68,129

stationary combustion engines to upwards of 425,665 tpy CO_2e for large power plant turbines.[12] EPA concluded that the average across all ranges and units in its equivalency analysis was 98,333 tpy CO_2e, which is higher that EPA's proposed 75,000 tpy GHG SER value.[13] EPA should consider adopting the 20 percent of NSPS approach and propose a higher SER value instead of arbitrarily selecting 75,000 tpy CO_2e.

GHG BACT Review

While APPA strongly suggests EPA not lower the proposed GHG SER level, a GHG-specific BACT review is not likely to result in substantial GHG emission reductions beyond what is already achieved through the existing BACT review of new source review (NSR) regulated pollutants. EPA suggests that employing energy efficiency measures; gas recovery and utilization; leak detection and repair; and carbon capture and storage are possible GHG control techniques under a GHG-specific BACT review. All the technologies EPA mentions in the Proposed Rule, with the exception of carbon capture and storage, are already commonly applied in BACT strategies to reduce GHG emissions, as well as nitrogen oxides (NOx), carbon monoxide (CO), particulate matter (PM), and volatile organic compounds (VOCs) emissions from "anyway sources." As we have stated in comments on EPA's proposed "*New Source Performance Standards for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units,*" partial carbon capture and storage is not adequately demonstrated, and in many applications, will not be technologically or economically feasible.[14]

APPA appreciates the opportunity to comment on the Proposed Rule. We look forward to collaborating with the Agency as it works to develop policies designed to mitigate increases in GHG emissions. Please contact Ms. Carolyn Slaughter at cslaughter@publicpower.org with questions regarding the above comments.

Sincerely,

Carolyn Slaughter

Carolyn Slaughter
Director of Environmental Policy
American Public Power Association

[12] EPA-HQ-OAR- 2015-0355-0043.
[13] Id.
[14] EPA-HQ-OAR-2013-0495-1902, May 9, 2014.