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Mr. Bill Wehrum, Assistant Administrator
United States Environmental Protection Agency
Office of Air and Radiation, Mail Code 6101A
1200 Pennsylvania Ave. N.W. Washington D.C. 20460

Oct. 31, 2018

Re: Docket ID No. EPA-HQ-OAR-2017-0355

Dear Mr. Wehrum:

I am writing on behalf of the Pennsylvania Chamber of Business and Industry (PA Chamber), the largest, broad-based business advocacy organization in the Commonwealth, in response to the Environmental Protection Agency's (EPA) Notice of Proposed Rulemaking regarding Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units, also known as the Affordable Clean Energy (ACE) Rule (Docket ID: EPA-HQ-OAR-2017-0355).

The nearly 10,000 members of the PA Chamber are of all industrial and commercial categories and sizes; all of them rely on not just a reliable, affordable supply of energy, but a rational, predictable and well-functioning regulatory environment as well. Thanks to its tremendous assets in nuclear, oil, natural gas, coal and renewables, Pennsylvania is both the second-largest producer of electricity and the second largest net-exporter of electricity in the nation.

Pennsylvania Chamber of Business and Industry Statement of Policy on Environmental Regulation

For the past several decades, the PA Chamber has been actively involved in issues relating to stewardship of Pennsylvania's environmental resources and development of its energy assets, bringing the perspective of the regulated community to issues ranging from the development and refinement of the state air quality regulations and implementation of various federal requirements. In preparing these comments, the PA Chamber has drawn resources and views from a range of its members, all of whom both recognize the need for environmental stewardship and require affordable, reliable energy for their continued economic vitality. These comments represent the views of the PA Chamber as an organization; individual members of the PA Chamber may have different positions on certain policy positions or recommendations.

As a statement of policy, the PA Chamber believes that environmental stewardship and economic growth are mutually-compatible objectives, and that environmental and natural resources laws and regulatory programs should be framed and implemented to concurrently meet these twin objectives. We seek environmental laws, regulations and policies that:

- (1) are based on sound science and a careful assessment of environmental objectives, risks, alternatives, costs, and economic and other impacts;
- (2) set environmental protection goals, while allowing and encouraging flexibility and creativity in their achievement;
- (3) allow market-based approaches to seek attainment of environmental goals in the most cost-effective manner;

- (4) measure success based on environmental health and quality metrics rather than fines and penalties; and
- (5) do not impose costs which are unjustified compared to actual benefits achieved;

With regard to greenhouse gas emissions, we support efforts in Pennsylvania which balance societal environmental, energy, and economic objectives, fit rationally within any national or international strategy which may take shape, and capitalizes on the availability of Pennsylvania's diverse natural resources to facilitate economic development in the Commonwealth. This policy framework has directed the PA Chamber in the compilation of its comments regarding the Clean Power Plan, as outlined in this letter.

Background on the PA Chamber's Prior Positions on the Clean Power Plan and the Affordable Clean Energy Rule

We were dismayed with the process the previous administration undertook with respect to collaborating with stakeholders, including states and the regulated community, in developing the initial draft and final proposed Clean Power Plan under Sections 111(b) and (d) of the Clean Air Act. The final Clean Power Plan threatened to significantly raise electricity prices and compliance costs for Pennsylvania consumers and businesses, which led our organization to be a lead named party in an amicus brief supporting arguments challenging the legality of the Clean Power Plan. The brief included representation from an unprecedented 166 state and local chamber, business and manufacturing groups.¹ We are encouraged that this administration is engaging in a thorough stakeholder process, including having solicited comments prior to making a determination as to whether to repeal of Clean Power Plan, to better inform the creation of a durable and achievable approach to addressing carbon emissions from the power generation sector.

Pennsylvania was one of the first states to embrace competitive energy markets and separate generation from transmission and distribution. In the years since, the prices for electricity, gas and energy have come down substantially – and so have greenhouse gas emissions and NAAQS criteria pollutants. Natural gas costs for utility customers have fallen by as much as 75% in the past ten years.² According to data from the PJM Interconnection, the grid operator for thirteen states (including Pennsylvania), current wholesale prices in the PJM markets are 40% less than they were in 2008. PJM's real-time energy market prices "were lower in 2016 than at any time in PJM history since the beginning of the competitive wholesale market on April 1, 1999."³ While it must be noted that these prices increased slightly in 2017, the overall trend in the market is one of low energy prices.

According to the U.S. Energy Information Administration's most recent data, between 2005 and 2015, greenhouse gas emissions from Pennsylvania's electric generation sector fell by more than 17%.⁴ Notably, this reduction is greater in terms of actual tons reduced than any one of the neighboring northeastern states that entered into the Regional Greenhouse Gas Initiative cap-and-trade initiative. The state of Pennsylvania has also made significant and documented progress in reducing concentrations of NAAQS criteria pollutants; most recently and most notably achieving a 47% reduction in NOx during

¹ Brief of 166 State and Local Business Associations as *Amicus Curiae* in Support of Petitioners, State of West Virginia v. EPA. Feb. 23, 2016. <https://www.pachamber.org/assets/pdf/166-business-associations-clean-power-amicus-brief.pdf?1519671613>

² Purchased Gas Cost Rates. Pennsylvania Public Utility Commission. <http://www.puc.state.pa.us/NaturalGas/pdf/PGC.pdf>.

³ 2016 State of the Market Report for PJM. Monitoring Analytics LLC, May 9, 2017. http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2016/2016-som-pjm-sec1.pdf

⁴ Pennsylvania State Carbon Dioxide Emissions Data. U.S. Energy Information Administration. <https://www.eia.gov/environment/emissions/state/>

ozone season via important flexibility provisions in the state's RACT II rule that implements the 2008 ozone standard for existing sources. As such, our experience in Pennsylvania demonstrates that the best approach to securing energy and environmental goals is one that lets states lead the way with respect to energy policy, that affords regulated entities flexibility with respect to compliance pathways and that does not force the selection of energy choices.

Recommendations and Comments Regarding the Final Affordable Clean Energy Rule

As the Environmental Protection Agency continues work on addressing greenhouse gas emissions and other pollutants of concern, we urge the agency to finalize a workable, durable replacement 111(d) rule that:

- a. Allows and encourages flexible, achievable state-drive policy;
- b. Does not raise energy costs; and
- c. Is based on what is achievable inside the fenceline.

Section 111(d) provides that EPA is to "establish a procedure" for states to submit plans and implement standards of performance. In keeping with the historical notion of cooperative federalism, which must be a foundational principle in a final replacement rule, states and the regulated community must be afforded flexibility. This means that the federal agency must respect states' knowledge of their own power generation and electric utility sector, including the expected life of facilities and what upgrades can be undertaken by them, and allow this knowledge to inform the development of state plans.

Further, the replacement rule must not undo the significant savings to businesses and families that have been achieved as American embraced its diverse energy resources in recent years. Significant contributions from nuclear, gas, coal, oil, and renewables in recent years has led to the aforementioned reductions in energy costs in Pennsylvania and the PJM territory. The recently enacted federal tax reform is also expected to bring a significant amount of repatriated and new capital to the United States, in addition to the increased economic activity associated with higher takehome pay for employees. We must not diminish this generational opportunity by rendering potential projects uneconomic due to policy choices that raise the cost of energy.

Finally, as the legal challenges to the Clean Power Plan noted, EPA took an expansive view of what constituted a source of emissions – instead of looking at what measures a regulated facility could employ to achieve reductions in emissions, EPA examined the entire grid as a source. Generally, power generating states like Pennsylvania were given much stringer targets than states that rely on importing power – states that would not be asked to help with the costs associated with compliance. The Clean Air Act is clear when it comes to what constitutes a source – it is a "building, structure, facility or installation." The Clean Air Act does not, as written, provide for a mechanism for federal agencies to fundamentally restructure the grid to provide support for preferred sources of power generation.

We applaud this administration for taking an approach to implement the Clean Air Act in a manner much more in keeping with Congressional design and past practice. Notably, this rule demonstrates that continued improvements in air quality will occur. As we have stated in this and other regulatory filings, a flexible approach to regulation results in improved environmental outcomes and greater economic opportunity. We have advocated in a variety of contexts that one of the greatest opportunities for flexibility and improved environmental benefit will come with reform to the New Source Review

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program. We are pleased this administration has identified NSR reform as a priority. We have applauded EPA's actions over the past two years to provide greater clarity with respect to the administration of the program, and we encourage EPA to take further steps to allow for NSR flexibility for all sources, not just facilities seeking to comply with 111(d) of the Clean Air Act. We also encourage EPA in its final ACE rule to provide flexibility to states to define what heat rate improvement technologies can be utilized and to allow the option of multi-facility averaging for companies with multiple power generation assets.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Sunday". The signature is written in a cursive style with a large initial "K" and "S".

Kevin Sunday

Director, Government Affairs

Pennsylvania Chamber of Business and Industry