www.ntaaTribalair.org
928.523.0526 office
928.523.1266 fax

National Tribal Air Association
P.O. Box 15004
Flagstaff, AZ 86011-5004

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Environmental Protection Agency
Docket Center
EPA Mail Code 2822IT
1200 Pennsylvania Ave., NW
Washington, DC 20460

RE: Comments on the Clean Energy Incentive Program Design Details
Docket ID NO. EPA-HQ-OAR-2016-0033

To Whom It May Concern:

On behalf of the National Tribal Air Association ("NTAA"), I am pleased to submit these comments on the EPA's Proposed Design Details for the Clean Energy Incentive Program, a component of the final Clean Power Plan Emissions Guidelines rule issued in October 2015.

The NTAA is a member-based organization with 112 principal member Tribes. The organization's mission is to advance air quality management policy and programs, consistent with the needs, interests, and unique legal status of Indian Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by NTAA may not be agreed upon by all Tribes. Further, it is also important that EPA understands interactions with the organization do not substitute for government to government consultation, which can only be achieved through direct communications between the federal government and Indian Tribes.

The EPA originally proposed the Clean Energy Incentive Plan as part of the Clean Power Plan – the final rule promulgated by the EPA in October 2015 to reduce carbon dioxide emissions from certain electricity generating units (EGUs). As designed, the Clean Power Plan seeks to reduce carbon emissions by almost 35% across the country, although the emission reduction guidelines are defined at a state level (and for three Indian Tribes with EGUs located on Tribal lands). The CEIP is generally designed to promote the early deployment of clean electric generation – from renewable energy resources – as well as reduce electricity use through energy efficiency measures to achieve the carbon emission reduction requirements that become necessary as part of the compliance period starting in 2022. To incentivize this early deployment, the EPA proposes to create an allocation of "early" compliance units – emission reduction credits or allowances – that will match an

equal number of allocations at the state level. With an additional goal to promote benefits to low-income communities – traditionally over-burdened with pollution, carbon emissions, and climate change impacts – the EPA proposes a double match for energy efficiency projects in low-income communities. The CEIP is a voluntary program for the States to adopt as part of their state implementation plans for the Clean Power Plan. However, if a state does include a CEIP in its SIP, then the CEIP must comply with the proposed regulations. Furthermore, the EPA expects to include a CEIP in any federal implementation plan that may be applied to a state or the three Indian Tribes subject to the Clean Power Plan.

As stated in NTAA comments submitted to EPA last year, NTAA generally supports this effort by EPA to help control Greenhouse Gas Emissions by incentivizing cleaner forms of energy that will help reduce carbon emissions. While NTAA generally supports the Clean Power Plan and the Clean Energy Incentive Program, these comments are respectfully submitted to ensure NTAA member Tribes and all those in Indian Country are treated fairly and that EPA's policies reflect that fairness with respect to Tribal sovereignty. The NTAA's comments address the proposed design details for four specific areas that are most relevant for our member Tribes:

1) Incorporation of Indian Lands in State CEIP plan
2) Definition of Low-Income Community
3) Project Definitions
4) Incorporation of renewable energy technologies
5) Allocation methods for projects on Tribal lands
6) National Tribal FIP

1. Inclusion of Indian Country in State CEIP

The EPA has proposed specific language that prohibits states from disallowing or excluding projects located on Tribal lands from receiving early action ERCs or allowance. Preamble III.D.; 60.5373(c)(ii)(10). This requirement is definitely welcome language to ensure that projects on Tribal lands are treated equally with off-reservation projects. Tribal lands contain almost 6% of the technically feasible renewable energy resources in the United States – at least 27 billion MWh of potential renewable energy generation.[1] This potential generation includes over 14 billion MWh of utility scale solar, 1 billion MWh of wind, 5 million MWh of conventional geothermal, 7 million MWh of hydroelectric, and 5 million MWh of biomass and biogas. At least 335 federally recognized Tribes in the Lower 48 – not including the three Tribes subject to the CPP – have an opportunity to participate in state CEIPs, and NTAA urges the EPA to continue promoting Tribal participation in both the CEIP and emission trading mechanisms so that Tribes can directly benefit from their abundant renewable energy resources while contributing to the reduction of carbon emissions.

NTAA recommends that EPA either specifically define "Indian Country" in 60.5880, or cross-reference an appropriate definition of "Indian lands" such as the Energy Policy Act of

[1] Geospatial Analysis of Renewable Energy Potential on Tribal Lands, E. Doris, A. Lopez and D Beckley, National Renewable Energy Laboratory (February 2013) (Available electronically at www.osti.gov/bridge)

2005, 25 U.S.C. § 3501(2). This clarification is necessary to ensure states are clear about geographic boundaries.

The CEIP requirements allow for projects that are located outside of state with CEIP to be eligible for early ERCs or allowances, as long as the project "benefits" the state. Preamble, III.D.B; 60.5373(d)(2)(ii). This provision appears to cover projects in Tribes and states without EGUs, and the NTAA understands this to cover projects on Tribal lands that are outside the CEIP state. To illustrate how this might apply to Tribes:

> *Tribe A is located in State 1. State 1 does not have a CEIP. However, State 2's grid is connected to State I, does have a CEIP. Tribe A implements a project on its lands, and sells the power to a utility located in State 2. State 2 can provide early ERCs to Tribe A.*

To ensure this scenario works for a Tribal project, especially if State 2 does not have any Indian Country within its border, the CEIP should include language in (c)(10) that can't prohibit projects on Indian lands, "regardless of where Indian Country is located."

NTAA proposes that the EPA allocations include a Tribal set-aside for both RE and EE programs. See Section 5 for a further description of this proposal. This set-aside will ensure that Indian lands and low income Tribal communities are fairly included in CEIPs.

Furthermore, the EPA requires states to conduct "meaningful outreach" to stakeholders, which presumably includes Indian Tribes located within the state. It is unclear how EPA will gauge whether outreach was meaningful. NTAA recommends that states should be required to conduct consultation with Indian Tribes and to document that consultation with its CEIP submission. Consultation with Indian Tribes should be required because many, if not most, Tribes are considered "low income communities" under federal program definitions, Tribes may have a strong interest in developing energy efficiency programs to obtain early ERCs or allowances, and because the EPA leaves final program design up to the states, there is no other feasible or practicable way to ensure the states have appropriately considered Indian Tribes and Tribal communities in the CEIP development process.

Lastly, NTAA is concerned that while it is important to ensure projects are not excluded, the EPA continues to require Tribes to subject themselves, their lands, and projects on their lands to state implementation and CEIPs. NTAA renews is comments that the EPA should establish a national federal implementation plan (FIP) for all Tribes that are located in states with EGUs. If the EPA creates such a national FIP for Indian Country, then the EPA can establish a specific CEIP for Tribal lands that will respect Tribal sovereignty vis-à-vis the states, ensure CEIP goals can be met within Indian Country specifically, and Tribes can more effectively participate in meeting the Clean Power Plan goals of reduced carbon emissions.

2. Definition of low income community

EPA proposes to allow states to define "low income communities" within the state. While states may be able to use definitions using current federal programs, states may also use existing definitions under existing state programs. This flexibility, while laudable for off-

reservation communities, is a further example of Tribes being subject to state determinations on whether Tribal lands will be included in the CEIP. In addition, it is not entirely clear that state programs would even include the Tribal low income communities, as states do not typically support Tribal low income communities in state programs. See, e.g. California's climate change program report on air pollution impacts on low income communities, which makes no mention of Tribes in list of low-income communities affected by air pollution.[2] So, while states may use the same basic formula to determine low income – such as census data – it is unreasonable for the EPA to be able to determine, on a state by state basis, if the state's definition will necessarily cover Tribal lands.

Therefore, NTAA strongly recommends that, for Tribal lands within a state, the state should be required to use a single definition of low income community based on existing federal programs. This approach would also be consistent with the EPA's environmental justice policy towards Tribal communities. Any of the EPA's proposed federal programs definitions will work, but for purposes of the energy efficiency program, the most relevant definition is the one used for the Department of Energy's Weatherization Assistance Program. See 42 U.S.C. § 6862; 10 CFR Part 440; DOE 2016 Poverty Income Guidelines and Definition of Income (http://www.energy.gov/sites/prod/files/2016/02/f29/WPN%2016-3%20PIGS%20Final_0.pdf

3. Project Definition

The CEIP rules include the definition of project to include " . . . a program that aggregates multiple projects." 60.5880. NTAA understands this definition to mean that an Indian Tribe can submit an application to a state for a program that is an aggregation of multiple individual projects, and the individual projects don't have to apply for early ERCs or allowances. This appears to mean that a Tribe can develop an energy efficiency program that will include several individual projects that deploy energy efficiency or distributed solar energy projects. However, given the requirement that to be eligible for early ERCs or allowances a project / program must commence operations – that is, it must generate power or deliver quantifiable and verifiable electricity savings - then the individual projects in the program must actually be deployed. EPA should clarify exactly what quantity or ratio of individual projects must be deployed for the whole program to qualify. NTAA recommends that at least 50% of the planned individual projects should actually be deployed in order to be eligible for early action ERCs or allowances under the energy efficiency allocation.

Further, energy efficiency projects should be allowed to include Tribal government and enterprise buildings, as well as residential and community facilities, regardless of ownership, located within Indian lands.

4. Expanded Inclusion of renewable energy technologies

EPA has proposed to expand the types of renewable energy technologies eligible for the renewable energy portion of the CEIP to include geothermal and hydroelectric. This expansion of eligible resources is a positive move. But, many Tribes don't have these types of resources in

[2] http://www.arb.ca.gov/cc/ab32publichealth/communitymethod.pdf

abundance.[3] And, for those Tribes that do have these resources available on their lands, the lead time for development of these resources is well beyond the ability to quickly and efficiently deploy projects within the timing of the CEIP. However, many Tribes do have substantial biomass resources.[4] The proposed design rules lack any rationale for not including biomass. While it is clear the EPA wants to promote zero carbon emission technologies, certain biomass resources as well as biomass technologies can have negligible emissions. Furthermore, certain biomass resources can produce biofuels for use in electricity generation, such as landfill gas, biodigester gas.

EPA has also proposed to include distributed solar energy technologies within the energy efficiency projects. NTAA also supports this expansion, as virtually every Indian Tribe has an opportunity to deploy distributed solar projects as part of an energy efficiency program. NTAA recommends that EPA expand distributed energy technologies to also include distributed wind, as well as "behind the meter" distributed storage. Both of these technologies are capable of net metering. Tribes have over 374,505 MW of wind resources[5] (1.1 billion MWh of generation potential), and many Tribes have deployed distributed wind, using their robust and favorable wind resources within their Tribal community. Distributed wind should be eligible for inclusion in energy efficiency project.

Table 1. Lists the top 15 Tribes with the highest potential wind energy capacity at 80 meter hub height.

Tribe	State	Wind Potential Installed Capacity at 80m (MW)
Cheyenne River	SD	57,806
Standing Rock	SD,ND	45,972
Fort Peck	MT	41,331
Pine Ridge	NE,SD	38,028
Rosebud	NE,SD	25,833
Blackfeet	MT	24,476
Lake Traverse (Sisseton)	SD,MN,ND	17,736
Crow	WY,MT	16,497
Fort Berthold	ND	16,409
Osage	OK	16,357
Fort Belknap	MT	11,725
White Earth	MN	7,400
Yankton	NE,SD	6,732
Crow Creek	SD	5,722
Devils Lake Sioux	ND	4,533

Source: NREL

While NTAA supports the expansion of distributed renewable energy for energy efficiency projects, the CEIP does not address a primary challenge: most states do not have net

[3] See Geospatial Analysis of Renewable Energy Potential on Tribal Lands, at pp.22-25
[4] See Id., at pp. 19 - 20
[5] See Id., at pp. 32-33.

metering policies that favor "community distributed energy." The EPA has cited specific states' programs as examples of how to create such a program. However, these states have specific regulatory and/or statutory authority to develop these programs (i.e., California law allows aggregate and virtual net metering). In states with no specific statutory or regulatory authorities, Tribal and low income communities in these states will be at a distinct disadvantage to be able to deploy distributed resources in an energy efficiency program.[6]

Furthermore, most Tribes, as well as rural communities – especially in the Great Plains, Great Lakes and upper mid-west – are served by rural electric cooperatives. Cooperatives by and large do not allow net metering – or limit the amount of distributed energy onto their systems – for various reasons, including for economic reasons.[7] These Tribes and rural communities will also be at a great disadvantage, and especially because these are the Tribes with the highest "fossil fuel" energy (Coop G&Ts have the highest percentage of coal fired generation).

5. Allocation between renewable energy and energy efficiency projects

NTAA also supports the equitable allocation between RE and EE projects, but recommends a Tribal set-aside in both allocations to ensure equitable treatment of projects located on Tribal lands. NTAA recommends that the set-asides be based on:

* the pro rata share of Tribal renewable energy resources, as measured by the National Renewable Energy Laboratory in its reports[8] on technical renewable energy resources on state and Tribal lands

* pro rata share of low-income households.

Further, for the renewable energy projects allocation, the set aside should be based on Tribes percentage of renewable energy technical potential for the state. For example, Arizona Tribes (excluding Navajo Nation) have approximately 30% of the state's RE potential. The AZ allocation should thus have a 30% set aside for Tribes. The following matrix provides an example of several other states that have relatively high budget reduction requirements, and large number of Tribes:

[6] See, e.g. Barbose, Galen, John Miller, Ben Sigrin, Emerson Reiter, Karlynn Cory, Joyce McLaren, Joachim Seel, Andrew Mills, Naïm Darghouth, and Andrew Satchwell. 2016. On the Path to SunShot: Utility Regulatory and Business Model Reforms for Addressing the Financial Impacts of Distributed Solar on Utilities. Golden, CO: National Renewable Energy Laboratory. NREL/TP-6A20-65670. http://www.nrel.gov/docs/fy16osti/65670.pdf.

[7] See e.g. "Net Metering: An Issue Paper of the National Rural Electric Cooperative Association" (http://www.nreca.coop/wp-content/uploads/2013/07/NetMetering_WhitePaper.pdf)

[8] See U.S. Renewable Energy Technical Potentials: A GIS-Based Analysis, A. Lopez, B. Roberts, D. Heimiller, N. Blair, and G. Porro, Golden, CO, National Renewable Energy Laboratory, NREL/TP-6A20-51946 (July 2012),

State	Tribal % of RE Potential
Arizona	28%
Minnesota	7%
Montana	19%
New Mexico	9%
North Dakota	16%
South Dakota	78%
Wisconsin	2.2%

For the Tribal set-aside for the energy efficiency allocation, the set-aside should also be based on the pro rata per capita of Tribal low income households in the state. This per capita pro rata set aside can be based on the same formula adopted by S. 2012, Title XXXXX – which proposes to amend the Weatherization Assistance Program to allow for pro rata set aside for Tribal lands.

Both set-asides should be done at the state level – versus based on the national number – because the carbon emissions budgets are calculated at the state level, and the projects on Indian lands are available to provide the states with meeting their carbon emission goals.

EPA has also asked for comment on whether solar and wind resources should have limited eligibility for early ERCs or allowances, given the extension of the PTC and ITC. EPA's rationale for this comment is that the PTC and ITC may provide sufficient incentive for deployment. However, NTAA does not support reducing the allocation or limiting solar and wind projects based on the extension of certain tax incentives. Evidence shows that while the ITC and PTC are necessary, they have proven insufficient alone to incentivize renewable energy deployment; additional incentives such as renewable portfolio standards, and other requirements, are also required to see actual deployment. In NTAA's view, additional incentives, such as early action ERCs or allowances, combined with tax incentives, are still necessary to support deployment of renewable resources. However, if EPA does decide to limit these types of technologies, then NTAA recommends that such limitations do not apply to projects in low income communities or on Tribal lands – communities that have not particularly benefited from the deployment of clean energy resources.

6. National Tribal FIP

NTAA renews its comments and recommendation that EPA adopt a national FIP for Tribes under the Clean Power Plan. A national FIP would serve several purposes to support Tribes that do not have EGUs, but for purposes of the CEIP design rules, those purposes can be summed up as follows:

* It would create a CEIP that cover Tribal lands, regardless of whether the state decides to do a CEIP. Tribes thus would not be subject to a state's decision to do a CEIP.
* The EPA, with Tribal consultation, can design a CEIP that appropriately covers projects on Tribal lands, without Tribes having to negotiate with the states and other stakeholders over CEIP design such as:
    * Eligible programs
    * Renewable energy technologies

    * Eligible communities
* Allocation of early action ERCs/allowances can be based on the proposed formulas for Tribal set-asides, at the state level
* A single definition of "low income" community based on federal programs that Tribes currently have access to, would clarify and simplify the geographic determination of a low income project

In summary, the NTAA is pleased to provide the aforementioned comments and recommendations concerning the CEIP, and also looks forward to reviewing and providing comments on forthcoming EPA action that the NTAA understands will address how the CEIP is implemented.

On Behalf of the NTAA Executive Committee,

Bill Thompson, Chairman, NTAA