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VIA ELECTRONIC MAIL TO: airquality@nd.gov

Terry O'Clair
Director
North Dakota Department of Health
Division of Air Quality
918 E. Divide Ave., 2nd Floor
Bismarck, ND 58501

Attention: Public Comments on Implementation of Clean Power Plan

Director O'Clair:

The Lignite Energy Council (LEC) represents the coal mines, power plants, gasification plant, and over 300 contractor-suppliers that provide affordable power, value-added products, 16,000 good-paying jobs, and over \$3 billion in annual economic activity in North Dakota. We want to thank the North Dakota Department of Health for giving the public the opportunity to provide comment as the state begins implementing the most complex and far-reaching regulation to ever hit the coal-fired power industry.

The Health Department has presented a number of questions to which it is seeking response. Since the final Clean Power Plan was released on August 3rd, the industry has had all hands on deck - including our best engineering, environmental, and legal minds - trying to answer many of the same questions. At this point, a clear path forward has yet to emerge. The industry is working to develop a number of options to assist the Health Department, but we'd like to do the best we can now to address some of the questions you have posed.

First and foremost, the LEC firmly supports the state in developing a State Implementation Plan (SIP). The industry has embraced a strategy that includes seeking legal clarification of EPA's authority to issue and implement all or certain aspects of the rule - while at the same time taking measures to comply with the rule in order to avoid the issuance of a heavy-handed Federal Implementation Plan before litigation is resolved. Whether that plan is rate-based, mass-based, or includes "outside-the-fence" measures, the LEC believes it is essential that the plan allows coal country and the rest of the state to thrive by supporting existing generation resources and the jobs, economic development, and tax revenues associated with those facilities. At this point, the Health Department should keep all options on the table that meet these important goals while working through the SIP process - letting

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the courts decide the ultimate fate of the rule. We also strongly encourage the Health Department to pursue the two-year extension offered by the EPA and take full advantage of the 2018 deadline to prepare its SIP.

EPA's CO₂ reduction goal under the Clean Power Plan for North Dakota is 45 percent. Stating the obvious – this will be a difficult if not impossible goal to meet in the timeframe given. While we acknowledge it is a difficult task to develop a rule that the EPA might find sufficient, the Health Department needs to develop a plan that is aggressive yet reasonable and achievable for the State of North Dakota without harming its citizens. The EPA has placed the Health Department in the unenviable position of implementing a rule aimed at reducing coal-fired generation in a state that needs to build additional power to meet growing demand. We cannot afford to sacrifice existing baseload power while at the same time looking at several thousand megawatts of increased electrical demand. It is also critical that the state recognize the remaining useful life of its coal-fired power plants, as well as the \$2 billion utilities have invested to comply with other EPA regulations. Failure to do so will strand billions of dollars in assets that electric utilities have spent to comply with EPA's rules. This will have a negative impact on electric customers both inside and outside the state.

With respect to the remaining questions, the Health Department should absolutely develop a process to coordinate with the Public Service Commission (PSC) in writing a plan. In addition to regulating the rates of investor-owned utilities, the PSC has a central role in approving new infrastructure that will be needed to comply with the Clean Power Plan. Building new generation and transmission infrastructure is a years-long process that EPA has largely failed to recognize in issuing its rule. As such, the PSC will be essential in helping the Health Department defend this reality to the EPA when submitting a plan. The Health Department should also employ the necessary analysis to fully understand the impacts of a SIP on electric reliability, as well as the costs of load-following generation and transmission infrastructure. One study has already estimated that the Clean Power Plan could increase average electricity prices in North Dakota by 43 percent, with a peak year increase of 62 percent¹.

Furthermore, the LEC believes that the Health Department should take measures in its SIP to address the shortcomings in the Clean Power Plan's application to lignite facilities. For example, there is no "one size fits all option" when it comes to coal-plant heat rate improvements. In past rules EPA has recognized the unique characteristics of lignite energy, but it does not in the Clean Power Plan by suggesting an efficiency increase that applies to all existing coal plants. The age of the existing lignite fleet versus the majority of the eastern interconnection fleet means that the opportunities for improvement are very different. In addition, the basic design has evolved to account for the significantly different properties (i.e., high moisture, high sodium content) of the lignite fuels. The proposed rule assumed that regulated facilities could achieve a 6 percent improvement in heat rate. It is simply not feasible for lignite to achieve the same gains in efficiencies as higher-rank coals. While this penalty was slightly reduced in the final rule to a heat rate improvement of 4.3 percent, it remains beyond the physical capability of lignite-fired facilities to achieve the same gains in efficiency as other coal-fired power plants in the eastern interconnection.

The Health Department should also properly recognize renewable generation installed in North Dakota, and apply credit for renewable generation installed prior to 2012. The EPA's refusal to recognize the great strides North Dakota utilities made in renewables prior to 2012 puts North Dakota at a further disadvantage that should be remedied in a state plan. A SIP must also be designed to allow

¹ <http://www.americaspower.org/wp-content/uploads/2015/11/NERA-CPP-Final-Nov-7.pdf>

facilities to comply through regional or national trading of allowances (mass-based program) or emission rate credits (rate-based program). Finally, we strongly encourage the Health Department to coordinate the development of a SIP with neighboring states and the region. Regional coordination is extremely important given North Dakota's role as a net exporter of electricity, the broad service territories of the state's utilities, and to further facilitate a trading-ready SIP.

Again, we appreciate the Health Department beginning this public process as it begins implementing the Clean Power Plan. We look forward to working with you to develop a responsible plan for the State of North Dakota, and would ask that additional hearings be held in 2016 as both industry and state agencies are able to more clearly answer many of these questions and a plan begins to take shape.

Sincerely,

LIGNITE ENERGY COUNCIL

A handwritten signature in black ink that reads "Jason Bohrer". The signature is written in a cursive style with a long horizontal flourish at the end.

Jason Bohrer
President & CEO