



December 18, 2015

Via Email: AirQuality@nd.gov

Tom Bachman
The North Dakota Department of Health
600 E. Boulevard Ave. Dept. 301
Bismarck, ND 58505

RE: Comments of NextEra Energy Resources in Response to the North Dakota Department of Health's Request for Comments to Develop the North Dakota Department's Compliance for the U.S. Environmental Protection Agency's Final Rule for Carbon Pollution Emissions Guidelines for Existing Stationary Sources; Electric Generation Units (Clean Power Plan)

Dear Mr. Bachman:

NextEra Energy Resources, LLC is pleased to submit these comments in response to the Department of Health's request for input into its Compliance Plan for meeting the requirements of the U.S. Environmental Protection Agency's (EPA) Clean Power Plan (Clean Air Act Section 111(d)) Rule (CPP).

NextEra Energy Resources, LLC (together with its affiliated entities, "NextEra Energy Resources") is a clean energy leader and is one of the largest wholesale generators of electric power in the U.S., with approximately 19,777 megawatts of generating capacity in 25 states and Canada as of year-end 2014. NextEra Energy Resources is the world's largest generator of renewable energy from the wind and sun. NextEra Energy Resources operates clean, emissions-free nuclear power generation facilities in New Hampshire, Iowa, and Wisconsin as part of the NextEra Energy nuclear fleet, which is one of the largest in the United States. NextEra Energy Resources is a subsidiary of Juno Beach, Florida-based NextEra Energy, Inc. (NYSE: NEE).

As a member of the NextEra Energy, Inc. family, it is notable that our sister company, Florida Power & Light Company (FPL), was in compliance with the Clean Power Plan before there was a Clean Power Plan. For more than 15 years NextEra Energy Resources and FPL, the largest-owned electric utility in the State of Florida, have been transitioning our generation profile to more efficient, lower emitting, and zero-emitting technologies. During that 15 year period, FPL has implemented CO2 emissions reduction measures now required of others by the CPP. As a result, FPL's CO2 emissions rate is 35% below the industry average and effectively meets Florida's 2030 111(d) requirements today. North Dakota has 15 years from this point in time to comply with the Final 111(d) Rule. This is a challenging but achievable goal. The Department of Health can achieve this goal, while maintaining affordable and reliable energy for all North Dakotans, by displacing older, inefficient power plants and investing in renewable energy.

NextEra Energy Resources appreciates the concerns that both the Administration and the Legislature may have regarding potential economic impacts associated with implementing the 111(d) Rule. Despite

these reservations, North Dakota has distinguished itself by promoting transparency and stakeholder outreach in obtaining input into this critical environmental policy. Regardless of the composition of the Final Rule or any pending or future litigation, the state is taking the right approach by working through a state-based solution, rather than ceding authority to the federal government to impose a plan that may not meet the interests of North Dakotans. The extensive schedule of listening sessions during Fall 2015 and the request for comments highlights for stakeholders the critical questions to be addressed to promote the best solution for the North Dakota's residents, environment, economy, and businesses.

Responses

NextEra Energy Resources is pleased to address the following questions as raised by the Department:

General Question:

- **Both Should the Department develop a plan? If yes, should it be a "State only" plan or a regional plan?**

North Dakota should take the path that places it in the most effective trading regime at the least cost to all North Dakotans. From all indications – from studies conducted by Regional Transmission Organizations, as well as third-party NGOs, developing a regionally-based collaborative is the most efficient, cost-effective approach to compliance. The broader the region, the greater the opportunity to benefit from the assets and opportunities inherent across multiple states. The final CPP rule provides a viable option for states to trade with other states without the considerable expense, investment of time and resources, and complexities involved in either going-it-alone or entering into a formal multi-state agreement. As long as a workable attribute trading and accurate tracking mechanism can be incorporated within the program; the companion states have the same plan type (mass or rate); and they have the same treatment of their allowances, a "trade ready", informal multi-state (regional) trading regime should be quite workable.

- **To what extent should the Department develop a plan?**

North Dakota should not limit options it considers to develop a plan. Both rate-based and mass-based options represent workable approaches for North Dakota, but a mass-based construct has significant advantages over a rate-based approach. EPA and several states have a history of mass-based trading on a regional basis. The tracking and trading systems already exist in other emissions programs, are well tested, and are reasonably straight-forward in their implementation. Rate-based programs require complex and potentially costly evaluation, measurement, and verification (EM&V) systems – including third party verification of Emissions Reduction Credits (ERCs) – that will need to be implemented. Mass-based compliance avoids this issue.

EPA has built-in slightly less stringent compliance requirements for mass-based targets, making compliance somewhat easier. EPA provides a premium of approximately 12 percent more allowances to mass-based states to mimic incentives for renewables under a rate-based program and to allow for corresponding growth in emitting resources. And EPA will provide an additional two to three percent budget of allowances if states choose to incorporate both new and existing natural gas sources (as opposed to just the existing sources) into the mass-based programs, an important feature for addressing leakage.

Additionally, mass-based plans give states control over allowance allocation and the ability to direct funding from allowance auctions to preferred uses, should they choose to incorporate an auction-based approach. For example, states can choose to allocate allowances to utilities and cooperatives, offsetting a majority of customer costs on average; or states can choose to auction allowances and direct funds toward energy efficiency, new renewables, refunds to customers and other public benefits. If states choose to initially allocate allowances to affected units we would suggest utilizing a method based on the average of the highest 2 or 3 years in a five year historical period of generation (e.g., 2008 – 2012). This is an allowance allocation approach historically used by EPA in other emissions trading programs (e.g., the acid rain program, the NOx SIP call, the Clean Air Interstate Rule and the Cross State Air Pollution Rule).

One potential issue for North Dakota relates to the significant percentage of coal in North Dakota's generation mix. Short of retiring a significant number of coal units, North Dakota will be challenged to meet the rate-based target established by EPA. In North Dakota's case, the final rate-based target is 1,305 lbs. CO₂/MWh by year 2030, meaning that a significant amount of non- or low-emitting resources will need to be added to meet EPA's rate targets. And while a mass-based approach would not be an easy lift for purposes of compliance, the ability to trade or allocate allowances within or across states – and for compliance resources like coal units to be able to purchase allowances via auction or secondary markets – suggests a more flexible set of compliance options for states, like North Dakota, with a significant percentage of coal in its fleet.

- **How should allowances be allocated under a mass-based approach?**

Allowances can be allocated (or distributed) without cost to emitting and non-emitting resources. By allocating to emitting resources in this fashion, the cost of compliance by those resources can be offset or reduced somewhat, but no revenue is obtained by North Dakota under that scenario.

Several existing environmental programs utilize an auction-based approach for allocating allowances. Each compliance resource would be required to purchase at auction or in the secondary market an allowance amount equal to the number of tons emitted. From a policy standpoint, auctioning allowances is a fair, equitable, and economically efficient method of distributing allowances to affected sources in that auctioning provides affected sources the ability to purchase the number of allowances they need for compliance (i.e., pay as you go) and avoids the issue of picking winners and losers and the possibility of providing windfalls to certain generators.

Another attractive aspect of this approach is the revenue derived from the auction process, which can be allocated in accordance with state policy preference to offset ratepayer impacts or implement other priorities designated by North Dakota.

- **Should new natural gas plants be included within a mass-based target?**

NextEra Energy Resources supports the North Dakota's incorporation of new natural gas plants within a mass-based target as an effective approach for preventing leakage. Failure to do so could result in emissions from new natural gas generation effectively bypassing the limits (targets) established under the CPP, as well as creating inefficient market dispatch signals by simply shifting from existing to new generating resources.

- **How should the Department incorporate cost and electrical grid reliability concerns into the plan?**

Reliability is an important consideration and continues to be an important point of discussion as the EPA receives and reviews comments to the final rule. There are certainly lingering questions regarding the sufficiency of the safety valve provisions, and without question reliability and the ability to serve customers under all conditions is paramount. In terms of cost considerations, North Dakota should develop a compliance program that meets the environmental, public health and safety and economic concerns. North Dakota must also consider the costs of existing infrastructure and new infrastructure.

- **Should the Department propose any legislation necessary for implementing the plan?**

As it stands today, the Administration has existing statutory and regulatory authority to submit a State Implementation Plan.

- **Suggestions for cost-effective carbon dioxide reductions.**

North Dakota can look to add natural gas, convert existing coal plants add renewables and promote a trading regime that permits North Dakota to coordinate with regional states. In a trade-ready regional collaborative, the state isn't limited to resources located within North Dakota.

- **Comments on EPA's three building blocks and how they apply to North Dakota sources.**

EPA's building blocks were provided as suggested options for all states to utilize in developing a 111(d) compliance program. North Dakota has the option of crafting other options which might better suit its needs. As noted earlier, we would suggest an "all of the above" approach, which includes increasing natural gas efficiency, converting less efficient coal units to natural gas, developing new renewable resources and crafting a "trade ready" approach that enables allowance trading with neighboring states, resulting in a least-cost approach to compliance that benefits all North Dakotans.

- **Comments on coordination with the North Dakota Public Service Commission.**

The North Dakota Public Service Commission (PSC) regulates many aspects of energy providers within the state. Any State Implementation Plan should include close coordination with the PSC.

- **Comments on coordination with other states.**

ND has significant renewable energy resources and could be a good regional partner with states such as IA and MN. As stated above developing a regionally-based collaborative is the most efficient, cost-effective approach to compliance. The broader the region, the greater the opportunity to benefit from the assets and opportunities inherent across multiple states.

Block 3 Questions (Block 3 refers to renewable generation replacing existing coal-fired generation):

- **How should the Department incorporate accounting of renewable generation emission rate credits or excess mass allowances into the plan?**
 - **North Dakota takes credit for all renewable generation in the state**

- **North Dakota takes credit for a certain percentage of renewable generation**
- **Owners of the renewable power can decide how to use the credits as they see fit**

The owners of the CO2 credits should have control over the marketing and sale of the credits. A cost effective method for North Dakota to achieve compliance with the CPP is to embrace a robust interstate trading market. The CO2 credits will have different contractual owners that vary project by project that could be the owner of the renewable generation, the utility or cooperative energy supplier that built their own renewable generation or the energy supplier that entered into a purchase power agreement (PPA) with a renewable energy developer. The state should support least cost compliance options for regulated entities that include market alternatives, whether they are in-state or out of state.

The flow of allowances should not be artificially restricted. Even if a some allowances are sold out of state, North Dakota will continue to benefit from the jobs and tax revenue brought to the state by these projects.

- **Should the Department allow trading of emission rate credits (ERC) or mass allowances (tons of CO2 emissions)?**
 - **No trading at all**

This question can be interpreted in very different ways. If the question is whether – instead of trading – compliance resource owners should simply comply through a combination of investment in new non-emitting resources, reducing generation from emitting sources, and utilizing existing allocated allowances, that is one option to consider. Another question might be whether North Dakota should focus on a “go-it-alone” intrastate strategy, rather than interstate trading. In considering both questions, it’s obvious that allowances allocated to North Dakota under the CPP will be insufficient for all compliance resources to meet their targets. North Dakota can, in fact, go-it-alone, although that option may place additional pressure on North Dakota’s residents, businesses, industry, and overall economy to aggressively and expensively develop new gas and renewable resources beyond what might be practical, efficient, and economic in the short- to mid-term. The alternative, then, is to reduce higher emitting generation, significantly increase output at existing NGCC resources, and invest in additional non-emitting resources (notably renewables, nuclear uprates, or end-use energy efficiency initiatives). In a state in which coal comprises a significant percentage of electric output, a compliance strategy that involves a major investment in new renewable resources is achievable, but may be somewhat less cost effective than a combination of procuring new non-emitting resources, increasing gas generation output, reducing steam generation output, and trading with neighboring states. Trading provides a greater degree of flexibility and optionality, and lower cost, than “go-it-alone”, as well as providing the opportunity to trade with other states that may, for example, have a greater wind resource or a larger pool of allowances for purposes of compliance.

- **Region wide trading**

The final CPP rule provides a viable option for states to trade with other states without the considerable expense, investment of time, and complexities involved in creating a formal compact with other states (i.e., through “trading ready” mass-based compliance plans). As long as a workable attribute trading and accurate tracking mechanism can be incorporated within the program; the companion states have

the same plan type (mass or rate); and they have the same treatment of their allowances or credits, a more formal multistate trading collaborative should not be necessary.

- **Nationwide trading**

NextEra Energy Resources supports a broad-based trading approach.

If – instead of trading – compliance resource owners should simply comply through a combination of investment in new non-emitting resources, reducing generation from emitting sources, and utilizing existing allocated allowances, that is one option to consider. One question might be whether the North Dakota should focus on a “go-it-alone” intrastate strategy, rather than interstate trading. In considering the above, it’s obvious that allowances allocated to North Dakota under the CPP will be insufficient for all compliance resources to meet their targets. North Dakota can, in fact, go-it-alone, although that option may place additional pressure on North Dakota’s residents, businesses, industry, and overall economy to aggressively and expensively develop new gas and renewable resources beyond what might be practical, efficient, and economic in the short- to mid-term. The alternative, then, is to reduce higher emitting generation, significantly increase output at existing NGCC resources, and invest in additional non-emitting resources (notably renewables, nuclear uprates, or end-use energy efficiency initiatives). In a state in which coal comprises a significant percentage of electric output, a compliance strategy that involves a combination of procuring new non-emitting resources, increasing gas generation output, reducing steam generation output, and trading with neighboring states. Trading provides a greater degree of flexibility and optionality, and lower cost, than “go-it-alone”, as well as providing the opportunity to trade with other states that may, for example, have a greater wind resource or a larger pool of allowances for purposes of compliance.

In summary, NextEra Energy Resources applauds North Dakota’s efforts to move forward and develop a state plan to comply with the EPA’s CPP. NextEra Energy Resources supports a state compliance plan that uses a mass-based approach and incorporates broad-based trading for credits or allowances. NextEra Energy Resources is pleased to submit these comments on North Dakota’s participation in, and compliance with, the EPA’s CPP.

Sincerely,

Julie Voeck

Julie Voeck
Director, Regulatory and Legislative Affairs
NextEra Energy Resources