

Clean Energy Incentive Program (CEIP) Clean Power Plan Comments

Prepared By Minnesota Department of Commerce/Pollution Control Agency Staff

Introduction

The State of Minnesota (Minnesota or State) appreciates the opportunity to provide information in response to the Environmental Protection Agency's (EPA) solicitation for comment on the Clean Energy Incentive Program (CEIP). It is the understanding of the State that the CEIP is an optional program designed to incentivize renewable energy investments and energy efficiency measures in low income (LI) communities that could result in the ability to earn Emission Rate Credits (ERCs) or allowances from a specified set-aside (and matching ERCs or allowances from EPA) that count toward achievement of states' emissions goals established through the Clean Power Plan (CPP).

Minnesota has a long-standing commitment to development and investment in clean energy technologies established through statewide laws, statutes and rules as well as policies and programs that directly impact the consumer's ability to implement such technologies. Additionally, since the early 1980s, the State has focused on energy-related programs to help LI persons and communities access funding, services and technologies for energy-related needs.

There are many considerations EPA should make when defining criteria, terms and requirements for the CEIP, given that states participating in the program have varying histories and requirements for similar initiatives already established within their states. The comments provided herein reflect Minnesota's history and experience with clean energy policies and programs for EPA's consideration as the final guidance and rules for the CEIP are established. Comments are focused in three primary sections of this document, including Low Income Energy Efficiency Program Requirements, Renewable Energy Program Requirements, and CEIP Timing and ERC/Allowance Credit.

Low Income Energy-Efficiency Program Requirements

There are several criteria EPA should consider when designing the parameters and mechanics of the CEIP which include, but are not limited to, definition of terms, project or technology eligibility, reporting and tracking performance, evaluation, measurement and verification requirements, and additional program eligibility. Clearly outlined and often-communicated criteria for program requirements will help provide states a clear path and ease of use for the CEIP.

Definition of Terms

The State understands EPA is seeking input on specific terms, including input on how to define 'LI Community.' Information on definitions currently used within the state for related programs are provided in this section along with resource information for further review. Additional definitions and resource materials are provided in footnotes for context.

LI Persons/Communities:

There are many ways that LI persons or communities can be defined and definitions vary across different programs as well as the state and federal level. Minnesota currently deploys multiple programs that specifically address either LI individuals or LI communities, some of which include the Minnesota utility ratepayer funded Conservation Improvement Program (CIP), the federal Weatherization Assistance Program (WAP), LI Home Energy Assistance Program (LIHEAP), utility affordability programs, and other initiatives.¹ Additionally, there are consumer privacy protections in place regarding the verification practices utilities and service providers can use to verify the income levels of a person or household.² EPA should consider the different policy objectives related to advancing clean energy technology and consumer privacy as it relates to identification and verification of LI status. Minnesota also encourages EPA to take a broad approach to defining LI persons and communities, taking into account the multitude of definitions and practices already in place in states and at the federal level, arriving at a definition that is inclusive rather than exclusive.

In an effort to reduce market confusion and to be more inclusive in its regulatory approach, the energy efficiency resource standard (EERS) for Minnesota utilities that is administered through the ratepayer-funded CIP, has not created a separate definition for LI persons or communities but rather has sought to leverage existing definitions and criteria from other LI focused energy programs. Historically, utilities administering LI CIP programs have partnered with U.S Department of Energy (DOE) WAP providers in the state to provide LI energy efficiency services required by state law.³ Additionally, utilities work with the state to deliver LIHEAP and other required affordability programs. The benefit of this practice has been that CIP funds leverage WAP funds, resulting in the installation of more energy-efficiency measures at a property. Creating consistent definitions between utility-administered energy-efficiency programs and federally funded energy-efficiency programs allows for this leveraging of funds, program consistency and common terminology. The State recommends that EPA coordinate with DOE regarding the development of a definition of LI persons or communities.

Additionally, there are often opportunities, especially in multifamily rental properties, to install energy-efficiency measures independently of WAP. EPA should consider not only a definition for LI persons, but also LI building criteria when developing a definition and project eligibility for 'LI communities.' Minnesota, through its CIP program regulation, has provided guidance to utilities regarding use of resources associated with existing LI programs, specifically WAP and affordable

¹ The requirements of Minnesota's Energy Efficiency Resource Standard (EERS) can be found in Minnesota Statutes § [216B.2401](#) and § [216B.241](#). The requirements for coordinating Residential Weatherization Assistance Programs can be found in Minnesota Statutes § [216C.263](#). Additional requirements for low income heating assistance definitions and affordability programs can be found in Minnesota Statute § [216B.1675](#).

² Verification criteria are established for utilities through the Cold Weather Rule which can be found in Minnesota Statute § [216B.096](#) Subdivision 6.

³ Minnesota Statute § [216B.241](#), Subdivision 7 requires that the Commissioner of the Department of Commerce ensure that each utility and association provides low-income programs. When approving spending and energy-savings goals for low-income programs, the commissioner shall consider historic spending and participation levels, energy savings for low-income programs, and the number of low-income persons residing in the utility's service territory. A municipal utility that furnishes gas service must spend at least 0.2 percent, and a public utility furnishing gas service must spend at least 0.4 percent, of its most recent three-year average gross operating revenue from residential customers in the state on low-income programs.

housing programs, to verify that LI households occupy a reasonable threshold of the units in a multifamily building. The verification mechanisms demonstrate LI occupancy while not requiring utilities or CIP program administrators to handle any tenant personal and financial information, mitigating concerns over individual persons' privacy. While there are several definitions of 'multifamily,' depending on the context, the State has defined multifamily properties as buildings that contain five or more housing units. Utilities must demonstrate that a threshold of units in a single building is occupied by low-income households to meet criteria for project eligibility. For the purpose of CIP LI spending, buildings with five or more units must have at least 66 percent of the units occupied by LI households qualify. If a building meets this threshold of occupancy by LI citizens, 100 percent of the building can be considered LI for the purpose of CIP programs. In affordable housing regulation, housing "properties" or "projects" may consist of multiple adjacent or scattered buildings. The EPA should be aware of this factor when determining program eligibility and consider this fact when defining the term 'LI community.' Below is a description of the documentation utilities can use to satisfy criteria for verification of LI spending to meet statutory requirements.

Documentation Type	Documentation Description
Weatherization Assistance Program Lists	The DOE publishes lists of multifamily rental properties that are prequalified for the WAP based on tenant income data collected annually by the federal government. U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture (USDA) identify eligible multi-family properties to be included on these lists. Any building on the current DOE list is eligible for CIP LI spending. The EPA should consider a similar approach when determine project eligibility for the CEIP. Currently, Minnesota utilities retain a printed or electronic copy of the WAP list with the listed property to demonstrate that the building qualifies for LI spending and to provide the State with documentation for regulatory compliance.
LI Renter Certification (LIRC)	Minnesota statutes allow rental properties subsidized under a federal or state government program or meeting certain rent and income restrictions to be taxed at a lower rate. Property owners apply to the Minnesota Housing Finance Agency (MN Housing) for LI Rental Classification (LIRC) and MN Housing provides certification to local assessors that a property qualifies. MN Housing compiles a LIRC Assessor Report annually, in May, of all properties that have LIRC status. The LIRC Assessor Report indicates the portion of low-income units in a property. Utilities may retain a copy of the LIRC Assessor Report with the listed property to demonstrate that the building qualifies for LI spending. Some properties listed on the LIRC Assessor Report are composed of multiple buildings.
Use Restriction	Some affordable housing programs require, as a condition of receiving funding, that the property owner rent a portion of the units to tenants with an annual income of less than or equal to 60 percent of area median income. This is accomplished through the declaration of a use restriction on the property that lists the income restrictions. The State currently allows utilities to use a property's use restriction to demonstrate that a building qualifies for LI spending.

In 2005, municipal owned and rural electric cooperative utilities were provided guidance regarding how to determine their LI spending budget based on US Census data. To estimate spending and

eligibility requirements, these utilities may use the most recent available census data to determine how much of their general population is classified as LI status. The EPA could also look to US Census data to determine whether sizable energy efficiency projects serve a community that is predominately LI. This could be particularly important when looking at inclusion of ERCs/allowances for projects that are not connected to an affected electric generating unit (EGU) under the CPP since many of these communities will be found in more rural areas of the United States.

Other programmatic definitions have evolved as the need for LI services has become greater. Utilities have created programs that address the needs of people and communities that do not fit traditional definitions at the federal level for poverty or for LI energy programs. There is broad recognition that many families and communities that do not meet LIHEAP or WAP criteria or choose not to participate in the government assistance programs still have a need for energy efficiency financial aid and services. One such program is Minnesota Energy Resource Corporation's 4U2 CIP program.⁴ The 4U2 project is a weatherization project that assists customers who fall just above the income guidelines for LIHEAP and WAP and currently receive little to no assistance. One customer category is defined as having limited income and are underemployed or do not receive any other work-related benefits; and another customer category is defined as having fixed income and typically do not receive or participate in government low-income programs. This program provides services where there is a gap in the marketplace.

The State recommends that EPA consider all definitions of LI persons and communities for existing LI energy programs to meet the requirements of CEIP rather than creating yet another definition of LI which could result in market confusion. Additionally, the State recommends that EPA take a more comprehensive approach toward defining LI communities so that the program is more inclusive rather than exclusive. This approach will ensure better market penetration and acceleration of investments of clean energy technologies.

Project and/or Technology Eligibility

EPA should consider a broad perspective when establishing requirements for eligible energy efficiency technologies for the CEIP. Many states currently have statutes and rules regarding eligible clean energy technologies for various policy or programmatic purposes. Given the variation, EPA should aim to be more inclusive of technologies while providing stipulations for independent testing and industry standards. Additionally, EPA should consider the current state of the market and advancements in energy efficiency and renewable energy technologies. The requirements should remain flexible enough to account for market transformation and prevent any stifling of the transformation. Within this section, Minnesota provides information and references for EPA to consider when establishing project or technology eligibility.

Eligible Energy Efficiency Projects:

⁴ More information about the program details can be found at Minnesota Energy Resource Corporation's website <http://www.minnesotaenergyresources.com/home/4u2.aspx> and in Minnesota Docket No. 12-548, Pg. 40.

EPA should give consideration to the various ways in which states may already be defining eligible energy efficiency technologies. Many states have an EERS with specific definitions around how efficiency is defined and which technologies are allowed to count toward any avoided energy or emissions. Minnesota has an EERS as well as state administered efficiency programs that include definitions.⁵ Minnesota recommends EPA give deference to the state's that have codified definitions of energy efficiency when determining eligible energy efficiency projects.

Minnesota also recommends that EPA encourage states, in developing their own state plans, to consider whether projects earning allowances/ERCs under the EE in low income communities provision of the CEIP should be required to demonstrate some aspect of additionality. Under Minn. Stat. 216B.241, subdivision 7, utilities must spend at least 0.2 percent of their gross operating revenue from residential customers in the state on low-income programs. Each utility thus has a minimum dollar amount that must be spent on low-income programs each year already under state law. To the extent that some of the purpose of the CEIP is to make further progress in low income communities and help ensure that certain benefits of the Clean Power Plan are made available to communities traditionally deprived of such benefits, there may be some value in focusing the incentives of the CEIP on projects that are in addition to existing state low-income minimum spending requirements.

Energy Auditing/Feasibility Study Requirements:

Energy audits are an important part of identifying and prioritizing energy efficiency projects while feasibility studies are typically the first step in determining a sound clean energy project. The EPA should consider what energy auditing/feasibility study requirements should be in place to determine project eligibility. There are a variety of resources the EPA could look to when developing criteria for energy auditing or feasibility study requirements. For LI energy efficiency projects, EPA should consider the different requirements for single family homes versus multifamily buildings. For single family homes, Minnesota recommends the EPA look to the WAP for guidance. Within the WAP protocols are conditions for audit requirements and auditor certifications as well as post-project inspections as a means of quality control.⁶ For multifamily buildings, Minnesota recommends looking to the Weatherization Assistance Program Technical Assistance Center (WAPTAC) for additional resources on developing audit criteria for this market segment.⁷

WAP Standard Work Specifications:

DOE has extensive experience administering LI WAP, coordinating with states to develop rigorous project eligibility standards, and collaboration with subject matter experts to ensure requirements are current with existing technologies. For single family homes, manufactured homes and multifamily facilities, Minnesota recommends that EPA review the WAP Standard Work Specifications to guide development of LI energy efficiency project eligibility.⁸

⁵ See Minnesota Statute §216B.241 Subdivision 1 for definitions of energy conservation and efficiency.

⁶ Additional curriculum, training and certification information for residential energy auditing can be found here (<http://waptac.org/WAP-Standardized-Curricula/Energy-Auditor-002D-Single-Family-2002E0.aspx>).

⁷ Additional information can be found here <http://www.waptac.org/Energy-Audits/Multifamily-Audits.aspx>.

⁸ DOE WAP Standard Work Specifications can be found here (<http://energy.gov/eere/wipo/guidelines-home-energy-professionals-standard-work-specifications>).

Cost Effectiveness:

Minnesota's WAP utilizes the DOE Weatherization Assistant auditing tool; it determines which energy conservation measures have a Savings to Investment Ratio (SIR) of 1 or more. The State recommends that EPA coordinate with DOE when determining the cost effectiveness of LI measures.

Reporting and Tracking Performance

Minnesota requires over 180 electric and natural gas utilities to develop and administer an energy efficiency and conservation program to achieve the statewide EERS. All utilities are responsible for reporting to the state annually on program performance. As a result of the magnitude of energy savings and spending being reported by utilities, there was an evident need to demonstrate that savings claimed by the utility were measurable, verifiable and reported in a form that allowed for comprehensive evaluation. Minnesota developed a Technical Reference Manual (TRM), in collaboration with utility and trade ally stakeholders, to provide a source of standardized savings and algorithms to be used when quantifying measure level energy savings. While standardization helped to increase transparency and confidence in reported savings, challenges remained with regard to administrative efficiency for utility program administrators and regulators, operational efficiency for program administrators, and in assuring that the correct version of the approved energy efficiency savings algorithms was being used. Given these challenges, Minnesota hired a software developer to create automation and management tools in what is now called the Energy Savings Platform® (ESP). Minnesota believes these tools reduce implementation costs, increase administrative efficiency, and provide more accurate site-specific savings calculations.

The performance reporting structure needed to administer a program like the CEIP will be critical to the tracking and crediting of ERCs/allowances under the Clean Power Plan. There will need to be a high degree of sophistication in how energy efficiency projects are quantified, tracked and reported to ensure a system of crediting is fair and accurate. Minnesota recommends the EPA should follow a recently funded study by the DOE through the State Energy Program Competitive Awards that will scope the development of a national energy efficiency registry.⁹ In this project, the State of Tennessee, in partnership with NASEO, APX, Georgia, Minnesota, Michigan, Oregon, and Pennsylvania, will develop a roadmap with potential pathways for voluntary adoption and implementation of a national energy efficiency registry. States, including the EPA, could benefit from the road-mapping and registry exercise, as it will support the multitude of efforts related to state and federal energy policy and emissions reduction goals. Minnesota's Department of Commerce and Pollution Control Agency are currently participants in this study and will be providing expertise from past experience in developing and managing a statewide energy efficiency reporting tool.

Evaluation, Measurement and Verification (EM&V) Requirements

EPA should establish a flexible framework for EM&V requirements using a variety of tools. The purpose of EM&V is to provide confidence that the investments made in clean energy technologies are returning a greater amount in emissions reductions. This is a critical part of determining any

⁹ More information on the grant award can be found on DOE's web site: <http://energy.gov/eere/wipo/state-energy-program-2015-competitive-award-selections>.

success toward the achievement of a set goal; even so, the cost of such requirements needs to be considered. The cost of the most stringent EM&V approaches may not outweigh the benefits, so a balance must be created between the costs and benefits of any EM&V framework. This section addresses a few different components of a strong EM&V framework including a description of a Technical Reference Manual, measurement & verification protocols, custom project allowances, and program evaluations.

Technical Reference Manual (Prescriptive Measure Algorithms):

Within Minnesota's EERS, utilities are expected to use energy savings algorithms derived from Minnesota's statewide Technical Reference Manual (TRM) or utility-specific algorithms approved as part of their efficiency plans.¹⁰ Minnesota's TRM was developed by an independent third-party contractor with input from the Minnesota Department of Commerce, utilities, and other interested stakeholders through a public process. An advisory committee and technical working groups meet regularly to advise Commerce on TRM content, policies, and procedures.

The TRM puts forth standard methodologies and inputs for calculating the savings impacts and cost-effectiveness of energy conservation improvement programs (CIP) in Minnesota. It is not intended to define a single set of approved calculation methods; rather it provides a set of methodologies and inputs that CIP administrators may reference when developing, implementing and reporting on CIP programs and will result in more accurate savings calculation method when correctly applied in a program.

Minnesota's TRM has also been implemented as a cloud-based library of measure calculators on the Energy Savings Platform®, the reporting platform developed by the State for energy efficiency tracking and reporting. The measure calculator library is accessible to all Minnesota utilities, implementation contractors, and trade allies and is key to the State's effort to collect accurate energy savings data. ESP provides Minnesota utilities and their partners a common set of rigorously tested calculators for energy savings measures, ensuring that savings are calculated consistently and accurately across the state.

The State of Minnesota recommends that the EPA allow states to use existing TRMs and tracking tools where currently in use. For states that do not currently have a TRM, the EPA, in conjunction with DOE's Uniform Methods Project, could create a national TRM for use in quantifying emissions reductions from EE or RE projects. This approach will allow for CEIP program flexibility, differences across states, and the impact that projects have on emissions reductions.

Custom Project Evaluation and Criteria:

Custom projects generally do not use pre-approved savings algorithms established in the TRM and typically encompass larger, more complex projects. Typical custom projects in the LI segment occur in multi-family or larger scale housing projects that include whole building retrofits, HVAC installations,

¹⁰ Additional information and examples of quantification methods can be found in the Technical Reference Manual (<http://mn.gov/commerce-stat/pdfs/trm-version-1.3.pdf>).

and a combination of different energy efficiency technologies. The State provides utilities with guidance regarding evaluation criteria for custom projects and conducts a random sampling of these types of projects each year to ensure that appropriate baselines are used, that calculated savings are reasonable, and that sound engineering methodologies are employed. A custom project is defined as any project with one or more non-prescriptive clean energy technologies or a project with multiple clean energy measures such that the operation of each measure is affected by one or more of the other technologies. Below is a list of criteria that Minnesota requires its utilities to include when submitting a custom project for regulatory approval:

Custom Projects – Required Information for Evaluation	
Existing System Description	Proposed System Description
Baseline Methodology	Gas/Electric Annual Usage Information
Technology Type/Nameplate Data	Energy Savings/Demand Savings
Primary/Secondary Benefits	Project Costs/Project Savings
Cost Benefit Test Scenarios	Project Payback Information
Diagrams or Drawings of System	Operations and Maintenance Costs/Savings
Pre/Post M&V Plans (If Required)	Measure/Project Lifetime Estimates

EPA should consider custom project evaluation mechanisms when determining program design and project eligibility for LI communities. Many projects, especially at the community scale, will be custom in nature. Additionally, LI community projects may include both energy efficiency and renewable energy projects and the CEIP needs enough flexibility to handle these types of custom projects.

Measurement and Verification (M&V) Protocols:

There are several reasons to measure and verify savings from energy efficiency projects to demonstrate the project savings to the consumer, to improve the accuracy of claimed energy savings, to provide measured outcomes that justify project costs, and to increase the confidence of emissions avoided as a result of project implementation. Minnesota initiated M&V protocol development through CIP to standardize M&V activities across all utilities. The State relied heavily on expertise from the International Performance Measurement Verification Protocol (IPMVP) in development of a statewide M&V policy.¹¹

Given that application of more stringent and standardized protocols can add cost to the overall project, Minnesota’s protocols in CIP are limited to projects of a certain size. All individual custom or prescriptive energy efficiency projects with estimated annual savings greater than 1,000,000 kWh of electricity qualify for formal M&V, which includes a pre/post M&V plan approval. There are three primary options for performing M&V that can be approved within a pre/post M&V plan:

Option #1 – Third Party Engineering Review

¹¹ The IPMVP was developed by a coalition of international organizations and is widely referenced within the energy industry. Core documents can be accessed through the US Department of Energy State and Local Energy Efficiency Action Network Evaluation, Measurement and Verification Resource Portal: <https://www4.eere.energy.gov/seeaction/evaluation-measurement-and-verification-resource-portal>

- Option #2 – Equipment Sub-Metering
- Option #3 – Facility Metering

The options chosen for any pre/post M&V plan should be appropriate to the type and size of the clean energy project. Minnesota recommends EPA consider the costs of the M&V application to the size of any one project. Depending on the stringency deemed necessary for the CEIP, the EPA will want to consider the balance between the cost and benefit regarding measurement and verification of energy savings that result in emissions reductions.

Quality Control Inspection (QCI):

DOE WAP utilizes a robust inspection procedure that includes on-site building diagnostics and mechanical systems testing as well as a visual inspection conducted by a certified person. All WAP single family and multifamily inspections are completed by a person who has successfully passed the Building Performance Institute's QCI certification. The QCI is done by a person not involved in the creation of the original scope work and verifies that all appropriate measures were included in the scope of work, all measures are installed properly and in accordance with the WAP Standard Work Specifications, and the mechanical systems are operating safely. Minnesota recommends that EPA coordinate with the DOE WAP, its QCI certification requirements, and how WAP handles project inspections and verification of energy savings.

Program Evaluation:

Program evaluation is another critical component of program design the EPA should consider when developing the final requirements for the CEIP. Program evaluations can be employed at the state, federal, or any programmatic level. Additionally, program evaluations can determine how effective a program is in its process or in its impact. To ensure there is an accurate accounting of in-service rates and free ridership as a result of the CEIP, EPA will want to consider a periodic requirement for an impact evaluation of the CEIP. An impact evaluation should be conducted by an independent third Party from the administrator of the CEIP. DOE, through the SEE Action Network's Evaluation, Measurement, and Verification Working Group compiled an Energy Efficiency Program Impact Evaluation Guide.¹² Minnesota recommends that the EPA coordinate with DOE and the SEE Action Network when establishing program evaluation guidelines.

Renewable Energy Program Requirements

Minnesota will provide additional comment regarding CEIP renewable energy requirements in the submittal of its comments due on January 21, 2016. Various topics, including crediting states with ERCs/allowances for low income renewable energy projects and renewable energy credits for voluntary programs and state compliance, will be addressed. Additionally, recommendations will be made regarding the eligibility, metering, evaluation, measurement and verification of renewable energy projects in forthcoming comments.

¹² The US Department of Energy State and Local Energy Efficiency Action Network Guide on Energy Efficiency Program Impact Evaluation can be found here:

https://www4.eere.energy.gov/seeaction/system/files/documents/emv_ee_program_impact_guide_0.pdf

Minnesota does recommend at this time, however, that EPA consider the role that community solar projects might play under the CEIP. Community solar projects in low-income communities can meet both goals of the CEIP – providing zero-carbon renewable energy, and providing benefits (by way of bill stabilization) to low-income households. Minnesota recommends that EPA clearly indicate that low-income community solar projects are eligible to earn CEIP allowances/ERCs, and also that EPA ensure that such projects be eligible for double credit (as are energy efficiency projects in low-income communities) under the CEIP.

CEIP Timing and ERC/Allowance Credit

EPA should encourage states to develop a clear path for inclusion, crediting, and administrative review and oversight of non-utility-delivered energy efficiency activities providing emissions reductions included in state plans. This may include energy savings performance contracts, low-income weatherization programs, industrial energy efficiency and other privately contracted and delivered energy efficiency historically unaccounted for in ratepayer and state programs. For EPA's consideration, Minnesota offers further recommendation below on reserves of matching allowances, program eligibility dates, and conditional approval of state plans.

EPA Reserves of Matching ERCs/Allowances

EPA proposes to create an account of “matching” ERCs/allowances for each state participating in the CEIP that reflects each state's pro rata share of a federal pool of additional allowances. It then proposes to reserve some portion of each state-specific matching ERC/allowance pool for energy-efficiency programs in low-income communities and some for eligible wind and solar projects, and proposes that unused ERC/allowances in either reserve be redistributed among participating states. Minnesota recommends that EPA allow state plan states to re-direct unused matching ERC/allowances from one reserve to another before releasing those allowances for redistribution to other states. It is unlikely that energy programs in different states would align precisely with the planning considerations EPA will use to develop its reserves for renewable energy and energy efficiency in low-income communities. States who worked to incentivize early CO2 reductions would risk losing a significant portion of their incentive simply because EPA's assumptions may or may not reflect precisely the energy planning occurring in that state. While it is understandable that EPA's approach seeks to achieve a reasonable balance between the CEIP-eligible activities, and especially seeks to ensure that low-income communities are able to realize benefits from energy planning decisions that have historically been unavailable to them, Minnesota is concerned that a strict formula for each reserve size is inappropriate for a state-by-state process. If EPA is unwilling to provide states with full flexibility on the treatment of unused ERC/allowances in each reserve, it should provide some type of process whereby states could demonstrate the appropriateness of re-directing some portion of unused ERC/allowances into the other reserve. Such an approach could require that states with an undersubscribed reserve (whether RE or EE in low-income communities) demonstrate that they have made a good-faith effort to achieve matching allowances/ERCs according to EPA's prescribed approach. After such a demonstration, the state could redistribute unused allowances/ERCs to the other reserve (to the extent that reserve is adequately subscribed) before such allowances/ERCs would be redirected and made available to other states.

CEIP Eligibility Dates

Minnesota understands that certain elements of the CEIP are prescribed in the final Clean Power Plan rule language published on October 23, 2015 (80 FR 64661) and are not currently open for comment. Nevertheless, Minnesota is concerned that the eligibility dates for CEIP projects identified in the final rule will serve to delay the early action the CEIP seeks to incentivize. The EPA determines eligibility in part based upon whether a project is able to “commence construction in the case of RE, or commence operation in the case of demand-side EE, following the submission of a final state plan to the EPA, or after September 6, 2018 for a state that chooses not to submit a final state plan by that date...” Minnesota recommends that EPA modify its rule language to expand the eligibility trigger date to *initial* plan submittal (i.e., the September 2016 submittals wherein most states are expected to seek a plan submittal extension). Minnesota also recommends that EPA modify its rule language to expand the time period in which eligible projects can earn allowances/ERCs from 2020-2021 to 2018-2021 (or from the date upon which EPA approves a state’s final plan through 2021, which could better ensure that projects are subject to EPA-approved EM&V protocols). These adjustments would expand the incentive for early renewable energy and energy efficiency projects, which will provide earlier CO2 emissions reductions. Further, the current deadlines provide minimal time for eligible RE projects to complete construction in order to generate ERC/allowances and associated matches in the 2020-2021 time frame. The rule language, as finalized, could create an incentive to pause clean energy projects for the immediate future to ensure CEIP eligibility, and then asks that potentially eligible projects be completed rapidly in order to actually generate credits. Pushing the eligibility date earlier and widening the time period in which allowances/ERCs may be generated resolve both concerns.

Conditional Approval of State Plans

The EPA is proposing to amend the framework regulations and amend the process for acting on Clean Air Act section 111(d) state plans under 40 CFR part 60, subpart B, changes that would be applicable to any future section 111(d) rules going forward – not simply the Clean Power Plan emissions guidelines. Minnesota supports these changes (partial approvals/disapprovals, conditional approvals, calls for plan revisions, error corrections, completeness criteria and updates to deadlines for EPA action) and recommends that EPA align the process with the section 110(k) State Implementation Plan process as closely as possible.

Minnesota specifically recommends that EPA clarify the conditional approval process to ensure that it may approve a state plan based on a “commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan...” and identify the one-year time period between plan approval and submittal of enforceable measures explicitly. Currently, the Clean Energy Incentive Program eligibility date for renewable energy projects/energy efficiency programs is based upon the submittal date of the state plan. In order to ensure that CEIP set asides and matching ERC/allowances are fully subscribed; states will likely seek to submit plans as early as possible. Unfortunately, for many states, the rulemaking process needed to incorporate enforceable regulations required by the Clean Power Plan is considerably longer and administratively onerous than is the process to develop a state plan and could result in delays to early plan submittal. Allowing states the opportunity to submit a plan prior to completion of the rulemaking process can not only ensure states have full access to the benefits of the CEIP program,

but it can allow for more orderly energy planning in that states can share compliance plans prior to formal completion of administrative rulemaking procedures. This opportunity for earlier plan submittal will allow states submitting later plans to review and consider earlier plans, and will provide Independent System Operators/Regional Transmission Organizations with information necessary to support reliability planning earlier than would a process that requires completion of all rulemaking activities prior to plan submittal.

By specifying that EPA may conditionally approve a state plan, as long as the state plan committed to adopt specific enforceable measures no later than one year after the date of plan approval, EPA could support the flexibility necessary to support sensible energy planning and broaden states' opportunities for CEIP-eligible programs.