

**COMMENTS OF THE OPERATING COMPANIES
OF THE AMERICAN ELECTRIC POWER SYSTEM
ON THE COUNCIL ON ENVIRONMENTAL QUALITY'S
"DRAFT NEPA GUIDANCE ON CONSIDERATION OF THE EFFECTS OF
CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS"**

75 Fed. Reg. 8046 (February 23, 2010)

Submitted May 24, 2010

The operating companies of the American Electric Power (AEP) System submit the following comments regarding the issuance by the President's Council on Environmental Quality (CEQ) of draft guidance on consideration of the effects of climate change and greenhouse gas emissions in conducting the environmental reviews required for certain actions by a number of different federal agencies under the National Environmental Policy Act (NEPA). 42 U.S.C. §4321 *et seq.* AEP is one of the largest electric utility systems in the United States, delivering electricity to more than 5 million customers in 11 states. AEP ranks among the nation's largest generators of electricity, owning nearly 38,000 megawatts of generating capacity in the U.S. AEP also owns the nation's largest electricity transmission system, a nearly 39,000-mile network that includes more 765-kilovolt extra-high voltage transmission lines than all other U.S. transmission systems combined. AEP's transmission system directly or indirectly serves about 10 percent of the electricity demand in the Eastern Interconnection, the interconnected transmission system that covers 38 eastern and central U.S. states and eastern Canada, and approximately 11 percent of the electricity demand in ERCOT, the transmission system that covers much of Texas. AEP's utility units operate as AEP Ohio, AEP Texas, Appalachian Power (in Virginia and West Virginia), AEP Appalachian Power (in Tennessee), Indiana Michigan Power, Kentucky Power, Public Service Company of Oklahoma, and Southwestern Electric Power Company (in Arkansas, Louisiana and east Texas). AEP's headquarters are in Columbus, Ohio.

For the reasons set forth below, AEP believes that CEQ should re-examine the threshold suggested in the guidance, reconsider the utility of examining climate change effects from individual projects based on the current state of the science, affirmatively state that the guidance creates no new substantive or procedural obligations, and more clearly instruct federal agencies to avoid investing scarce public and private resources in evaluations of certain proposals that have only indirect effects on emissions of greenhouse gases.

In addition to these individual comments, AEP is a member of the Utility Water Act Group ("UWAG"), the Edison Electric Institute ("EEI"), and a number of other organizations that may prepare and file comments on issues raised by this draft guidance. Except as otherwise noted, AEP incorporates these comments by reference and adopts the

positions advanced therein. These individual comments are intended to supplement the comments submitted by others and should be read in conjunction with them.

I. Statement of AEP's Interest

In the course of providing electricity, AEP's operating subsidiaries engage in construction activities that sometimes take place in wetlands and other waters of the United States and require permits under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, or both. The issuance of an individual permit by the U.S. Army Corps of Engineers ("Corps") under either of these Acts is a federal action requiring review pursuant to NEPA. Most frequently, these activities involve reinforcement of existing or construction of new transmission facilities, or construction of other ancillary support facilities for our electric generating units. In addition, electricity transmission and distribution facilities sometimes cross federal lands, and securing the necessary permissions to do so also requires NEPA review. Accordingly, the implementation of NEPA is important to AEP as well as to its customers, whose health, safety, and general welfare depends on a cost-effective and reliable supply of electricity. Our comments are informed by our experience with NEPA reviews in the context of these activities. Our interest is to assure that environmental reviews of critical infrastructure projects, including electric generating, transmission and distribution facilities, is appropriate in nature, scope and content. Given the significant public interest in prompt completion of these projects, we also have an interest in assuring that the review process is as streamlined and efficient as possible in order to avoid unnecessary delays.

AEP supports comprehensive federal legislation to address climate change effects and emissions of greenhouse gases in a fashion that is both technologically and economically responsible. Such legislation can be developed with the public input necessary to balance the costs and benefits of greenhouse gas emission regulation, in light of the state of the technology necessary to control or reduce emissions, and the economic impact of requiring reductions from various sectors of the economy. Given the ubiquitous nature of greenhouse gas emissions, the cumulative actions necessary to impact current concentrations in the atmosphere, and the global nature of the greenhouse effects, attempting to use traditional environmental regulatory requirements applied to individual projects and proposals, instead of pursuing comprehensive legislation, will result in significant cost increases and ineffectual measures being imposed on a project-by-project basis, to the detriment of the American people.

II. CEQ's Recommended Threshold Is Too Low and Should Be Re-Examined

As outlined in detail in the comments prepared and submitted by EEI and UWAG, CEQ's suggestion that a quantitative and qualitative review of greenhouse gas emissions and climate change effects should be considered for any activity that directly emits 25,000 tons per year or more of greenhouse gases on a CO₂ equivalent basis is overbroad and unnecessary. As noted in the recent rule released by the Environmental Protection Agency (EPA), extending regulation under the Clean Air Act to sources at this level is administratively infeasible and unnecessary, and the EPA Administrator has made the commitment that Clean Air Act regulation will not be extended to sources of greenhouse gases emitting less than 100,000 tons per year in the near term, and will not extend to sources emitting less than 50,000 tons per year until at least 2016, if ever. *Final Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule*, at pp. 507, 514-515, <http://www.epa.gov/nsr/documents/20100413final.pdf> (signed May 13, 2010). Moreover, EPA, as the agency charged with administering and enforcing the Clean Air Act, is the federal agency with the expertise to undertake analyses of greenhouse gas emission reduction strategies, along with the State partners that administer and enforce the Clean Air Act. That expertise is still developing at this point. Greenhouse gases have never before been subject to regulation under the Clean Air Act, and will only become so when the final rules for new motor vehicles take effect. Most greenhouse gas emissions result from combustion sources, and technologies have not yet been developed to safely, efficiently and effectively control these emissions. EPA has promised to provide additional guidance to the States, which regularly issue the majority of permits to control direct emissions of regulated pollutants.

Given these circumstances, CEQ should at the very least follow the recommendations of EPA, and instruct sister federal agencies to forego additional evaluation under NEPA for any sources not currently subject to regulation under the Clean Air Act. For those sources that are or will be subject to regulation, CEQ should explicitly recognize that EPA and the States will address issues related to direct emissions of greenhouse gases in the context of these permitting decisions. Courts have repeatedly recognized that federal agencies can defer to state and federal permitting determinations in the context of their NEPA evaluations. *Sierra Club v. Clinton*, 2010 U.S. Dist. LEXIS 8937 *25 (D. Minn. February 3, 2010). Greenhouse gases present no issues that justify a departure from this established precedent.

III. Current Science Does Not Provide Meaningful Information Regarding Climate Change Effects from Individual Emission Sources

Attempting to evaluate climate change effects attributable to individual sources of emissions is, as explained in both UWAG's and EEI's comments, not practicable given the current state of the science. Global climate models may be able to predict effects at the continental level (although such predictions are not precise, and rely on a series of

assumptions that do not account for all of the inherent variability in the complex climate system), but are not yet sufficiently developed to allow for determination of any regional or localized impacts. Moreover, as explained above, attempts to impact global concentrations of greenhouse gases (and the climate effects attributed thereto) will be ineffective unless they are part of comprehensive global commitments to reduce greenhouse gases. As such, directing federal agencies to attempt to assess the impact of individual sources of emissions on climate effects, particularly at the levels proposed in the draft guidance, will consume public and private resources, and result in unnecessary delays. But such analyses will not meaningfully inform the decisions entrusted to the federal agencies, which is NEPA's ultimate goal.

IV. CEQ Should Confirm That The Guidance Is Not Intended to Establish Substantive Requirements or Expand the Source Of Agency Jurisdiction

As noted in the comments submitted by UWAG, the draft guidance is not a legislative rule, and therefore cannot modify or supersede existing legislative rules. However, certain statements in the memorandum could be misinterpreted by other federal agencies and the public as creating new, binding substantive or procedural obligations. CEQ should clarify that the guidance is not intended to do so. CEQ should also clarify that, if a specific numeric threshold is retained as part of a final guidance document (which itself would be a departure from CEQ's past practice in over 40 years of implementing NEPA), any such threshold is not a measure of "significance" and does not require the preparation of an environmental impact statement (EIS) if exceeded by a proposed project.

V. CEQ Should Consider Providing More Explicit Direction on Indirect Effects on Greenhouse Gas Emissions

CEQ should clarify the circumstances under which it is necessary and appropriate to consider "indirect" effects on greenhouse gas emissions. AEP has participated in a number of environmental reviews for transmission projects whose federal impacts are limited to crossings over federal lands and/or limited impacts on wetlands. In one such project, the federal agencies prepared and included in the EIS a detailed analysis of potential impacts on emissions from electric generating facilities as a result of the transmission reinforcement project. As was expected, the detailed analysis, including modeling with a sophisticated dispatch model, demonstrated that the transmission project had negligible impacts on emissions from the generating units within the relevant area. Instead, as one would expect, emissions are driven by the same economic factors that govern the dispatch of electricity generating units, most prominently fuel costs, and other independent factors.

Transmission reinforcement and expansion will rarely, if ever, cause changes in emissions in any significant or reasonably foreseeable way. On the other hand,

transmission reinforcement and expansion is critical to assure the integrity of the nation's electricity delivery system, allow the incorporation of new renewable energy facilities, alleviate transmission congestion and the associated cost imposed upon the American people, and relieve overloading and other potential contingencies that can interrupt service. The draft guidance provides little instruction on how to appropriately analyze indirect impacts (assuming that those impacts are proximately caused by the federal action and are reasonably foreseeable, which are prerequisites to analysis under NEPA), and could prompt more calls for similar modeling exercises. CEQ could provide valuable guidance to federal agencies that such indirect impacts, which have been demonstrated to be negligible and predominantly attributable to other independent factors, need not be exhaustively analyzed as part of the NEPA review.

AEP appreciates the opportunity to provide these comments on the draft guidance. Should you have any questions concerning these comments, please contact Janet Henry at (614) 716-1612.