The National Rural Electric Cooperative Association

Comments on

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting
Submitted Electronically to:

The Environmental Protection Agency
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On behalf of America's Electric Cooperatives, the National Rural Electric Cooperative Association (NRECA) appreciates the opportunity to submit these comments on the Environmental Protection Agency's (EPA's) proposed rule: Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting. 84 Fed. Reg. 39244 (August 9, 2019).[1] For the reasons described below, NRECA supports EPA's proposal to include project emission decreases in the New Source Review (NSR) and Nonattainment New Source Review (NNSR) Step I "project netting" as part of "project emissions accounting," the initial step in determining NSR and NNSR applicability.[2] Interpreting the existing regulations in this manner ensures that both project emission increases and *decreases* are appropriately considered in determining whether project physical or operational changes would result in a "significant emissions increase." EPA should finalize this proposal for this reason.

NRECA is the national service organization for America's electric cooperatives. The nation's member-owned, not-for-profit electric cooperatives comprise a unique sector of the electric utility industry. Due to their size and structure, rural electric cooperatives face special challenges in adapting their operations to meet federal and state emissions restrictions. Those circumstances briefly detailed herein present a

[1] Proposed rule cites hereinafter reference only page number of the proposal
[2] The remaining comments reference only NSR but are meant to be inclusive of NNSR as well

unique and valuable perspective on the nature, scope and compliance challenges cooperatives face with any new guidelines or regulations

NRECA represents the interests of the nation's nearly 900 rural electric utilities, that have the responsibility for "keeping the lights on" for more than 42 million people across 48 states and over 65% of the United States land mass in the lower 48 states. The electric cooperatives collectively serve all or part of 88% of the nation's counties and 13% of the nation's electric customers while distributing approximately 12% of all electricity sold in the United States.

Many consumers in rural communities are less affluent than those in other parts of the country. In 2015, the median household income for electric cooperative consumers was 11% below the national average. That figure is unsurprising, given that electric cooperatives serve 92% of persistent poverty counties (364 of 395) in the United States. Many of these economically disadvantaged customers live in areas with harsh winters and without access to natural gas.

NRECA's member cooperatives include 62 generation and transmission cooperatives ("G&Ts") and 833 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. G&Ts generate and transmit power to nearly 80% of the distribution cooperatives, which in turn provide power directly to end-of-the-line consumer-owners. Remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. NRECA members account for about 5% of national generation. On net, they generate approximately

50% of the electric energy they sell, purchasing the remaining 50% from non-NRECA members. All but three of NRECA's member cooperatives are "small business entities" as defined by the Small Business Administration. G&Ts and distribution cooperatives share responsibility for serving their members by providing safe, reliable, and affordable electric service.

Due to federal government mandates between 1978 and 1987 making natural gas uneconomic to utilize for electric generation at the same time very significant needs for cooperative electric generation arose, the vast majority of G&T generation built was coal-fired and remains the predominant source of G&T generation today, accounting for about 60 percent of total G&T generation in MWh sales as compared to around 30 percent utility-wide. NSR regulations are complex as applied to electric generating units (EGUs) and can present compliance challenges due to varied interpretations of some provisions. Finalizing this proposal would serve to clarify requirements for Step I project netting that at least in some cases would allow projects involving physical or operational changes to avoid Step II multi-year contemporaneous netting and other Step II considerations that EPA has correctly described as inherently complex.[3]

[3] See March 2018 memorandum, Docket # EPA-HQ-OAR-2018-0048-0008, referenced in footnote 38 in the proposal

The proposed rule clarification is the best interpretation of the existing rule.

For numerous reasons NRECA believes this proposal to clarify that both project emission increases and decreases be considered in Step I "project netting" under NSR is not only a permissible reading of the existing rule but the best reading of it. First, as noted in the proposal, the statute is silent regarding how to determine project emission increases and consequently interpreting what constitutes an emission increase is left to agency discretion under *Chevron* II doctrine. Page 39249.

Second, as pointed out in the proposal, present project netting regulatory interpretation disallows project emission decreases under Step I and forces them, if considered at all, under the Step II process that entails contemporaneous emissions increases and decreases in calculating whether a "significant net emission increase" has occurred, thus potentially triggering NSR. Step II determinations have proven to be extremely complicated, uncertain and subjective. As EPA described in its March 2018 Memorandum, the contemporaneous netting process involves "inherent complexities." While this proposal does not attempt to rectify the various complications involved in navigating the Step II process, it would if finalized allow some project NSR considerations to avoid the Step II all together by netting project emission increases and decreases under Step I to conclude no significant emission increase will occur, thus avoiding the Step II process and further NSR consideration.

Third, *project* emission decreases, as differentiated from *contemporaneous* emission decreases, at least under one interpretation of the existing rule cannot be included

under Step II at all based on a literal reading of the existing regulations. Page 39249. As noted in the proposal, the Step II netting provisions in 40 CFR 52.21(b)(3)(i)(b) appear to allow only contemporaneous emission decreases apart from the project.[4]

Thus, to interpret the existing regulation to disallow any emission decreases associated with the project in the Step I netting process as EPA currently does, results in a failure to consider them at all. This obvious inconsistent treatment of emission increases and decreases is logically deficient and represents a poor interpretation of the existing rule. EPA's proposed regulatory interpretation allowing both emissions decreases and increases under Step I "project netting" is the better interpretation of the statute and the existing regulations and is well within the agency's regulatory discretion.

NRECA also agrees with the several proposed changes to the existing provisions to clarify the allowance of emission decreases in project netting. For calculating a Step I project "significant emissions increase" involving only existing emissions units [52.21 (a)(2)(c)] and involving only new emissions units [52.21 (a)(2)(d)] the proposal interprets "the sum of the difference" in both provisions to allow the summing of project emissions increases and decreases.

For a project involving both new and existing emissions units [52.21 (a)(2)(f)], under the "hybrid' test, the proposal would replace the existing provision language

[4] References here are for the federal PSD program. State implementing regulations at 40 CFR 51.165 and 51.166 contain duplicate provisions with respect to the federal PSD program

"sum of the emission increases for each emission unit" with "sum of the difference for all emission units," thus allowing "project netting" under Step I where both new and existing emissions units are involved in one project.

NRECA refers to the March 2018 Memorandum[5] Footnote 15 to point out that the language explaining that the calculation of emissions under the "hybrid test" is identical to the methods employed in provisions 52.21 (a)(2)(c) and (a)(2)(d) but was inadvertently deleted in the 2007 NSR reform rule. To clarify project netting under these three provisions, the proposal would add a new provision [52 (a)(2)(g)] noting that "the sum of the difference" as used in the three provisions (c), (d) and (f) above include both increases and decreases in emissions. Thus, the addition of new provision (g) would serve to clarify the original rule interpretation.

The proposed rule is consistent with the current NSR aggregation policy

As EPA points out in the notice to retain NSR aggregation policy based on its 2009 action, 83 Fed. Reg. 57324 (November 15, 2018), there are no hard and fast rules on aggregating actions to define a project. Rather actions sharing a technical or economic relationship are appropriate for project aggregation. Aggregation policy objective is to avoid the segregation of actions substantially related to avoid project significant emission increases under Step I project netting that would otherwise occur

[5] *Supra* note 3

if the project was appropriately defined to include related actions and each action's emissions were added together.

In view of this project netting proposal, EPA raises the question of whether, if finalized, the rule could create incentives to over-aggregate. Page 29251. NRECA does not believe over aggregation will be a concern if the proposed project netting rule is finalized. The aggregation policy prevents NSR avoidance of unrelated projects by separating emission increases that are not appropriate for inclusion under one project. Defining the project should be the overriding concern, as opposed to over aggregation, that allows the summing of emission decreases for NSR avoidance.

EPA raises the question of whether an activity associated with an emission decrease under proposed project netting should spur a requirement to include activities "substantially related" that project an emissions increase? Page 39251. NRECA believes that the 2009 current aggregation policy addresses that question as actions substantially related are candidates for aggregation. Thus, to the extent activities with emission decreases are included in the project, the aggregation policy would seemingly require any related activities with emissions increases to be likewise included in the project.

Finalizing this proposal would facilitate NSR evaluations and reduce regulatory for projects within the electric utility sector

NRECA offers two examples highlighting how finalizing this proposal could reduce the regulatory NSR regulatory burdens in the electric utility sector. First,

under the recently finalized ACE rule, the state implementation planning process requires each existing EGU that is a designated facility to consider the following seven heat rate improvement (HRI) measures:[6]

(i) Neural network/intelligent sootblowers;

(ii) Boiler feed pumps;

(iii) Air heater and duct leakage control;

(iv) Variable frequency drives;

(v) Blade path upgrades for steam turbines;

(vi) Redesign or replacement of economizer; and

(vii) Improved operating and maintenance practices.

As part of the planning process, it will be necessary to determine not only the applicability of each of these HRI measures to each designated facility, but also how the combination of one or more of these HRI measures will impact the emission of criteria pollutants for NSR purposes. The ability to do Step I project accounting that considers both emission increases and decreases of each relevant pollutant under a combination of two or more of these HRI measures will be essential to completing State Plans under the ACE rule in an efficient and timely way.

Second, many electric utilities contemplate adding heat recovery steam generators (HRSGs) to existing simple cycle natural gas combustion turbine electric

[6] See 40 CFR § 60.5740a(a)(1); 84 Fed. Reg. 32520, 32580 (July 8, 2019).

generators as the need arises to transition the unit from peaking to intermediate capability. Such consideration typically involves adding selective catalytic reduction (SCR) technology to existing simple cycle gas turbines that do not already have this NOx reducing capability. Again, the ability to do Step I project accounting that considers both emission increases and decreases of each relevant pollutant will allow utilities a simpler and clearer permitting path to increase efficiency and decrease emissions from these facilities.

Existing monitoring, record keeping and reporting requirements are adequate

The current requirements under 40 CFR 52.21 (r)(6) and NSR implementing regulations 40 CFR 51.65 and 51.66 require extensive monitoring, record keeping and reporting to ensure project emissions will not meet Step I significant increase levels based on actual post project emissions. NRECA does not believe the proposed changes in Step I project netting necessitate any additional requirements to demonstrate NSR compliance.

The proposed clarifications to project netting, if finalized, should be required minimum state program elements.

If finalized, NRECA believes that the need for consistency between states regarding this NSR clarifying interpretation justifies inclusion as a minimum program element for state and local programs. As the proposal states, such inclusion as a required program element has been made for the 2002 NSR regulatory revisions. Page 39252. We see no reason why it should not be required here.