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Testimony at the Pennsylvania Coal Caucus Hearing

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Good morning/afternoon, my name is Vince Brisini, I am the Director of Environmental Affairs for Olympus Power, LLC. I am here today testifying on behalf of our investments in both anthracite and bituminous coal refuse-fired electric generating units as well as traditional coal-fired electric generating units. Olympus Power coal-refuse fired facilities are members of ARIPPA.

I am here today to express concerns with EPA's proposed Clean Power Plan. This proposed process is part of a changing environmental regulatory process to provide more opportunities for environmental regulators to make policy decisions about broader social and economic outcomes.

EPA's proposed Clean Power Plan is a good example of a regulation which is attempting to redefine how an environmental agency can become the "agent of change" by requiring states environmental agencies to prepare and implement comprehensive state energy plans that include not only the soon to be affected existing fossil fuel fired electric generators but also other electric generation and efficiency programs which they are not authorized to regulate. In that proposal

EPA identified goals for carbon dioxide reductions from existing fossil fuel-fired electric generating units that are far beyond what those units can accomplish and then allow so called “flexibility” in how that can be accomplished. From a practical standpoint that flexibility is only an illusion because all of the available options were used in establishing the goal so those same measures are all that is likely available to achieve those goals. Plainly stated, to achieve the carbon dioxide reduction goals from existing generators, the plan must significantly limit the use of coal and coal-refuse and then mandate other resources to provide the necessary electricity to preserve electric grid reliability. This regulation appears to be drafted to speed the retirement of the coal-fired and coal refuse-fired electric generation industry in the United States and to provide mandated markets for other electricity resources. This particularly true in states like Pennsylvania where generators participate in a competitive wholesale electric market. To make matters worse, there is no acknowledgement of, the multi-media environmental benefits of the coal refuse reclamation to energy industry in Pennsylvania. That industry will suffer, along with the coal-fired electric generating units, and perhaps be more adversely affected because those facilities are smaller and the distances to the fuel and the distances to return the beneficial use ash for remediation and reclamation are increasing which considerably increases their cost of doing business.

Because the Regional Greenhouse Gas Initiative or RGGI has been identified as a possible mechanism to use in the development of Pennsylvania's Clean Power Plan, it is appropriate to understand RGGI on an outcomes basis. Under RGGI, a carbon dioxide emissions budget and the base price for carbon dioxide allowances are established. A carbon dioxide allowance must be procured and surrendered to account for each ton of carbon dioxide emitted. To put this into perspective, based on the current price of a RGGI allowance, which is \$5.65, this will add about \$5.50 to the price of a megawatt-hour from a traditional coal-fired supercritical electric generating unit and about \$9.00 to about \$10.25 to the price of a megawatt-hour from a coal refuse-fired electric generating unit. This would be compared to an increase of about \$2.75 per mega-watt hour from a natural gas combined cycle electric generating unit. What happens is that the higher emitters of carbon dioxide are priced out of the market through what is essentially a tax on electricity that is paid for by electric customers. As the RGGI participating states are proud to advertise, they have considerably reduced carbon dioxide emissions. However, if one peruses the information available on the RGGI website, as I have done, it can be determined that 60% of the carbon dioxide reductions are due to ceasing to generate that corresponding amount of electricity in the RGGI states. So for RGGI to be working, it was and is necessary for those participating states to allow and

increase the importation of electric power into their region. They debated that considerably in RGGI, but to control prices somewhat and to ensure adequate supplies of electricity they accepted that “leakage” of electric generation and their corresponding emissions. Importantly, the RGGI website also documents considerable reductions in carbon dioxide in the areas from which they import their electricity. Albeit without the implementation of RGGI.

This is sobering information when one considers that Pennsylvania is currently the number two generator of electricity in the nation and the number one exporter. One can easily speculate the effect on Pennsylvania’s electric generators future ability to be an exporter of power and to continue to provide the jobs associated with their industry if Pennsylvania were to join RGGI while other states that sell electricity in the PJM competitive wholesale electric market don’t participate. Regardless if everyone participates, the coal refuse-fired electric generating resources will be priced out of that market because of the technology necessary to allow the combustion of coal refuse as a fuel results in additional carbon dioxide being released from chemical reactions from the use of limestone in the fluidized bed combustor.

It is worth noting, there is a legal means to include the use of the electric generation and energy efficiency resources which Pennsylvania DEP does not have the authority to regulate under Section 111(d). It must be understood, that only existing fossil fuel-fired electric generating units will actually be affected under Section 111(d) and not until after the finalization of the new source performance standards or NSPS for carbon dioxide from fossil fuel-fired electric generating units under Section 111(b) of the Clean Air Act.

That legal method is discussed in the “Commonwealth of Pennsylvania, Recommended Framework for the Section 111(d) Emissions Guidelines Addressing Carbon Dioxide Standards for Existing Fossil Fuel Fired-fired Power Plants,” which was submitted to EPA on April 10, 2014. In that whitepaper it is described how the Section 111(d) affected sources could include other means, such as energy efficiency projects in their plant plan to achieve necessary carbon dioxide reductions. This results in a critical difference between EPA’s Clean Power Plan and DEP’s whitepaper. That critical difference being that the concept identified in DEP’s whitepaper results in those resources being an advantageous compliance option for the affected fossil fuel-fired electric generating units while under the proposed Clean Power Plan those same resources are included in a fashion which is to the detriment of the Section 111(d) affected sources.

I mention this to show that there are ways to accomplish goals in an effective, pragmatic fashion that doesn't select "winners and losers" if that is actually the desired outcome.

Another change in the proposed Clean Power Plan which is very concerning is the redefining of "Best System of Emission Reduction." That has traditionally been defined as the best system of control a particular source can achieve. That is consistent with the historical definition of Best Available Control Technology. That definition of Best Available Control Technology was affirmed in the Supreme Court decision which over-ruled the EPA's carbon dioxide tailoring rule. As stated in that decision, "... BACT is based on "control technology" for the applicant's "proposed facility §7475(a)(4); therefore it has long been held that BACT cannot be used to order fundamental redesign of the facility." In the proposed Clean Power Plan that is exactly what EPA is proposing to accomplish because they are now proposing to force regulation of the entire electric energy portfolio rather than regulate emissions from the Section 111(d) affected existing fossil fuel-fired electric generating units.

To some policy makers and members of the public, that may seem acceptable now because it is being used to achieve their desired outcomes. However, what if

political forces change and that concept is being used to achieve measures that are not to their liking?

In the case of business and industry, how can investments be justified when they can turn from a “winner” to a “loser” every political cycle.

It must also be recognized that if the carbon dioxide emissions are regulated by EPA under Section 111(d) of the existing Clean Air Act and only the Section 111(d) affected sources are included, that is Building Block 1, it is still the “beginning of the end” for those existing generating assets unless the issue of New Source Review is addressed. The requirements need to be changed to allow efficiency improvements to be made without stifling future operations. This change is necessary to allow those affected units that have made efficiency improvement modifications, and which are now lower emitting units on an output basis, to increase their operational levels and total mass emissions and compete with those that haven’t done so and consequently have no operational limits except their original potential to emit. That sort of change will better accomplish the desired outcome of carbon dioxide reduction rather than the current situation that favors those who have done nothing.

If it is ultimately decided to limit carbon dioxide either under the Clean Air Act Section 111(d) or through legislation, these following items must be addressed and included in that effort to preserve low cost, affordable electricity; to provide a stable, reliable electric grid system; and to allow economic expansion and prosperity. It is strongly my opinion that these items must be part of any path forward:

- The states should establish the carbon dioxide reductions that are achievable within their jurisdictions. The states know best what can be accomplished within their jurisdictions and besides, EPA has made many technical errors in the regulatory process because they don't understand the assets within the states as well as the states do.
- Stay "inside the fence" to establish the targets. In other words, only directly regulate the affected sources.
- Address New Source Review (NSR) applicability issues so that sources that implement efficiency improvements aren't limited in their operations or potential to emit except as dictated by other regulatory, permitted or modelled limits.

- Don't pick winners and losers by trying to price certain fuel sources out of the market. Instead allow the economics and markets to establish the metrics and give everyone a chance to be successful.
- Maintain the "traditional" Best System of Emission Reduction (BSER). Only regulate the affected source. Do not use this requirement to pick a chosen winner.
- Make the New Source Review (NSR) applicability changes available to all sources of greenhouse gas emissions, not just those regulated under Section 111(d) or some other requirements. This will result in carbon dioxide emissions from industries and sources that aren't even part of a legislative or regulatory carbon dioxide reduction program.
- Consider early reductions as creditable toward the target. Don't discount a reduction or set a steeper target because the reductions occurred previously. Stop the "no good deed goes unpunished" aspect of environmental regulation.
- Provide credit for all "reductions" – allow inclusion of non-affected sources
- Allow states to join in multi-state regional trading programs. Provide as much compliance opportunity as possible.

- Allow units to trade/average across state boundaries. Allow this to occur even if the states aren't linked in a formal multi-state program.
- Allow trading/averaging without allowances. Because the quantification of the emissions are consistent under Title 40, Part 75 of the Federal Code of Federal Regulations, allowances aren't really necessary and they may only serve to increase the price of electricity.
- Allow any "market" to function. Don't manipulate the market through the environmental regulatory process. The EPA changes which were just decided by the US Court of Appeals which found EPA "arbitrary and capricious" is a good example
- Recognize the differences between areas which are rate-based and competitive wholesale electric markets. Rate based utilities receive full cost recovery and a return on investment. Competitive electric markets need to have some certainty to allow sound business decisions to be made.
- Avoid "RGGI-like" programs. Do not add costs in an attempt to achieve desired social outcomes by forcing unnecessary added costs. All this does is increase the price of electricity to customers and likely impedes the development of jobs creating expansions or development.

- Recognize significant multi-media benefits that some industries provide, like the coal refuse reclamation and conversion to energy business

Thank you for the opportunity to provide this testimony. I would be happy to take any questions at this time.