I am writing to share with you several important concerns that we have regarding the Clean Electricity Performance Program (CEPP or Program) that is to be marked-up by the Energy and Commerce Committee on Monday. As background, American Electric Power (AEP) has announced a goal to install approximately 16 gigawatts (GW) of new renewable energy by the end of 2030. As a point of comparison, our current total generation capacity is approximately 30 GW. AEP plans to deploy the equivalent of over 50% of our current generation capacity in new renewables. This represents one of the largest programs to deploy renewables by a single regulated utility anywhere in the country, and we provide the comments below in light of those plans.

(1) Aggressive rate of increase and impact on reliability and resilience. The CEPP aggressively expands non-hydro clean energy four-fold in only eight years, and is forcing clean energy development too rapidly. A program of this magnitude, if enacted into law, will adversely impact the reliability and resilience of the electric grid, unless the increase in intermittent renewables is accompanied by an expansion of very expensive firm dispatchable and resilient resources, such as energy storage. The CEPP provides a natural incentive for developers to increase the price of renewable energy projects in a significant manner, and we expect that the market would not have the ability to correct this in a timely fashion, given that the demand for projects is likely to exceed the supply of projects for years to come. Costs not covered under the program include electric transmission and distribution upgrades and the necessary improvements to reliability, such as the extensive build out of energy storage over a short, 8-year program.

(2) Application of payments. The draft bill applies penalty “payments” against electricity suppliers for failing to meet their clean energy targets in any particular year of the Program. This provision would likely have many counterproductive impacts on the investor-owned electric utilities (IOUs) that are making extraordinary efforts to rapidly achieve a significant expansion of renewables. This provision fails to recognize that clean energy deployments will typically occur in large increments resulting from discrete projects of varying size and not evenly over eight years. Moreover, the deployment of new clean energy projects is subject to delays beyond the control of the IOU, including vendor supply issues, labor constraints, need for state and federal regulatory approvals, and timing of transmission infrastructure upgrades. For example, if a public utility commission (PUC) denies approval for a project, an IOU would likely be forced to make the penalty payment, for no fault of its own. Many electric utilities will simply not be able to avoid an unfair and arbitrary obligation to make penalty payments for many years of the Program even though they may be able to achieve their clean energy targets, albeit not in a linear fashion as provided under the bill. While the provisions on averaging in the draft bill provide some minimal relief and flexibility for meeting the annual clean energy targets, averaging is limited to just three years and can still produce patently unfair outcomes.

(3) Prohibition on recovering cost of payments. The bill prohibits electricity suppliers from recovering the cost of penalty payments. Instead, the bill arbitrarily mandates that the payments must be charged to shareholders of the IOUs in all cases, rather than deferring to state public utility commissions to determine how these clean energy accounting payments should best be handled. This mandatory requirement treats these payments the same as fines or penalties, to use an example, that are applied for violating a Clean Air Act or other environmental regulation, when in fact these payments are just an accounting byproduct of the Program. These payments have far more in common with alternative compliance payments that act as a safety valve, than they do with penalties or fines for violating an emissions standard.

The Committee has designed a CEPP, on the one hand, to require clean energy deployments. But on the other hand, the CEPP deliberately applies punitive penalties to shareholders, by mandating payments for no reason other than the fact that clean energy deployments cannot be designed and averaged out evenly over eight years. The assessment of these arbitrary and punitive payments could have repercussions for investment portfolios that include stock for investor-owned utilities. In particular, stockholders will question why utilities are making penalty payments if they are behaving properly and deploying clean energy.

Requiring payments from IOUs that, while falling short of an arbitrary annual goal, are nevertheless still deploying clean energy, has absolutely no place in this legislation, and upends the very logic of bill, which is to encourage clean energy deployment. If such payments are to be included, state public utility commissions should determine how they are applied to IOUs. The better approach; however, is that the legislation should eliminate such payments altogether.

(4) "Payments" by electricity suppliers above 85% clean energy. The bill provides that electricity suppliers that have achieved 85% clean energy must still make a payment for any decline in the percentage of clean energy no matter how high their level of clean energy deployment. For example, if a utility is at 93% clean energy, and in a given year, due to fluctuations in renewable energy production levels or customer usage levels, falls back to 91%, that company would have to make a payment. This makes little sense above 85%. The bottom line is that there should be no payments above 85% -- none at all.

(5) Point of Regulation. The bill states that the compliance obligation would be on each electricity supplier that "provides" electricity to "end-use" retail customers. Notably, this approach is different from the approach taken in the pending traditional clean electricity standard (CES) bills, such as McKinley-Schrader, DeGette, and CLEAN Future Act. The point of regulation in those CES bills is the retail electricity supplier that is defined as the entity that "sells" not fewer than 20 MWhs of electricity to retail customers. We are concerned that the CEPP legislation may unintentionally result in the regulation of wire companies that, in point of fact, provide and deliver the power to "end-use customers," but do not in fact sell that power. A wires company has no ability to even comply with the requirements of the bill. This can be corrected by stipulating that regulation should be on the retail electric suppliers that are acquiring the electricity that they are selling to their retail customers.

Many thanks for considering our perspectives as the Committee considers this legislation.

If you have any questions on the above, please call Tony Kavanagh at 202-383-3434 (work) or 202-731-3568 (mobile) or Marty McBroom at 202-383-3437 (work) or 202-236-3125 (mobile).

Sincerely yours,

Tony Kavanagh