EPA'S ANTICIPATED GREENHOUSE GAS 111(D) RULE:
THE GULF COAST LIGNITE COALITION'S
TOP FIVE KEY POINTS AND CONCERNS

I. Emissions limitations must be set on an individual unit level that are achievable "within the fence" and must not trigger other Clean Air Act requirements.

a. Section 111 concerns the performance of sources within a source category and does not prescribe or even contemplate source category – or system – wide standards. Therefore, any limitation must be achievable at the unit level.
b. Whether a technology is demonstrated as a best system of emissions reduction must take into consideration cost, technology (e.g. different boilers), age, size, location, operational challenges, heat rate impact associated with pollution control equipment that has already been installed, improvements that have already been made to improve heat rate, market design in the ISO the unit operates within, and fuel type. EPA cannot include demand-side management, energy efficiency, and other "outside the fence" reductions.
c. Once a source limitation has been established "within the fence" of each unit, it is then up to the states to determine the type and flexibility of compliance measures to meet those standards.
d. Entities owning a single coal unit do not have the ability to "shift" generation to lower emitting sources. These units would be at a competitive disadvantage under a rule that anticipates these types of shifts in generation and could potentially be required to shut down. Some of these single-unit entities are also backed by federal government loans (e.g. San Miguel & Deseret), which would also be put into jeopardy.
e. In addition, efforts taken by impacted electric generators, including, but not limited to, the installation of technological controls, modification of existing facilities, changes of processes, and efficiency upgrades, must be explicitly exempted from triggering new source review (NSR) or other requirements under separate provisions of the Clean Air Act. Complying with a 111(d) rule cannot be used as an end-around means to impose other onerous Clean Air Act requirements.

II. Unit specific emissions limits must not focus on a single year but should be based on many more years of operation.

EPA has previously looked to numerous operational years as a means to establish baseline emissions, in order to avoid isolated or non-representative years from establishing emissions limitations. For instance, in the CSAPR rule (despite its numerous flaws requiring it being vacated by the Courts), looked to the maximum annual historic emissions identified within an eight-year baseline.[1] For a 111(d) of rule, with such a significant potential impact, the period should extend for at least ten years and should be based on the maximum annual emissions from one of the years within that time span. This has become an even more important issue given the varying dispatch that traditional base load units are experiencing due to a number of market and technical factors. Further, credit should be given to electric generators for upgrades that were completed prior to the baseline years that reduced GHG emissions, as well as credit for pollution control upgrades for non-GHG emissions after the establishment of the baseline year, in order to account for decreased efficiency due to the parasitic load of these controls

III. Any Section 111(d) rule must provide for subcategorization of coal separate from gas and, within the coal subcategory, establish a further subcategory for mine-mouth lignite units.

a. The CAA allows, and EPA rules require, that EPA subcategorize under Section 111(d), including "specify[ing] different emission guidelines or compliance times or both for different sizes, types, and classes of designated facilities when costs of control, physical limitations, geographical

[1] *See* CSAPR Final Rule, 76 FR 48208, 48290.

location, or similar factors make subcategorization appropriate."[2] The unique physical and operational characteristics of coal, and separately, lignite-fired generation sources require categorization and subcategorization, respectively.

b. EPA, as recently as the MATS Rule, established a subcategory for lignite under the larger coal category (upheld by the Court of Appeals for the D.C. Circuit), based not only on the chemical composition of the fuel source, but the fact that lignite units are "universally constructed 'at or near' a mine containing" lignite with designated and narrowly limited conveyance mechanisms to transport lignite from the mine to the power plant.[3] The same proximity argument would apply under any Section 111(d) rule.

c. Subcategorization is also required because of the physical and chemical characteristics of lignite; lignite-fired plants have higher net unit heat rates than comparable plants firing a higher heat-value coal. Further, the physical and chemical composition of lignite also typically requires larger, more energy intensive, control technologies than other coal-fired units. The increased parasitic load of these technologies inherently increases energy consumption.

d. The necessity to provide subcategorization, likewise prevents EPA and the states from redefining the source or force fuel switching as part of the NSPS process. The courts have recognized that EPA cannot "redefine" a power plant, which includes forcing fuel switching.

IV. Section 111(d) of the Clean Air Act mandates a state-led process with maximum flexibility provided to the states.

a. The Clean Air Act requires that EPA's oversight of state submissions is restrained and deferential. EPA is charged with issuing guidelines to states that reflect the "best system of emission reduction," while the states are free to develop performance standards – which can differ based on numerous technological, operational, and other unit- and state-specific considerations. Further, states may apply "less stringent emission standards or longer compliance schedules" to particular facilities or classes of facilities if adopting the EPA's emission guidelines would be "unreasonabl[y] costly," or "physical[ly] impossible," among other factors.[4]

b. The Clean Air Act requires that EPA approve state submissions if they are deemed "satisfactory."[5] Under this review, it is not upon the EPA to dictate to the states the means of compliance, nor undo states' plans when EPA would have chosen a different path.[6]

V. The timeline for states to propose their own implementation plans must be longer than the thirteen months contemplated in the President's Climate Action Plan/Power Sector Carbon Pollution Standards Memorandum and should contemplate a much longer period of time for ultimate unit-level compliance.

a. The complexity of a 111(d) rule for existing power plants is far greater, with a much larger potential impact, than any other 111(d) rule previously proposed.

b. EPA must provide a greater timeline than currently contemplated under the President's Plan for states to submit their plans. The discretion to extend this timeline is already clearly outlined in Federal rules.[7] Thirteen months is simply not enough time.

c. State plans must be allowed to provide a great deal of discretion in the timing for individual units to comply with their plans. At minimum, the states should be allowed to set compliance timelines

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[2] 40 C.F.R. § 60.22(b)(5).

[3] MATS Rule, 77 Fed. Reg. at 9379. EPA used the term "low rank virgin coal" with a heat-input value of 8,300 Btu/lb, which is, almost exclusively lignite.

[4] *See* 40 CFR § 60.24(f).

[5] Clean Air Act § 111(d)(2)(A).

[6] *See Luminant Generation Co. v. EPA*, 675 F.3d 917 (5th Cir. 2012), which states that EPA's role is in the Section 110 state implementation plan ("SIP") approval process is "confine[d] . . . to the ministerial function of reviewing [state plans] for consistency with the Clean Air Act's requirements" and little more.

[7] *See* 40 CFR 60.27(a), which includes that "[t]he Administrator may, whenever he determines necessary, extend the period for submission of any plan or plan revision or portion thereof."

based on the remaining useful life of individual sites (with due consideration to issues such as the necessary time to fully amortize existing debt).