

## EURACOAL Position Paper

### on an Emissions Performance Standard under the UK Energy Bill 2012-13

#### Background

Current policy in the UK requires that any new coal-fired plant demonstrates CCS on at least 300 MW of its proposed net generating capacity.<sup>1</sup> To further strengthen this policy, the UK proposes to implement an emissions performance standard (EPS) from 2014 of 450 g/kWh and hence limit the CO<sub>2</sub> emitted by all new fossil fuel power stations larger than 50 MW.<sup>2</sup> The aim is to prevent new or upgraded coal-fired power stations from being commissioned unless they are equipped with sufficient CO<sub>2</sub> capture and storage (CCS) to meet the proposed EPS. In contrast, the EPS does not affect investment in new gas-fired generation because emissions from unabated gas plants (*i.e.* CCGT plants without CCS) are below 450 g/kWh. Indeed, EPS permits will be “grandfathered” until 2045 to provide long-term certainty to investors in unabated gas plants.

In practice, the EPS will be implemented as an annual cap on emissions equivalent to the emissions from a plant that meets the EPS operating at baseload (*i.e.* at an assumed 85% load factor). New unabated coal-fired plants could therefore operate at reduced load (*e.g.* <48.4% load factor), but would be unlikely to be economic.

#### Incompatibility with EU law

The proposed EPS would not be compatible with EU law. In particular, it would not comply with Article 9 of the Industrial Emissions Directive (IED)<sup>3</sup> and could not be justified under Article 193 of the Treaty on the Functioning of the EU as being a more stringent environmental protection measure.

CO<sub>2</sub> emissions from power generation and certain other sectors fall within the scope of the EU Emissions Trading Scheme (ETS): agreed reductions must be achieved by these sectors across the EU. In addition, the EU is committed to meet the greenhouse gas (GHG) emission reduction targets set out in the UNFCCC Kyoto Protocol. A burden-sharing agreement details targets for individual member states and recognises that emission reductions from sectors covered by the ETS can be made anywhere in the EU: allowance certificates are fully fungible.<sup>4</sup>

Consequently, Article 9 of the IED states that, “Where emissions of a greenhouse gas from an installation are specified in Annex I to Directive 2003/87/EC in relation to an activity carried out in

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<sup>1</sup> National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2), DECC, July 2011

<sup>2</sup> Energy Bill 2012-13, Clause 38

<sup>3</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), OJ L 334/17, 17.12.2010

<sup>4</sup> Decision No. 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community’s greenhouse gas emission reduction commitments up to 2020

that installation, the permit shall not include an emission limit value for direct emissions of that gas, unless necessary to ensure that no significant local pollution is caused.”

The purpose of Article 9 of the IED is to prevent Member States from introducing emission limit values for GHG emissions from installations already covered by the EU ETS because the EU has agreed to limit these GHG emissions by cap and trade through the EU ETS rather than by imposing emissions performance standards for each installation. The proposed EPS under the UK Energy Bill 2012-13 would apply a GHG emission limit value for ETS installations which is not allowed according to Article 9 of the IED.

Furthermore, the proposed EPS would not be a “more stringent protective measure” in the sense of Recital 10 of the IED and Article 193 of the Treaty. It would not complement the EU ETS; in fact, it would undermine the cap and trade system. An EPS for ETS installations would not help to reduce CO<sub>2</sub> emissions since any unused allowances resulting from the application of an EPS would simply be used by other operators of ETS installations elsewhere in the EU. The UK’s proposed EPS would not reduce the number of allowances in circulation, and so would not reduce the aggregate GHG emissions from the EU. It would therefore have no environmental benefit.

In conclusion, an EPS would not be a more stringent protective measure than the EU ETS and could not therefore be justified under Recital 10 of the IED or Article 193 of the Treaty. Moreover, it would be contrary to Article 9 of the IED.

## **EURACOAL Position**

Whilst EURACOAL welcomes the UK’s aim to push forward the demonstration of CCS, the proposed EPS will not incentivise the construction of any new coal- or gas-fired plants with CCS. Firstly, it would mandate against the building of the capture-ready coal plants that are needed to increase the potential for CCS deployment in the longer term. Secondly, the proposed EPS would merely endorse the construction of unabated gas plants. A single, non fuel-specific EPS will always disadvantage coal-fired generation and, as such:

- it will reduce fuel diversity and hence weaken security of supply;
- it will limit competition in the electricity market;
- it will result in fuel switching from coal to gas and hence delay CCS deployment; and
- it is incompatible with EU law.

EURACOAL calls on the European Commission to examine very carefully this UK proposal and avoid allowing a precedent to be set that would compromise the proper functioning of the EU ETS and the internal energy market, and that may well delay the investments needed to deploy CCS in the long term.

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