Hearing on the EPA’s Proposed Clean Power Plan


I. WITNESSES

The Honorable Kenneth W. Anderson, Jr.
Commissioner
Public Utility Commission of Texas

The Honorable Travis Kavulla
Commissioner
Montana Public Service Commission

The Honorable Henry R. Darwin
Director
Arizona Department of Environmental Quality

The Honorable Tom W. Easterly
Commissioner
Indiana Department of Environmental Management

The Honorable Paul J. Roberti
Commissioner
Rhode Island Public Utility Commission

The Honorable Kelly Speakes-Backman
Commissioner
Maryland Public Service Commission

The Honorable David W. Danner
Chairman
Washington Utilities and Transportation Commission
II. BACKGROUND

On June 2, 2014, the Environmental Protection Agency ("EPA") issued its 645-page proposed rule for existing fossil fuel-fired power plants under section 111(d) of the Clean Air Act ("CAA") entitled "Carbon Emission Guidelines for Existing Stationary Sources: Electric Generating Units" ("Clean Power Plan"). The proposal was published in the Federal Register on June 18, 2014, and comments are due on October 16, 2014.

The EPA interprets section 111(d) to provide it with regulatory authority to require states to meet mandatory carbon dioxide ("CO2") targets set by the agency for the state’s system for generating electricity. In particular, the EPA proposes to set unique “state-specific rate-based goals for carbon dioxide emissions from the power sector” which include for each state an “interim goal” required to be met beginning in 2020 and continuing through 2029, and a “final goal” required to be met beginning in 2030 and thereafter. According to the EPA, it developed its mandatory CO2 “goals” for States based on the consideration of four “building blocks,” which include measures to:

1. “make fossil fuel power plants more efficient,” which EPA projects would result in an average heat rate improvement of 6 percent for coal units;

2. “use low-emitting power sources more,” which EPA projects could be achieved by dispatch to existing and under-construction natural gas combined cycle units up to a 70 percent capacity factor;
3. “use more zero- and low-emitting power sources,” which EPA projects could be achieved through dispatch to new clean generation, including new nuclear generation under construction, deployment of new renewable generation, and continued use of existing nuclear generation; and

4. “use electricity more efficiently,” for which EPA assumes would increase demand-side energy efficiency of 1.5 percent annually.

The EPA is proposing that states adopt plans that incorporate a combination of “strategies,” and has posted on its website a map which includes information for each state (except Vermont and the District of Columbia) and indicates that the state “may work alone or in cooperation with other states to comply with the proposed rule,” and should identify “strategies” for their plans which may include:

• Demand-side energy efficiency programs;
• Renewable energy standards;
• Efficiency improvements at plants;
• Dispatch changes;
• Co-firing or switching to natural gas;
• Construction of new natural gas combined-cycle plants;
• Transmission efficiency improvements;
• Energy storage technology;
• Retirements;
• Expanding renewables like wind and solar;
• Expanding nuclear;
• Market-based trading programs; and
• Energy conservation programs.

Under the Clean Power Plan, states would be required to develop, adopt, and submit their plans to the EPA for approval not later than June 30, 2016, with a possible one year extension for individual state plans and two year extension for plans that include a multi-state approach. Once the EPA approves the plan, the provisions in the plan would become “federally enforceable against the entity responsible for noncompliance.” If a state fails to submit a plan, or if the EPA finds a state’s plan to be unsatisfactory, it would impose a federal implementation plan, although the EPA has not yet developed a model federal plan.

According to Committee staff, while the EPA’s proposed Clean Power Plan is still being reviewed and the comment period remains open, a number of questions have been raised concerning its implementation. Questions range from legal issues relating to whether the EPA has the authority to regulate power plants at all under section 111(d), to whether the EPA has authority to pursue an “outside the fence” approach (assuming the agency has authority to regulate existing power plants under section 111(d) of the CAA), or whether the EPA has authority to impose what is
effectively a state-by-state cap-and-trade CO2 emissions policy. Questions also relate to the workability and feasibility of the rule, ranging from how the EPA’s proposed mandatory state CO2 emissions targets were calculated and whether there was interagency and state coordination while the agency developed the rule, to its (the proposed rule’s) impacts on electricity markets, electricity reliability, and fuel diversity; the implications of increased reliance on natural gas, renewables and energy efficiency; costs associated with stranded assets, compliance costs associated with building necessary new transmission infrastructure, and costs to consumers and businesses; and impacts on future economic impacts, including for states’ energy intensive and trade exposed industries.

Committee staff also indicated that there are questions about the amount of state resources that would be required to comply with the Clean Power Plan, coordination among state regulatory agencies (including public utility commissions, environmental, economic development and other state agencies), necessary state approvals, the need for state and/or federal implementing legislation, the actions that would need to be taken by state legislatures to implement the proposed rule, whether and the extent to which special state legislative sessions may be necessary, and the consistency of the Clean Power Plan’s “outside the fence” approach with state laws or pending legislation. Concerning potential conflicting state legislation, there are at least five states that have enacted legislation providing that any CO2 performance standards established by the state for existing power plants be based on “inside the fence” measures, and there are at least thirteen additional states
that have adopted similar resolutions in either their House or Senate or both.

III. ISSUES

The following issues concerning the EPA’s proposed Clean Power Plan are expected to be examined at the hearing:

• Legal issues associated with EPA’s proposal;
• Practical issues associated with EPA’s proposal;
• Impacts on electricity rates for consumers and businesses;
• Impacts on fuel diversity and electric reliability; and
• Impacts on future economic growth and jobs.

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The proposed rule, along with fact sheets, legal and other memoranda, technical support documents and a regulatory impact analysis is available at http://www2.epa.gov/carbon-pollution-standards/clean-power-plan-proposed-rule.

This Committee Update provides general information and not legal advice or opinions on specific facts