

Opening Statement of the Honorable Ed Whitfield
Subcommittee on Energy and Power
Hearing on “State Perspectives: Questions Concerning EPA’s Proposed Clean Power Plan”
September 9, 2014

(As Prepared for Delivery)

This morning’s hearing focuses on EPA’s proposed Clean Power Plan, which would impose federal limits on carbon dioxide emissions from each state’s electricity system. This is our third hearing on the subject and the previous two hearings left a great many questions unanswered – about EPA’s legal authority to impose this sweeping global warming agenda under a rarely-used provision in the Clean Air Act, about the feasibility of implementing EPA’s unprecedented and highly complicated scheme, and about the potential adverse impacts on electricity costs, reliability and economic growth.

The last hearing focused on FERC, and I must say that I was disturbed to learn the extent that FERC was being bypassed by EPA in its attempt to consolidate control over the manner in which electricity is generated and consumed in the United States. Today, we will hear from the states, whose primary role in overseeing the electric sector for their citizens is also being jeopardized by EPA’s proposed rule.

It is important to remember that EPA has no energy policy-setting authority or expertise. These responsibilities reside primarily with the states or other federal agencies, and EPA’s role historically has been confined to regulating emissions from electric generating units. Never before has the agency sought to set standards that extend to nearly every aspect of electricity generation, distribution, and use. And never before has EPA – or any other federal agency – proposed to exert ultimate authority – including enforcement authority -- over state decision-making in the electric sector. But EPA is doing so now with the Clean Power Plan. And aside from the fundamental legal issues, there is a long list of concerns about the workability of this scheme.

EPA has tried to spin its proposal as a helpful list of sensible steps for states to take -- what it calls “building blocks.” To the extent that some of these policies make economic sense, states should be free to take those actions in the interest of their citizens. But they shouldn’t be compelled to undertake actions and measures that may impose increased costs and other harms. Make no mistake: the Clean Power Plan is coercive – either a state comes up with a plan that meets with EPA’s approval, or EPA will impose its own Federal Implementation Plan.

And I must add that the provisions in the Clean Power Plan affecting coal-fired generation are especially destructive when viewed in the context of all the other regulations targeting this energy source. EPA’s latest proposed rule adds to the cumulative burden that is making it nearly impossible to keep coal in the energy mix. Indeed, we are already seeing coal-fired capacity being retired at an alarming rate – much faster than EPA’s projections – and this raises serious concerns about electric reliability, not to mention all of the jobs that depend on coal. The President’s direct assault on coal is also a likely contributor to rising residential electricity prices that the Energy Information Administration recently reported.

EPA also likes to tout its proposed rule as being ‘flexible’ but it would actually undercut each state’s flexibility to respond to changing circumstances because after an implementation plan is approved by the EPA, a state will have ceded authority over its energy sector to the federal government. For example, if a state legislature decides that its renewable portfolio standard (RPS) is problematic, that legislature would be prevented from amending it without first obtaining EPA permission. If the State amends or freezes it without permission it may be subject to EPA enforcement or subject to a private party lawsuit. As it is, states are constantly considering modifications to their energy policies to better meet consumer needs, but under EPA’s proposal each state will be stuck with a rigid federal plan and won’t be able to easily adapt to changing circumstances.

Unlike EPA, state-level officials are the ones who are held accountable to their consumers and businesses, and bear the responsibility of keeping electricity affordable and reliable. They have to deal with all the implementation challenges, including resolving the conflicts between the Clean Power Plan and their own state laws and regulations. That is why their views on the Clean Power Plan are so vitally important and why this hearing is critical to gathering the perspective necessary to understand the challenges confronting the states.

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