



March 13, 2015

TO: Members, Subcommittee on Energy and Power

FROM: Committee Majority Staff

RE: Hearing entitled “EPA’s Proposed 111(d) Rule for Existing Power Plants: Legal and Cost Issues”

I. INTRODUCTION

On Tuesday, March 17, 2015, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Energy and Power will hold a hearing entitled “EPA’s Proposed 111(d) Rule for Existing Power Plants: Legal and Cost Issues.”

II. WITNESSES

Panel 1

- **Laurence H. Tribe**, Carl M. Loeb University Professor and Professor of Constitutional Law, Harvard Law School;
- **Richard L. Revesz**, Lawrence King Professor of Law, Dean Emeritus, Director, Institute for Policy Integrity, New York University School of Law; and
- **Allison D. Wood**, Partner, Hunton & Williams LLP.

Panel 2

- **Art Graham**, Chairman, Florida Public Service Commission;
- **Kelly Speakes-Backman**, Commissioner, Maryland Public Service Commission, and Chair, Board of Directors, Regional Greenhouse Gas Initiative, Inc.;
- **Craig Butler**, Director, Ohio Environmental Protection Agency; and
- **Donald van der Vaart**, Secretary, North Carolina Department of Environment and Natural Resources.

III. BACKGROUND

The Environmental Protection Agency's (EPA) proposed carbon dioxide (CO₂) rule for existing power plants, referred to by the agency as its "Clean Power Plan," was announced on June 2, 2014.¹ The rule is being advanced under section 111(d) of the Clean Air Act,² as part of President Obama's [Climate Action Plan](#). EPA currently [projects](#) that the rule will be finalized and published this summer. The comment period closed December 1, 2014, and the agency has received over 3.9 million comments.³

Under the rule, EPA proposes to require States to meet carbon dioxide (CO₂) emissions "goals" set by the agency for each State's electricity sector, including an "interim goal" for the period 2020 to 2029, and a "final goal" beginning in 2030. The goals are based on four "building blocks" identified by the agency, including 1) making heat rate improvements at coal-fired power plants, which EPA assumes for each State could, on average, result in a 6 percent CO₂ emissions reduction from the affected coal-fired electric generating units; 2) shifting away from coal-fired generation and operating the State's natural gas combined cycle plants at a 70 percent capacity factor; 3) shifting away from coal-fired generation and expanding the use of existing nuclear and renewable energy generation; and 4) reducing the use of electricity through energy efficiency programs that EPA assumes for each State could improve electricity savings by up to 1.5 percent annually.⁴

Under the rule, States would have 12 months to submit a plan describing how they would meet the interim and final goals, with a possible 1-year extension for individual State plans and 2-year extension for plans that include a multi-State approach.⁵ Under the proposal, in the event that a plan was deemed by the agency to be unsatisfactory, EPA would develop a Federal plan for the State.⁶

¹ The [proposed rule](#) was published in the Federal Register on June 18, 2014. *See* 79 Fed. Reg. 34830 (June 18, 2014). On October 8, 2014, EPA announced a [supplemental proposed rule](#) for Indian Country and U.S. territories. *See* 79 Fed. Reg. 65482 (Nov. 4, 2014). The rulemaking documents are available at <http://www2.epa.gov/carbon-pollution-standards/clean-power-plan-proposed-rule>. Additional [technical support documents](#), a [legal memorandum](#), and other related memoranda are available <http://www2.epa.gov/carbon-pollution-standards/clean-power-plan-proposed-rule-technical-documents>. *See also* EPA's "[Clean Power Plan Toolbox for States](#)."

² For background relating to the proposal, see the Committee's Staff Report entitled: "[EPA's Proposed CO₂ Regulations for Existing Power Plants: Critical Issues Raised in Hearings and Oversight](#)."

³ *See* docket available at <http://www.regulations.gov/#!docketDetail;D=EPA-HQ-OAR-2013-0602>.

⁴ *See* [Proposed Rule](#), 79 Fed. Reg. 34830, 34855-34892 (June 18, 2014), including at 34859-34862 (Building Block 1), 34862-34866 (Building Block 2), 34866-34871 (Building Block 3), 34871-34875 (Building Block 4). *See also*, e.g., "[Fact Sheet: Clean Power Plan Framework](#)". With respect to renewable energy under "Building Block 3," *see also* [Alternative \[Renewable Energy\] Approach Technical Support Document](#).

⁵ For EPA's proposed requirements for State plans, *see* [Proposed Rule](#), 79 Fed. Reg. at 34951-34953.

⁶ *Id.* at 34950-34951.

Numerous States and Federal officials, as well as other stakeholders, have submitted comments on EPA's proposal.⁷ Among the concerns that have been raised by some commenters are Constitutional, statutory, jurisdictional and other Federal and State law issues. Currently, litigation is pending before the U.S. Court of Appeals for the District of Columbia relating to threshold questions about whether the agency has statutory authority to issue a rule for existing power plants under section 111(d) of the Clean Air Act.⁸

In addition to the legal concerns, commenters also have raised concerns relating to the costs of compliance, timing and other implementation issues, and potential impacts on electric grid reliability. EPA estimates that the costs of compliance would range from \$5.5 billion to \$7.5 billion in 2020 and from \$7.3 billion to \$8.8 billion in 2030. According to other estimates, however, the potential costs could be much higher.⁹

IV. ISSUES

The following issues relating to EPA's proposed rule may be examined at the hearing:

- Legal issues;
- Cost issues;
- Potential stranded assets;
- Potential ratepayer impacts; and
- Potential reliability impacts.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Mary Neumayr or Tom Hassenboehler of the Committee staff at (202) 225-2927.

⁷ For links to comments from State and Federal officials, see the Bipartisan Policy Center "[Clean Power Plan Comments Map](#)."

⁸ See *In Re Murray Energy Corporation*, U.S. Court of Appeals for the District of Columbia, Case No. 14-1112 and Case No. 14-1151; *State of West Virginia v. United States Environmental Protection Agency*, U.S. Court of Appeals for the District of Columbia, Case No. 14-1146.

⁹ See, e.g., NERA Economic Consulting report entitled "[Potential Energy Impacts of the EPA Proposed Clean Power Plan](#)," October 2014.