

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

May 4, 2015

The Honorable Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Assistant Administrator McCabe:

Thank you for appearing before the Subcommittee on Energy and Power on April 14, 2015, to testify at the hearing entitled "EPA's Proposed 111(d) Rule for Existing Power Plants, and H.R. ___, Ratepayer Protection Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, May 18, 2015. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittees.

Sincerely,



Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy and Power

Attachment

The Honorable Ed Whitfield

1. In the proposed Clean Power Plan, EPA states that “We estimate a 4 to 7 percent increase in retail electricity rates, on average, across the contiguous U.S. in 2020.”
 - a. What is the low end of the range and the high end of the range?
 - b. Has EPA prepared estimates of the average retail electricity price increases for the years 2021 through 2030? If yes, please provide those estimates for each year, including the high and low ends of the range.
2. EPA announced that it would begin in January 2015 a rulemaking process to propose by this summer a model federal plan for the Clean Power Plan.
 - a. Does EPA have authority under section 111(d) of the Clean Air Act to issue a mandatory federal plan that orders a state to dispatch low-carbon electricity?
 - b. Does EPA have authority under section 111(d) to issue a mandatory federal plan that orders a state to generate electricity from renewable sources?
 - c. Does EPA have the authority under section 111(d) to issue a mandatory federal plan that orders a state to enact consumer energy efficiency standards?
 - d. Does EPA have the authority under section 111(d) to issue a mandatory federal plan that requires a nuclear power plant at risk for closing to remain open?
 - e. Does EPA believe it has legal authority under section 111(d) to impose requirements in a mandatory federal plan on entities other than operators of affected electric generating units?
3. In the “Clean Power Plan” EPA is encouraging States to consider establishing or participating in cap-and-trade programs. For the federal plan, is EPA considering requiring regions or states to establish or pursue a cap-and-trade approach?
4. In its 111(d) proposed rule for existing power plants, EPA proposes to allow States to comply by developing and submitting a multi-state plan signed by authorized officials for each of the participating states. EPA also indicates plans must include enforceable measures to reduce CO2 emissions, and that once approved by the agency a plan would become federally enforceable.

Section 102(c) of the Clean Air Act (42 USC 7402) provides that two or more States may negotiate and enter into agreements or compacts for the prevention and control of air pollution, but that “[n]o such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress.”

 - a. How would Section 102(c) of the Clean Air Act apply to a multi-state plan being submitted to comply with EPA’s 111(d) rule?
 - b. Would a multi-state plan agreed to by participating States be binding or obligatory upon any State a party thereto before it had been approved by Congress?

5. The EPA FY2016 Budget requests funding for: “Implementation of the Clean Power Plan through development of guidance and tools that states will need to create their plans for addressing carbon pollution from existing power plants. In particular, program expertise will be needed to model economic potential and evaluate costs and benefits of end-use energy efficiency and renewable energy measures to support state plan development.”
 - a. What is the “guidance and tools” needed to create State plans?
 - b. Will it be available at the time EPA releases the final rule?
 - c. If not, when will it be available?
6. When you testified in June 2014, you indicated that EPA and FERC staff had had communications relating to the proposed Clean Power Plan.
 - a. Have the documents reflecting those communications been included in the rulemaking docket?
 - b. Will all documents reflecting communications between EPA and FERC staff relating to the proposed rule be included in the docket for the final rule?
7. EPA’s proposed rule under Section 111(b) for new power plants would mandate carbon capture and storage for new coal plants. This proposal itself raises serious legal questions and EPA has withdrawn the proposed rule once already.
 - a. If the 111(b) rule is struck down, what is the impact on its proposed 111(d) rule for existing power plants?
 - b. If EPA itself decides to reconsider the 111(b) rule after it is issued, will the agency put compliance with the 111(d) rule on hold? If not, why not?
8. In the proposed guidelines for existing plants, EPA notes that all elements of a state’s compliance plan must be enforceable. EPA also notes that, once EPA approves a state plan, all elements of the plan become federally enforceable and would be subject, not just to EPA enforcement actions, but to citizen suits.
 - a. Would environmental groups and other non-governmental organizations be able to sue states as a result of these guidelines?
 - b. Who else would they be able to sue? Could they sue cities? Utilities? Consumers of electricity?
 - c. Can you provide the committee with information in writing on (i) who would be able to sue to enforce a state implementation plan; and (ii) who could potentially be sued?
9. In its November 2014 supplemental rule relating to the Clean Power Plan, EPA solicited comment “on the treatment of renewable energy, demand-side energy efficiency and other new low- or non-emitting electricity generation across international boundaries in a state plan.” As you are aware, and as the Department of Energy’s recent Quadrennial Energy Review affirms, there is significant electric integration within North America. How does EPA plan to treat electricity imported across international boundaries in the final rule?