



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 09 2015

OFFICE OF CONGRESSIONAL  
AND INTERGOVERNMENTAL RELATIONS

The Honorable Ed Whitfield  
Chairman  
Subcommittee on Energy and Power  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Whitfield:

Thank you for your letter of May 4, 2015, to Acting Assistant Administrator Janet McCabe requesting responses to Questions for the Record following the April 14, 2015, hearing before the Subcommittee on Energy and Power entitled, "EPA's Proposed 111(d) Rule for Existing Power Plants, and H.R. \_\_, Ratepayer Protection Act."

The responses to the questions are provided as an enclosure to this letter. If you have any further questions please contact me, or your staff may contact Kevin Bailey at [bailey.kevinj@epa.gov](mailto:bailey.kevinj@epa.gov) or (202) 564 2998.

Sincerely,

A handwritten signature in black ink that reads "Nichole Distefano".

Nichole Distefano  
Deputy Associate Administrator  
for Congressional Affairs

**Questions for the Record**  
**House Energy and Commerce, Subcommittee on Energy and Power**  
**Hearing Titled: EPA's Proposed 111(d) Rule for Existing Power Plants, and**  
**H.R. \_\_, Ratepayer Protection Act**

**Janet McCabe, Acting Assistant Administrator**

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.

**A. Consistent with statute, Executive Order, and OMB guidance, the EPA conducted a Regulatory Impact Analysis that shows the benefits and costs of illustrative scenarios states may choose in complying with the proposed Clean Power Plan. Because states have flexibility in how to meet their goals, the actions taken to meet the goals may vary from what is modeled in the illustrative scenarios. Specific details, including information about how costs and benefits are estimated are available in section 3.7.9 of the Regulatory Impact Analysis (RIA) (<http://www2.epa.gov/sites/production/files/2014-06/documents/20140602ria-clean-power-plan.pdf>).**
2. EPA announced that it would begin in January 2015 a rule making 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 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?

**A. The Clean Air Act provides for EPA to write a federal plan if a state does not put an approvable state plan in place. In response to requests from states and stakeholders since the proposed Clean Power Plan was issued, EPA announced in January 2015 that we will be starting the regulatory process to develop a rule that would set forth a proposed federal plan and could provide an example for states as they develop their own plans. EPA fully expects that, as contemplated by the Clean Air Act, states will want to submit their own plans, and will use that as an opportunity to tailor their plans to their specific needs and priorities. The agency expects to issue the proposed federal plan for public review and comment in summer 2015.**

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?

**A. The Clean Air Act provides for EPA to write a federal plan if a state does not put an approvable state plan in place. In response to requests from states and stakeholders since the proposed Clean Power Plan was issued, EPA announced in January 2015 that we will be starting the regulatory process to develop a rule that would set forth a proposed federal plan and could provide an example for states as they develop their own plans. EPA fully expects that, as contemplated by the Clean Air Act, states will want to submit their own plans, and will use that as an opportunity to tailor their plans to their specific needs and priorities. The agency expects to issue the proposed federal plan for public review and comment in summer 2015.**

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 CO<sub>2</sub> emissions, and that once approved by the agency a plan would be federally enforceable. Section 102(c) of the Clean Air Act (42 USC 7402) provides that one or more States may negotiate and enter into agreements or compacts for the prevention and control of air pollution, but that no such agreement or compact shall be binding or obligatory upon any State a part thereto unless and until it has been approved by Congress.

a. 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?

**A. In the proposal, the EPA invited comment on how multistate plans might work (79 Fed. Reg. 34911 – 34912). We are currently reviewing comments received on that issue, as well as all of the more than 4.3 million comments received on the proposal, as we work towards the development of a final Clean Power Plan.**

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?

**A. As with any major rule the EPA will be working with states to help them throughout the implementation process. To further assist states we will be providing them with resources and tools throughout the implementation phase of this rulemaking. For some of the tools and resources EPA has already provided see: <http://www2.epa.gov/cleanpowerplanttoolbox>.**
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?

**A. The EPA will ensure that the final Clean Power Plan complies with the law, including all applicable statutory requirements on making materials publicly available.**
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?

**A. The EPA invited comment on the legal relationship of standards for new, modified and reconstructed, and existing sources under Sections 111(b) & (d). We are currently reviewing comments received on that issue, as well as all of the more than 4.3 million comments received on the Clean Power Plan proposal, as we work towards the development of a final Clean Power Plan.**

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?
- A. Under the proposed rule, the states have significant discretion in determining what types of measures to adopt and submit to EPA for approval. The EPA will approve a state plan if it meets the state goal. EPA discussed the concept of federal enforceability, including the availability of citizen suits, in the preamble to the proposed rule (79 Fed. Reg. 34,830, 34,902-34,903) and the accompanying legal memorandum (Docket ID Number EPA-HQ-OAR-2013-0602-0419, PAGE 4) and the agency will review any comments we receive on this issue.**
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?
- A. The EPA is reviewing the comments received on how to account for electricity from international sources as we work towards the development of a final Clean Power Plan.**