



April 10, 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, and H.R. ____, Ratepayer Protection Act”

I. INTRODUCTION

On Tuesday, April 14, 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, and H.R. ____, Ratepayer Protection Act.”

II. WITNESSES

Panel 1

- **The Honorable Janet McCabe**, Acting Assistant Administrator for the Office of Air and Radiation, U.S. Environmental Protection Agency

Panel 2

- **Eugene M. Trisko**, Energy Economist and Attorney on behalf of the American Coalition for Clean Coal Electricity;
- **Lisa D. Johnson**, CEO and General Manager, Seminole Electric Cooperative, Inc. on behalf of National Rural Electric Cooperative Association;
- **Kevin Sunday**, Manager, Government Affairs, Pennsylvania Chamber of Business and Industry;
- **Paul Cicio**, President, Industrial Energy Consumers of America;
- **Susan F. Tierney**, Senior Advisor, Analysis Group; and
- **Melissa A. Hoffer**, Chief, Energy and Environment Bureau, Office of the Attorney General, Commonwealth of Massachusetts.

III. BACKGROUND

On June 2, 2014, the Environmental Protection Agency (EPA) announced its proposed carbon dioxide (CO₂) rule for existing power plants, referred to by the agency as its “Clean Power Plan.”¹ This rule is being advanced pursuant to section 111(d) of the Clean Air Act (CAA), as part of President Obama’s [Climate Action Plan](#).² EPA [projects](#) it will finalize the rule this summer.

Under the proposed rule, EPA would require States to meet individual 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 State goals are calculated based upon four “building blocks.”³ To comply with the goals, EPA directs States to consider a broad array of actions across their electricity system.⁴

As proposed, States would be required to submit a plan to meet the new CO₂ goals to EPA within 13 months of a final rule, with a possible 1-year extension for individual State plans and 2-year extension for plans that include a multi-State approach.⁵ For many States, plan development may require new legislation or regulations, and decisions that may not easily be reversed, including decisions to shut down power plants, and to begin the planning, financing and constructing new facilities and infrastructure.⁶ Once approved, a State plan would become federally enforceable and could not be changed without EPA approval.⁷ If a State failed to submit a plan EPA determined to be satisfactory, the agency would impose a yet to be developed Federal plan on the State.⁸

¹ The [proposed rule](#) is published in the Federal Register at 79 Fed. Reg. 34830 (June 18, 2014), and the rulemaking documents are available at <http://www2.epa.gov/carbon-pollution-standards/clean-power-plan-proposed-rule>. On Oct. 8, 2014, EPA announced a [supplemental proposed rule](#) for Indian Country and U.S. territories. *See* 79 Fed. Reg. 65482 (Nov. 4, 2014).

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

³ The building blocks include 1) making heat rate improvements at coal-fired power plants, which EPA assumes for each State could result on average 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 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. *See* [Proposed Rule](#), 79 Fed. Reg. 34830, 34855-34892. The formulas and methodologies for setting State targets are described in a [“Goal Computation Technical Support Document.”](#)

⁴ On its website, EPA encourages States to consider: 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; retirement; expanding renewables like wind and solar; expanding nuclear; market-based trading programs; and energy conservation programs. *See* <http://cleanpowerplanmaps.epa.gov/CleanPowerPlan/>. In the rule, EPA highlights Regional Greenhouse Gas Initiative and California cap-and-trade programs. *See e.g.*, [Proposed Rule](#), 79 Fed. Reg. at 34834, 34848, 34880, 34900 (June 18, 2014).

⁵ *See* [Proposed Rule](#), 79 Fed. Reg. at 34951-34953.

⁶ *See, e.g.* [Testimony](#) of Allison Wood at pp. 19-21; [Majority Staff Report](#) at pp. 24-26 (citing testimony of State regulators).

⁷ *See* [Proposed Rule](#), 79 Fed. Reg. at 34954 and 34844 (“Once a state receives the EPA’s approval for its plan, the provisions in the plan become federally enforceable against the entity responsible for noncompliance . . .”).

⁸ *Id.* at 34950-34953.

The costs to ratepayers of the proposal, even according to EPA's estimates, would be in the tens of billions of dollars. EPA estimates annual costs of compliance over the next 15 years to implement the rule would range from \$5.5 billion and \$7.5 billion in 2020 to \$7.3 billion and \$8.8 billion in 2030,⁹ and that there would be "a 4 to 7 percent increase in retail electricity prices, on average, across the contiguous U.S. in 2020."¹⁰ According to other estimates, the potential costs and rate increases could be significantly higher.¹¹ For background, State [average retail electricity prices](#) recently released by the U.S. Energy Information Administration are included in Appendix 1.

Federal and State officials, as well as utilities, consumer organizations, energy-intensive and trade exposed industries, chambers of commerce, and other entities have submitted thousands of pages of comments raising extensive concerns about the legality of the proposal, its unprecedented and expansive assertion of new regulatory authority, and the implications for energy prices and the reliability of State electricity systems.¹² According to a recent report summarizing State concerns, "32 states made legal objections, 28 raised significant concerns regarding compliance costs and economic impacts, 32 warned electricity reliability problems, and 34 states objected to EPA's rushed regulatory timelines."¹³

There are significant legal questions that have been raised relating to EPA's proposed rule, including whether there is authority at all to issue the rule.¹⁴ Legal challenges to the rule currently are pending in the D.C. Circuit, including a lawsuit brought by 12 States.¹⁵ Given the enormous resources and coordination that would be required to prepare State plans, the legal questions surrounding the rule, and the costs and complexity of compliance, a number of States have urged that implementation of any final rule be stayed pending judicial review.¹⁶

IV. LEGISLATION

On March 23, 2015, Chairman Whitfield released a discussion draft of H.R. ___, the "Ratepayer Protection Act." The legislation would allow for judicial review of any final rule

⁹ *Id.* at 34934-34935.

¹⁰ *Id.* at 34948 ("We estimate a 4 to 7 percent increase in retail electricity prices, on average, across the contiguous U.S. in 2020, and a 16 to 22 percent reduction in coal-fired electricity generation as a result of this rule. The EPA projects that electric power sector delivered natural gas prices will increase by about 8 to 12 percent in 2020.")

¹¹ See, e.g., NERA Economic Consulting report entitled "[Potential Energy Impacts of the EPA Proposed Clean Power Plan](#)," October 2014 (estimating costs of \$366 billion to \$479 billion in present value terms over the period from 2017 through 2031).

¹² For links to comments from State and Federal officials, see, e.g., the Bipartisan Policy Center [Clean Power Plan Comments Map](#). The full docket is available at <http://www.regulations.gov/#!docketDetail;D=EPA-HQ-OAR-2013-0602>. EPA's docket indicates that the agency has received over 4.3 million comments.

¹³ See, e.g., U.S. Chamber of Commerce, Institute For 21st Century Energy, January 2015 [report](#), at p. 3. See also, e.g., NERC [Report](#) entitled "Potential Reliability Impacts of EPA's Proposed Clean Power Plan."

¹⁴ For testimony and comments raising legal issues, see e.g. [Testimony](#) of Prof. Laurence H. Tribe; [Testimony](#) of Allison D. Wood; [Comment](#) of the Hon. Charles W. Pickering, Sr. and the Hon. Thomas Scott; [Comment](#) of 17 Attorneys General; [Comment](#) of 15 Governors.

¹⁵ See *State of West Virginia v. United States Environmental Protection Agency*, U.S. Court of Appeals for the District of Columbia, Case No. 14-1146; see also *In Re Murray Energy Corporation*, U.S. Court of Appeals for the District of Columbia, Case No. 14-1112 and Case No. 14-1151.

¹⁶ See, e.g. [Comment](#) of 17 Attorneys General at p. 26; North Carolina Department of Environment and Natural Resources [Testimony](#); Alabama Dept. of Environmental Management [Comment](#) at p. 2; North Dakota Dept. of Health [Comment](#) at p. 6; and Florida Dept. of Environmental Protection [Comment](#) at p. 3.

addressing CO2 emissions from existing fossil fuel-fired electric utility generating units before requiring compliance with the rule, and also allow States to protect households and businesses from significant adverse effects on electricity ratepayers or reliability. The legislation includes the following provisions:

Section. 1:

This section provides the short title of “Ratepayer Protection Act of 2015.”

Section. 2:

This section would extend the compliance dates of any final rule issued under section 111(d) of the CAA addressing CO2 emissions from existing fossil fuel-fired electric utility generating units, including for submittal of State plans.

Section 2(a) provides that the term “compliance date” means the date by which any State, local, or tribal government or other person is first required to comply with the rule, including the date for submittal of State plans to the EPA.

Section 2(b) provides that the final rules subject to the Act include any final rule that addresses CO2 emissions from existing sources that are fossil fuel-fired electric utility generating units under section 111(d) of the CAA, including any final rule that succeeds the EPA’s proposed rules published at 79 Fed. Reg. 34830 (June 18, 2014) or 79 Fed. Reg. 65482 (November 4, 2014).

Section 2(c) provides that the time period by which the compliance dates would be extended would be the period of time that begins 60 days after the final rule appears in the Federal Register, and ends on the date on which judgment becomes final, and no longer subject to further appeal or review, in all actions filed during the initial 60 days after the rule appears in the Federal Register seeking review of the rule, including actions pursuant to CAA section 307.

Section. 3:

This section provides that no State shall be required to adopt a State plan, and no State or entity within a State shall become subject to a Federal plan, pursuant to any final rule described in section 2(b), if the Governor of the State makes a determination, and notifies the EPA Administrator, that implementation of the State or Federal plan would have a significant adverse effect on 1) the State’s residential, commercial, or industrial ratepayers, taking into account the rate increases necessary to implement the State or Federal plan, and other rate increases that have been or are anticipated to be necessary to implement other Federal or State environmental requirements; or 2) the reliability of the State’s electricity system, taking into account the effects on the State’s existing and planned generation and retirements, transmission and distribution infrastructure, and projected electricity demands.

This section further provides that, in making such a determination, the Governor consult with the State’s energy, environmental, public health, and economic development departments or agencies, and any regional entity, as defined in section 215 of the Federal Power Act, whose jurisdiction includes the State.

V. ISSUES

The following issues may be examined at the hearing:

- EPA's proposed 111(d) rule for existing power plants;
- Potential impacts on ratepayers;
- Potential impacts on electric reliability;
- Potential impacts on energy intensive, trade exposed industries; and
- H.R. __, "Ratepayer Protection Act."

VI. 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.

APPENDIX 1

Table 5.6.B. Average Retail Price of Electricity to Ultimate Customers by End-Use Sector,

by State, Year-to-Date through January 2015 and 2014 (Cents per Kilowatthour)

Census Division and State	Residential		Commercial		Industrial		Transportation		All Sectors	
	January 2015 YTD	January 2014 YTD								
New England	19.75	17.17	16.39	15.38	12.45	12.71	12.57	10.78	17.34	15.81
Connecticut	21.00	18.29	16.79	15.74	13.20	13.45	10.84	18.50	18.44	16.79
Maine	15.62	14.45	14.81	14.31	10.07	11.79	--	--	14.12	13.79
Massachusetts	20.80	16.83	16.53	15.45	13.16	13.10	13.04	NM	17.87	15.69
New Hampshire	19.15	16.54	15.75	15.30	12.83	12.79	--	--	16.87	15.49
Rhode Island	17.72	20.16	17.85	15.48	15.32	14.20	17.95	15.92	17.55	17.41
Vermont	16.48	16.94	14.06	14.26	10.32	10.36	--	--	14.24	14.47
Middle Atlantic	15.64	15.63	12.53	14.05	7.14	8.91	12.57	12.03	12.81	13.72
New Jersey	15.31	15.26	11.98	13.88	10.35	15.11	12.58	10.29	13.16	14.54
New York	19.29	19.53	14.62	16.37	6.09	7.41	13.79	13.08	15.36	16.51
Pennsylvania	12.92	12.74	9.54	10.38	7.00	8.49	7.18	8.74	10.28	10.84
East North Central	12.12	11.27	9.57	9.41	6.70	6.93	6.68	5.47	9.65	9.39
Illinois	11.50	9.76	8.61	8.31	6.38	6.32	6.44	5.11	9.00	8.27
Indiana	10.64	10.16	9.63	9.44	6.72	6.88	9.66	9.23	8.86	8.76
Michigan	13.60	13.85	10.05	10.52	6.64	7.78	11.91	13.59	10.50	11.05
Ohio	12.05	10.98	9.67	9.31	6.66	6.83	7.38	7.06	9.76	9.30
Wisconsin	13.74	13.10	10.60	10.34	7.39	7.30	--	--	10.69	10.44
West North Central	10.07	9.75	8.51	8.37	6.38	6.33	8.15	7.76	8.58	8.45
Iowa	10.22	9.99	8.16	8.01	5.40	5.46	--	--	7.84	7.84
Kansas	11.34	10.94	9.53	9.33	7.36	7.11	--	--	9.67	9.41
Minnesota	11.51	11.33	9.07	9.15	6.68	6.85	9.55	9.49	9.28	9.37
Missouri	9.23	8.86	7.80	7.67	5.52	5.59	6.48	6.20	8.10	7.94
Nebraska	9.15	8.94	8.34	8.19	6.75	6.63	--	--	8.19	8.03
North Dakota	8.34	7.78	8.11	7.79	7.98	7.10	--	--	8.15	7.59
South Dakota	10.02	9.43	8.80	8.21	7.03	6.92	--	--	9.02	8.55
South Atlantic	11.30	11.11	9.56	9.72	6.57	6.97	8.79	9.23	9.91	9.99
Delaware	13.76	12.48	11.32	10.93	8.31	10.67	--	--	11.74	11.65
District of Columbia	13.84	12.60	12.59	13.26	7.76	4.42	NM	9.72	12.68	12.84
Florida	11.93	11.86	9.91	9.74	8.31	7.93	9.19	9.27	10.83	10.71
Georgia	10.43	10.83	9.78	10.80	5.86	7.08	5.38	6.81	9.22	10.06
Maryland	13.47	13.14	10.99	11.52	9.14	11.51	9.16	10.11	12.13	12.35
North Carolina	10.54	10.29	8.44	8.62	6.27	6.34	7.67	8.02	9.14	9.14
South Carolina	11.77	11.65	9.92	10.13	5.97	6.57	--	--	9.45	9.71
Virginia	10.80	10.09	8.48	8.04	7.45	6.79	8.75	8.03	9.47	8.89
West Virginia	9.06	9.01	7.81	7.71	5.86	5.99	10.04	9.92	7.68	7.83
East South Central	10.28	10.03	10.10	10.02	5.68	6.24	8.18	12.89	8.83	8.95
Alabama	10.99	10.72	10.63	10.75	5.58	6.20	--	--	8.95	9.25
Kentucky	9.50	9.42	8.90	8.88	5.15	6.13	--	--	7.80	8.19

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Census Division and State	Residential		Commercial		Industrial		Transportation		All Sectors	
	January 2015 YTD	January 2014 YTD								
Mississippi	11.06	10.44	10.97	10.53	6.54	6.31	--	--	9.58	9.18
Tennessee	9.96	9.74	10.10	10.00	5.94	6.41	8.18	12.89	9.18	9.20
West South Central	10.56	10.18	8.03	7.99	5.66	5.65	5.56	5.37	8.43	8.30
Arkansas	8.73	8.29	7.62	7.40	5.65	5.54	10.88	NM	7.54	7.25
Louisiana	8.80	8.49	8.84	8.68	5.50	5.37	8.38	9.41	7.62	7.51
Oklahoma	8.56	8.32	7.03	7.44	5.06	5.23	--	--	7.17	7.28
Texas	11.54	11.18	8.06	8.00	5.82	5.82	5.33	5.08	8.95	8.79
Mountain	11.13	10.81	9.24	8.95	6.04	6.08	9.84	10.20	8.97	8.80
Arizona	11.03	10.91	9.52	9.24	5.84	6.11	8.07	--	9.39	9.34
Colorado	11.39	11.44	9.18	9.36	6.65	6.88	9.88	10.72	9.31	9.49
Idaho	9.66	9.17	7.59	7.30	5.64	5.43	--	--	8.06	7.66
Montana	10.74	9.88	10.84	9.31	5.18	5.59	--	--	9.35	8.64
Nevada	12.70	12.46	9.61	9.64	5.93	5.95	8.70	8.15	9.22	9.18
New Mexico	12.18	11.28	10.24	9.49	6.16	5.94	--	--	9.65	9.00
Utah	10.33	10.00	7.96	7.69	5.63	5.53	10.18	9.87	7.89	7.71
Wyoming	10.28	9.77	8.75	8.48	6.47	6.31	--	--	7.73	7.51
Pacific Contiguous	13.68	13.19	12.21	11.62	7.76	7.57	8.04	8.43	11.93	11.49
California	17.47	16.62	13.98	13.06	10.74	10.32	8.00	8.42	14.73	13.94
Oregon	10.30	10.08	8.76	8.67	5.78	5.97	9.15	8.46	8.81	8.80
Washington	8.13	8.58	7.66	7.89	4.21	4.34	8.27	8.36	6.98	7.33
Pacific Noncontiguous	26.22	27.50	23.92	25.71	23.24	26.09	--	--	24.47	26.42
Alaska	19.35	18.21	17.26	16.68	14.44	14.70	--	--	17.51	16.88
Hawaii	33.34	37.40	31.07	34.92	26.68	30.82	--	--	30.04	34.08
U.S. Total	12.10	11.65	10.30	10.34	6.62	6.94	10.67	10.29	10.19	10.13

See Technical notes for additional information on the Commercial, Industrial, and Transportation sectors.

Notes: - See Glossary for definitions. - Values are preliminary estimates based on a cutoff model sample.

See Technical Notes for a discussion of the sample design for the Form EIA-826.

Utilities and energy service providers may classify commercial and industrial customers based on either NAICS codes or demands or usage falling within specified limits by rate schedule.

Changes from year to year in consumer counts, sales and revenues, particularly involving the commercial and industrial consumer sectors, may result from respondent implementation of changes in the definitions of consumers, and reclassifications.

Totals may not equal sum of components because of independent rounding.

Source: U.S. Energy Information Administration, Form EIA-826, Monthly Electric Sales and Revenue Report with State Distributions Report.