

## Clean Power Plan Rules Fail to Address Electric Co-ops' Concerns

Nov 18, 2015 T&D World Magazine

Electric co-ops are heavily reliant on coal generation, because they built coal-fired power plants at a time when the federal government encouraged the use of coal to provide reliable, affordable electricity.

The National Rural Electric Cooperative Association (NRECA) today participated in a public hearing on proposals for implementing the U.S. Environmental Protection Agency's (EPA) Clean Power Plan (CPP). John Novak, executive director, environment, testified on the agency's Federal Plan and Model Trading Rules, challenging EPA's assertions that they represent a "readily available path forward" to CPP implementation.

"The proposed Federal Plan and Model Trading Rules fail to address the concerns that NRECA and our members raised in our comments, in our previous statements, and in meetings with EPA and others in the administration," Novak said. "The bottom line is that electric co-ops and their consumer-owners will see higher electricity rates under the Clean Power Plan, whether they participate in a state implementation plan or the proposed Federal Plan."

Novak pointed out that electric co-ops are heavily reliant on coal generation, because they built coal-fired power plants at a time when the federal government encouraged the use of coal to provide reliable, affordable electricity. The CPP will lead to the shutdown of co-op-owned power plants with significant remaining useful lives, and into which co-ops have invested billions of dollars on emission controls. Many co-ops have outstanding loans that were necessary to pay for environmental upgrades, and they need to run these units in order to generate revenue and pay off the loans.

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He also took issue with EPA's assertion that the CPP's emissions trading provisions would provide sufficient flexibility to avoid the premature shutdown of co-op-owned power plants. Because of their small size and reliance on coal, many co-ops would not be able to take advantage of the flexibility in the Federal Plan, such as the option to run lower-emitting natural gas power plants instead of coal.

In closing, Novak urged EPA to reconsider adding a dynamic reliability safety valve to the CPP. [NRECA](#) doesn't believe the market will be able to adequately compensate for an unexpected electricity outage at a large nuclear power plant. This could force some coal power plants to run more, putting them in conflict with their emissions requirements under the CPP.



## UTILITIES:

### **AEP CEO sees transmission opportunity in Clean Power Plan**

[Rod Kuckro](#), E&E reporter

EnergyWire: Tuesday, November 17, 2015

For Nick Akins, the future success of utilities such as American Electric Power Co. rests with the ability to "provide whatever the customer wants," even as forecasts for electricity demand flatten and environmental mandates demand extensive changes.

"Our business is about optimization and about services to our customers. It's not about building assets and building central station generation and meeting an ever-increasing load.

"That's done and gone," Akins, 55, said during an interview last week at the Edison Electric Institute's annual financial conference in Hollywood, Fla.

As chairman, president and CEO of Columbus, Ohio-based AEP, the affable Louisiana native also is looking to leverage his 40,000-mile transmission system -- the largest in the United States -- to better manage the new mix of electric generation that is expected to result from the Obama administration's Clean Power Plan.

"The real issue coming up with the Clean Power Plan is the reoptimization of flows on the grid because as you take out generation, a large part of the mitigation's going to be transmission. And then the flows on the lines themselves change as a result because everyone's changing their generation-related connections to the system," Akins said.

Of AEP's 32,000 megawatts of generation capacity, about 54 percent is coal-fired, followed by natural gas at 26 percent, then renewables, nuclear and efficiency. In 2020, AEP will still look to coal for 49 percent of its capacity.

A special challenge is how to better manage the grid "the more you go to distributed generation," he said.

"It's asking the transmission system to do something it never has been asked to do before. It's a different way of planning. It's a different way of investment. When you take these large prime movers out of the system, you're actually depending more on transmission for the flows to occur across the system."

And as AEP adds natural gas plants along its system, "that will also change the flows on the grid, as well," he said.

"We have to look at it in a no-regrets fashion. OK, this generation's being retired. We expect this difference in flow, and this is the investment that needs to be made to ensure the integrity of the grid," Akins said.

### Clean Power Plan as 'catalyst'

Those investments in the grid and new generation will have to be vetted by regulators in the 11 states where AEP operates.

"There's no doubt that having a catalyst like that helps when you have a federal mandate to do something. The states and our plans have to comport with that," Akins said.

He discounted the notion that "we are going to be able to get rid" of the EPA plan to cut carbon emissions.

"I just think that that's difficult because customers, the customers are already expecting [that], and we are moving toward a cleaner energy environment. There's no question about it.

"The real issue is the pace. Can an individual state address the pace and the targets that the EPA has given them? I think that's where room for negotiation should exist because the fundamental driver is what the U.S. consumer expects from an environmental footprint perspective, but also from a cost perspective," Akins said.

"That's where we need to be out in front of the regulators, but the Clean Power Plan no doubt is a catalyst for the investments to be made to support not only the movement of the customers, but also reducing the environmental footprint."

AEP has been in discussion with its states about how to approach compliance, even as some of those states are involved in lawsuits against EPA over the rule.

Akins said he has been involved personally in discussions with some regulators and is pleased with the willingness of states to also look at compliance by crafting a state implementation plan.

"It's already happening to a certain extent because we've had a lot of discussions with all of our states. Arkansas has turned around. Michigan's turned around. Indiana, it looks like they'll also be looking at a plan. West Virginia's looking at a plan," Akins said.

"They're all at least looking at a plan, looking at the facts," he said. Part of the equation will have AEP provide a version of its preferred plan to states and help them determine whether they are "long or short" on carbon. "Then we start addressing from a multi-state perspective," he said. "You don't have to give up your legal position to do that."

AEP's drive to "get out front" on the CPP is "somewhat selfish because we want to make sure that there's a clear plan that we can adequately invest in and be assured of recovery of during that process," Akins said.

He gave complimented EPA for its changes in the final rule made in response to near-unanimous industry concerns. "I think we have a great relationship with EPA, and I think we have a lot of credibility with EPA because we've been factual.

"So what'd they do in the final rule? They delayed [compliance] for the states. They changed the trajectory so it is more back-end-loaded to give time for the development of the resources, and they put in a reliability provision. So you can take that and say they did listen," Akins said.

## Rule offers 'tremendous opportunity'

Even as AEP pursues energy efficiency, demand-side management and techniques to optimize the grid, a focus will be "making sure we have the resources and the ability to provide whatever the customer wants. Otherwise, we're a sitting duck," Akins said.

"It's a tremendous, tremendous opportunity for this country to rebalance out the entire fleet. But it has to be done in a credible fashion and understanding the difference between capacity and energy. Energy will get you the environmental results you need. Capacity gets you reliability."

Akins expressed hope that state regulatory commissions "don't hold us back from being and having that relationship with the customers -- because they do trust what we do. But if they hold us back, then they're setting us up just to be a grid provider. I don't think that's a good answer," he said.

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## Many states opposed to the CPP are working on compliance plans

By [Robert Walton](#) | November 10, 2015

### Dive Brief:

- Mississippi has joined a host of states opposing the U.S. Environmental Protection Agency's Clean Power Plan, ClimateWire reports.
- Some 27 states have filed a variety of legal challenges, while another 18 have petitioned the courts in support of the rule. Only four states have remained neutral.
- Despite opposition in many states to the government's plan to reduce greenhouse gas emissions 32% nationwide by 2030, almost all states are developing compliance strategies.

### Dive Insight:

Yet another state has joined in opposing President Obama's signature climate legislation. But according to ClimateWire, the legal fight is proceeding alongside efforts to comply – even if those efforts are not being publicized.

"I think many of them are proceeding ahead even if it's only the umbrella of Plan B, and I think that's wise," Regulatory Assistance Project's Ken Colburn told the news source. Colburn is a principal at RAP, which is advising state regulators on the climate plan.

"Most are having stakeholder meetings, and certainly the discussions between [public utility commissions] and air regulators are well under way now since even before the proposed rule," Colburn said. "I think those developments are proceeding as though they are going to be necessary without any advertising."

In total, states opposed to the rule include: Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, New Jersey, North Carolina, North Dakota, Oklahoma, Ohio, South Carolina, South Dakota, Texas, Utah, West Virginia, Wisconsin and Wyoming.

The largest lawsuit includes at least two dozen states and is being led by West Virginia.

The 18 states filing to defend the plan include: California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia and Washington. The District of Columbia, Chicago, New York City and Philadelphia have also signed on.

There had been talk of ignoring the Clean Power Plan – Senate Majority Leader Mitch McConnell (R-Ky.) had [urged states to refuse to file plans](#) – but that strategy appears to have little traction. Extensions will be easy for states to acquire, and many are already on the way to complying. According to a report issued over the summer by the Union of Concerned Scientists, even without the CPP, some 31 states were at least halfway to compliance with 14 fully on track. Even Texas, traditionally not a fan of the EPA, is looking at strategies.

"We are looking at all options," Texas Commission on Environmental Quality chief Bryan Shaw told ClimateWire. "As part of our efforts to suggest that a [court-ordered] stay would be appropriate is recognizing that in order to fully understand this rule, we're having to go forward as if we're going to submit a plan, as if we're not going to submit a plan, as if there's going to be a request for an extension, so we are working to work through all that."

### Recommended Reading

ClimateWire: [Most states suing EPA's climate rule are also mulling how to comply](#)



## CLEAN POWER PLAN:

# 44 states take sides in expanding legal brawl

[Robin Bravender](#), E&E reporter

Greenwire: Wednesday, November 4, 2015

Nearly every state has taken a side in the court battle that will determine the fate of President Obama's signature climate change policy.

Today, 18 states led by New York and several cities [asked](#) a federal court to allow them to defend U.S. EPA's Clean Power Plan, a rule to cut greenhouse gas emissions from existing power plants. That pits them against 26 other states and a wide range of industry groups that have asked the U.S. Court of Appeals for the District of Columbia Circuit to strike down the rule.

"I can't recall a Clean Air Act rule, or other EPA rule, that had 44 states in the mix," said Joe Stanko, an attorney at Hunton & Williams.



The heavy involvement by states on both sides of the issue demonstrates the importance of the rule, which will require states to slash their power-sector carbon dioxide emissions rates by varying amounts by 2030. Opponents argue that it'll be devastating to the power sector and force electricity rates to soar, while EPA's backers insist it's a necessary step toward tackling climate change.

The states asking today to defend EPA: New York, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, Oregon, Rhode Island, Vermont, Virginia and Washington. Several states and a county also signed on to the petition, including the District of Columbia; Boulder, Colo.; Chicago; New York; Philadelphia; South Miami, Fla.; and Broward County, Fla.

"The Clean Power Plan requires states to implement standards to reduce greenhouse gas emissions from fossil-fueled power plants, the country's largest source of such emissions. These emission reductions will help prevent and mitigate harms that climate change poses to human health and the environment, including increased heat-related deaths, damaged coastal areas, disrupted ecosystems, more severe weather events, and longer and more frequent droughts," the states wrote to the court.

"State and municipal intervenors have a compelling interest in defending the Clean Power Plan as a means to achieve their goal of preventing and mitigating climate change harms in their states and municipalities."

New York Attorney General Eric Schneiderman (D) today said in a statement, "Climate change represents an unprecedented threat to the environment, public health, and our economy. We no longer can afford to respond to this threat with denials or obstruction."

Environmental and public health groups have also asked the court to intervene in the legal skirmish on EPA's behalf ([E&ENews PM](#), Oct. 27).

More than half the states are on the other side of the fight.

Twenty-four states are in a coalition challenging the rule: West Virginia, Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, New Jersey, North Carolina, Ohio, South Carolina, South Dakota, Texas, Utah, Wisconsin and Wyoming. Oklahoma and North Dakota have filed separate challenges.

State challengers have touted their bipartisan support. Missouri Attorney General Chris Koster and Kentucky Attorney General Jack Conway are Democrats.

Bracewell & Giuliani attorney Jeff Holmstead said today, "The 26 states that have challenged the rule are the most ever to challenge an EPA rule and, as far as I know, any federal action. They represent almost 80 percent of emission reductions required under the [Clean Power Plan]."

He added, "The 18 that are supporting the rule only represent about 12 percent of the reductions required under the rule and include two states that are not even covered by the rule -- Vermont and Hawaii." Holmstead is representing coal industry clients that are also challenging the rule in court.

State challengers are also asking the court to immediately halt the EPA rule, arguing that they're being "immediately and irreparably harmed" by the regulation. The court is expected to decide whether to grant the request for a stay early next year ([E&ENews PM](#), Oct. 29).

The six states that haven't taken a side in court: Alaska, Idaho, Mississippi, Nevada, Pennsylvania and Tennessee.

The legal fight over the Clean Power Plan is widely expected to wind up in the Supreme Court and may not be decided until 2018 ([Greenwire](#), Oct. 26).

Separately, a coalition of 16 states, the District of Columbia and New York City filed a [request](#) to the appeals court today to intervene in a lawsuit surrounding EPA's new rule that sets the first-ever carbon dioxide emission standards for new and modified power plants.

Twenty-four states and several industry groups have asked the court to strike down that rule as well ([E&ENews PM](#), Nov. 3).

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**AP**

## **More states wade into legal fight on greenhouse gases, this time defending Obama**

Associated Press Nov. 4, 2015 | 6:56 p.m. EST + More

By MICHAEL BIESECKER, Associated Press

WASHINGTON (AP) — A legal battle is brewing in Washington over President Barack Obama's plan to reduce greenhouse gas emissions, setting states economically dependent on fossil fuels against those already suffering from longer droughts, stronger storms and higher seas.

A coalition of 18 states filed motions Wednesday seeking to defend the Clean Power Plan, responding to lawsuits filed last month against the Environmental Protection Agency. Led by New York and California, they are joined by municipalities and urban counties largely led by Democrats, including New York City, Chicago and South Miami.

Twenty-five mostly Republican states, led by Texas and West Virginia, oppose the new carbon-cutting rules as an "unlawful power grab" they claim will kill jobs and drive up electricity costs. Also suing the EPA are several utilities, the National Mining Association and Murray Energy Corp., the nation's largest privately owned coal company.

The Obama administration and environmental groups counter that the new rules are needed to stave off the worst predicted impacts of climate change. They also say the plan will spur new clean-energy jobs.

The dueling legal actions set to be heard by the U.S. Court of Appeals for the District of Columbia Circuit are, in several instances, pitting neighbor versus neighbor.

"Here in Virginia, climate change isn't some theoretical idea or academic exercise," said Mark Herring, the state's Democratic attorney general. "In the last 75 years, the sea level in Hampton Roads has risen by 2 feet. ... If you say climate change is some sort of made-up global conspiracy, then just come to Hampton Roads and take a look for yourself."

Herring recounted how city streets along the state's receding Chesapeake Bay coastline now often experience tidal flooding, even on sunny days. The rising water, which studies suggest could increase another 2 to 5 feet by the end of the century, also threatens military bases and shipyards in Norfolk that are among the region's largest employers.

A few hours up Interstate 64 in West Virginia, however, Attorney General Patrick Morrisey sees the federal plan as a mortal threat to coal mines already struggling due to competition from cheap natural gas.

"EPA cannot rely on experimental and costly technology that threatens hard-working West Virginians whose livelihoods are dependent upon the coal industry," Morrisey, a Republican, said this week.

The federal plan aims to reduce carbon dioxide emissions at existing power plants by about one third by 2030. The plan also encourages further development of alternative energy sources such as wind and solar by further ratcheting down any emissions allowed from new coal-fired power plants.

Under the Clean Air Act, certain challenges to new EPA rules skip the federal district court and go directly to the appeals court in Washington. Dates for oral arguments in the cases, which are being consolidated by the court, have not yet been set.

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## **EPA rules for new power plants draw states' lawsuits**

Robin Bravender, E&E reporter  
Wednesday, November 4, 2015

West Virginia and 22 other states challenged U.S. EPA rules for new power plants in court today, marking the latest attack in a multifront war against the agency's climate change policies.

The coalition of 23 states submitted a [petition](#) asking a federal appeals court to strike down a new EPA rule that sets the first-ever carbon dioxide emission standards for new and modified power plants.

Many of the same states are simultaneously challenging the Obama administration's related rule to slash carbon dioxide emissions from existing power plants, known as the Clean Power Plan.

The states challenging the rule for new and modified plants "will show that the final rule is in excess of the agency's statutory authority and otherwise is arbitrary, capricious, an abuse of discretion and not in accordance with law," they wrote in their petition to the U.S. Court of Appeals for the District of Columbia Circuit. "Accordingly, petitioners ask the court to hold unlawful and set aside the rule, and to order other such relief as may be appropriate."

West Virginia filed the petition along with Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Wisconsin, Wyoming, the Arizona Corporation Commission, the Louisiana Department of Environmental Quality and the North Carolina Department of Environmental Quality.

The EPA rule "effectively prohibits the construction of new, coal-fired power plants," West Virginia Attorney General Patrick Morrisey's office said today in a statement announcing the legal challenge. Morrisey, a Republican, said the rule relies on experimental technology that is expensive and unproven on a commercial scale in the United States.

EPA has said its new standards "are in line with current industry investment patterns" and are "not expected to have notable costs and are not projected to impact electricity prices or reliability."

Several other groups are also challenging EPA's standards for new power plants in the federal appeals court, including Murray Energy Corp. and the Energy & Environment Legal Institute. North Dakota separately asked the court to review the rule last month, bringing the total number of state challengers so far to 24.

A coalition of environmental and public health groups including the American Lung Association, the Center for Biological Diversity, the Clean Air Council, Clean Wisconsin, the Conservation

Law Foundation, the Environmental Defense Fund, the Natural Resources Defense Council, the Ohio Environmental Council and the Sierra Club has asked to intervene in the case to support EPA ([E&ENews PM](#), Oct. 27).

Two states that joined West Virginia's challenge to EPA's rule for existing power plants — Colorado and New Jersey — did not sign onto today's petition seeking review of the EPA rule for new sources.

Roger Hudson, a spokesman for Colorado Attorney General Cynthia Coffman (R), said today, "Just because we signed onto that lawsuit doesn't mean we sign onto all other lawsuits." The state's challenge to the Clean Power Plan, he said, "was really about the mechanism of the EPA overreaching into Colorado" and not about clean air or the environment. "It was just about who gets to decide," he said.

Coffman's involvement in the lawsuit challenging the Clean Power Plan has sparked a fight with the state's Democratic governor, John Hickenlooper, who said his administration would seek a state court review of Coffman's decision ([E&E Daily](#), Oct. 27).

Media representatives for New Jersey acting Attorney General John Hoffman (R) did not respond to a request for comment in time for publication.



## Obama sued by 24 states over coal rule

By [Timothy Cama](#) - 10/23/15 08:51 AM EDT

A coalition of 24 states and a coal mining company filed lawsuits Friday to challenge the most significant piece of President Obama's environmental agenda, his signature climate change rule for power plants.

The litigants accuse the Environmental Protection Agency (EPA) of going far beyond the authority Congress granted to it by ordering significant a transformation of states' electricity generation, moving away from fossil fuels like coal and toward lower-carbon sources like wind and solar power.

They are asking the Court of Appeals for the District of Columbia Circuit to overturn the rule. They also want the court to immediately stop its implementation while it works its way through the courts.

"The Clean Power Plan is one of the most far-reaching energy regulations in this nation's history," West Virginia Attorney General Patrick Morrisey, a Republican who is leading the charge for 24 largely conservative states, said in a statement.

"EPA claims to have sweeping power to enact such regulations based on a rarely-used provision of the Clean Air Act but such legal authority simply does not exist," he said.

The regulation would significantly harm West Virginia through higher electricity prices and closing coal plants and mines, Morrisey said.

“Our citizens on fixed incomes will not be able to pay their electric bills, and our manufacturers of products for the global marketplace will not be able to compete,” Bob Murray, head of coal mining company Murray Energy Corp., said in a statement.

The lawsuits and others like them had been widely expected by the EPA and its supporters and opponents ever since Obama announced in June 2013 that he would work toward carbon limits for power plants as the main pillar of his second-term climate agenda.

The National Mining Association also filed for an immediate pause to the rule’s implementation Friday.

The climate rule, dubbed the Clean Power Plan, seeks a 32 percent cut in the power sector’s carbon emissions by 2030, compared with 2005 levels. Each state has been assigned a specific emissions goal based on its unique circumstances, with flexibility in how the goals are met.

West Virginia and Murray led a similar coalition in two lawsuits earlier this year against the regulation that were deemed premature by the D.C. court. The first was before the final rule had been announced, and the second was in August, before it was published in the Federal Register.

The Obama administration has been steadfast in its defense of the legal backing of the rule.

The EPA said its rule is legal and will pass all court challenges.

“The Clean Power Plan has strong scientific and legal foundations, provides states with broad flexibilities to design and implement plans, and is clearly within EPA’s authority under the Clean Air Act,” EPA head Gina McCarthy said in a Friday statement.

“We are confident we will again prevail against these challenges and will be able to work with states to successfully implement these first-ever national standards to limit carbon pollution the largest source of carbon emissions in the United States,” she said.

The West Virginia and Murray lawsuits came the day the rule was published in the Federal Register, the first day court challenges can legally be filed.

The states joining West Virginia are Texas, Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, New Jersey, Ohio, South Carolina, South Dakota, Utah, Wisconsin, Wyoming, Arizona and North Carolina.

Friday also marks the first day lawmakers can file challenges under the Congressional Review Act, which allows Congress to quickly overturn regulations.

Congressional Republicans are planning to file resolutions quick against the climate rule, but Obama has promised to veto any such legislation.

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## Clean Power Plan implementation may end up 're-Balkanizing' power grid: MISO exec

Houston (Platts)--22 Oct 2015 4:51 pm EDT/2015 GMT

A Midcontinent Independent System Operator executive on Thursday expressed concern that if states choose to implement the Clean Power Plan individually, the result could end up "re-Balkanizing" the power grid.

Describing efforts to study the CPP's effects on MISO, Clair Moeller, MISO executive vice president of transmission and technology, said: "Certain compliance approaches run the risk of re-Balkanizing the energy market."

"It does make a difference if states go down the path [toward compliance] individually," Moeller said. "It will erode the value of the market dramatically."

The US Environmental Protection Agency's Clean Power Plan sets a target of cutting carbon dioxide emissions from the existing generation fleet to 32% below 2005 levels by 2030, with interim CO<sub>2</sub> targets to be accomplished by 2022.

How those emissions reductions are measured is a key decision, Moeller said. If states choose the "rate-based" method, they would measure the rate, in st/MWh generated, that they emit, according to an EPA fact sheet. If states convert the rate-based goal to the tonnage they would be allowed to emit over a time period, they could more easily set up a trading program.

"If only one of our states chooses rates and everyone else chooses mass, they don't have anyone to trade with," Moeller said.

Whereas, by working together, MISO's diverse footprint could allow the natural-gas-heavy MISO South Region to trade with the coal-heavy North and Central regions in winter, he said. Alternatively, when the South Region has high peak demands in summer, the wind-heavy North Region might be able to reciprocate.

MISO is now defining the scope and future scenarios to be included in its analysis of the CPP,

Moeller said, and hopes to issue the results in mid-2016.

The first analysis would assume that all states use the CPP's "building blocks" to meet goals using the mass-based standard, he said. The second analysis would assume they use the building blocks to meet goals using the rate-based standard.

The building blocks are: improving fossil fuel plants' efficiency, increasing the use of lower emitting sources, adding more zero- or low-emitting sources and increasing the efficiency of power use.

If the MISO grid becomes less integrated, the planning reserve margins necessary to maintain reliability would likely double, according to Moeller's presentation. Also, individual states attempting to meet their own renewable goals alone would likely require even higher reserve margins to achieve the same output.

Currently, MISO has a low regulating reserve requirement -- about 400 MW -- because generation over a large area can be controlled from a single location, Moeller said. If each state operates separately, contingency reserves would collectively require about four times as much.

Similarly, the diversity of MISO's footprint allows more economical build-out of renewable generation, which dampens the need for reserves, Moeller said. If a need to balance individual areas with higher levels of intermittent renewable resources emerges, the regulation requirement would increase.

Also Thursday, the MISO board approved amendments to the 2015 budget, largely because of changes in North American Electric Reliability Corp. critical infrastructure protection standards.

The amendment increased the 2015 operating budget by \$1.8 million and the capital budget by about \$3 million.

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**It's showtime for legal and Hill battles**

By Jean Chemnick and Robin Bravender  
Posted: Friday, October 23, 2015

An epic legal battle surrounding the Obama administration's signature climate change rule formally kicks off today.

U.S. EPA is set to publish its Clean Power Plan — a rule to crack down on power plants' greenhouse gas emissions — in the *Federal Register*. The bureaucratic move will trigger a flurry of lawsuits and launch what promises to be a lengthy war in the courts over the Obama administration's regulation.

“Well, it's finally here,” environmental attorney David Doniger said today. “You've seen the trailer — and maybe this is not as highly awaited as the new ‘Star Wars’ movie — but the Clean Power Plan will be published tomorrow.”

A raft of legal challenges are expected from states and industry groups that have publicly denounced the regulation. And Republicans on Capitol Hill will roll out Congressional Review Act resolutions targeting the Clean Power Plan and a rule for new units that will be published alongside it tomorrow. But although it may take years for the rule to work its way through the courts — ending with a likely decision by the Supreme Court — congressional efforts are expected to end with a presidential veto if they clear both chambers.

Lawyers on both sides of the issue have been eagerly awaiting the rule's formal publication, which will precede a 60-day window for opponents to sue in federal appeals court.

States and industry litigants are expected to challenge the final existing power plant rule on many of the same grounds they previewed in lawsuits to stop last year's draft version ([E&E Daily](#), Oct. 19). Critics are expected to ask the U.S. Court of Appeals for the District of Columbia Circuit to block the rule, arguing they'll be harmed by its implementation. EPA and its allies, meanwhile, say they're confident the rule will stand up to legal scrutiny.

Among the lawsuits expected to pile in tomorrow will be one from West Virginia, one of the states leading the charge against EPA's regulations.

“The President's illegal rule will have devastating impacts on West Virginia families, and families across the country,” state Attorney General Patrick Morrisey (R) said today in a statement. “West Virginia, working with a large bipartisan coalition of other States, will be filing suit and seeking a stay of the rule promptly tomorrow.”

EPA's foes are “promising to line up at the U.S. Court of Appeals in Washington tomorrow to file their lawsuits,” Doniger said. “They will try to impress you with the number of lawsuits and with hot rhetoric about supposedly dire impacts.” On EPA's side, he said, “the Clean Power Plan will have a powerful army of defenders as well, in this court battle.”

Earlier this year, the D.C. Circuit dismissed an attempt by more than a dozen states, energy companies and industry groups to block EPA from finalizing its greenhouse gas standards for power plants. In an unusual move, EPA's challengers asked the judges to halt the rule before it was finished, arguing it will have a significant economic impact and questioning whether EPA has the authority under the Clean Air Act to issue it. The court said the challengers had to wait until the rule was final ([Greenwire](#), June 9).

Speaking on a call this morning with reporters, EPA acting air chief Janet McCabe said the agency was focused on helping the states implement the rule, not on efforts to undo it.

“We know these processes are out there and people will engage in them,” she said on the call.

But she reiterated that she was confident the rule was on firm legal footing — a foundation that is painstakingly articulated in the 1,560-page final rule.

“So I am confident that we will continue to make progress and to show leadership on this issue, here at home and internationally,” McCabe said.

McCabe and her staff have kept up a busy travel schedule since the rule was finalized to help states begin laying the groundwork for implementation. EPA staffers find themselves fielding ever more specific questions from states ahead of next year’s deadline for an initial submittal toward a state implementation plan, she said. And few states are not planning.

“States generally prefer to be in the driver’s seat themselves and develop their own Clean Air Act plans, and that’s what I’m hearing,” she said.

McCabe told a conference hosted by the Environmental Council of the States in Washington, D.C., yesterday that EPA would be as involved or not involved as states preferred as they prepare their implementation plans — which are ultimately due by 2018.

“We are off and running about the business of implementing the Clean Power Plan,” she told the ballroom full of environmental regulators. “And we will be there with you every step of the way unless you don’t want us there with you on some of those steps.”

Tomorrow’s publication begins the 90-day public comment period for EPA’s proposed model plans for states and its draft federal implementation plan. The former is intended to guide states as they craft their own plans or to act as a ready-made option, but the latter shows how EPA would enforce curbs on power plants in states that opt not to comply. EPA will also take comment on the voluntary Clean Energy Incentive Program it included in its final version of the rule for early action, and EPA announced yesterday that it planned to hold meetings with stakeholder groups to discuss the program.

### **Capitol Hill challenges**

Republicans on Capitol Hill have their own plans to challenge the rule. Senate Majority Leader Mitch McConnell (R-Ky.) is taking the lead in the Senate in offering two CRA resolutions to scuttle the new and existing power plant rules. His office said today that those would be unveiled next week in a joint rollout with Sen. Shelley Moore Capito (R-W.Va.).

Capito said today that she still expects action on her bill to allow states to opt out of the existing rule and to scrap the rule for new sources. But the CRA motions will probably come to the floor sooner, she said.

“So two tracks, I think. And try to fight it that way,” she said.

Rep. Ed Whitfield (R-Ky.) has said he, too, plans to offer CRA resolutions in the House.

While these efforts will not overcome President Obama’s veto, Republicans hope they will embarrass the administration as it sends negotiators to Paris next month in hopes of hammering out an international emissions deal. The U.S. submission to the United Nations process depends heavily on the power plant rules to deliver reductions over the coming years, and GOP members say the world should know that the rule is unlikely to survive.

But a senior administration official told reporters yesterday that the rule tracks with trends already happening in the U.S. power sector and therefore is likely to stand the test of time.

“So I think that we feel quite confident that we can make the case that without new law, without new authorities, and based on pretty well-established regulatory approaches, the United States is well on the trajectory to get to those goals,” the official said.

*Reporters Geof Koss and Kevin Bogardus contributed.*



## **REGULATION:**

### **EPA's final climate rule made compliance easier for some state regulators, harder for others**

[Elizabeth Harball](#), E&E reporter

ClimateWire: Wednesday, October 21, 2015

Whether they plan on embracing or fighting the rule, Virginia, Kansas, Pennsylvania and Missouri are all planning on writing state plans to submit to U.S. EPA proposing how they aim to comply with the Obama administration's recently released Clean Power Plan that seeks to curb greenhouse gas emissions from power plants.

But at a conference on the Section 111(d) rule hosted by Infocast in Washington, D.C., yesterday, officials charged with crafting those plans said they are already feeling the impacts of political shifts in their states as a result of dramatic changes in EPA's requirements in the final rule compared to the proposed rule. This means some states, like Virginia, are supporting the rule more eagerly, while others, like Missouri and Kansas, will be challenging EPA more aggressively.

For example, Missouri Public Service Commissioner Scott Rupp said his state still plans on writing an initial plan and, like many other states, will likely ask for an extension to submit a final plan to EPA in 2018.

But thanks to the final rule's more stringent requirements for his state -- Missouri must now make a 36.7 percent emissions rate reduction, as opposed to a 21.3 percent reduction in the

proposed rule -- utilities are less eager to talk to state leaders about the advantages of writing a state plan.

"When the final plan comes out, complete change -- much more difficult for Missouri," said Rupp, who stipulated that the opinions he expressed are his own and don't represent the Missouri PSC. "Now the people that would have been pushing for, 'Hey, we need to get this done' ... now you have our utilities going, 'Yeah, we're suing.'"

He added, "A month ago I would have said we're working on a mass-based approach and everybody is working together, but at this point I think ... you're going to see probably some stronger positioning, much more in line with the state of Texas."

Rupp said this is even more certain given that this month, Missouri Attorney General Chris Koster, who is also a Democratic candidate for governor in the 2016 election, said his state is joining a lawsuit challenging EPA on the rule ([EnergyWire](#), Oct 13).

"Regardless of who wins [the 2016 election,] you are going to have a veto-proof Republican Legislature and a person in the governor's office who is against the Clean Power Plan," Rupp said.

Timothy Keck, deputy chief counsel for Kansas Department of Health and Environment, said his state is also "adversely affected" by more stringent goals under the final Clean Power Plan. Kansas' requirements jumped from a 22.7 percent emissions rate reduction to 43.5 percent, "which is going to be a hard pull for us to do," Keck said.

"We are going to be one of the states that is at the courthouse door, ready to file one of the lawsuits that will be filed shortly after publication," Keck said.

Recent events have served to further steel Kansas' state lawmakers against the Clean Power Plan. The closure of two coal-fired units resulted in swift backlash from Republican leadership in the state Legislature ([ClimateWire](#), Oct. 19).

But while Kansas is hoping for the court system to issue a stay of the rule, Keck said the outcome of that request is uncertain so it's likely the state will be making an initial submission of its plan next September and "will take as much time as we are allowed to take from EPA to submit our final plan."

#### **Va. warms up to climate rule**

For Virginia, changes to the final Clean Power Plan worked in the opposite direction, said Michael Dowd, director of the air division with the state's Department of Environmental Quality.

Virginia saw its final goals ease slightly, from a 37.8 percent emissions rate reduction requirement in the proposed rule to a 31.6 percent emissions rate reduction in the final rule.

Gov. Terry McAuliffe (D) "went from a skeptic of the proposal to a supporter of the final rule," Dowd said, citing a recent [op-ed](#) by the governor cheering the Clean Power Plan for creating economic growth opportunities for his state.

Although Dowd allowed the EPA rule will mean Virginia's coal communities "will be hit very hard," he went on to call the final rule "a lot fairer" and "more legally sustainable" than the proposed rule. Virginia will likely be submitting its state plan in 2017, before McAuliffe's term expires, Dowd said.

It remains unclear whether Virginia will choose a rate-based plan, meaning its power fleet must meet a specific average amount of carbon per unit of power produced, or a mass-based plan, meaning the state would cap the total tons of carbon its power sector can emit each year. It will depend heavily on what other states choose to write in their plans, said Dowd, and Virginia's utilities have not yet weighed in on the decision.

But Dowd said at this early date, "it would appear, from my perspective, that a mass-based approach has a lot to recommend it" because it seems easier to implement, adding that the state is considering joining a "trading-ready" program which would allow it to exchange allowances with other states.

### A 'prisoner's dilemma' for Missouri?

Like Virginia, Pennsylvania also saw its goals ease in EPA's final Clean Power Plan, and the state announced it will submit a final plan to the agency by next September ([ClimateWire](#), Sept. 10). But the state also remains unclear on what will be included in the plan.

"What that plan looks like I could not tell you -- mass based versus rate based, we don't know," said Robert Powelson, commissioner with the Pennsylvania Public Utility Commission.

Powelson added it's unlikely that the state will join the Regional Greenhouse Gas Initiative, an already-established multi-state carbon market in the U.S. Northeast. Instead, he hinted that Pennsylvania is considering trading with states outside of RGGI.

"There seems to be bipartisan support to say we might look for a new dance partner or two," said Powelson.

Whether supporting or decrying EPA's final rule, all the officials that spoke at the panel said figuring out what other states are planning has made solidifying their own plans a unique challenge, especially because EPA has disallowed the practice of trading emissions credits or allowances between states that choose a mass-based approach and states that choose a rate-based approach.

"If West Virginia, for example, goes mass-based, and we go rate-based, that may not be good," Dowd said. "We really have to consider what our other states are doing, but we're not going to know until they submit their plans, so keeping in touch with each other is really, really important."

Missouri's Rupp said that under the Clean Power Plan, states are now dealing with something akin to the "[prisoner's dilemma](#)," a classic game theory scenario in which two criminals in solitary confinement must choose whether or not to betray the other without being given the opportunity to communicate. Depending on the other's decision, a prisoner's choice to betray his colleague could result in getting set free or it could result in him spending an even longer period in prison.

"We feel like we're a prisoner, and should we take a plea? Should we not? What are other states going to do? I think that's kind of the mindset that is there," Rupp said.

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## **‘Assume the rule will survive,’ former EPA chief tells states**

Amanda Reilly, E&E reporter

Posted: Thursday, October 22, 2015

Former U.S. EPA Administrator William Reilly said today the Clean Power Plan would survive legal challenges, urging regulators to start writing state plans.

Reilly — who was President George H.W. Bush’s EPA chief — criticized Republican elected officials who have publicly opposed EPA’s bid to reduce the power sector’s carbon footprint and said it would be a “bad idea” to not write state implementation plans, or SIPs, to comply with the program.

“Move ahead with planning and assume the rule will survive,” he told an Environmental Council of the States meeting in Washington, D.C.

Finalized in early August, EPA’s Clean Power Plan aims to reduce carbon dioxide emissions from existing power plants. While Reilly said he was “under no illusion that meeting the objectives of the Clean Power Plan will be easy or straightforward,” he said he believed EPA had put forth a flexible final program that would allow for collaborations between states and faster adoption of renewable forms of energy.

In his speech today, Reilly criticized congressional Republicans broadly for not believing that climate change was a problem.

“Many of the governors take a similarly dim view of the science of climate change and also would repudiate the rule,” he said. “Several governors and legislatures have said they will not allow their regulators to submit state implementation plans. That would be a bad idea.”

Reilly cast the decision of writing a state implementation plan as a choice between following the law or politics. He warned that in states that don’t submit plans, Congress had sent an “unmistakable message” through the cooperative-federalism framework of the Clean Air Act that EPA would step in to protect public health with a federal implementation plan.

“I suspect that in the end, none of the governors and attorneys general ... want to see the agency write their implementation plan,” he said. “They may be partisan, but they’re not stupid.”

Fifteen states filed a lawsuit to block the draft of the rule, and when the final version was unveiled, they petitioned for an emergency stay. When the rule is published in the *Federal Register*, their challenges will no longer be premature, and opponents are likely to file petitions for review and ask the court to stay the rule.

While he said the Clean Air Act was far from an ideal tool to address climate change, Reilly said that EPA was working within the authority given to it by Congress to reduce carbon dioxide emissions.

Reilly said that opponents who are pushing for a stay will be hard-pressed to prove to a court that the rule will cause immediate damage, since any effects are likely to be far in the future. He said that he expected the rule would hold up against the various legal challenges.

“My own expectation is even if elements of the rule are disapproved,” he said, “most of what it contemplates will survive.”

In addition to his work at EPA, Reilly has served as president of the World Wildlife Fund and currently sits on the board of Texas-based Energy Future Holdings Corp.

Paul Bailey, senior vice president of federal affairs and policy for the American Coalition for Clean Coal Electricity, told regulators at the ECOS meeting to not rush into making plans, arguing instead that the rule had a “very good chance” of getting struck down.

“How far do you go to make irrevocable commitments considering this program could be overturned in court?” Bailey said.

Reilly praised electric utilities for steps they’ve already taken to reduce carbon dioxide emissions but said the power sector, as a major generator of CO<sub>2</sub>, must move further and faster to avert “potentially catastrophic climate events,” he said.

Quoting Pope Francis’ encyclical calling for moral action to address climate change, Reilly said he believes state air regulators are the “unsung heroes on whom we all depend” and that the politics would catch up to actions they take to address climate change.

“The culture is moving ahead of the politics on climate, and where culture leads, the politics eventually and inevitably follows,” Reilly said. “The clean power rule is on the right side of history.”

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# The Washington Post

## Less Texas coal shut down under revised clean power plan

By Emily Schmall | AP October 16

FORT WORTH, Texas — The federal mandate to slash carbon emissions nationwide would shut down far fewer coal-fired plants in Texas than originally estimated, the state’s biggest electric distribution grid operator said in a report released Friday.

The Electric Reliability Council of Texas said that 4,000 megawatts of coal-fired power, or one in four plants, would shut down, sharply down from last November when the operator predicted almost half of the state’s coal fleet would need to be shuttered.

The expected closures in Texas represent about 6 percent of ERCOT’s current installed capacity.

“We continue to have concerns about the potential impacts on planning and operation” of the power grid, ERCOT chief executive Trip Doggett said in the report.

The retirement of a portion of coal, a predictable power source, along with more electricity from intermittent solar and wind sources could affect reliability, the report said.

Last year’s analysis was based on a proposed version of a rule which has since been revised with less stringent goals for Texas and extended deadlines for compliance nationwide.

Under the plan unveiled in August, Texas, the biggest emitter of greenhouse gases and industrial pollution in the nation, would need to cut emissions 32 percent from 2005 levels by 2030. That is down from a proposed 39 percent.

The EPA’s broader plan calls for a 32 percent nationwide reduction by 2030.

It would cost the ERCOT system \$1 per ton of carbon dioxide to meet the 2022 goals, which could increase retail prices by as much as 16 percent.

ERCOT said its price forecasts don’t account for transmission upgrades, more expensive natural gas and costs associated with the retirement or scaled-back use of coal-fired plants.

The EPA rule, finalized in August, includes a carbon trading system as an option to meet the mandates.

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## **CLEAN POWER PLAN:**

# **State regulators, utilities see advantages in mass-based approach to EPA rule**

[Jeffrey Tomich](#), E&E reporter

EnergyWire: Tuesday, October 20, 2015

LITTLE ROCK, Ark. -- U.S. EPA's draft Clean Power Plan prompted concerns last year about a "dash to gas" -- a wide-scale, costly build-out of natural-gas-fired generation to replace retiring coal plants.

The final plan issued Aug. 3, which is more geared toward facilitating emissions allowance trading, seems instead to be inciting another race -- one toward mass-based compliance plans.

A key "threshold" decision facing state regulators as they look to begin crafting compliance plans -- whether to choose rate- or mass-based approaches -- dominated much of the discussion yesterday during a workshop here on the Clean Power Plan.

The daylong meeting was organized by the Bipartisan Policy Center and nonprofit Great Plains Institute. It is a follow-up to a similar conference in June that was hosted by the same groups ([EnergyWire](#), June 8).

The earlier meeting produced broad agreement, even among groups that disagreed about many aspects of the rule, that multistate compliance with emissions allowance trading has benefits that could help bring down the cost of meeting the EPA-mandated carbon dioxide emissions reductions.

Yesterday's workshop, similarly, suggested that many of the same groups have a preference for choosing a mass-based compliance approach under which a specific cap is set for CO<sub>2</sub> emissions from a state's existing power plants. Under the alternative rate-based approach, states would have to reduce emissions to a certain level, or rate, per megawatt-hour of electricity generated.

Mass-based approaches are generally viewed as preferable for trading because "it's easier to administer and it is more simplistic," said Sandra Byrd, a vice president of Arkansas Electric Cooperatives Corp.

"It's an easier way of quantifying the emissions reduction. And because it's easier and because more folks are likely to choose it, it's something that will be traded on a regional basis, which makes the costs lower for consumers," said Byrd, a former chairwoman of the Arkansas Public Service Commission.

Byrd said if the industrial sector gets allowances at some point, those could be added to the pool for trading purposes.

Coal-dependent states, especially, will see mass-based approaches as being most favorable because retirements of older, inefficient plants that are occurring regardless of the Clean Power Plant can be counted toward compliance.

### **Momentum for mass**

Other state regulators, utility officials and representatives of grid operators PJM Interconnection and the Midcontinent Independent System Operator likewise said a mass-based approach is simpler, easier to administer and familiar for state air regulators, who have established similar emissions caps for other pollutants.

Byrd said the key advantage to a rate-based approach is that it more easily allows for economic development and electricity demand growth, which could mean increased CO<sub>2</sub> emissions under a mass-based plan.

But Pam Kiely, senior director of regulatory strategy for the Environmental Defense Fund, said that shouldn't be as much of a concern because the electric industry has been accommodating increased electricity demand for years while simultaneously reducing air emissions.

"I think the same can be true in the carbon context," she said.

Scott Weaver, manager of strategic policy analysis for Columbus, Ohio-based American Electric Power Co., said a rate-based approach could also make sense for Southeast states, such as Georgia or South Carolina, that are adding new nuclear generation. That's because the additional carbon-free power would help lower the pounds of CO<sub>2</sub> produced per megawatt-hour.

But Paul Sotkiewicz, a senior economic policy adviser to PJM, suggested there would be strong pressure for most states, including states adding nuclear output, to opt for a mass-based

compliance strategy. That's because states looking to benefit from selling emissions allowances are going to want the most liquid market and largest possible pool of trading partners.

Officials from regional transmission organizations have said they'll be able to keep the lights on regardless of what approach states in their footprint choose. But a patchwork approach will be more expensive and complicated.

"We can manage to maintain reliability under a variety of scenarios," said Kari Evans Bennett, senior director of program strategy at MISO and a former Indiana utility regulator. "It's just a matter of how expensive it would be."

### States still in 'think tank stage'

While state regulators have expressed a familiarity with simpler mass-based plans, they have been careful to say publicly that no decisions have been made.

Nancy Lange, a member of the Minnesota Public Utilities Commission, said it may be because they're still busy analyzing, modeling and understanding implications of both approaches. States including Arkansas, Missouri and Iowa have recently hosted their first stakeholder meetings since the Aug. 3 rule ([EnergyWire](#), Sept. 24). Michigan and some states plan to do their own modeling to complement work being done by regional transmission organizations.

"I don't know if any state has done enough analysis to know that one approach is preferable over another," Lange said.

Becky Keogh, director of the Department of Environmental Quality for host state Arkansas, said the state is in "the think tank stage" of evaluating the Clean Power Plan. The state held its first meeting on the Clean Power Plan just last week ([EnergyWire](#), Oct. 13).

Among the key questions it is trying to answer: What is the best approach? How might it affect reliability and environmental quality? Is the timeline sufficient to add new infrastructure, do environmental scoping and get regulatory approval? And what is the cost to consumers and the effect on the state's economy?

States may also be hesitant to declare whether they'll choose a rate- or mass-based approach until they know more about the potential for allowance trading. There's broad agreement that a critical mass of trading partners is needed to keep costs down. States that adopt a different approach risk becoming islands and having higher compliance costs.

"It's hard to separate rate from mass discussions from discussions about regional trading," Bennett said.

Citing studies by grid operators MISO and Southwest Power Pool that show cost savings, Colette Honorable of the Federal Energy Regulatory Commission urged state planners, regulators, utilities, and environmental and consumer groups to evaluate multistate compliance options and keep a focus on what's best for consumers.

Where implementation of the rule affects electricity users is "where the rubber meets the road," she said.

Meanwhile, she said FERC will be working with EPA to ensure that two mechanisms in the rule aimed at maintaining reliability work as intended.

"I believe belts and suspenders really don't hurt," Honorable said.

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## With Market on Their Side, Electric Utilities Skip Fight Against Carbon Rule

**Cheap natural gas, falling costs for wind, solar already have power companies on low-carbon path**

By

Rebecca Smith

Oct. 11, 2015 7:33 p.m. ET

U.S. coal companies and at least 16 state governments are working on challenges to the Obama administration's new rule limiting carbon emissions from power plants. Most electric utilities have a different strategy: They are embracing it.

From [Dominion Resources](#) Inc. in Virginia to [Dynegy](#) Inc. in Houston to Ohio's [FirstEnergy](#) Corp., electricity producers say they plan to comply rather than contest the regulation.

The main reason, executives and experts say, is that economic forces are pushing the power industry inexorably toward a lower-carbon future.

"Everybody is moving in this direction anyway," said Dominion Chief Executive Tom Farrell.

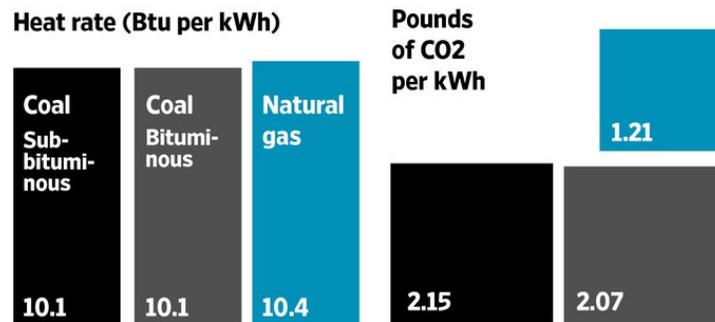
The new regulations just add certainty to companies' plans to move away from relying on coal to generate electricity, turning instead toward cheap natural gas as well as renewable energy, which is available at increasingly lower cost.

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### Energy Trade-offs

It takes fewer British Thermal Units of coal than gas to make a kilowatt-hour of electricity...

...But natural gas produces far less carbon dioxide for each kilowatt-hour of electricity



Note: Subbituminous is mostly western coal, Bituminous is mostly an eastern coal

Source: U.S. Energy Information Administration

THE WALL STREET JOURNAL. ENLARGE

“Price is a larger force in electricity markets today than what Washington is doing with regulations,” said Todd Carter, president of Panda Power Funds, a private-equity investor and generating-plant developer based in Dallas.

Advertisement

Panda Power Funds is building a huge gas-fired power station in central Pennsylvania, adjacent to a 65-year-old coal plant that closed down last year. Building near the old facility means Panda can reuse existing infrastructure like transmission lines and an electrical substation to save money.

Switching from an old coal plant to a modern natural-gas one can cut carbon-dioxide emissions by between 50% and 60% for each megawatt hour of electricity produced, according to the Environmental Protection Agency.

And although coal also remains a relatively cheap fuel, natural-gas plants can produce power at lower prices and are often much more profitable for the companies that own them.

“Our coal assets are still running but they’re not making any money,” said Bob Flexon, CEO of Dynegy, an independent supplier whose generating capacity is about 45% coal and 55% gas.

“All the earnings are coming from our gas portfolio.”

That is partly because of the way electricity markets work. In much of the U.S., grid operators take bids from generators every day, tapping the lowest-cost resources first—often natural-gas plants.

But the market price is set by the last producer needed to meet that day’s electricity demand, which tends to be a coal plant. So natural-gas plants can often offer electricity at prices lower than coal plants but collect the higher price set by coal units.

In the wake of the U.S. shale boom, natural gas has become so abundant and so inexpensive—and forecasters expect it to remain so for years—that the EPA’s new carbon rule has provisions that prevent utilities from relying too much on a single fuel. Instead, the EPA regulation encourages development of renewable-energy projects.

Coal consumption by utilities fell so much in the first four months of the year that it may be headed toward a 25-year low, according to data released in August by the U.S. Energy Information Administration.

“The bulk of utilities have already started to make the transition away from coal,” said Jeremy Fago, PricewaterhouseCoopers LLP’s power and utilities deals leader. He said the rule’s emphasis on green electricity means “it effectively creates a national renewable-energy policy.”

To be sure, not every utility has agreed to go along with the EPA’s 15-year plan to cut carbon dioxide emissions from the power industry by 32% compared with 2005. Implementation is being left to the states, which must come up with plans to comply or face direct regulation from Washington.

So far, at least 16 states have expressed opposition to the regulation, and some are likely to file a formal suit once the EPA publishes the carbon rule in the Federal Register, which is expected to happen this month.

Some companies are testing the political winds in their states or are still analyzing the potential impact on customer bills and company earnings. Edison Electric Institute, which represents

shareholder-owned utilities, is staying out of legal contests while working with utilities and states to plot a path forward.

North Carolina-based [Duke Energy Corp.](#), with utilities in the Midwest and Carolinas, is undecided. Lynn Good, Duke's chief executive, recently told investors that her experts continue to analyze the plan, though she noted, "I think there's flexibility there."

Some utilities are hedging their bets. Ohio-based American Electric Power Co. is urging the 11 states in which it operates utilities to draft carbon-reduction plans. But it is also participating in the Utility Air Regulatory Group, a loose federation of energy companies that has challenged the low-carbon rule in the past and may do so again.

Renewable energy is becoming more financially attractive for utilities. A recent survey by the Energy Department found that utilities paid 66% less for wind power purchased under long-term contracts in 2014 than 2009, making it extremely competitive with electricity from the latest gas-fired plants.

Southern Power, a unit of Atlanta-based Southern Co., recently installed its first wind turbine at a 299-megawatt project in Kay County, Okla. It also announced the purchase in August of controlling interest in the 200-megawatt Tranquility solar facility in Fresno County, Calif., from Recurrent Energy, a unit of [Canadian Solar Inc.](#)

When combined with other existing and announced projects, these developments will boost Southern Power's green portfolio to a production amount equivalent to three big fossil-fuel plants, though production will be less because the wind doesn't always blow and the sun doesn't always shine.

The company made more electricity using natural gas than coal in the second quarter, something so unusual it was highlighted in an earnings call. Nevertheless, Southern said it is still studying the rule and deciding what its next steps will be.

Write to Rebecca Smith at [rebecca.smith@wsj.com](mailto:rebecca.smith@wsj.com)

## ENERGYWIRE

### CLEAN POWER PLAN:

# Southwest Power Pool reaches out to state air regulators

[Rod Kuckro](#), E&E reporter

Published: Thursday, September 24, 2015

The Southwest Power Pool on Tuesday hosted what amounted to an online mixer for the air regulators from the 14 states in which SPP ensures electric system reliability and operates electricity markets.

The webinar was more than an occasion to get acquainted for the regional transmission organization and the group of regulators that will be drawing up state plans to comply with the U.S. EPA Clean Power Plan.

It was the start of a consultative process SPP hopes to engage in with states as they prepare their plans to comply even as some political leaders pursue litigation or a "just say no" response.

It was also the first instance of an RTO openly meeting with air regulators about the EPA plan.

"Our No. 1 responsibility is to help our members work together to keep the lights on, not only today but in the future. In fact, that's our mission statement," said Lanny Nickell, SPP's vice president of engineering. He led the webinar, which included state air agency officials, utility commissioners and SPP utility members.

"We have the skill set and expertise to best assess and determine whether or not the state plans that are being developed in compliance with the Clean Power Plan can in fact accomplish that mission," Nickell said in an interview.

Nickell gave the regulators an overview of SPP's basic functions of ensuring reliability and dispatching its 825 power plants to provide electricity to 18 million people over a service territory spanning 575,000 miles.

And he filled them in on the results of [studies](#) SPP has conducted over the past year on aspects of the EPA rule to curb carbon emissions from power plants.

### **SPP will revisit regional compliance costs**

Earlier this year, before the final rule was issued, SPP produced a study on the potential for regional compliance but found the cost would be an estimated \$2.9 billion a year ([EnergyWire](#), April 9).

SPP "absolutely" will revisit the cost of compliance now that EPA has extended the compliance deadline and allowed states or regions greater flexibility in their compliance plans, Nickell said.

"You should be able to take away from those studies that it's about 40 percent more expensive to go it alone than be involved in a regional approach," he said.

Among the studies' findings were that state-by-state compliance required 114 percent more generation retirements, increased generation at risk for retirement by 9 percent, and required 185 percent more new natural gas generation and roughly the same amount of new renewables.

Not only is state-by-state compliance more expensive, but it is "more disruptive than a regional approach to the reliability and economic benefit provided by SPP's markets," the RTO presentation said.

More new generation and transmission infrastructure would likely be "needed for state-by-state than for regional compliance," SPP found.

### How long will it take?

Nickell warned states that there could be "overlapping impacts" from the fact that 12 of SPP's 14 states also have their electricity overseen by one or more RTOs, planning authority or reliability coordinator.

States should try "to implement and plan for an approach that really is interoperable with other states. For example, decide to establish a carbon trading market with all of the other states. To me, that kind of an approach would carry with it a lot less risk or concern than something that is more generator specific," Nickell said.

"It's going to necessitate a higher degree of coordination to fully understand where those overlapping impacts might reside."

That's where assessing state plans comes in. One question states had Tuesday is how long it might take SPP to perform an assessment.

"I still don't have an answer for them," Nickell said.

"We've not assessed anything like this before. We don't yet have a real good idea of how long it's going to take to do an assessment.

"We don't know to what extent you're going to put a lot of detail into your state plan; we don't if it's going to be more general as opposed to specific. So until we start getting a better feel for what each state is thinking, it's hard for me to tell you with any accuracy how long it would take us," he said.

The political battle over the EPA rule is something that "we'll certainly have to deal with as best we can," Nickell said. But "that's not something we want to get involved in."

"We respect the fact that some of the states will litigate; that's their right to do so. We just hope and encourage them to be working a parallel path so that in whatever event occurs, that they're ready to implement something that will be reliable and cost-effective."

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## Electric Grid Reliability Fears Remain in Wake of Climate Rule

[Davis Burroughs](#) | [August 31, 2015](#)

Stakeholders and government officials are unsure about whether the Obama administration's legacy climate rule will threaten the electric grid, according to the ISO/RTO Council, whose members include independent systems operators and regional transmission organizations.

Critics of the power plant emissions rules have long held that the Clean Power Plan, which aims to cut carbon emissions from the power sector by 30 percent, would lead to more brownouts and blackouts. In an attempt to bed those concerns, the Environmental Protection Agency added a reliability “safety-valve,” or RSV, to the final rule released in early August. But there’s little agreement on whether the RSV actually helps.

The ISO/RTO Council, or IRC, rarely takes a position on major federal policies. Yet it was one of many commenters who asked EPA to make keeping the lights on a bigger priority.

Having had nearly a month to digest the rule, IRC hasn’t yet reached agreement about whether the last-minute safety valve satisfied its members’ concerns. Ray Dotter, a communications manager at PJM Interconnections, said Friday that “there is no joint position at the ISO-RTO Council on the Clean Power Plan or the reliability safety valve provision.”

“From PJM Interconnection’s perspective, we understand what EPA did given its other changes and will work to see that [the safety valve] works as intended in practice,” Dotter said. “There’s nothing more to be said at this point.”

The Federal Energy Regulatory Commission, the agency that regulates the sale of electricity, also recommended the addition of the RSV. The regulator safety valve, FERC argued, could allow states to request a temporary waiver to compliance plans in the event the CPP threatens electric grid reliability.

As it’s currently written, the RSV offers electric generating units the ability to operate outside of the plan for up to 90 days. In the event reliability comes under threat, power plants can apply for up to two 90-day noncompliance periods over the lifetime of the unit.

That’s not enough assurance for FERC Commissioner Tony Clark, who said after the climate rule published that EPA is operating out of bounds.

“EPA officials are not responsible for ensuring reliable, affordable power,” he said. “No one should think reliability and affordability are slam dunks, lest we deny the science of electrical engineering.”

On the other hand, FERC chairman Norman Bay said earlier this month that EPA is working with a trifecta of other departments to make sure reliability concerns are addressed safely and effectively.

Bay said EPA, FERC and the Department of Energy will have a “coordination document” that “will make reasonable efforts to monitor states as they develop and implement plans to meet CPP’s requirements and maintain awareness of any potential electric reliability effects.” Bay also said the relevant agencies will coordinate, as appropriate, to address reliability concerns.

Bay pointed to the successes of previous inter-agency coordination on a similar effort as proof that this part of the rule can work. EPA, DOE and FERC worked together in monitoring reliability during implementation of toxic emissions rules. In that case, Bay said, the agencies established a “successful working relationship.”

Paul Gutermann, a natural resources attorney with the law firm Akin Gump, said the RSV might make the rule more palatable to federal judges, who will ultimately decide whether the Clean Power Plan is legal. The addition of the RSV hampers the argument that the rule would have serious negative impacts on public access to reliable electricity.

Jason Grumet, president of the Bipartisan Policy Center, said earlier this month that “electric generators are reassured with a new reliability ‘safety-valve.’”

Critics maintain the safety valve does little to change the overall impacts of the regulation.”While a safety valve designed to address reliability crises is necessary, no safety valve can fix a poorly crafted rule that harms reliability as it is implemented,” said Scott Legal, director of the Electric Reliability Coordinating Council, in a statement. “That’s like relying on an emergency brake after the accident is already under way. You need to prevent the accident in the first instance.