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# CLEARING THE AIR: SLC STATE RESPONSES TO THE CLEAN POWER PLAN PROPOSED RULE *AN ISSUE ALERT FROM THE SLC*

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## Introduction

On June 2, 2014, the U.S. Environmental Protection Agency (EPA) released the *Clean Power Plan Proposed Rule* under the authority of *Section III(d)* of the federal Clean Air Act. This Proposed Rule would establish state-specific goals to limit greenhouse gas emissions by setting firm carbon reduction standards that each state would have to meet beginning in 2020 and accelerating through 2030. While it is unclear whether the EPA will revise its Final Rule, which is expected by July 2015, many states in the Southern Legislative Conference (SLC) of The Council of State Governments already have enacted legislation addressing the Clean Power Plan Proposed Rule and its regulations.

This *SLC Issue Alert* provides an overview of some measures taken by state legislatures in the SLC region to address the Clean Power Plan Proposed Rule through the 2014 legislative session. This *Issue Alert* is not a legal analysis of Section 111(d), nor does it take a position on compliance pathways or the EPA's proposed state-specific carbon dioxide (CO<sub>2</sub>) goals.

## Background

Nationwide, by 2030, the EPA's Clean Power Plan Proposed Rule would achieve CO<sub>2</sub> emission reductions from the power sector of approximately 30 percent from CO<sub>2</sub> emission levels

in 2005. For each state, the Proposed Rule would establish a different target emissions rate or maximum amount of carbon dioxide that could be emitted per megawatt-hour of power produced (See Table 1.) The reduction requirements for states range from 11 percent in North Dakota to 72 percent in Washington. The target rates are based on assumptions about how much each state could reduce emissions using four carbon-reducing measures, or building blocks, which the EPA identified as the "best system of emission reduction." States are charged with writing their own plans for complying with the targets and are not required to use the combination of building blocks proposed by the EPA. Importantly, states are tasked with establishing their own carbon-reducing measures, provided that they minimize emissions from power plants enough to achieve the targeted level of reductions.

## State Responses

Before the EPA released the Clean Power Plan Proposed Rule, legislative actions passed in 11 of 15 SLC member states addressing the anticipated Rule (See Table 2.) In advance of the Proposed Rule, bills were passed in Kentucky,<sup>1</sup> Louisiana<sup>2</sup> Missouri,<sup>3</sup> Virginia<sup>4</sup> and West Virginia.<sup>5</sup> Meanwhile, resolutions were passed in Alabama,<sup>6</sup> Arkansas,<sup>7</sup> Florida,<sup>8</sup> Georgia,<sup>9</sup> Oklahoma,<sup>10</sup> and Tennessee.<sup>11</sup> The most common request among these legislative actions was that the EPA respect state primacy in setting performance standards under

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Section 111(d) and that it grant the states maximum flexibility to implement carbon standards. This flexibility would include allowing a more lenient standard and compliance schedule based on the state's unique circumstances, cost, or reliability factors.

Within these legislative actions, consistent themes emerge. In addition to requesting that the EPA respect state primacy in setting individual CO<sub>2</sub> performance standards, other issues within these legislative actions include the recommendation that EPA grant the states maximum flexibility to implement carbon emission standards, consider the individual circumstances of each state, and allow a more lenient carbon-reduction standard and compliance schedule that accounts for cost, available technology and impact on low-income populations. In addition to these requests, some states passed legislation prohibiting fuel switching\* at electric generating units and applying separate standards for coal and gas generation units.

## State Primacy

Several states that passed measures concerning the Clean Power Plan Proposed Rule asserted primacy in prescribing CO<sub>2</sub> performance standards in each respective state. For example, in *Senate Memorial 1174 (2014)*, Florida urged the EPA to “respect the primacy of Florida and rely on state regulators to develop performance standards for carbon dioxide emissions” that take into account the state's unique policies, needs and priorities. Measures passed by Oklahoma, Tennessee and West Virginia contain nearly identical language. Likewise, in *House Bill 388 (2014)*, Kentucky asserts that “states have the primary role in managing their own economic and environmental resources.” Similar language can be found in Alabama's *Senate Joint Resolution 57 (2014)*. Meanwhile, in *Senate Resolution 2 (2014)*, the Arkansas General Assembly finds that the Proposed Rule interferes with “the sovereign power of the state of Arkansas to regulate electricity and to determine the mix of energy resources that ensures reliable and affordable supplies of electricity for its citizens.” In language unique to Arkansas,<sup>†</sup> the Resolution

\* Fuel switching is the process of replacing inefficient fuel with cleaner and economical alternatives, such as substituting coal or kerosene with natural gas. Complemented by modern equipment upgrades, fuel switching can be seen as one approach to reducing energy consumption and costs for end-users, while also curbing carbon emissions.

† When compared with the language in other SLC member states.

urges the EPA to withdraw the current proposal and put forth new regulations that respect the primacy of the state to determine the emission reduction requirements that are in the best interest of its citizens.

## Flexibility

Many states requested greater flexibility from the EPA under the Clean Power Plan Proposed Rule. In *House Bill 4346 (2014)*, West Virginia asserts that the “standards of performance developed and proposed under any state plan to comply with Section 111 of the Clean Air Act should allow for greater flexibility and take into consideration the additional factors... as a part of any state plan to achieve targeted reductions in greenhouse gas emissions which are equivalent or comparable to the goals and marks established by federal guidelines.” The Bill further directs the state's Department of Environmental Protection to “establish an achievable standard of performance for any existing fossil fuel-fired electric generating unit, and examine whether less stringent performance standards or longer compliance schedules may be implemented or adopted for existing fossil fuel-fired electric generating units in comparison to the performance standards established for new, modified or reconstructed generating units.” This is a position repeated in several SLC states, including Florida, Georgia, Louisiana, Missouri and Oklahoma. Many states assert that the state agencies should carry out these directives based on factors such as unreasonable cost of control, physical impossibility of installing necessary control equipment, and other factors that make less stringent standards or longer compliance times significantly more reasonable. This is the case in Florida, Kentucky, Louisiana, Missouri, Oklahoma, Virginia and West Virginia and is consistent with the federal implementation guidelines in 40 C.F.R. § 60.24(f). Missouri's *House Bill 1631 (2014)* directed the state's Air Conservation Commission to develop, on a unit-by-unit basis for individual existing affected sources and their CO<sub>2</sub> emissions, “emission standards that are less stringent, but not more stringent, than applicable federal emission guidelines or longer compliance schedules than those required by federal regulations.”

## Economic Concerns

The Clean Power Plan Proposed Rule could have myriad economic impacts in SLC states. To ensure optimal preparedness in determining standards of performance, states

Table 1

## Emission Reduction Goals by State

|                | 2012 Emission Rate (Fossil, Renewables and 6% Nuclear) (lbs/MWh) | Interim Goal (2020-2029 average) | Interim Goal Percent Reduction (Compared to 2012) | 2030 State Goal (2030 and thereafter) | 2030 Goal Percent Reduction (Compared to 2012) |
|----------------|------------------------------------------------------------------|----------------------------------|---------------------------------------------------|---------------------------------------|------------------------------------------------|
| Alabama        | 1,444                                                            | 1,147                            | -21%                                              | 1,059                                 | -27%                                           |
| Alaska         | 1,351                                                            | 1,097                            | -19%                                              | 1,003                                 | -26%                                           |
| Arizona        | 1,453                                                            | 735                              | -49%                                              | 702                                   | -52%                                           |
| Arkansas       | 1,640                                                            | 968                              | -41%                                              | 910                                   | -45%                                           |
| California     | 698                                                              | 556                              | -20%                                              | 537                                   | -23%                                           |
| Colorado       | 1,714                                                            | 1,159                            | -32%                                              | 1,108                                 | -35%                                           |
| Connecticut    | 765                                                              | 597                              | -22%                                              | 540                                   | -29%                                           |
| Delaware       | 1,234                                                            | 913                              | -26%                                              | 841                                   | -32%                                           |
| Florida        | 1,200                                                            | 794                              | -34%                                              | 740                                   | -38%                                           |
| Georgia        | 1,500                                                            | 891                              | -41%                                              | 834                                   | -44%                                           |
| Hawaii         | 1,540                                                            | 1,378                            | -11%                                              | 1,306                                 | -15%                                           |
| Idaho          | 339                                                              | 244                              | -28%                                              | 228                                   | -33%                                           |
| Illinois       | 1,895                                                            | 1,366                            | -28%                                              | 1,271                                 | -33%                                           |
| Indiana        | 1,923                                                            | 1,607                            | -16%                                              | 1,531                                 | -20%                                           |
| Iowa           | 1,552                                                            | 1,341                            | -14%                                              | 1,301                                 | -16%                                           |
| Kansas         | 1,940                                                            | 1,578                            | -19%                                              | 1,499                                 | -23%                                           |
| Kentucky       | 2,158                                                            | 1,844                            | -15%                                              | 1,763                                 | -18%                                           |
| Louisiana      | 1,466                                                            | 948                              | -35%                                              | 883                                   | -40%                                           |
| Maine          | 437                                                              | 393                              | -10%                                              | 378                                   | -14%                                           |
| Maryland       | 1,870                                                            | 1,347                            | -28%                                              | 1,187                                 | -37%                                           |
| Massachusetts  | 925                                                              | 655                              | -29%                                              | 576                                   | -38%                                           |
| Michigan       | 1,696                                                            | 1,227                            | -28%                                              | 1,161                                 | -32%                                           |
| Minnesota      | 1,470                                                            | 911                              | -38%                                              | 873                                   | -41%                                           |
| Mississippi    | 1,130                                                            | 732                              | -35%                                              | 692                                   | -39%                                           |
| Missouri       | 1,963                                                            | 1,621                            | -17%                                              | 1,544                                 | -21%                                           |
| Montana        | 2,245                                                            | 1,882                            | -16%                                              | 1,771                                 | -21%                                           |
| Nebraska       | 2,009                                                            | 1,596                            | -21%                                              | 1,479                                 | -26%                                           |
| Nevada         | 988                                                              | 697                              | -29%                                              | 647                                   | -34%                                           |
| New Hampshire  | 905                                                              | 546                              | -40%                                              | 486                                   | -46%                                           |
| New Jersey     | 932                                                              | 647                              | -31%                                              | 531                                   | -43%                                           |
| New Mexico     | 1,586                                                            | 1,107                            | -30%                                              | 1,048                                 | -34%                                           |
| New York       | 983                                                              | 635                              | -35%                                              | 549                                   | -44%                                           |
| North Carolina | 1,646                                                            | 1,077                            | -35%                                              | 992                                   | -40%                                           |
| North Dakota   | 1,994                                                            | 1,817                            | -9%                                               | 1,783                                 | -11%                                           |
| Ohio           | 1,850                                                            | 1,452                            | -22%                                              | 1,338                                 | -28%                                           |
| Oklahoma       | 1,387                                                            | 931                              | -33%                                              | 895                                   | -35%                                           |
| Oregon         | 717                                                              | 407                              | -43%                                              | 372                                   | -48%                                           |
| Pennsylvania   | 1,540                                                            | 1,179                            | -23%                                              | 1,052                                 | -32%                                           |
| Rhode Island   | 907                                                              | 822                              | -9%                                               | 782                                   | -14%                                           |
| South Carolina | 1,587                                                            | 840                              | -47%                                              | 772                                   | -51%                                           |
| South Dakota   | 1,135                                                            | 800                              | -29%                                              | 741                                   | -35%                                           |
| Tennessee      | 1,903                                                            | 1,254                            | -34%                                              | 1,163                                 | -39%                                           |
| Texas          | 1,298                                                            | 853                              | -34%                                              | 791                                   | -39%                                           |
| Utah           | 1,813                                                            | 1,378                            | -24%                                              | 1,322                                 | -27%                                           |
| Virginia       | 1,297                                                            | 884                              | -32%                                              | 810                                   | -38%                                           |
| Washington     | 763                                                              | 264                              | -65%                                              | 215                                   | -72%                                           |
| West Virginia  | 2,019                                                            | 1,748                            | -13%                                              | 1,620                                 | -20%                                           |
| Wisconsin      | 1,827                                                            | 1,281                            | -30%                                              | 1,203                                 | -34%                                           |
| Wyoming        | 2,115                                                            | 1,808                            | -15%                                              | 1,714                                 | -19%                                           |

Source: *The Natural Resources Defense Council*, June 2, 2014

are calculating consumer impacts, including any disproportionate impacts of energy price on low-income populations; costs of achieving emission reductions given factors such as plant age, location or basic process design; absolute cost of applying performance standards to units; remaining useful life of units; and impacts of closing units, including economic consequence such as job losses. These concerns are reflected in preemptive legislation passed by Kentucky, Louisiana, Missouri, Virginia and West Virginia. Georgia's *House Resolution 1158 (2014)* cites cost and reliability factors that could be considered in the initial setting of the carbon emissions reduction standard. By directing their environmental rulemaking bodies to study these potential impacts, state legislatures will have an opportunity to craft a plan in the best interest of each state's citizens.

## Other Factors

States have asserted other rights and concerns associated with the Clean Power Plan Proposed Rule. Kentucky, Louisiana, Virginia and West Virginia disallow fuel switching, co-firing with other fuels, or decreased unit utilization as a means of achieving emissions reduction. All four states encourage "increased efficiencies and other measures that can be implemented at each coal-fired electric generating unit to reduce carbon dioxide emissions from the unit without converting from coal to other fuels, co-firing other fuels with coal, or limiting the utilization of the unit." Other factors addressed in the legislative measures enacted by many SLC states in-

clude the right to set carbon reduction standards separately for coal and gas-fired units (Kentucky, Virginia and West Virginia) and precluding the use of technology that is not adequately demonstrated as a basis for carbon emission reductions (Georgia, Kentucky, Louisiana and West Virginia).

In *House Resolution 1158*, the Georgia House of Representatives further encourages the EPA "to establish separate guidelines for coal-fueled electric generating units that are based on highly efficient units such as ultrasupercritical<sup>‡</sup> and supercritical<sup>§</sup> technologies without [carbon capture and sequestration technology] which will optimize the economic and equitable utilization of all types of domestic fuel sources" and emphasizes that additional time is needed for the technology to become an adequately demonstrated system of emissions reduction.<sup>12</sup> Finally, in a move unique

<sup>‡</sup> Ultrasupercritical (USC) steam generation represents an increase in steam cycle efficiency. A USC unit operates above super critical pressure at advanced steam temperatures above 1,100 degrees Fahrenheit, resulting in a more efficient steam cycle. This increased efficiency reduces fuel consumption, reagent (substance or compound that is added to a system in order to bring about a chemical reaction, or added to see if a reaction occurs) consumption, solid waste, water use and operating costs.

<sup>§</sup> A subcritical steam generation unit operates at pressures such that water boils first and then is converted to superheated steam. At supercritical pressures, water is heated to produce superheated steam without boiling. Due to the improved thermodynamics of expanding higher pressure and temperature steam through the turbine, a supercritical steam generating unit is more efficient than a subcritical unit.

| Table 2       | Legislation                                   |
|---------------|-----------------------------------------------|
| Alabama       | <i>Senate Joint Resolution 57 (2014)</i>      |
| Arkansas      | <i>Senate Resolution 2 (2014)</i>             |
| Florida       | <i>Senate Memorial 1174 (2014)</i>            |
| Georgia       | <i>House Resolution 1158 (2014)</i>           |
| Kentucky      | <i>House Bill 388 (2014)</i>                  |
| Louisiana     | <i>Senate Bill 650 (2014)</i>                 |
| Missouri      | <i>House Bill 1631 (2014)</i>                 |
| Oklahoma      | <i>Senate Concurrent Resolution 39 (2014)</i> |
| Tennessee     | <i>House Joint Resolution 663 (2014)</i>      |
| Virginia      | <i>Senate Bill 615 (2014)</i>                 |
| West Virginia | <i>House Bill 4346 (2014)</i>                 |

to Georgia,<sup>¶</sup> the state urges the EPA, the U.S. Department of Energy and Congress to “support industry efforts for carbon capture and sequestration, specifically exploration for geological storage opportunities for states like Georgia without demonstrated geological storage locations, in conjunction with the development of regulations.”<sup>13</sup>

## Conclusion

The prevalence of legislation that occurred prior to the issuance of the Proposed Rule is a powerful indicator of SLC states’ interest in, and opposition to, the Clean Power Plan Proposed Rule. Since the Proposed Rule was released, more than 50 pieces of related legislative measures have been filed in 12 SLC states.\*\* As states prepare for the release of the Final Rule, expected by July 2015, it is likely that additional legislation will be proposed.

Traditional fossil fuels still are essential to the economies of SLC states, providing substantial direct and indirect jobs and sources of affordable, reliable energy. States have made significant investments in these resources and should continue to benefit from these investments, while also diversifying their portfolio with renewable and clean energy technology. A viable mix of energy resources will ensure that SLC states continue to be leaders in energy production for generations to come.

As states in the SLC region continue to enact legislation and craft guidelines for compliance in anticipation of the Clean Power Plan Final Rule, it will be important for policymakers to be cognizant of measures that may place restrictions regarding flexibility on the respective agencies charged with the actual implementation. Restrictions that limit compliance options that may be available to state agencies could result in unintended consequences. Such unintended consequences may include higher electric rates for consumers, delayed construction schedules on power generating facilities and the imposition of a federal plan. While a federally implemented plan may endeavor to apply a broader set of guidelines and impose a one-size fits all strategy, state policymakers are better positioned to understand the unique needs, resources and concerns of their individual states.

¶ When compared with the language in other SLC member states.

\*\* As of March 10, 2015

## Endnotes

- 1 Kentucky House Bill 388. n.d. <http://www.lrc.ky.gov/record/14RS/hb388.htm>.
- 2 Louisiana Senate Bill 650. n.d. <http://www.legis.la.gov/legis/ViewDocument.aspx?d=910308>. *relative to air control standards; to create a carbon dioxide emissions program; to measure carbon dioxide emissions from existing fossil fuel-fired electric generating units; to provide criteria for the standards of performance; to provide terms, conditions, and requirements; and to provide for related matters*”, “URL”: “<http://www.legis.la.gov/legis/ViewDocument.aspx?d=910308>”, “number”: “650”, “chapter-number”: “2013-2014”}}, “schema”: “<https://github.com/citation-style-language/schema/raw/master/csl-citation.json>”}
- 3 Missouri House Bill 1631. <https://legiscan.com/MO/text/HB1631/id/1020198> (accessed March 16, 2015). 2015
- 4 Virginia Senate Bill 615. n.d. <http://lis.virginia.gov/cgi-bin/legp604.exe?141+ful+CHAP0756+pdf>. *relating to the Virginia Energy Plan; analysis of effects of carbon dioxide emission control requirements; periodic interim updates.*”, “URL”: “<http://lis.virginia.gov/cgi-bin/legp604.exe?141+ful+CHAP0756+pdf>”, “number”: “615”, “chapter-number”: “2014”}}, “schema”: “<https://github.com/citation-style-language/schema/raw/master/csl-citation.json>”}
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- 6 Alabama Senate Joint Resolution 57. n.d. <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2014RS/PrintFiles/SJR57-enr.pdf>.
- 7 Arkansas Senate Resolution 2. n.d. <ftp://www.arkleg.state.ar.us/Bills/2014S2/Public/SR2.pdf>.
- 8 Florida Senate Memorial 1174. 2014. <https://legiscan.com/FL/bill/S1174/2014> (accessed March 16, 2015).
- 9 Georgia House Resolution 1158. n.d. <http://www.legis.ga.gov/Legislation/20132014/138326.pdf>.
- 10 Oklahoma Senate Concurrent Resolution 39. n.d. [http://webserver1.lsb.state.ok.us/cf\\_pdf/2013-14%20ENR/SRES/SCR39%20ENR.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2013-14%20ENR/SRES/SCR39%20ENR.PDF).
- 11 Tennessee House Joint Resolution 663. <https://legiscan.com/TN/text/HJR0663/id/948231> (accessed March 16, 2015).
- 12 Georgia House Resolution 1158.
- 13 Ibid.