



Briefing on U.S. EPA’s “Clean Power Plan” August 3, 2015

On August 3, 2015, the U.S. Environmental Protection Agency (EPA) signed a sweeping new rule, which it calls the “Clean Power Plan,” to limit carbon dioxide (CO₂) emissions from existing power plants that burn coal and other fossil fuels.¹ This new rule will drive up energy costs, destroy jobs, and hurt Georgia’s economy.

Overview of the EPA Power Plan

The stated purpose of the Power Plan is to reduce CO₂ emissions from the existing power plants by 30 percent or more between 2005 and 2030.² The plan sets individualized target emission rates or “goals” that each state must meet. The targets are expressed as levels of CO₂ emissions per megawatt-hour of power produced. They are based on the types of power plants that exist in each state, combined with assumptions about how much CO₂ emissions can be reduced using three “building blocks” that, according to EPA, collectively make up the “best system of emission reduction.”³ The three building blocks are:

1. Improving the efficiency of coal-fired power plants;
2. Increasing use of natural gas combined cycle plants; and
3. Developing renewable energy sources like wind and solar.⁴

¹ US EPA, Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (signed Aug. 3, 2015).

² Although EPA seeks an overall emissions reduction of 30 percent between 2005 and 2030, the EPA calculates state targets using a base-line year of 2012.

³ As originally proposed, EPA included a fourth “building block”—namely, reducing electricity demand by 1.5 percent per year by using power more efficiently. EPA has is reported to have abandoned this approach in the final version of the rule.

⁴ Note that #2 and #3 are not control strategies to reduce CO₂ emissions at existing power plants covered by the rule. Instead they focus on “outside the fence” measures—that is, measures to be taken at other facilities rather than the regulated power plants themselves—to achieve reductions on a state-wide basis. US EPA has never used outside the fence requirements as a system of emission reduction for an affected source under Section 111(d) of the Clean Air Act.

The targets set for each state differ based on EPA's analysis of each state's particular characteristics. This means that certain states are required to achieve greater reductions in emissions than other states. This disparity between states is a major issue in Georgia. The Georgia Environmental Protection Division estimates that, under the proposed version of the rule, Georgia would have been required to reduce CO₂ emissions by dioxide emissions by 46%.⁵ This is among the reductions required anywhere in the United States, and well above the national average.

The Power Plan requires each state to develop its own plan to achieve the stated targets. States are not required to use the "building blocks" identified by EPA, so long as the plans they develop offset CO₂ emissions from power plants and achieve the required reductions.

States must submit initial compliance plans to EPA in 2016, and final plans will be due in 2018. If a state does not submit a plan as required, EPA will impose a "federal implementation plan" on the state.⁶ States must begin making cuts under their plans by 2022. They are required to achieve their target emissions rates by 2030.

Georgia's Opposition to the EPA Power Plan

Like many other states, Georgia has opposed the Power Plan. While Georgia submitted comments criticizing many aspects of the rule, the comments submitted by the Georgia Environmental Protection Division on the draft rule focused on three major flaws: (1) the fact that Georgia was required to achieve much greater reductions than other states; (2) EPA's failure to provide sufficient time to achieve reductions necessary to meet interim compliance deadlines set by EPA; and (3) EPA's failure to give Georgia credit for emissions reductions that will be achieved by nuclear units currently under construction.

The Power Plan will force closures of coal-fired power plants in Georgia and across the country, making states that had previously relied on coal provide inexpensive and reliable electricity to find alternative sources of energy. In Georgia, more than, 3,332 MW of coal-fired generation in Georgia has either retired or been announced for retirement since 2010 as a result of other EPA rules affecting the power sector, with an additional 700 MW of coal-fired generation scheduled for conversion to natural gas by 2016.⁷ The Power Plan will only accelerate these closures. Indeed, the U.S. Energy Information Administration ("US EIA") forecasts a decrease of more than 600 billion kilowatt-hours in coal generation nationwide by 2025 as a result of the plan.⁸

An independent analysis of EPA's proposed rule projected that it would cause a 12% increase in the price of electricity in Georgia, while the US EIA forecasts that average retail electricity

⁵ Georgia Environmental Protection Division comments on Proposed Rule (Dec. 1, 2014).

⁶ EPA issued a draft federal implementation plan along with its Power Plan.

⁷ Georgia Environmental Protection Division comments on Proposed Rule (Dec. 1, 2014).

⁸ U.S. Energy Information Administration, Analysis of the Proposed Clean Power Plan (June 15, 2015), available at <http://www.eia.gov/conference/2015/pdf/presentations/jones.pdf>.

prices will rise by 5% nationwide between 2020-2030.⁹ The US EIA expects this to decrease the nation's overall GDP by about 0.2% through 2040. Another independent analysis performed for rural electrical cooperatives projected nationwide non-cumulative average job losses of 882,000 based on a 10% increase in energy prices over the 2020 to 2040 period.¹⁰

Important Caveat

News reports suggest that EPA made major changes to the proposed version of the rule. These changes appear to address at least some of Georgia's concerns. For example, it is being reported that US EPA has reduced the differences between the states' respective goals, extended the initial compliance period by two years from 2020 to 2022, and, critically, changed its treatment of nuclear generating capacity that is presently under construction. While these changes are unlikely to blunt major criticisms of the rule and this administration's climate-related policies, they may be very important to Georgia and we need to understand them before commenting.

Legal Challenges

The sweeping and controversial nature of the EPA Power Plan cannot be overstated. EPA has taken an obscure provision of the Clean Air Act and applied it in a novel way that Congress did not intend. The end result will be to fundamentally reshape electrical generation in the United States.

Many experts question the legality of EPA's Power Plan. They question US EPA's authority to regulate CO₂ emissions from power plants that are already regulated under another provision of the Clean Air Act, US EPA's authority to establish enforceable emission targets under Section 111(d), and US EPA's reliance on "outside the fence" control measures as the "best system of emission reduction," among other things.

As many as half of the states in the Union—25 states—are expected to challenge the Power Plan in court. 15 states have already done so. Given real concerns about the legality of the Clean Power Plan, the Regional Business Coalition calls upon EPA to stay all deadlines and suspend implementation at least until its legality can be tested in court.

⁹ NERA Economic Consulting, Potential Energy Impacts of the EPA Proposed Clean Power Plan, October 2014, available at: http://www.americaspower.org/sites/default/files/NERA_CPP%20Report_Final_Oct%202014.pdf; U.S. Energy Information Administration, Analysis of the Proposed Clean Power Plan (June 15, 2015), available at <http://www.eia.gov/conference/2015/pdf/presentations/jones.pdf>.

¹⁰ National Rural Electric Cooperative Association, Affordable Electricity: Rural America's Economic Lifeline (July 27, 2015), available at <http://www.nreca.coop/wp-content/uploads/2015/07/Affordable-Electricity-Rural-Americas-Economic-Lifeline.pdf>