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Cindy Lash
Principal Research
Analyst
785-296-3181
Cindy.Lash@kldr.ks.gov

Energy and Utilities

I-1 Clean Power Plan

On August 3, 2015, President Obama and the U.S. Environmental Protection Agency (EPA) announced the Clean Power Plan (CPP), a federal rule that regulates reductions in carbon pollution from power plants in order to address climate change issues the President and the EPA believe are caused by carbon pollution. The ultimate goal of the CPP is to reduce U.S. carbon dioxide emissions by 32 percent from 2005 levels by 2030.

The CPP consists of establishing state-specific emission goals for the states to follow in developing plans to reduce greenhouse gas emissions from existing fossil fuel-fired electric generating units. The goals are expressed two ways, rate-based and mass-based, either of which the state can use in its plan. Depending on which way a state chooses to measure its goal, states can then develop and implement customized plans that ensure the power plants in the state meet the statewide goals. Emission trading is allowed under the federal rule.

The first interim compliance period for the rule begins in 2022, by which time the states should have a plan in place. Each state's plan must be submitted in 2016, but the EPA can approve a two-year extension. The final goals for each state under the CPP should be met by 2030. The EPA has determined the "starting point" for each state, and included in the CPP are the rate or mass of carbon dioxide emissions for each state in 2012, as calculated by the EPA using their own mathematical formulas.

Clean Power Plan—Kansas

For Kansas, the 2012 carbon dioxide rate has been measured as 2,319 lbs/Net MWh. If Kansas chooses a rate-based goal, the goal for the interim period between the years of 2022 and 2029 would be 1,519 lbs/Net MWh, with a final goal in 2030 of 1,293 lbs/Net MWh. If Kansas chooses a mass-based goal, the 2012 amount is measured to be 34,353,105 short tons of carbon dioxide emissions. The state would need to meet a goal of either 24,859,333 or 25,120,015 short tons (depending on which mass-based goal measurement is chosen) during the interim period, with a final goal of 21,990,826 or 22,220,822 short tons in 2030.

The 2015 Legislature passed HB 2233, which established the procedure for developing and submitting a state plan to the EPA to comply with

the CPP. The bill authorized the Secretary of Health and Environment (Secretary) to develop and submit a plan to the EPA for compliance with the requirements of the CPP. The Secretary and the Kansas Corporation Commission (KCC) were required to enter into a memorandum of understanding concerning implementation of the requirements and responsibilities under state law. Additionally, the bill established the CPP Implementation Study Committee, which consists of 11 members of the Legislature.

The Secretary and the KCC entered into a memorandum of understanding in early summer 2015. The Committee met late summer 2015 to study the CPP and how the Kansas Department of Health and Environment and the KCC have progressed with discussions toward developing a state plan for Kansas.

Clean Power Plan—Litigation

Several petitions have been filed challenging the legality of the CPP. Under the Clean Air Act, challengers have 60 days from the date of publication of the final rule to file a petition for review in the D.C. Circuit Court of Appeals. The deadline is December 22, 2015, as the final rule was published on October 23, 2015. The following is a review of filings as of November 17, 2015.

West Virginia, in conjunction with 23 other states (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), filed a petition for review arguing the final rule is in excess of the EPA's statutory authority; goes beyond the bounds set by the *U.S. Constitution*; and otherwise is arbitrary, capricious, and an abuse of discretion and not in accordance with law.

The 24 state group also filed a motion for a stay (which would halt the law from going into effect), pending a decision of the D.C. Circuit Court of Appeals. In addition, Oklahoma, North Dakota, and Mississippi each filed separate petitions for review and stays opposing the CPP.

A number of utilities and power industry players also have filed challenges to the CPP, including a coalition of 15 trade associations led by the U.S. Chamber of Commerce; a coalition of 3 coal industry groups; and a coalition of 38 power companies, utility industries, and labor groups.

Challenges to the “new source rule” also have begun. The new source rule mandates new and modified sources of carbon emissions must be regulated before or at the same time as existing sources through the CPP. North Dakota was the first state to challenge this rule. As of November 3, 2015, West Virginia, along with 23 other states (Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, Wisconsin, and Wyoming), filed a petition asking the D.C. Circuit Court of Appeals to strike down the “new source rule.”

On the other side of the litigation, the EPA has found several allies. Eighteen states (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, and six local governments (New York City, Philadelphia, Chicago, Boulder [Colorado], South Miami, and Broward County [Florida]) have filed as intervenors in support of the EPA in the CPP litigation. In addition, a group of five power companies have filed a motion to intervene, as well as a separate motion by NextEra Energy.

The D.C. Circuit Court has consolidated all of the various filings into one proceeding, *West Virginia v. EPA*, D.C. Cir., No. 15-1363. Briefing on the motion to stay will conclude December 23, 2015. A decision on the stay is expected in early 2016. Following the decision on the stay, the Court will hear oral arguments on the petition for review. The final decision on the petition is expected late 2016 or early 2017.

Regional Greenhouse Gas Initiative

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative effort among nine Northeastern and Mid-Atlantic states to reduce carbon dioxide emissions through a coordinated cap and trade program. RGGI is administered and implemented by a non-profit corporation, RGGI, Inc. The nine states currently participating are Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. RGGI officially organized in 2003, but the first compliance period did not begin until January 1, 2009. RGGI participants adopted a Model Rule to guide their actions, namely, to set limits on in-state emissions, issue carbon allowances, and establish state participation for regional carbon allowance auctions. The program uses three-year compliance periods and establishes overall emissions budgets for each period; the third compliance period began January 1, 2015. RGGI distributes state allowances through quarterly auctions where bidders may submit multiple confidential bids for a specific quantity of allowances at a specific price. Proceeds from the auctions are then distributed among the states by RGGI, Inc. As of September 2015, cumulative auction proceeds were more than \$2 billion. Twenty-five percent of proceeds must be reinvested into consumer benefit programs such as energy efficiency, renewable energy, and direct bill assistance, but in practice, states reinvest virtually all of their proceeds. Power sector carbon emissions in participating states have declined 40 percent since 2005. Emissions were capped at 88.7 million short tons in 2015. The cap will decline 2.5 percent annually until 2020.

For more information, please contact:

Cindy Lash, Principal Research Analyst
Cindy.Lash@klrd.ks.gov

Erica Haas, Principal Research Analyst
Erica.Haas@klrd.ks.gov

Heather O'Hara, Principal Research Analyst
Heather.OHara@klrd.ks.gov

Natalie Nelson, Research Analyst
Natalie.Nelson@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824