

Report of the Clean Power Plan Implementation Study Committee to the 2016 Kansas Legislature

CHAIRPERSON: Representative Dennis Hedke

VICE-CHAIRPERSON: Senator Robert Olson

OTHER MEMBERS: Senators Marci Francisco, Forrest Knox, Mike Petersen, and Caryn Tyson; Representatives Tony Barton, Ken Corbet, Annie Kuether, Les Mason, and Randy Powell

CHARGE

The Clean Power Plan Implementation Study Committee shall:

- Hold informational hearings; and
- Receive updates from the Kansas Department of Health and Environment, the Kansas Corporation Commission, and the Attorney General about the implications of the adoption of a state plan pursuant to docket EPA-HQ-OAR-2013-0602 (the federal Clean Power Plan) concerning the impact to:
 - Electric ratepayers;
 - Electric utilities;
 - The reliability of the electric grid in Kansas; and
 - The overall sovereignty of the State.

Clean Power Plan Implementation Study Committee

REPORT

Conclusions and Recommendations

The Committee makes no conclusions or recommendations.

Proposed Legislation: None.

BACKGROUND

The 2015 Legislature passed HB 2233, which established the procedure for developing and submitting a state plan (Plan) to the U.S. Environmental Protection Agency (EPA) to comply with the proposed federal Clean Power Plan (CPP) rule. The bill created the Clean Power Plan Implementation Study Committee (Committee), which was directed to hold informational hearings and receive updates from the Kansas Department of Health and Environment (KDHE), Kansas Corporation Commission (KCC), and the Attorney General about the implications of the adoption of a Plan for the CPP. Members appointed to the Committee will serve a term from July 1, 2015 to June 30, 2017.

The Committee was authorized to meet one day.

COMMITTEE ACTIVITIES

The Committee met on October 1, 2015, in the Statehouse. The Committee first reviewed the specifics of HB 2233.

Office of the Attorney General

The Chief Deputy Attorney General provided an update on the legal status of the CPP rule. On

August 1, 2014, Kansas and 11 other states filed a Petition for Review in the U.S. Court of Appeals for the D.C. Circuit, the case for which was captioned *State of West Virginia, et al., v. United States Environmental Protection Agency*, Case No. 14-1146. The 12 petitioning states also intervened in a private preemptory challenge to the CPP rule, which was *In re Murray Energy Corporation*, in the U.S. Court of Appeals for the D.C. Circuit, Case Nos. 14-1112 and 14-1151. The two cases were consolidated for briefing and oral argument. On June 5, 2015, the D.C. Circuit ruled against the petitioners on the ground that the CPP rule in its preliminary form could not be challenged until it became final.

After the CPP rule was announced on August 3, 2015, 11 of the 12 original states, plus four others, filed an Emergency Petition for Extraordinary Writ in the D.C. Circuit, asking for the CPP rule to be stayed. A panel of the D.C. Circuit denied the Petition on September 9, 2015. At the time of the Committee hearing, the Chief Deputy Attorney General stated Kansas is precluded from any additional legal challenges until the CPP rule is published in the *Federal Register*. The Chief Deputy Attorney General then reviewed the legal problems with the CPP rule, as identified by the Office of the Attorney General: the CPP rule unlawfully exceeds the authority of the EPA and contains multiple legal defects, each of which provides an independent basis to invalidate the rule in its entirety.

Kansas Department of Health and Environment (KDHE)

The Air Monitoring and Planning Chief and Environmental Program Administration Supervisor (Supervisor) for KDHE discussed the CPP rule in detail, discussing key dates, affected units in Kansas, changes from the proposed CPP rule to the final CPP rule, and the emissions reductions that Kansas will need to achieve by 2030. The Supervisor discussed the various state plan types that Kansas could choose from and the two compliance paths provided by the final CPP rule. The Supervisor also discussed what the path forward would be, including evaluating the impact of a more stringent goal; reviewing types of plans and their requirements; determining which approach is best for Kansas; reviewing options for dealing with stranded assets; developing a plan to meet the public process provisions; continuing coordination with the KCC, utilities, and stakeholders; and reviewing the Model Rule and Federal Plan and preparing comments to be submitted to the EPA.

The Supervisor provided an initial calendar of dates for the Committee, with a submission of an initial state plan with an extension request by September 2, 2016.

Kansas Corporation Commission (KCC)

The Director of the Utilities Division (Director), KCC, stated the agency staff is continuing to review the final rule. The KCC and KDHE staff have weekly calls to discuss the CPP rule and have bi-weekly calls involving the KCC, KDHE, and all stakeholders. The Director stated a general investigation would be opened soon after the Committee's meeting, to identify least-cost compliance options that maintain reliable electric service, be an open proceeding that affected parties may petition to intervene and submit comments, allow KDHE to participate per the terms of the Memorandum of Understanding signed by the two agencies, and encourage all affected non-jurisdictional utilities to intervene and participate.

The Director stated a request for proposal has been issued to engage a consulting firm with the necessary experience and modeling program to run

re-dispatch and power flow models. The Director then outlined the scope of work that was anticipated in order to accomplish the KCC's directives under HB 2233.

Southwest Power Pool (SPP)

The Senior Vice President for Governmental Affairs and Public Relations and the Vice President of Engineering for the Southwest Power Pool (SPP) provided the SPP's impact assessment of the proposed CPP rule. The SPP performed three assessments on the draft rule:

- **Reliability Impact Assessment:** assessed the impact of EPA's projected generator retirements on the transmission system and resource adequacy;
- **Regional Compliance Assessment:** evaluated changes to existing resources and resource plans needed to comply with the CPP rule under a regional compliance approach; and
- **State-by-State Compliance Assessment:** evaluated changes to existing resources and resource plans needed to comply with the CPP rule under a state-by-state compliance approach.

The SPP found after conducting these assessments that state-by-state compliance is more costly than regional compliance and is more disruptive than a regional approach to the reliability and economic benefit provided by SPP's markets. In addition, the SPP found that more new generation and transmission infrastructure likely is needed for state-by-state than for regional compliance.

The SPP representatives stated the SPP stands ready to assist in any way that it can to ensure a reliable, cost-effective approach to compliance with the proposed CPP rule. The SPP encourages states to begin coordination with the SPP early and often during the development of state plans.

National Perspective

A national perspective on the proposed CPP rule was presented by the Department Chair for Environment (Washington, D.C., office) and partner of Baker Botts, LLP, an international law firm. The representative stated there are legal vulnerabilities regarding the proposed CPP rule, which include whether the EPA has the power to regulate under existing law, whether the proposed standards are more stringent than existing standards, whether the EPA can require renewable energy under the proposed CPP rule, whether there are limits to EPA's authority under the proposed rule, and other CPP-specific elements, including remaining useful life of power plants, state obligations, and potential issues of leakage.

Additional information on the national perspective was provided by the Vice President of State Policy and General Counsel, American Energy Alliance, who stated the proposed CPP rule picks winner and losers. The representative also provided information regarding the various ways states could comply with the proposed rule and the role of state legislatures in complying with the rule. The representative provided three scenarios to consider:

- Submit a fully-compliant initial state implementation plan by September 2016;
- Submit a partial or non-compliant initial state implementation plan by September 2016; or
- Refrain from submitting an initial state implementation plan by September 2016.

Industry Perspective – Investor-owned Utilities

The Executive Director for Environmental Services, Westar Energy, provided testimony on behalf of Westar Energy, Kansas City Power and Light (KCP&L), and Empire District, all of which are investor-owned utilities (IOUs). The Executive Director stated the IOUs were planning to approach the CPP rule on parallel paths. First, the IOUs are planning to challenge the rule in the courts, but at the same time, the IOUs will be analyzing the rule and working with KDHE to support the option of a state plan with the least

impact to the IOUs' customers. The Executive Director expressed the IOUs' support for a state plan, the development process of which allows for gathering data, getting regulatory input, and factoring in the results of litigation. In addition, the Executive Director added that the trading of allowances could be a valuable tool for reducing CPP customer impact, especially when done under a state plan. The Executive Director stated the SPP is reviewing and addressing potential reliability impacts and their current analyses support the value of a trading option, which could require legislative action to allow it in Kansas.

Industry Perspective — Cooperatives and Municipals

The Executive Manager, Environment, for the Sunflower Electric Power Corporation (Sunflower) provided the cooperative utilities' concerns about the proposed CPP rule. The Executive Manager stated cooperative customers access coal-based energy from Sunflower and Westar Energy assets. He said coal is the state's most economical fossil fuel and there is no emission control technology that can reduce carbon dioxide emissions on currently installed fossil fuel electricity generating units. The Executive Manager continued by stating renewable resources already saturate the western and central Kansas electricity grid and there is doubt that more can be added. Additionally, the Executive Manager stated the EPA directs that electricity generation be redispatched, such that existing natural gas combined cycle units will operate at a 75.0 percent capacity factor, and that this will reduce utilization of lower-cost Kansas coal-based units to less efficient capacity factors. The Executive Manager also stated the proposed CPP rule will strand investment and that Sunflower's transmission rate has doubled since 2008. Adding additional wind requires more transmission reliability upgrades, which adds more costs.

The Director of Environmental Services, Kansas City Board of Public Utilities (BPU), presented the concerns of the municipal electric utilities. In addition to BPU, some units at the Coffeyville and Winfield municipal power plants are affected. The Director stated the proposed CPP rule will be detrimental to BPU customers and lower income earners in the service area, causing

an estimated 31.0 percent electric rate increase without escalation cost. The Director stated the CPP will potentially cause stranded assets, including a \$250.0 million air pollution control project initiated prior to the proposed CPP rule to comply with Cross State Air Pollution Control Rule and Mercury and Air Toxics Rule. BPU expects a negative impact on reliability, and the Director added that BPU supports the comments filed on proposed CPP rule by KDHE and all other Kansas utilities. The Director focused on the potential impact to rate payers, stating that because BPU services some of the lowest income earners in the state, the rate payers in the area would be

some of the most affected by the increased rates. The Director stated BPU supports KDHE in developing a state plan in lieu of a federal plan and transferability of credits may need to be codified in statute. BPU believes, the Director stated, that submitting a state plan provides the most economic and viable path to meet the proposed CPP rule.

CONCLUSIONS AND RECOMMENDATIONS

Following its review, the Committee makes no conclusions or recommendations.