



**National Rural Electric
Cooperative Association**
A "Renewable Energy" Cooperative

FAST FACTS

Support the Ratepayer Protection Act

Issue: EPA's proposed "Clean Power Plan" will fundamentally change how electricity is generated, distributed, and consumed in the United States. The plan proposes significant reductions in carbon dioxide (CO₂) emissions from existing power plants, and is based on section 111(d) of the Clean Air Act (a provision which has only rarely been used since the 1990 Clean Air Act Amendments were adopted a generation ago).

Electric cooperatives and others are deeply concerned that EPA is no longer just regulating emissions from a power plant (staying "inside the fence"). Instead, EPA has developed a novel, complex scheme that will require reductions achieved by displacing existing coal-based generation sources with lower CO₂ emitting alternatives. By relying on activities outside the power plant itself ("beyond the fence"), EPA is undertaking an approach that has never been used by the Agency. Likewise, the courts have never been presented with a case to determine if EPA's unprecedented "beyond the fence" approach is lawful under the Clean Air Act.

Co-ops are particularly concerned about this plan because it will result in the premature closing of existing power plants, even relatively new plants and those with significant debt remaining on them. In the case of co-ops, the consumer-owners will be left holding the bag for that debt, essentially being forced to pay twice for their electricity. This "stranded debt" is a paramount concern of electric cooperatives and is an absurd outcome from this over-reaching regulation.

While EPA's plan has a final deadline of 2030, the vast majority of the reductions (up to 90% in some cases) must be achieved by 2020, leaving precious little time for utilities to make the adjustments necessary. Co-ops will be forced to make irrevocable decisions in the next several years due to this impending "cliff."

Because of the unprecedented nature of the Clean Power Plan, and the fact that co-ops will be forced to make irrevocable billion-dollar decisions in the next few years, it is appropriate to provide a "safe harbor" period while the courts evaluate the plan and determine whether it complies with the Clean Air Act.

Status: NRECA and electric cooperatives have joined governors, regulators, electric reliability organizations, and others in filing extensive comments raising numerous concerns with the proposal. Our concerns include fundamental questions about the legality of the rule, the challenges co-ops and others will face implementing the rule, the increased cost of electricity that will result from the rule, and the significant risks to electric reliability. Even so, EPA plans

to finalize the rule this summer and start the clock on deadlines for states to submit comprehensive plans, some of which will require the state's legislature to review the plan before it can be forwarded to EPA for its approval.

Litigation has already begun on this rule, even though it is not yet a final rule. Additional lawsuits are expected when the proposal is finalized in the summer of 2015 (practically every major Clean Air regulation has undergone judicial review in recent decades). That litigation is likely to take several years before co-ops and other utilities have any degree of certainty over how the courts will view the Clean Power Plan.

To address the long-term uncertainty associated with the rule, House Energy and Power Subcommittee Chairman Ed Whitfield (R-KY) has introduced the **Ratepayer Protection Act of 2015**. The bill will extend the rule's compliance dates until judicial review is completed. That includes delaying the dates for submission of state plans. The bill also provides that no state shall be required to implement a state or federal plan that the state's governor, in consultation with other relevant state officials, determines would have a significant adverse effect on (i) retail, commercial, or industrial ratepayers; or (ii) the reliability of the state's electricity system.

NRECA Position: Providing a legislative "safe harbor period" while the courts review the legal challenges to the rule will ensure that electric consumers are held harmless and electric cooperatives are not forced to make irrevocable decisions while the uncertainty of the legal process unfolds. Federal Courts can provide a "stay" of a regulation while it undergoes judicial review – the Ratepayer Protection Act provides the same safe harbor that a judicial "stay" would provide. Given the significant potential stranded debt that will result from the EPA rule, a safe harbor is an appropriate way to protect against such harmful results.

Urge your delegation to co-sponsor and support the Ratepayer Protection Plan to protect electric co-operative members from the uncertainty of the Clean Power Plan while the legal challenges work their way through the courts.

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