

Federal Efforts to Address Climate Change

- Public power utilities are reducing their greenhouse gas (GHG) emissions through a variety of means, including increased use of renewable energy resources, the development of new nuclear power, the addition of distributed energy resources and storage, the adoption of energy efficiency programs, and the promotion of transportation electrification.
- The American Public Power Association (APPA) supports congressional efforts to address climate change through a statutory framework that provides electric utilities with regulatory certainty for the clean energy transition while keeping electricity affordable and reliable for all customers.
- Congress should continue to fund federal research, development, and deployment of clean energy technologies and infrastructure that increases the resilience of the grid, reduces emissions, and helps keep electricity affordable.
- The Environmental Protection Agency's (EPA) new proposed rules to reduce GHG emissions from new and existing power plants must be cost-effective, practically achievable, and incorporate future market trends.

Background

Following the U.S. Supreme Court's landmark decision in *Massachusetts v. Environmental Protection Agency* in 2007, which held that EPA has the authority to regulate tailpipe emissions of GHGs under the Clean Air Act (CAA) because GHGs are pollutants that potentially "endanger" public health and welfare, Congress and EPA have sought to address climate change through legislation and regulations. In 2009, the House of Representatives passed the American Clean Energy and Security Act of 2009 by a vote of 219-212. The legislation would have established an economy-wide GHG cap-and-trade system. The Senate did not consider the House bill; nor did it consider its own comprehensive climate bill due to the lack of sufficient support among senators.

With Congress failing to enact climate change legislation in 2010, the Obama administration's EPA issued proposed New Source Performance Standards for new fossil fuel-fired power plants in 2012. Just over three years later, in August 2015, EPA issued final rules to regulate carbon dioxide (CO₂) emissions from new power plants and existing power plants ("Clean Power Plan" or CPP). The CPP set final emission guidelines in the form of nationally uniform CO₂ emission performance rates for coal-fired and natural gas-fired power plants. It also set CO₂ emissions-reduction goals for each state and allowed for emissions reductions through energy efficiency upgrades at power plants and fuel switching from coal to natural gas or renewables.

In October 2015, the CPP was challenged in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). The case was subsequently dismissed in September 2019, with the court noting that challenges to the rule were moot due to the repeal of the CPP and replacement of the rule with the Affordable Clean Energy (ACE) rule.

Administrative Action

In June 2019, the Trump administration's EPA issued the final ACE rule, which repealed the CPP, promulgated new emissions guidelines for regulating CO₂ emissions from existing coal-fired power plants, and established new implementing regulations governing the submission and review of state plans and future guidelines. In September 2019, the ACE rule was challenged in the D.C. Circuit, where the court subsequently vacated and remanded the rule back to EPA.

That decision was then appealed to the U.S. Supreme Court in *West Virginia v. EPA et al.* (No. 20–1530). In June 2022, the U.S. Supreme Court reversed the lower court ruling. In a 6 to 3 decision, the court held that EPA does not have the authority to regulate existing sources under section 111(d) outside of the fence line. The court said EPA could not rely on generation shifting to create emission caps that fossil fuel-fired units cannot otherwise meet. Electric generating units (EGUs) must have an opportunity to comply without reducing capacity factors, switching to non-emitting resources, or shutting down. The court found that EPA's view of its authority is "unprecedented." It rejected EPA's expansion of its power to include issues reserved for Congress. The majority opinion said that type of regulation, which would affect larger economic forces beyond the fence lines of individual power plants, is not permitted under section 111(d) of the CAA. The court reversed and remanded the case to the D.C. Circuit.

The U.S. Supreme Court's decision narrows the scope of EPA's rulemaking authority for future section 111(d) rulemakings. EPA cannot use generation shifting or cap-and-trade programs to set the best system of emissions reduction for section 111(d) rules, and EPA must look to measures that existing fossil fuel-fired EGUs can implement at the source to reduce GHG emissions. However, questions remain, despite the decision's constraints on EPA authority, on whether states implementing the future EPA emission guidelines can still adopt market-based or flexible compliance mechanisms to satisfy EPA's guidelines.

EPA will soon issue proposed rules to address GHG emissions from the power sector. Notwithstanding the U.S. Supreme Court's decision in *West Virginia*, the agency still plans to develop a new set of emission guidelines for states to follow in submitting state plans to establish and implement performance standards for GHG emissions from existing fossil fuel-fired EGUs. A new proposed rule is expected in the spring of 2023.

Congressional Action

In the 117th Congress, climate issues were a key legislative focus of congressional Democrats. House Energy & Commerce Committee Democrats introduced a revised version of the Climate Leadership and Environmental Action for our Nation's (CLEAN) Future Act (H.R. 1512). The legislation would have created a clean energy standard that would have required retail electric suppliers to obtain 100 percent of their electricity from clean energy sources by 2035. It also included a host of provisions on transmission, electrification of the transportation sector, grid modernization, distributed energy resources, and hydropower, among others.

The CLEAN Future Act was the basis for a subsequent effort by House and Senate Democrats to create the Clean Electricity Performance Program (CEPP) to accelerate the reduction of GHG emissions from electric utilities by requiring increasing amounts of clean electricity to achieve a goal of 80 percent clean electricity by 2030. The CEPP would have amended the Federal Power Act to require electric utilities to increase their percentage of clean electricity annually between 2023 and 2030. The Department of Energy (DOE) would have administered the CEPP and issued grants to electric utilities meeting the annual clean energy compliance obligation for investments in clean energy infrastructure, reducing electricity rates, or other activities, such as energy efficiency or electrification, that further reduce GHG emissions. Electric utilities failing to meet the targets in the CEPP would have been subject to financial penalties.

The CEPP was not considered in the Senate due to concerns about the aggressive timetable for achieving annual clean energy goals and the impact of penalties for failure to meet such goals on electric rates. Subsequently, the Senate took a different approach and sought to expand existing energy tax credits and create new ones with the purpose of promoting clean energy technologies to reduce emissions to address climate change. The Inflation Reduction Act (IRA)(P.L. 117-169), which was signed into law in August 2022, also for the first time made these credits available to public power utilities, allowing them to claim these credits as refundable direct payment tax credits.

In addition, in November 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA)(P.L. 117-58). The law provides much needed federal funding for a host of programs to promote clean energy, energy efficiency, grid resilience, and electrification of the transportation sector. Various federal agencies, including DOE and the Department of Transportation, are now implementing the programs established or expanded in the law. APPA believes many of these programs will help public power utilities further reduce their GHG emissions or facilitate their ability to reduce emissions from other sectors, such as transportation.

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The American Public Power Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government and protect the interests of the more than 49 million people that public power utilities serve and the 96,000 people they employ.