

Federal Efforts to Address Climate Change

Summary

Over the last decade, Congress and the Environmental Protection Agency (EPA) have sought to address climate change through legislation and regulations. Congressional efforts to move climate legislation failed in 2010 with the Senate's decision to not take up a bill due to a lack of support in the chamber. Following a 2007 U.S. Supreme Court decision holding that greenhouse gases (GHGs) are pollutants under the Clean Air Act (CAA) and that EPA has the authority to regulate them from tailpipe emissions, the agency has undertaken several rulemakings to regulate carbon dioxide (CO₂) emissions from power plants. In 2015, the agency issued the Clean Power Plan (CPP), which sought to reduce emissions from coal and natural gas power plants under section 111(d) of the CAA. In 2019, under the direction of President Trump, the agency repealed the CPP and replaced it with new emissions guidelines to regulate CO₂ emissions from existing coal-fired power plants, entitled the Affordable Clean Energy (ACE) rule.

Congressional interest in addressing climate change continues to increase. Dozens of hearings have been held on the issue in the House of Representatives, draft comprehensive climate change legislation was released by House Energy & Commerce Committee Democrats in January 2020, and the House Select Committee on the Climate Crisis recently released its report to Congress on how to address the issue. Multiple bills have been approved by the House Energy & Commerce and Senate Energy & Natural Resources Committees that would promote energy policies would reduce GHG emissions. Further congressional activity on climate issues are expected this year.

Public power utilities recognize the threat climate change poses. They are reducing their GHG emissions through a variety of means, including increased use of renewable energy resources, development of new nuclear power, addition of distributed energy resources and storage, and adoption of energy efficiency programs. Many are also actively working in their communities to promote the electrification of the transportation sector, including deploying charging infrastructure, offering rebates for electric vehicles, and developing special rate structures to incent

off-peak charging. The American Public Power Association (APPA) supports congressional action to address climate change on an economy-wide basis. Climate legislation must set clear targets and provide maximum flexibility to covered entities. It must also be crafted in a manner that allows the electric sector to reduce CO₂ emissions while maintaining a reliable grid and affordable retail rates.

Background

In 2007, the U.S. Supreme Court issued its decision in *Massachusetts v. Environmental Protection Agency*. In that case, the court held that EPA has the authority to regulate tailpipe emissions of GHGs under the CAA because GHGs are pollutants that potentially "endanger" public health and welfare. The court remanded the case back to the agency to either issue an endangerment finding for GHGs or provide a basis for not issuing an endangerment finding.¹ On remand, EPA issued an endangerment finding in December 2009, which states that GHGs from motor vehicles do endanger public health and welfare. The following year, the agency entered into a judicial settlement where it agreed to promulgate New Source Performance Standards (NSPS) for two existing source categories—power plants and refineries.

During this same time period, there were efforts in Congress to address climate change. In 2007, the Consolidated Appropriations Act, 2008, directed EPA to publish a rule requiring public reporting of GHG emissions from large sources. Less than two years later, the House of Representatives passed the American Clean Energy and Security Act of 2009 by a vote of 219-212. The legislation, commonly referred to as "Waxman-Markey," 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.

¹ An endangerment finding is a necessary precondition under the CAA to take regulatory action.

With Congress failing to enact climate change legislation in 2010, the Obama Administration's EPA issued a proposed NSPS for new fossil fuel-fired power plants in March 2012. Just over a year later, President Obama sent a memo to the Acting Administrator of EPA, directing him to issue proposed "standards, regulations, or guidelines, as appropriate, that address carbon pollution from modified, reconstructed, and existing power plants..." no later than June 1, 2014. On August 3, 2015, EPA released its final "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units" (called the "Clean Power Plan" or "Existing Plant Rule") as well as its final "Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Generating Units" (called the "New Plant Rule").²

The CPP set final emission guidelines in the form of nationally uniform CO₂ emission performance rates for two kinds of fossil fuel-fired electric generating units (EGUs)—steam generating units (1,305 pounds CO₂ per megawatt hour (lb CO₂/MWh)) and combustion turbines (771 lb CO₂/MWh). It finalized goals for each state between 771 and 1,305 lb CO₂/MWh based on the weighted average of existing fossil-fuel fired generation in the state and provided equivalent mass-based state goals in short tons of CO₂. It also allowed for emissions reductions through energy efficiency upgrades at power plants and fuel switching from coal to natural gas or renewables.

Following publication of the CPP in the *Federal Register* on October 23, 2015, more than 150 state and industry petitioners challenged the legality of the rule in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). On February 9, 2016, the U.S. Supreme Court granted a rare emergency stay of the CPP that put implementation of the rule on hold while the D.C. Circuit heard legal challenges to it. The D.C. Circuit held oral argument on the case, but never issued a decision. The case was subsequently dismissed on September 17, 2019, with the court noting challenges to the rule were moot due to the repeal of the CPP and replacement of the rule with the ACE rule.

² The agency also issued final Carbon Pollution Standards for Modified and Reconstructed Stationary Sources: Electric Generating Units. In addition, EPA proposed its Federal Plan Requirements for Greenhouse Gas Emissions from Electric Generating Units; Model Trading Rules; Amendments to Framework Regulations (Federal Plan and Model Trading Rules) on August 3 (this was done to assist states in developing implementation plans that relied on tradable compliance instruments).

Administrative Action

On March 28, 2017, President Trump signed an Executive Order (EO) entitled, "Promoting Energy Independence and Economic Growth." The EO directed the Administrator of EPA to review the CPP and determine whether the agency should "suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding..." the rules for new, modified, and reconstructed power plants, as well as existing power plants and the proposed Federal Plan and Model Trading Rule. The EO also ordered the Administrator to review and determine whether to "suspend, revise, or rescind, as appropriate with the law, the 'Legal Memorandum Accompanying the Clean Power Plan for Certain Issues.'"

On August 21, 2018, EPA proposed "a new rule to reduce greenhouse gas (GHG) emissions from existing coal-fired electric utility generating units and power plants across the country." Entitled the ACE rule, it "establishes emissions guidelines for states to use when developing plans to limit GHGs at their power plants." APPA filed comments with EPA on October 31, 2018, expressing support for the decision to replace the CPP with "emissions guidelines for GHG emissions from existing EGUs that adhere to the statutory requirements of CAA section 111(d)."

On June 19, 2019, the EPA Administrator issued the final ACE rule, which included three separate final actions:

1. The repeal of EPA's 2015 Clean Power Plan;
2. The promulgation of new emission guidelines for regulating CO₂ emissions from existing coal-fired EGUs; and
3. The promulgation of amendments to CAA section 111(d) implementing regulations governing the submission and review of state plans and future guidelines.

APPA did not support the CPP because it exceeded EPA's statutory authority under section 111(d). APPA supports the ACE rule, which allows for the continued operation of coal-fired power plants that make efficiency improvements at the electric generating unit. The rule also provides states with the flexibility to develop unit-specific performance standards that can account for local market and economic conditions. The final ACE rule took effect September 6, 2019. It is currently being challenged in the D.C. Circuit.

Congressional Activity

The House of Representatives has been active on climate issues in the 116th Congress. In January 2019, Speaker Nancy Pelosi (D-CA) reinstated the Select Committee on Climate Change, now called the Select Committee on the Climate Crisis. The select committee held numerous hearings and was tasked with reporting to the House in March 2020 on its recommendations

for addressing climate change. The House Energy & Commerce Committee has held multiple hearings focused on the impact of climate change and policies that could be implemented to reduce GHG emissions. On April 3, 2019, the committee approved H.R. 9, the Climate Action Now Act, introduced by Representative Kathy Castor (D-FL) “to ensure the United States honors its Paris Agreement commitments by prohibiting any funds from being used to withdraw, and requiring the President to develop and communicate a plan to meet [the U.S.’s] pollution reduction targets.” The full House approved the legislation on May 2, 2019, by a vote of 231 to 190. Senate consideration of H.R. 9 is unlikely.

On January 8, 2020, the Democratic leadership of the House Energy & Commerce Committee held a press conference to announce their outline for comprehensive climate legislation that would achieve a 100 percent “clean economy by 2050.” At the event, Democrats released a memo that described what their draft climate change legislation would address. On January 28, they released the text of the bill, entitled the Climate Leadership and Environmental Action for Our Nation’s (CLEAN) Future Act. The legislation would create a Clean Energy Standard (CES) that would require retail electric suppliers to obtain 100 percent of their electricity from clean energy sources by 2050. It also includes a host of provisions on transmission, electrification of the transportation sector, grid modernization, distributed energy resources, and hydropower, among others. The committee held several hearings on bill. Several provisions in the legislation (to promote energy policies that would reduce GHG emissions) were included in House Democrats’ broad infrastructure legislation, H.R. 2, the Moving Forward Act, which was approved by the House on July 1, 2020.

In June 2020, the House Select Committee on the Climate Crisis released its comprehensive report to Congress on how to address the climate crisis. The report, which was originally scheduled to be released in March, was postponed to June due to the COVID-19 pandemic. The report calls for Congress to reach 100 percent, net-zero emissions on an economy-wide basis in the U.S. by 2050. It also calls for “establishing ambitious interim targets to assess progress and reduce pollution in environmental justice communities” and achieving net-negative emissions during the second half of the century. For the electric sector, the report calls for the creation of a national CES to achieve net-zero emissions no later than 2040, ten years sooner than what would be required under the CLEAN Future Act. The report states the CES should consider the upstream emissions of all sources as part of an analysis of lifecycle GHG emissions. A second report from the Select Committee is expected later this year.

In the Senate, the Energy & Natural Resources Committee held three hearings in 2019 focused on climate change. The hearings examined GHG reductions that have occurred in

the electricity sector and what the industry can do to continue reducing emissions while keeping electricity affordable and reliable; how the U.S. can use its leadership in energy innovation to develop technologies to reduce GHG emissions across the globe; and the Department of Energy’s carbon capture, utilization, and storage (CCUS) programs and the role CCUS technologies could play in reducing CO₂ emissions. One hearing focused on S. 1201, the Enhancing Fossil Fuel Energy Carbon Technology Act. This legislation would establish “four research and development projects focused on coal and natural gas technology, carbon storage, carbon utilization, and carbon removal.” The committee approved the legislation on September 24, 2019.

In March 2020, the Senate Energy & Natural Resources Committee combined approximately 50 bills, including S. 1201, into a bipartisan energy package, S. 2657, the American Energy Innovation Act (AEIA). AEIA includes provisions that would promote much needed research and development for CCUS technologies. It also includes provisions to promote energy efficiency, energy storage, renewable resources, including hydropower and geothermal, and advanced nuclear technologies, all of which will be needed to reduce GHGs to address climate change. Unfortunately, the bill, which APPA supports, stalled on the Senate floor due to an impasse on an amendment on hydrofluorocarbons.

In addition, the Senate Environment & Public Works Committee held a legislative hearing in February 2019 to “examine the state of current technologies that reduce, capture, and use carbon dioxide” and on S. 383, the Utilizing Significant Emissions with Innovative Technologies (USE IT) Act. The bipartisan legislation, introduced by Chairman John Barrasso (R-WY), Ranking Member Tom Carper (D-DE), and 11 other senators, would amend the Clean Air Act to encourage capturing CO₂ emissions and converting the gas into a valuable commercial good, thus reducing emissions. The bill was approved by the committee without amendment on April 10, 2019. It was later attached to the fiscal year (FY) 2020 National Defense Authorization Act (NDAA) that was approved by the Senate on June 27, 2019. However, it was dropped from the final NDAA at the end of 2019 due to objections from the House that no hearings were held in that chamber on the legislation. The USE IT Act was added this year to the FY 2021 NDAA in the Senate. It is unclear if House Democrats will again object to it remaining in the FY 2021 NDAA bill, although a legislative hearing was held in February 2020 on its House companion, H.R. 1166.

American Public Power Association Position

Public power utilities are reducing their GHG emissions through a variety of means. Many are increasing their use of renewable energy resources, such as hydropower, wind, solar power, and geothermal. They are also working with their cus-

tomers to enable distributed energy resources, which can reduce the need for power from traditional fossil fuel-fired power plants. Public power utilities are involved in the construction of two new nuclear units at Plant Vogtle in Georgia, and are actively pursuing development of small modular reactors (SMRs). SMRs are small nuclear reactors that could generate up to 300 megawatts of power and be linked together to provide incremental power as load grows. Many public power utilities have implemented energy efficiency programs to help their customers reduce their power usage. Others are also actively working in their communities to promote the electrification of the transportation sector. Many of these efforts have been undertaken voluntarily rather than being required by state or federal law.

APPA supports congressional action to address climate change. The association believes climate legislation must be done on an economy-wide basis that set clear targets and provide maximum flexibility to covered entities. As Congress works on climate legislation, it should include policies that would reduce CO₂ emissions while keeping electricity affordable and reliable. Such policies include promoting hydropower development, nuclear power, distributed energy resources, electric vehicles, energy storage, and energy efficiency. Public power is ready to work with Congress as it develops climate legislation by providing input on how to do so in a way that keeps electricity affordable, reliable, and sustainable.

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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 to protect the interests of the more than 49 million people that public power utilities serve, and the 93,000 people they employ. Our association advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.