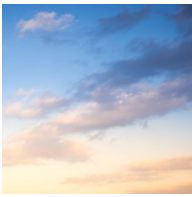


ISSUE BRIEF June 2021

Federal Efforts to Address Climate Change



Summary

For over a 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. In 2015, EPA issued rules to regulate carbon dioxide (CO₂) emissions from fossil fuel-fired power plants. In 2019, those rules were repealed and replaced under the direction of President Trump. In January 2021, EPA's power plant emissions rules were vacated and remanded and will likely be written by the agency, under the direction of the Biden Administration, to more aggressively reduce CO₂ emissions from fossil fuel-fired power plants. In addition, congressional interest in addressing climate change continues to increase with Congress widely expected to move legislation to promote clean energy technologies, among other climate policies.

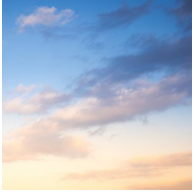
Public power utilities recognize the threat climate change poses. They are reducing their greenhouse gas (GHG) emissions through a variety of means, including increased use of renewable energy resources, the development of new nuclear power, the addition of distributed energy resources and storage, and the 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, realistic 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 Clean Air Act (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 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

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



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.

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 March 2012. Just over three years later, in August 2015, EPA issued a final rule to regulate CO₂ emissions from new power plants (“New Plant Rule”),² as well as a rule to regulate CO₂ emissions from existing power plants (called the “Clean Power Plan” or “Existing Plant Rule”).³ 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, 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). The D.C. Circuit held oral argument on the case, but never issued a decision. The case was subsequently dismissed in September 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 Affordable Clean Energy (ACE) rule.

Administrative Action

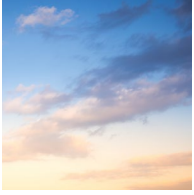
President Trump, in March 2017, signed an Executive Order (EO) entitled, “Promoting Energy Independence and Economic Growth.” The EO directed the Administrator of EPA to review the CPP and determine whether the agency should “suspend, revise, or rescind the guidance, or publish for notice and comment 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.’”

In June 2019, 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. Upon publication in the *Federal Register* in September 2019, numerous states and organizations challenged the ACE Rule in the D.C. Circuit. In January 2021, the court vacated and remanded the rule back to EPA, concluding that the agency had misconstrued the first step set forth in section 111(d) of the CAA by construing that the best system of emissions reduction could only take place at the power plant. The court said that “system” should be given its ordinary meaning, that the entire generation and delivery of electricity was a system, and that EPA had the flexibility to evaluate possible emission reductions based on the system, not actions that apply “at” or “to” an electric generating unit. Further, the court found “the ACE Rule’s amendment of the regulatory framework to slow the process for reduction of emissions is arbitrary and capricious.”

The Biden Administration has stated addressing the effects of climate change is a top priority. The President said he wants to decarbonize the electric sector by 2035 and has called for the creation of a federal clean energy standard (CES). On his first day in office, he rejoined the Paris Agreement and directed his Administration to reestablish an interim social cost of carbon “to ensure federal agencies account for the full costs of” GHG emissions. With the decision by the D.C. Circuit on the ACE rule, EPA will likely begin its efforts to rewrite the rule this year.

² Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Generating Units, 80 FR 64509.

³ Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units, 80 FR 64661.



Congressional Activity

Climate issues have been a key legislative focus of congressional Democrats in the 117th Congress. The House of Representatives thus far has built on the work it undertook in the 116th Congress and has been considering a host of policies to address the effects of climate change. House Energy & Commerce Committee Democrats began holding hearings focused on climate issues in February and in early March introduced a revised version of the Climate Leadership and Environmental Action for our Nation's (CLEAN) Future Act (H.R. 1512). The legislation would create a CES that would require retail electric suppliers to obtain 100 percent of their electricity from clean energy sources by 2035. It also includes a host of provisions on transmission, electrification of the transportation sector, grid modernization, distributed energy resources, and hydropower, among others.

The House and Senate are now in the process of drafting broad-based infrastructure legislation. President Biden recently reached an agreement with a bipartisan group of senators for a \$1 trillion infrastructure package. It will include provisions to promote clean energy, energy efficiency, resilience, and electrification of the transportation sector. House and Senate Democrats are also working on their “human infrastructure” bill under the budget reconciliation process. That legislation is very likely to include a host of tax provisions to extend and expand various energy-related tax credits that were included in the Growing Renewable Energy and Efficiency Now (GREEN) Act and Moving Forward Act in the last Congress (See APPA issue brief, “The Need for Direct Payment of Refundable Tax Credits for Public Power”).

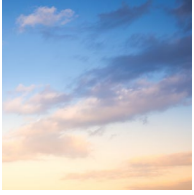
Senate Democrats have also been focused on climate issues. Majority Leader Chuck Schumer (D-NY) has said addressing climate change is one of his top priorities. The Environment & Public Works Committee held several hearings on the issue this year. The Energy & Natural Resources Committee held hearings focused on implementation of the Energy Policy Act of 2020, which included provisions to promote energy storage, energy efficiency, and advanced technologies that will help reduce CO₂ emissions, as well efforts by the electric sector to reduce its emissions. Senators Tina Smith (D-MN) and Ben Ray Lujan (D-NM) are leading efforts in the Senate to draft language to create a federal CES for inclusion in the Democrats’ human infrastructure package. The Smith-Lujan language would require electric utilities to get 80 percent of their electricity from clean energy resources by 2030 and would provide federal incentives to assist utilities in achieving that target. The details of their proposal are still being developed, but the budget resolution Democrats move is expected to include instructions to create a CES. It is unclear whether Democrats can draft language to create a federal CES or something that operates like a CES that complies with budget rules for measures moving via the budget reconciliation process.

APPA 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 customers 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 the development of small modular reactors (SMRs).⁴ 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 Congress needs to establish a statutory framework that provides electric utilities with regulatory certainty. Such legislation must be done on an economy-wide basis that sets realistic, clear targets and provides maxi-

⁴ 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.



imum 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 nuclear power, distributed energy resources, electric vehicles, energy storage, energy efficiency, and hydropower. Congress must also make significant investments in research, development, and demonstration of advanced technologies needed to reduce GHG emissions, including advanced nuclear, hydrogen, and carbon capture, storage, and utilization technologies. 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.