



# Clean Power Plan and Energy Efficiency Investments

Presented to:



Presentation by:

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# Overview

1. Clean Power Plan
2. Legal Challenges
3. EE Investment Opportunities



# Clean Power Plan

- Final Rule
  - Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule, 80 FR 64661 (Oct. 23, 2015).
- First time CO2 limits on U.S. fossil electric generation.
- Cooperative federalism model
  - EPA sets targets for states (32% average reductions from 2022-2030) in emissions guidelines rule.
  - States submit State Implementation Plans with measures to reach targets.





# Clean Power Plan

- Most consequential regulation of electric sector in decades.
- Forces sweeping restructuring of electric energy sector.
- Essentially a nation-wide **cap-and-trade** system trading allowances and reduction credits.
- Many states will adopt EPA model trading rules.
- **Billions \$\$\$** market value.





# Clean Power Plan - Litigation

- Supreme Court stays CPP rule on Feb. 9, 2016.
- D.C. Circuit will hear case *en banc* (all judges) on Sept 27.
- Litigation briefs filed and decision by Dec. 2016 (?).
- SCOTUS decision late 2017/early 2018 (?).
- Current CPP start date - SIPs by fall 2018, first compliance year 2022.

(ORDER LIST: 577 U.S.)

TUESDAY, FEBRUARY 9, 2016

ORDER IN PENDING CASE

15A773

WEST VIRGINIA, ET AL. V EPA, ET AL.

The application for a stay submitted to The Chief Justice and by him referred to the Court is granted. The Environmental Protection Agency's "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64,662 (October 23, 2015), is stayed pending disposition of the applicants' petitions for review in the United States Court of Appeals for the District of Columbia Circuit and disposition of the applicants' petition for a writ of certiorari, if such writ is sought. If a writ of certiorari is sought and the Court denies the petition, this order shall terminate automatically. If the Court grants the petition for a writ of certiorari, this order shall terminate when the Court enters its judgment.

Justice Ginsburg, Justice Breyer, Justice Sotomayor, and Justice Kagan would deny the application.



## CPP Rulemaking Status

- Not enforceable during stay, **but** . . .
- CEIP (e.g., disadvantaged EE) at OMB.
- Model trading rules possible this summer (revised or final uncertain).
- Some states working on SIPs; NACAA and others developing model rules.



## Potential Outcomes

- See Addendum for legal arguments.
- Courts likely to defer to agency in light of *Mass v. EPA* (CO<sub>2</sub> is pollutant).
- Adverse decision on fenceline issue could disqualify 111(d) as trading mechanism.
- Remand on one or more issues could create opportunity to improve approach.



# CPP – Investment Opportunities

## 4 CO2 Reduction Categories

- EE (energy efficiency)
- BE (beneficial electrification)
- FC (forest carbon)
- CH4 (methane destruction)

Only grid-tied reductions counted. *Policy Issue:* Should EPA take an integrated approach to energy-related emissions rather than electric sector only, where lock-in of inefficiencies could increase overall GHG emissions?



## EE in the CPP Final Rule

- EE removed from building blocks, but ...
- EE allowed for compliance:
  - *"(W)e are not finalizing the proposal to include avoided generation achieved through demand side EE as a component of the BSER. However, we note that most commenters also supported the use of demand-side EE for compliance whether or not it is used in determining the BSER, and we are allowing demand-side EE to be used for that purpose."* 80 FR 64730.
- EE qualifies for ERCs or allowance set-asides.
- EPA model rule sets template for State Plans.

States decide SIP approach and EE incentives, so engagement is key.



## Types of Qualifying EE

- EE installed 2013 or after, and still saving energy at 2022 CPP start date.
- Examples (possible):
  - *state and utility EE programs*
  - *project-based demand-side EE*
  - *state building codes*
  - *state appliance standards*
  - *conservation voltage reduction*
  - *industrial EE*



# Three Ways for State Implementation

- **Rate-based Approach**
  - Power plants not meeting CO<sub>2</sub> rates can buy Emission Rate Credits (ERCs) to comply.
  
- **Mass-based Approach**
  - States establish emissions cap and distribute/auction allowances; power plants buy allowances to match emissions.
  
- **State-Measures Approach**
  - States supplement a Mass-based approach with state laws implementing emissions-reduction measures through RPS, EE, and other obligations.



# 5% Allowance Set-aside for EE

## Annual Value = \$328 Million.

TABLE 2 TO SUBPART MMM OF PART 62—STATEWIDE RENEWABLE ENERGY SET-ASIDE (SHORT TONS)

State	Interim period			Final period
	Compliance period 1 2022–2024	Compliance period 2 2025–2027	Compliance period 3 2028–2029	Final compliance periods 2030–2031 and thereafter
Alabama	3,308,224	3,045,949	2,910,799	2,844,024
Arizona	1,759,462	1,618,597	1,545,311	1,508,538
Arkansas	1,801,634	1,647,676	1,562,687	1,516,132
California	2,675,005	2,504,042	2,436,844	2,420,506
Colorado	1,789,266	1,632,724	1,544,591	1,495,020
Connecticut	377,799	355,423	347,754	347,076
Delaware	257,418	248,155	239,214	235,591
Florida	5,959,024	5,537,734	5,336,809	5,254,735
Georgia	2,712,897	2,492,754	2,376,741	2,317,342
Idaho	80,776	76,141	74,653	74,643
Illinois	4,019,805	3,656,247	3,446,097	3,323,858
Indiana	4,600,539	4,185,017	3,945,079	3,805,692
Iowa	1,520,418	1,380,771	1,299,099	1,250,907
Kansas	1,338,186	1,214,789	1,142,405	1,099,541
Kentucky	3,837,868	3,484,943	3,278,345	3,156,306
Lands of the Fort Mojave Tribe	31,844	30,017	29,430	29,426
Lands of the Navajo Nation	1,322,470	1,199,978	1,127,887	1,085,029
Lands of the Uintah and Ouray Res- ervation	137,937	125,161	117,642	113,172
Louisiana	2,101,760	1,923,058	1,824,835	1,771,351
Maine	112,559	105,993	103,809	103,697
Maryland	872,368	792,124	745,141	717,381
Massachusetts	658,037	625,599	609,081	605,237
Michigan	2,842,713	2,594,678	2,455,344	2,377,203
Minnesota	1,355,158	1,243,429	1,173,839	1,133,918
Mississippi	1,447,034	1,339,534	1,287,811	1,265,217
Missouri	3,385,646	3,057,914	2,878,547	2,773,144
Montana	688,830	625,028	587,479	565,155
Nebraska	1,112,318	1,009,641	949,364	913,637
Nevada	753,827	703,632	682,631	676,179
New Hampshire	223,078	208,149	201,857	199,879
New Jersey	912,075	855,377	834,097	829,987
New Mexico	739,499	675,734	640,263	620,630
New York	1,774,674	1,646,638	1,587,097	1,562,871
North Carolina	3,048,792	2,787,466	2,642,825	2,563,312
North Dakota	1,272,659	1,154,781	1,085,405	1,044,162
Ohio	4,425,616	4,035,247	3,814,006	3,688,490
Oklahoma	2,378,891	2,183,251	2,078,869	2,024,410
Oregon	454,886	423,883	410,479	405,933
Pennsylvania	5,304,138	4,860,236	4,619,604	4,491,115
Rhode Island	190,582	179,647	176,134	176,111
South Carolina	1,551,276	1,416,842	1,341,748	1,299,948
South Dakota	211,559	193,120	182,771	176,974
Tennessee	1,705,915	1,553,959	1,467,161	1,417,420
Texas	11,080,665	10,186,403	9,717,567	9,479,442
Utah	1,423,990	1,299,099	1,228,643	1,188,910
Virginia	1,564,510	1,449,550	1,394,924	1,371,656
Washington	619,785	572,057	548,179	536,959
West Virginia	3,127,851	2,838,139	2,667,633	2,566,267
Wisconsin	1,675,283	1,528,566	1,445,897	1,399,349
Wyoming	1,926,425	1,748,391	1,643,786	1,581,721



## EE Monetization

1. Must be qualified project type (TBD).
2. Reductions from common practice baseline.
3. Evaluation, measurement and verification (EM&V) – see EPA guidance.
4. Third-party verification.
5. Marketing of resulting ERC or allowance.



# Clean Energy Incentive Program

- EPA provides matching allowances or ERCs for early action RE and certain EE
- Up to **300 million tons** for 2020-2021.
- Not yet finalized (at OMB review).
- Demand-side EE projects must be:
  - Implement after Sept. 6, 2018
  - in low-income communities and
  - will receive 2 credits for 1 MWh of avoided generation (wind and solar get 1 credit).



## Summary: EE Investment under the CPP

- Mass-based states: States allocate allowances or auction proceeds to EE, probably thru set-aside.
- Rate-based states: EE qualifies for ERCs to be sold to power plants.
- State-measures states: EE programs can be built into state law, and states can allocate allowances to EE projects.
- CEIP: States can incentivize early action EE investment in low-income communities through matching federal credits.



# Thank you. Questions?

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# Addendum: CPP Legal Arguments



# Clean Power Plan – Legal Arguments

## Standard of Review

- Industry: EPA undeserving of *Chevron* deference where it asserts “sweeping authority” over the energy sector and national economy, citing *UARG v. EPA* and *King v. Burwell* (Obama Care).
- EPA: EPA has special expertise and sticks to emissions regulation, so normal *Chevron* deference applies; and SCOTUS in *Mass v. EPA* ordered EPA to act.

## Generation Shifting Argument:

- Industry: The CPP forces restructuring of electric sector, which is outside EPA's Clean Air Act authority. EPA cannot force power plants to comply by reducing production or paying others to produce.
- EPA: CPP provides power plants flexibility to meet targets by investing in off-site reductions, but plants can meet targets internally if they choose. (But no off-site reductions off power grid).



# Clean Power Plan– Legal Arguments

## Fence line Argument

- Industry: Emissions standards must apply to individual facilities, not grid as a sector; industry strategy to confine BSER to internal generation efficiency improvements or end-of-stack emissions controls.
- EPA: Electricity is an integrated complex machine; emissions limitations apply to stationary sources when states issue individual permits not at the BSER level.

## Section 112 v. 111 Argument

- Industry: Two version of the 1990 Clean Air Act were passed; if a sector is regulated under 112 toxics program, EPA cannot regulate any other pollutants from that sector under 111. (“is not included on a list published under section [1]08(a) of this title or emitted from a source category which is regulated under section [1]12 of this title”)
- EPA: House and Senate bills simply replaced cross-reference to 112(b) which was re-written in 1990 amendments. Literal reading is EPA must regulate if not criteria pollutant, which is not plausible, therefore language is ambiguous and EPA chose interpretation that avoided industry's implausible result that power sector could never be regulated for harmful but non-toxic pollutants.



# Clean Power Plan– Legal Arguments

## Constitutional Argument

- Industry: EPA is commandeering state government by mandating emissions reductions that can only be accomplished by changing state energy policy to shutter coal plants and build gas and renewables.
- EPA: Under cooperative federalism, states can participate or opt out leaving EPA to regulate.

## Technical Argument

- Industry: Individual states raises issues about achievability of targets and EPA's cost-benefit analysis.
- EPA: The extensive record and supporting analysis is reasoned decision making deserving deference.



# Clean Power Plan– Legal Arguments

## FERC Authority Argument

- Industry: EPA invading FERC authority over power markets.
- EPA: CPP only regulates emissions, not electricity sales or rates.

## Industry Arguments - Long Shots

- Industry: Cannot rely on vehicle endangerment finding; CO2 should be NAAQS; no evidence of global warming.
- EPA: Science is well established.