



# INDEPENDENCE INSTITUTE ISSUE BACKGROUNDER

## COLORADO AND THE “CLEAN POWER PLAN”: EXPENSIVE, INEFFECTIVE, ILLEGAL, AND IMPOSSIBLE

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### SUMMARY

As part of the Obama administration’s agenda to address global warming, the Environmental Protection Agency (EPA) introduced new regulations with the purpose of reducing carbon emissions. Titled the “Clean Power Plan,” the controversial rules:

- Will require a new regulatory regime, and holistically seeks to remake the nation’s energy policy;
- Will incur massive costs;
- Will greatly affect energy reliability across the country;
- Is likely illegal; and
- Won’t have any measurable impact on global CO<sub>2</sub> emissions.

### WHAT IS THE CLEAN POWER PLAN?

The EPA drafted the Clean Power Plan (CPP), under the Clean Air Act’s Section 111(d), with a goal to cut carbon emissions from the power sector. It mandates states reach specific interim CO<sub>2</sub> targets between 2020 and 2029, and final targets by 2030. The rule relies on a formula of extremely aggressive “building blocks” to determine these targets. The “building blocks” come in four parts:

1. **Make fossil fuel plants more efficient:** 6 percent heat rate improvement for coal-fired electric generating units (EGUs)
2. **Use more low carbon-emitting power sources:** increase the capacity utilization of natural gas combined cycle plants to 70 percent, as opposed to the current national average of approximately 45 percent capacity utilization.
3. **Use more zero- and low-emitting power sources:** Expand renewable generating capacity, and use renewable sources such as solar and wind. Dispatch to new clean generation, including new nuclear generation under construction, moderate deployment of new

renewable generation, and continued use of existing nuclear generation.

4. **Use electricity more efficiently by reducing customer demand:** Increase demand-side energy efficiency by 1.5 percent annually.<sup>1</sup>

### WHAT DOES THE CPP MEAN FOR THE NATION? SIGNIFICANT COSTS

According to Energy Ventures Analysis, an energy consulting firm, the Clean Power Plan’s costs to consumers and the economy will be significant. In a November 2014 report, it concludes:

- Compared to 2012, the new EPA-driven regulations will cost the U.S. approximately \$284 billion more each year in power and gas costs for residential, commercial, and industrial customers, beginning in 2020.
- The total annual cost of power and gas will grow to more than \$750 billion by 2020.
- The average annual U.S. household’s combined electricity and gas bills will increase by \$680 in 2020.<sup>2</sup>

### RELIABILITY OF ENERGY AT RISK

The EPA claims that the proposed rule will not have an impact on reliability, but the nonpartisan non-profit North American Reliability Corporation says otherwise. In its November 2014 “Initial Reliability Review,” NERC writes:

A large penetration of VERs [Variable Energy Resources like wind] will also require maintaining a sufficient amount of reactive support and ramping capability. More frequent ramping needed to provide this capability could increase cycling on conventional generation. This could contribute to increased maintenance hours or higher forced outage rates... Increased reliance on VERs can significantly impact reliability operations.<sup>3</sup>

## WHAT DOES THE CPP MEAN FOR INDIVIDUAL STATES AND COLORADO?

### LAWSUITS

Although it is up to the individual states to determine how to implement the Clean Power Plan, it is still a blatant usurpation of states' authority. Through 111(d), the EPA will be challenging the authority states have had for decades over their electric power, resource portfolio, and grid. Lawsuits will result from the unconstitutional, coercive power grab.

Noted liberal Harvard law professor Laurence Tribe stated in his recent testimony before Congress,

"[The] EPA is attempting an unconstitutional trifecta: usurping the prerogatives of the States, Congress and the Federal Courts - all at once. Burning the Constitution should not become part of our national energy policy."<sup>4</sup>

### COLORADO GETS NO CREDIT FOR EARLIER INVESTMENT

The CPP actually punishes Coloradans for early aggressive action to address global warming. In comments submitted to the EPA, three state agencies complain:

...[I]t appears that the EPA now proposes to require states that have realized early emission reductions to do more than states that have not. In other words, for states that have done comparatively less, it appears that EPA is expecting them to do less. This raises equity issues, including cost and reliability concerns.<sup>5</sup>

The agencies argue that, "Colorado's IOU [Investor Owned Utilities] ratepayers have already invested more than \$4 billion for cleaner electric energy," more than \$2,500 per ratepayer, for which the EPA gives the state zero credit.<sup>6</sup>

### ADDITIONAL COST TO COLORADO RATEPAYERS

Essentially, Coloradans will be double paying for "clean energy." As a result of the EPA regulations, Coloradans should expect substantial increase in expenses, as follows:<sup>7</sup>

- Average annual Colorado household electricity and gas bills to increase by more than \$610 in 2020
- Total annual cost of power and gas to grow to over \$11 billion in 2020

### COMPLIANCE IMPOSSIBLE

Much of the reduction goals are front-loaded, meaning they

must be achieved well in advance of 2030. In an interview with *Denver Post* editorial page editor Vincent Carroll, CPP supporter Dr. Larry Wolk, a pediatrician and head of the Colorado Department of Public Health and Environment (CDPHE), admitted, "I think it's nearly impossible for us to meet the interim standard."<sup>8</sup>

The challenge results from two completely unrealistic deadlines:

- State plans need to be finalized by June 30, 2016, even though the official, final ruling by the EPA will not happen until "mid-summer" 2015. This is an exponentially tighter compliance timeframe than is provided under other Clean Air Act programs.
- The EPA is demanding a reduction of 32 percent from 2012 baseline emissions by 2020 and 35 percent by 2030.<sup>9</sup>

The problems created by EPA's Clean Power Plan don't stop with reliability, cost, and fanciful deadlines. The way CDPHE wants to comply is likely illegal. CDPHE seeks regulatory powers that Colorado law has not conferred upon the agency.

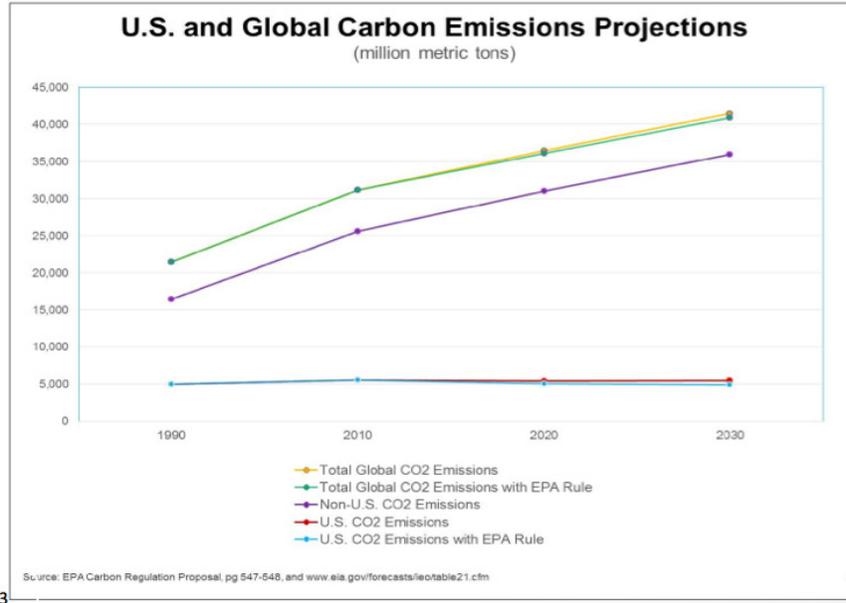
Specifically, Dr. Wolk claims CDPHE has the authority to "give marching orders to the all utilities in the state," as the "conduit for EPA" because, the argument goes, federal administrative regulations render state law irrelevant. This is wrong legally and dangerous practically. Raymond Gifford, attorney and former Chairman of the Colorado PUC, also spoke with Carroll and questioned the legality:

"Does the CDPHE have the authority to order the dispatch of gas turbines? ...Does it have the authority to create and impose a renewable energy standard? Does it have the authority to impose and then audit an energy efficiency standard? If you ask the questions that way, I think you have to say, 'Absolutely not.'"<sup>10</sup>

### BUT IT WILL BENEFIT THE ENVIRONMENT, RIGHT?

One would expect that with its complexity and excessive costs, the CPP would be an effective way to decrease CO2 emissions. However, by the EPA's own admission it fails to accomplish this goal. Its own report states: "The EPA does not anticipate that this proposed rule will result in notable CO2 emission changes." The agency's admission received a lot of attention, and was the subject of articles in the *National Review*, *Daily Caller*, and *Washington Examiner*. Curiously, the report is no longer available on the EPA's website.<sup>11</sup>

## What Would EPA Rule Accomplish?



### WHAT CAN COLORADO DO?

A number of states are putting consumers and the Constitution first and pushing back against the EPA. Some simply won't comply; 11 states have followed Oklahoma Attorney General Scott Pruitt's lead and filed suit against the EPA, contending that the agency must be held accountable to follow only the environmental statutes as passed by Congress. Other states have put up legislative roadblocks or speed bumps.

Colorado's recently elected Republican Attorney General Cynthia Coffman hasn't shown any indication that the state will join a lawsuit against the EPA, which is surprising considering her strong stance against EPA overreach as a candidate:

"the EPA's seemingly unfettered discretion in passing costly rules will continue to negatively impact job creation and energy costs in our state. As Attorney General, I will take the legal steps necessary to protect ratepayers and safeguard energy jobs in instances where the EPA oversteps its congressionally-mandated bounds."<sup>12</sup>

Apparently Governor John Hickenlooper will be little help either. The *National Journal* reports he intends to capitulate to the EPA and simply submit a state plan with minimal public process and transparency,<sup>13</sup> likely because of the heavy influence of entrenched special interest environmental groups.

At the very least Coloradans deserve an open, transparent process rather than unilateral implementation by an unelected state agency. That's the motivation behind the "Electric Consumers' Protection Act" (ECPA), recently introduced in the state legislature as SB15-258. The proposal would require an evidentiary hearing, an exhaustive economic and reliability study, and legislative approval before any plan can be submitted to the EPA. This is simply a good government measure to maximize transparency and analytical rigor as the state tries to implement a national energy policy masquerading as an environmental rule.

As it stands, the EPA's Clean Power Plan is a bunch of hot air: achieving very little, costing American taxpayers and ratepayers billions of dollars, and endangering the reliability of our electric grid.

## FURTHER READING

- Oklahoma and 11 other states file lawsuit against the EPA, [http://www.ok.gov/oag/documents/Section\\_111d\\_Settlement\\_Filing.pdf](http://www.ok.gov/oag/documents/Section_111d_Settlement_Filing.pdf)
- U.S. Senate Majority Leader Mitch McConnell says states should reject clean power mandates, [http://www.kentucky.com/2015/03/03/3725288\\_states-should-reject-obama-mandate.html?rh=1](http://www.kentucky.com/2015/03/03/3725288_states-should-reject-obama-mandate.html?rh=1)
- “State Implementation of CO2 Rules: Institutional and Practical Issues with State and Multi-State Implementation and Enforcement 1.0,” Raymond L. Gifford, Gregory E. Sopkin, and Matthew S. Larson, Wilkinson Barker, Knauer, LLP, <http://www.wbklaw.com/uploads/file/Articles-%20News/White%20Paper%20-%20State%20Implementation%20of%20CO2%20Rules.pdf>
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- “EPA’s Illegitimate Climate Rule: Hidden from Voters, Contrary to Congressional Intent, and Crafted by Special Interests,” William Yeatman, the Competitive Enterprise Institute, <https://cei.org/content/epa%E2%80%99s-illegitimate-climate-rule>
- Independence Institute’s official comments to the EPA, <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0602-22819>

## ENDNOTES

- <sup>1</sup> Environmental Protection Agency, “Fact Sheet: Clean Power Plan Framework,” <http://www2.epa.gov/carbon-pollution-standards/fact-sheet-clean-power-plan-framework> (accessed March 23, 2015).
- <sup>2</sup> Energy Ventures Analysis, “Energy Market Impacts of Recent Federal Regulations on the Electric Power Sector,” November 2014 <http://evainc.com/wp-content/uploads/2014/11/Nov-2014-EVA-State-Fact-Sheets.pdf> (accessed March 23, 2015).

- <sup>3</sup> North American Electric Reliability Corporation, “Potential Reliability Impacts of EPA’s Proposed Clean Power Plan,” November 2014, [http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/Potential\\_Reliability\\_Impacts\\_of\\_EPA\\_Proposed\\_CPP\\_Final.pdf](http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/Potential_Reliability_Impacts_of_EPA_Proposed_CPP_Final.pdf) (accessed March 23, 2015).
- <sup>4</sup> Laurence Tribe, “Testimony of Laurence H. Tribe,” in Testimony of EPA’s Proposed 111(d) Rule for Existing Power Plants: Legal and Cost Issues, <http://docs.house.gov/meetings/IF/IF03/20150317/103073/HHRG-114-IF03-Wstate-TribeL-20150317-U1.pdf> (accessed March 24, 2015).
- <sup>5</sup> Larry Wolk,, MD, Joshua Epel, and Jeff Ackerman, State of Colorado Comments, Docket ID No. EPA-HQ-OAR-2013-0602 <http://www.scribd.com/doc/249613875/Colorado-EPA-comments>
- <sup>6</sup> Amy Oliver Cooke, “Getting ‘ahead’ of the EPA was actually getting backhanded,” *Complete Colorado*, December 9, 2014, <http://completecolorado.com/pagetwo/2014/12/09/getting-ahead-of-the-epa-was-actually-getting-backhanded/> (accessed March 24, 2015).
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- <sup>9</sup> Institute for Energy Research, “EPA’s Power Plant Carbon Dioxide Reduction Mandate,” <http://instituteforenergyresearch.org/studies/111d-emissions-map#co> (accessed March 24, 2015).
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- <sup>11</sup> Environmental Protection Agency, “Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units,” September 20, 2013, <https://web.archive.org/web/20130930132444/http://www2.epa.gov/sites/production/files/2013-09/documents/20130920proposal.pdf>, (accessed March 25, 2015).
- <sup>12</sup> <http://www.cynthiacoffmanforag.com/issues/the-courtroom/>

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<sup>13</sup> Ronald Brownstein, "The Renewable Energy Fight: The battle in Colorado over renewable portfolio standards is a key front in the national climate debate," March 18, 2015, <http://www.nationaljournal.com/political-connections/the-renewable-energy-fight-20150318> (accessed March 27, 2015).

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