
Clean Power Plan: Repeal & Replace

Objective:

NRECA supports EPA's proposal to rescind the Clean Power Plan (CPP)¹, and strongly encourages EPA to move purposefully to propose and finalize a replacement 111(d) rule consistent with the section's regulatory history. Both near-term actions are needed to provide the regulated community with a common-sense and flexible rule that meets legal muster and is both clear and durable.

Background:

The Clean Power Plan needs to be replaced for the following reasons:

- The CPP was illegal. It was issued pursuant to a novel and expansive view of authority under Section 111 of the Clean Air Act (CAA) that required regulated entities to take actions “outside the fence line.” Prior to the CPP, every Section 111 rule, totaling over 100 rules, followed the law by only requiring actions that were applied “inside the fence line”.
- EPA's interpretation was unprecedented in the history of Clean Air Act rulemakings. The obvious legal vulnerabilities in the CPP led to a court challenge by NRECA and over 150 other entities as well as a bipartisan group of 34 U.S. Senators and 171 House Members arguing that the CPP was illegal. Most significantly, U.S. Supreme Court agreed when in February 2016, they issued an unprecedented stay of the CPP to immediately stop its implementation.
- The CPP violates the concept of cooperative federalism that gives states, not EPA, the authority to establish performance standards on a unit by unit basis based on a “best system of emissions reduction”. The CPP overturned this principle by EPA's decision to impose mandatory emission caps for each state. Subsequently many states were unable to effectively set achievable unit performance standards that by law must consider individual unit characteristics such unit remaining useful life and other relevant unit specific factors.
- EPA's CPP also required arbitrary generation shifts from affordable, reliable energy sources such as coal nuclear and natural gas, to costlier, intermittent renewables. This also made the EPA as defacto regulator of the electricity grid instead of FERC.
- EPA's economic analysis of the CPP was flawed, highly uncertain and controversial. For example, EPA's analysis compared estimated *domestic* control costs of the CPP against the estimated *global* climate benefits. In addition, billions of dollars of claimed benefits from the CPP came from “co-benefits” from other emission reductions not targeted by the CPP. And, in violation of longstanding OMB requirements, the energy efficiency benefits of the CPP were treated as an avoided cost resulting in an artificially low estimated cost for the CPP.

¹ On October 16, 2017, EPA proposed to repeal the Clean Power Plan (82 Fed. Reg. 48035.) In addition to the repeal, on December 28, 2017, EPA issued an Advance Notice of Proposed Rulemaking on replacing the Clean Power Plan (82 Fed. Reg. 61507.) EPA hosted a public hearing on the proposed repeal in Charleston, WV on November 28-29, 2017, and added listening sessions in Kansas City, MO on February 21, San Francisco on February 28, and Gillette, WY on March 27. The deadline to submit comments on the proposed repeal is April 26, 2018 and comments were due on the ANPR to replace the rule on February 26.