AMERICAN PUBLIC POWER ASSOCIATION
Powering Strong Communities

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Federal Efforts to Address Climate Change

- Public power utilities 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, the adoption of energy efficiency programs, and the promotion of transportation electrification.
- The American Public Power Association (APPA) supports congressional efforts to address climate change through a statutory framework that provides electric utilities with regulatory certainty for the clean energy transition while keeping electricity affordable and reliable for all customers.
- Congress should continue to fund federal research, development, and deployment of clean energy technologies and infrastructure that increase the resilience of the grid, reduce emissions, and help keep electricity affordable.
- The Environmental Protection Agency's (EPA) final rules to reduce GHG emissions from new and existing power plants are not cost-effective or practically achievable and will result in increased electricity costs and less reliable power. Public power remains committed to further reducing CO_2 emissions, but on a more realistic timeframe that ensures the reliability of the electric grid and affordability of electricity for all Americans.

Background

Following the U.S. Supreme Court's landmark decision in *Massachusetts v. Environmental Protection Agency* in 2007, which 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, Congress and EPA have sought to address climate change through legislation and regulations. In 2009, the House of Representatives passed the American Clean Energy and Security Act of 2009 by a vote of 219-212. The legislation 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 (NSPS) for new fossil fuel-fired power plants in 2012. Just over three years later, in August 2015, EPA issued final rules to regulate carbon dioxide (CO_2) emissions from new power plants and existing power plants ("Clean Power Plan" or CPP).

The CPP set final emission guidelines in the form of nationally uniform CO_2 emission performance rates for coal-fired and natural gas-fired power plants. It also set CO_2 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 2015, the CPP was challenged in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). The case was subsequently dismissed in 2019, with the court noting that challenges to the rule were moot due to the repeal of the CPP and replacement of the rule with the Trump administration's Affordable Clean Energy (ACE) rule. The ACE rule sought to establish the "best system of emissions reduction" (BSER) for limiting CO_2 emissions from affected electric generating units (EGUs) in the form of heat rate improvement measures that could be applied to or at an affected unit (i.e., "inside the fence-line"). In 2019, the ACE rule was challenged in the D.C. Circuit, where the court vacated and remanded the rule back to EPA. Subsequently, the D.C. Circuit's decision was appealed to the U.S. Supreme Court. The court ruled in *West Virginia v. EPA et al.* (No. 20-1530) that EPA's conclusion in the CPP that an "outside the fence" approach, including a cap-and-trade system, that resulted in a shift of electricity production

from coal plants to other sources of lower GHG emissions, exceeded EPA authority under section 111(d) of the CAA. Thus, the court reversed and remanded the case to the D.C. Circuit.

Administrative Action

In May 2024, EPA finalized rules to regulate GHG emissions from new, modified, reconstructed, and certain existing power plants under section 111 of the CAA.[1] The final rules will impose stringent NSPS on power plants fueled by natural gas and impose strict limits on GHG emissions from existing coal-fired generators. The final rules establish BSER based on the use of lower-emitting fuels, highly efficient generation practices, co-firing with natural gas, and carbon capture and storage (CCS) technology. The final rules aim to significantly reduce GHGs from the electric sector by requiring certain new and existing fossil fuel generation to implement CCS by 2032 or co-fire with 40 percent natural gas by 2030. The final rules allow for various technology options and compliance timelines commensurate with a facility's anticipated retirement date. The requirements vary based on whether an EGU is new or existing, coal-fired or gas-fired, and how often it is used. EPA's reliance on CCS as BSER assumes the technology is "adequately demonstrated" and "economically achievable." Many of the final rules' assumptions are based upon changes in the electric sector, technology developments, the passage of the Infrastructure Investment and Jobs Act (IIJA)(P.L. 117-58) and Inflation Reduction Act (IRA)(P.L. 117-169), and state support for investment in CCS.

Following the publication of the 2024 GHG rules in the *Federal Register,* 25 states filed a petition for review in the D.C. Circuit. Oral arguments in *West Virginia v. EPA*, No. 24-1120 (D.C. Cir.) were held on December 6, 2024. The Trump administration is expected to re-examine the 2024 GHG rules and instruct the Department of Justice to promptly file a motion with the D.C. Circuit to pause the case challenging the GHG rules and to send them back to EPA.

Congressional Action

Climate and energy infrastructure issues were a key legislative focus during the 117th Congress. In 2021, President Biden signed the IIJA into law, which provided federal funding for a host of programs to promote clean energy, energy efficiency, grid resilience, and electrification of the transportation sector. Many public power utilities have been selected for IIJA grants that will help them reduce their GHG emissions or facilitate their ability to reduce emissions from other sectors, such as transportation. Further, the IRA, signed into law in 2022, expanded existing energy tax credits and created new ones, including for nuclear power and carbon capture, among other technologies, to promote clean energy technologies to reduce emissions to address climate change. The IRA also for the first time made these credits available to public power utilities through elective pay. APPA is working to ensure that the elective pay tax credits created by the IRA are implemented in a way that will allow public power utilities to make further investments in clean energy technologies.

The 118th Congress focused on oversight of federal agencies, such as the Departments of Energy, Transportation, and Treasury, tasked with implementing the energy tax credits and grant programs created by the IRA and IIJA, and on executive actions to address climate change, including EPA's power plant regulations. Congress held several hearings on the proposed and final rules, with Republicans largely focused on the rules' impact on electric reliability and Democrats predominantly focused on the purported public health benefits of the rules. In December 2023, Republicans on the House Energy & Commerce Committee passed the Guaranteeing Reliable Infrastructure Development (GRID) Act (H.R. 6185), which would require the Federal Energy Regulatory Commission to review and comment on federal agency actions that are likely to have a significant, negative impact on the reliability of the bulk-power system. APPA supported H.R. 6185.

The 119th Congress is expected to focus on electric reliability and affordability issues. Not unlike the GRID Act from the 118th Congress, legislation that similarly prioritizes the reliability of the bulk-power system, including the needs of regional transmission organizations in the face of unprecedented demand growth, may be introduced and considered by Congress. With a majority in both the House and Senate, Republicans have said that they plan to amend or repeal provisions of the IRA, which could include elective payment of energy tax credits. Republicans are also expected to prioritize reducing federal spending overall, which is likely to impact federal funding for federal grants, as well as funding for energy-related research, development, and deployment projects.

1 89 Fed. Reg. at 39,798 (May 9, 2024) (Final Rules or Final GHG Rules).

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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 and protect the interests of the more than 54 million people that public power utilities serve and the 96,000 people they employ.