

# 2019-20

# LEGISLATOR'S GUIDE to the Issues

## Clean Power Plan

### The Issue

In early February 2016, the U.S. Supreme Court granted a stay of the Environmental Protection Agency's (EPA) Clean Power Plan (CPP), freezing the rule's implementation until final review by the courts. In response to petitions from more than two dozen states and many industry groups, this was the Supreme Court's first stay of an administrative rule, reversing the D.C. Circuit's earlier denial.

The CPP, linchpin of the Obama administration's climate policy, is the most sweeping regulation in EPA's history. The rule carries a \$7.2 billion annual price tag. This is a conservative estimate, as total costs amount to over \$30 billion. The rule has evoked the ire of constitutional scholars who view it as a fundamental violation of the U.S. Constitution's provision on the separation of powers. The rule exceeds the legal authority that Congress delegated to the EPA through the Clean Air Act. In the CPP, the Obama-era EPA asserted the authority to federalize and overhaul the country's electric power system, long a prerogative of state authority.

According to the EPA's own calculations, the CPP's goal to cut CO<sub>2</sub> emissions from electric generation by 32% would result in a mere 0.018 degree Celsius reduction in the rate of warming predicted by the Intergovernmental Panel on Climate Change (IPCC)—an immeasurable change. The rule would impose on Texas one-fifth of the total national obligation to reduce CO<sub>2</sub>. The total volume of CO<sub>2</sub> emissions that the EPA's rule intends to reduce by 2030 is emitted by China in less than two weeks.

The CPP's CO<sub>2</sub> standards would have forced fuel switching from coal to natural gas on a vast scale and also assumed a 150% increase in renewable sources that cannot provide reliable energy. The EPA's rule conveniently ignores the fact that Texas, at 14,000 megawatts (MW) of installed electric capacity, is already America's largest renewable energy generator. The CPP would have forced the state to increase its installed renewable capacity by 200%, an additional amount of wind and solar generation that is more than any other nation produces at present. The carbon cuts necessary to meet the final goals of the rule in 2030 would limit even natural gas-fired generating plants and force a massive expansion of renewables.

### The Facts

- The U.S. Congress has never explicitly delegated to EPA the authority to directly regulate human-induced emissions of CO<sub>2</sub>.
- The previous EPA projected that the CPP rule would force the early closure of over 16,500 MW of coal-fired generation by 2020—roughly 15% of Texas' total 110 gigawatts of electric power.

- Texas joined 28 other states in a suit challenging the CPP.
- The CPP will cost at least \$7.2 billion annually to curb 32% of CO<sub>2</sub> emissions in exchange for a 0.018 degree Celsius change in global warming.
- The Supreme Court stayed the CPP until full judicial review is completed.
- The U.S. Congress disapproved the CPP under the Congressional Review Act. President Trump's Executive Order 13783 ("Promoting Energy Independence and Economic Growth") directed EPA to review the CPP. On the basis of this review, finding that the CPP was unlawful, EPA proposed the repeal of the CPP in late December 2017. EPA also issued an Advanced Notice of Proposed Rule (ANPR) to replace the CPP with a lawful rule in late December 2017.
- The rules to repeal and to replace may be adopted in late summer 2018.

### Recommendations

- Texas should not expend any state resources in an effort to comply with EPA's CPP until full judicial review on the merits by the Supreme Court.
- Texas should learn from the grim lessons of European countries who aggressively rushed to renewable energy as a way to displace fossil-fueled electric generation.
- Any rule to replace the CPP must apply control measures to the source of emissions "inside the fence."

### Resources

["Texas Savors Court's Clean Power Plan Ruling"](#) by Mark Lisher, *Watchdog.org* (Feb. 18, 2016).

[Red Tape Rising 2016: Obama Regs Top \\$100 Billion Annually](#), by James L. Gattuso and Diane Katz, Heritage Foundation (May 2016).

[The Many Problems of the EPA's Clean Power Plan and Climate Regulations: A Primer](#) by Nicolas Loris, Heritage Foundation (July 2015).

[The Facts About the Clean Power Plan](#) by Kathleen Hartnett White, Texas Public Policy Foundation (Jan. 2016).

[EPA as Overlord of U.S. Electric Power](#) by Kathleen Hartnett White, Texas Public Policy Foundation (Oct. 2014).

*EPA's Final 111(d) Rule (a.k.a. the "Clean Power Plan") – Impact on Energy Council States* by Mike Nasi, Jackson Waler L.L.P.

[EPA's Proposed 111\(d\) Rule for Existing Power Plants: Legal and Cost Issues](#), Testimony of Laurence H. Tribe to the U.S. House Committee on Energy and Commerce, Subcommittee on Energy and Power (March 2015).

