



N A R U C
National Association of Regulatory Utility Commissioners

November 19, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

**RE: *Regulation of Carbon from Existing Power Plants; EPA Clean Carbon Plan;*
HQ- OAR-2013-0602**

Dear Administrator McCarthy:

Recognizing that “*compliance with ... environmental regulations regulating greenhouse gas emissions will affect ratepayers differently depending upon each State’s existing generation, energy resources, electricity market and State commission decisions,*”¹ both you personally, as well as Environmental Protection Agency (EPA) staff, engaged in extensive outreach² to National Association of Regulatory Utility Commissioners (NARUC) and its members.

NARUC genuinely appreciates that outreach about the agency’s now published proposal to regulate carbon emissions from existing power plants under Section 111(d) of the Clean Air Act. We also appreciate the opportunity and the additional time the EPA has provided for all stakeholders to provide additional feedback on these proposed rules.

NARUC’s members include the public utility commissions serving all States and territories responsible for ensuring the availability of reliable and affordable electric service. Our members regulate the retail rates and services of electric, gas, water, and telephone utilities. They are obligated to assure such utility services as may be required by the public convenience and necessity are established and maintained, and to assure that such services are provided at just, reasonable, and non-discriminatory rates, terms, and conditions.

¹ ***Resolution on Increased Flexibility with Regard to the EPA’s Regulation of Greenhouse Gas Emissions from Existing Power Plants*** (NARUC, November 20, 2013), attached as Appendix A and available online at: <http://www.naruc.org/Resolutions/Resolution%20on%20Increased%20Flexibility%20with%20Regard%20to%20the%20EPAs%20Regulation%20of%20Greenhouse%20Gas%20Emissions%20from%20Existing%20Power%20Plants.pdf>.

² ***EPA 111-d Outreach Activities, Page 1*** (May 29, 2014) online at: <http://blog.epa.gov/epaconnect/wp-content/uploads/2014/10/List-of-EPA-111-d-events-May-29-2014.pdf>. (Accessed 10/10/2014)

NARUC is *sui generis* and recognized by Congress in several statutes,³ consistently by Article III Courts⁴ as well as a host of federal agencies, including the EPA,⁵ as the proper entity to represent the collective interests of State utility commissions.

In part, as a result of the EPA's early outreach, on November 20, 2013, prior to the June 2014 release of the agency's draft guidelines, NARUC passed a ***Resolution on Increased Flexibility with Regard to the EPA's Regulation of Greenhouse Gas Emissions from Existing Power Plants***. The resolution is attached as Appendix A to this letter.

The resolution highlights the diversity among States in the options and authorities they have available to address any EPA rule or guideline, noting, *inter alia*, specifically that:

Many States have: 1) implemented mandatory and/or voluntary renewable portfolio/energy standards, 2) implemented energy efficiency and/or peak load reduction programs, 3) experienced significant retirements of coal based generating plants and/or 4) mandated emission reductions programs; all of which have already contributed to a reduction in GHG emissions; and

It may be in the best interest of ratepayers to maintain the operation of certain existing coal-based electricity generating plants that meet environmental performance requirements for priority pollutants for a period of time; and

³ See 47 U.S.C. § 410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. § 254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where this Court explains "Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.)

⁴ See, e.g., *United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), *aff'd* 672 F.2d 469 (5th Cir. 1982), *aff'd en banc on reh'g*, 702 F.2d 532 (5th Cir. 1983), *rev'd on other grounds*, 471 U.S. 48 (1985) (where the U.S. Supreme Court notes: "The District Court permitted . . . (NARUC) . . . to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commission's of those States in which the defendant rate bureaus operate." 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); *Compare, NARUC v. Federal Energy Regulatory Commission*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. Federal Communications Commission*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

⁵ See, e.g., *EPA Administrator Lisa P. Jackson, Remarks to NARUC* (02/17/2010), available online at: <http://yosemite.epa.gov/opa/admpress.nsf/12a744ff56dbff8585257590004750b6/e373453ce486f853852576cd005adcc7!opendocument> ("Building strong, working partnerships with the states is one of my top priorities."), *EPA and NARUC Announce Energy Efficiency and Renewable Energy Projects with Six States* (02/16/2010) at: <http://yosemite.epa.gov/opa/admpress.nsf/b1ab9f485b098972852562e7004dc686/d1a603bc8fe4de9285256faa00745c34!OpenDocument>; *Consolidated Water Rates: Issues and Practices in Single-Tariff Pricing* (Sept 1999) – A joint Publication of the U.S. Environmental Protection Agency and the National Association of Regulatory Utility Commissioners, at: <http://www.epa.gov/ogwdw000/utilities/stptitle.pdf>. *Compare, Atomic Safety and Licensing Board Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, *mimeo* at 31 (June 29, 2010) ("We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers' interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members' injury-in-fact.")

States rely on EPA to issue a procedure under Section 111(d) that reflects the best system or systems of emission reductions that has been adequately demonstrated at affected facilities; and

State utility regulators have jurisdiction over decisions regarding integrated resource planning and/or resource adequacy, processes which ultimately determine the mixes of fuels and resources in State generation portfolios, which differ from State to State; and

States have different mixes of fuels and resources in their existing generation portfolios; and

States have achieved different levels of GHG reductions to date, and have diverse economies and face different economic conditions, including States with energy intensive manufacturing industries that provide goods for the entire nation.

Citing these differences, the November 2013 resolution⁶ urges the EPA, in developing any emissions guidelines for regulating carbon emissions from existing power plants, to assure any guidelines:

[R]ecognize the primacy of States [and] rely on both State utility and environmental regulators to lead the creation of emission performance systems that reflect the policies, energy needs, resource mix, economic conditions of each State and region; and

[A]re flexible enough to allow States individually or regionally to take into account, when establishing standards of performance, the different makeup of existing power generation in each State and region; and

[A]void GHG emissions reductions that are not feasible; and

[P]rovide sufficiently flexible compliance pathways or mechanisms that recognize State and regional variations to achieve the most cost-effective emissions reductions in each State; and

[R]ecognize and credit States' emissions reduction achievements to date, recognize any and all existing State emission reduction programs, and . . . not intrude on the States' jurisdiction over decisions regarding integrated resource planning and/or resource adequacy or otherwise mandate specific modifications to the mix of fuels and resources in existing and future State generation portfolios.

⁶ This resolution follows two earlier resolutions that stress the need for EPA to build in any rules the flexibility required to minimize costs to consumers and to maintain reliability. *See, e.g., Resolution on Increased Flexibility for the Implementation of EPA Rulemakings* (NARUC July 20, 2011), available online at: <http://www.naruc.org/Resolutions/Resolution%20on%20Increased%20Flexibility%20for%20the%20Implementation%20of%20EPA%20Rulemakings.pdf>; *Resolution on the Role of State Regulatory Policies in the Development of Federal Environmental Regulations* (NARUC February 16, 2011), available online at: <http://www.naruc.org/Resolutions/Resolution%20on%20the%20Role%20of%20State%20Regulatory%20Policies%20in%20Development%20of%20Fed%20Enviro%20Regs.pdf>

Subsequently, on November 19, 2014, NARUC passed two more resolutions that specifically target the EPA's proposed June 2014 guidelines.

The first, captioned: ***Resolution Recognizing the Importance of Nuclear Power in Meeting Greenhouse Gas Goals***, urges the EPA, "to the extent it regulates carbon from existing power plants under Section 111(d) of the Clean Air Act" to adopt final GHG guidelines that:

[W]ill encourage States to preserve, life-extend, and expand existing nuclear generation;

[R]emove(s) the generic approximately 6 percent at-risk nuclear and nuclear under construction from the calculation of State-specific emissions targets; and

[Allows States to] include in compliance plans and thus receive emissions credit related to all output of new nuclear capacity (including uprates of existing plants) that begins operating after the issuance date of the proposed rule.

The full text of that resolution is attached to this letter as Appendix B.

The second resolution passed by NARUC at that November 2014 meeting, titled ***Resolution Regarding the Water-Energy Nexus***, points out that the treatment and delivery of water and wastewater services requires about four percent of all U.S. energy consumption each year and that policy makers at all levels are examining opportunities to achieve greater efficiencies in water and energy usage. The resolution, after detailing some of these options, urges the EPA in this proceeding to:

[Provide States with] maximum flexibility to [i] support energy efficiency measures stemming from the water-energy nexus and [ii] incorporate those efforts, and their positive impacts on the environment, into any compliance plan that might emerge.

The full text of that resolution is attached to this letter as Appendix C.

NARUC urges EPA to incorporate these principles in any final guidelines adopted in this proceeding. If you have any questions regarding the resolution or NARUC's positions, please do not hesitate to contact me at (202) 898-2207, (jramsay@naruc.org), or NARUC's Assistant General Counsel, Holly Rachel Smith at (202) 898-1350, (hsmith@naruc.org). Thanks again for the opportunity to provide input. We look forward to working with EPA on these and other issues.

Respectfully Submitted,

/s/ James Bradford Ramsay

General Counsel

National Association of Regulatory Utility Commissioners

cc: *Acting Assistant Administrator Janet McCabe, Office of Air and Radiation (OAR)*
Joseph Goffman, Associate Assistant Administrator & Senior Counsel, OAR

Attachments

Appendix A

Resolution on Increased Flexibility with Regard to the EPA's Regulation of Greenhouse Gas Emissions from Existing Power Plants

WHEREAS, A reliable, affordable energy supply is vital to the nation's future economic growth, security, and quality of life; *and*

WHEREAS, Compliance with expected environmental regulations regulating greenhouse gas (GHG) emissions will affect ratepayers differently depending upon each State's existing generation, energy resources, electricity market and State commission decisions; *and*

WHEREAS, States have jurisdiction over the reliability and affordability of electricity provided to retail customers; *and*

WHEREAS, Incorporating flexibility in the implementation of EPA regulations to allow for unique State or regional strategies can lessen generation cost increases because of improved planning, greater use of energy efficiency and demand-side resources, and orderly decision-making; *and*

WHEREAS, NARUC at this time takes no position regarding the merits of EPA rulemakings for the purpose of regulating GHG from new or existing power plants; *and*

WHEREAS, In 2009, President Obama made a pledge that by 2020, America would reduce its greenhouse gas emissions in the range of 17 percent below 2005 levels; *and*

WHEREAS, The Regional Greenhouse Gas Initiative implemented by nine States is recognized as reducing emissions and provides a net consumer and economic benefit; *and*

WHEREAS, Ten States have successfully implemented market-based emissions trading systems applicable to the electrical power sectors for the purpose of reducing emissions; *and*

WHEREAS, Many States have: 1) implemented mandatory and/or voluntary renewable portfolio/energy standards, 2) implemented energy efficiency and/or peak load reduction programs, 3) experienced significant retirements of coal based generating plants and/or 4) mandated emission reductions programs; all of which have already contributed to a reduction in GHG emissions; *and*

WHEREAS, It may be in the best interest of ratepayers to maintain the operation of certain existing coal-based electricity generating plants that meet environmental performance requirements for priority pollutants for a period of time; *and*

WHEREAS, On June 25, 2013, the President issued a memorandum to the U.S. EPA Administrator directing the EPA to:

- Issue proposed carbon pollution standards, regulations, or guidelines, as appropriate, for modified, reconstructed, and existing power plants by no later than June 1, 2014;
- Issue final standards, regulations, or guidelines as appropriate for modified, reconstructed and existing power plants by no later than June 1, 2015;

- Include in the guidelines addressing existing power plants a requirement that States submit to the U.S. EPA the implementation plans required under Section 111(d) of the Clean Air Act and its implementing regulations by no later than June 30, 2016; *and*

WHEREAS, The President instructed the EPA, in its efforts to address GHG emissions from modified, reconstructed and existing power plants to engage directly with States, and expressly recognized that States “will play a central role in establishing and implementing standards for existing power plants;” *and*

WHEREAS, The President instructed the EPA to work with State agencies to “promote the reliable and affordable provision of electric power through the continued development and deployment of cleaner technologies and by increasing energy efficiency, including through stronger appliance efficiency standards and other measures;” *and*

WHEREAS, Section 111(d)(1)(A) requires the EPA to establish a procedure under which each State shall submit to the Administrator a plan which establishes standards of performance for existing sources; *and*

WHEREAS, Section 111(d)(1)(B) requires: (1) the plan submitted by the State to provide for the implementation and enforcement of such standards of performance and (2) the Administrator to permit a State, in applying such standards of performance, “to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies;” *and*

WHEREAS, The States rely on EPA to issue a procedure under Section 111(d) that reflects the best system or systems of emission reductions that has been adequately demonstrated at affected facilities; *and*

WHEREAS, State utility regulators have jurisdiction over decisions regarding integrated resource planning and/or resource adequacy, processes which ultimately determine the mixes of fuels and resources in State generation portfolios, which differ from State to State; *and*

WHEREAS, States have different mixes of fuels and resources in their existing generation portfolios; *and*

WHEREAS, States have achieved different levels of GHG reductions to date, and have diverse economies and face different economic conditions, including States with energy intensive manufacturing industries that provide goods for the entire nation; *now, therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners, convened at its 125th Annual Meeting in Orlando, Florida, urges the EPA, in developing any emissions guidelines for regulating carbon emissions from existing power plants, to recognize the primacy of States to rely on both State utility and environmental regulators to lead the creation of emission performance systems that reflect the policies, energy needs, resource mix, economic conditions of each State and region; *and be it further*

RESOLVED, That the guidelines should be flexible enough to allow States individually or regionally to take into account, when establishing standards of performance, the different makeup of existing power generation in each State and region; *and be it further*

RESOLVED, That the States need EPA under the relevant statutory factors, to issue guidelines that avoid GHG emissions reductions that are not feasible; *and be it further*

RESOLVED, That the guidelines should provide sufficiently flexible compliance pathways or mechanisms that recognize State and regional variations to achieve the most cost-effective emissions reductions in each State; *and be it further*

RESOLVED, That the guidelines recognize and credit States' emissions reduction achievements to date, recognize any and all existing State emission reduction programs, and shall not intrude on the States' jurisdiction over decisions regarding integrated resource planning and/or resource adequacy or otherwise mandate specific modifications to the mix of fuels and resources in existing and future State generation portfolios.

Sponsored by the Committee on Electricity

Recommended by the NARUC Board of Directors November 19, 2013

Adopted by the NARUC Committee of the Whole November 20, 2013.

Appendix B

Resolution Recognizing the Importance of Nuclear Power in Meeting Greenhouse Gas Goals

WHEREAS, Reliable, clean and affordable electricity is vital to local, State, and national economic growth, jobs, and the overall interests of citizens; *and*

WHEREAS, As demonstrated during the Polar Vortex of 2014, maintaining reliability and fuel diversity; while ensuring compliance with proposed carbon reduction rules, are common challenges for our States and we jointly recognize the need to maintain the existing, baseload nuclear generation fleet; *and*

WHEREAS, Nuclear power plants provide approximately 20% of the nation's total electricity generation, and can provide carbon-free electricity for decades into the future; *and*

WHEREAS, On June 2, 2014, the United States Environmental Protection Agency (EPA) issued proposed regulations for reducing greenhouse gas (GHG) emissions from existing power plants, known as the Clean Power Plan, in which EPA identified the avoidance of the retirement of existing nuclear capacity as one of the "best system of emission reduction" (BSER) methods;⁷*and*

WHEREAS, EPA states in its proposed regulations that policies "that...discourage premature retirement of nuclear capacity could be useful elements of GHG reduction strategies and are consistent with current industry behavior;"⁸ *and*

WHEREAS, Nuclear energy has played a substantial role in the achievement of existing GHG State or regional emission reduction goals to date, and continued operation of nuclear power plants is vital to States' ability to economically meet new federal regulations, and provides an essential tool to manage risks associated with potential GHG emissions reduction requirements; *and*

WHEREAS, In the absence of a public safety or environmental concern, the premature shutdown of these valuable assets may cause economic, social, reliability and environmental harm to families and businesses; *and*

WHEREAS, The United States Department of Energy, grid operators, and Federal Energy Regulatory Commission (FERC) commissioners have cautioned that the premature shutdown of nuclear power plants could jeopardize both the nation's electric reliability and the ability to timely address climate change; *and*

WHEREAS, The EPA's proposed GHG regulations for existing power plants would lower a State's allowed GHG emissions rate by counting approximately 6 percent of its nuclear capacity as being "at risk" and including this zero-carbon energy in the goal-setting formula, leading to lower (more stringent) emission rate targets for States that have nuclear power plants; *and*

⁷ ENVIRONMENTAL PROTECTION AGENCY, 40 CFR Part 60, [EPA-HQ-OAR-2013-0602; RIN 2060-AR33, Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, June 2, 2014, at p. 114.

⁸ *Id.*, at p. 151-152

WHEREAS, The EPA's proposed rule treats new nuclear power plants under construction as though they are already operating, and uses their output in the rate-setting formula, which drives down the States' emission rate goals, *and*

WHEREAS, State commission actions to approve the uprating of existing nuclear power plants or the siting of new nuclear power plants have and will play a substantial role in GHG emissions reduction goals; *now, therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners, convened at its 126th Annual Meeting in San Francisco, California, urges the EPA, to the extent it regulates carbon from existing power plants under Section 111(d) of the Clean Air Act, to adopt final GHG rules and regulations that: 1) will encourage States to preserve, life-extend, and expand existing nuclear generation; and 2) remove the generic approximately 6 percent at-risk nuclear and nuclear under construction from the calculation of State-specific emissions targets; *and be it further*

RESOLVED, That, to the extent the EPA regulates carbon from existing power plants under Section 111(d) of the Clean Air Act, that States may include in compliance plans and thus receive emissions credit related to all output of new nuclear capacity (including uprates of existing plants) that begins operating after the issuance date of the proposed rule.

Sponsored by the Committee on Electricity

Recommended by the NARUC Board of Directors November 18, 2014

Adopted by the NARUC Committee of the Whole November 19, 2014

Appendix C

Resolution Regarding the Water-Energy Nexus

WHEREAS, The water-energy nexus describes a close relationship between two critically important sectors of the economy; *and*

WHEREAS, Today's energy extraction and electricity production processes require a tremendous amount of water; *and*

WHEREAS, The treatment and delivery of water and wastewater services requires a significant amount of energy, representing about four percent of all U.S. energy consumption each year, a share that could rise significantly as a result of the antiquated and inefficient nature of U.S. water and wastewater infrastructure, as evaluated by the American Society of Civil Engineers in its 2013 Report Card on U.S. Infrastructure; *and*

WHEREAS, Numerous research and government organizations, including the U.S. Department of Energy, have highlighted a range of opportunities for companies, including regulated utilities in both sectors to work together and with regulatory counterparts at the State and federal levels to provide efficiencies in water and energy usage in their respective industries; *and*

WHEREAS, Many newer thermoelectric power plants use significantly less water as a result of cooling processes that reuse water and other alternative methods; *and*

WHEREAS, Many energy production States are innovating and adopting new environmental quality standards that are aimed at promoting efficient water usage; *and*

WHEREAS, State regulatory commissions are encouraging that water used in the energy production process be recycled rather than disposed of; *and*

WHEREAS, Efforts by water utilities to enhance efficiency by replacing outdated water pumps, integrating "smart" information and communication technologies to identify leaks in real time and streamline other processes, and using a greater share of alternative energy to fuel operations, among other initiatives, have already yielded measurable reductions in the amount of energy used to deliver water and wastewater services; *and*

WHEREAS, The EPA is currently considering rules to reduce emissions of carbon dioxide from existing stationary sources throughout the country; *and*

WHEREAS, A provision of the EPA's proposed rules would provide States with considerable latitude to design programs to meet federally-mandated targets for cutting Statewide emissions; *and*

WHEREAS, States possess many of the tools needed to implement policies, programs, and incentives, to fully employ the water-energy nexus for the purposes of enhancing energy efficiency efforts that could also yield more reliable service, stable rates for consumers, and lower carbon emissions for States and the country as a whole; *and*

WHEREAS, A growing number of State regulatory commissions, environmental agencies, and legislatures are actively exploring opportunities for harnessing the water-energy nexus for these purposes; *and*

WHEREAS, As an example of its support of State commissions to appropriately regulate issues related to the water-energy nexus, in July 2009, the NARUC Board of Directors passed a resolution “Supporting State Regulation of Hydraulic Fracturing;” *now, therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners, convened at its 126th Annual Meeting in San Francisco, California, urges States, working with the appropriate federal authorities, to proactively explore the water-energy nexus and pursue regulatory reforms that might be needed to unlock further progress toward enhanced water and energy efficiency, recognizing and reiterating that States are well suited to effectively regulate their natural resources; *and be it further*

RESOLVED, That, as the EPA moves forward with its proposed rules for reducing carbon emissions from existing stationary sources, NARUC recommends that States be provided maximum flexibility to support energy efficiency measures stemming from the water-energy nexus and to incorporate those efforts, and their positive impacts on the environment, into any compliance plan that might emerge.

Sponsored by the Committees on Energy Resources and the Environment, Gas, and Water

Recommended by the NARUC Board of Directors November 18, 2014

Adopted by the NARUC Committee of the Whole November 19, 2014