

EL-2 Resolution on EPA's Regulation of Greenhouse Gas Emissions from New and Existing Power Plants

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

Whereas compliance with expected environmental regulations regulating greenhouse gas (GHG) emissions will affect ratepayers differently, depending on each state's existing generation, energy resources, electricity market, and state commission decisions;

Whereas states have jurisdiction over the reliability and affordability of electricity provided to retail customers;

Whereas incorporating flexibility in the implementation of Environmental Protection Agency (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;

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

Whereas the Regional Greenhouse Gas Initiative implemented by a number of states is recognized as reducing emissions and provides a net consumer and economic benefit;

Whereas a number of states have successfully implemented market-based emissions trading systems applicable to the electrical power sectors for the purpose of reducing emissions;

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;

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

Whereas on October 23, 2015, the EPA promulgated the Carbon Pollution Guidelines for Existing Stationary Sources: Electric Generating Units, commonly referred to as the Clean Power Plan;

Whereas on June 19, 2019, the EPA issued its Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations, otherwise referred to as the Affordable Clean Energy, or ACE Rule;

Whereas on June 30, 2022, the Supreme Court of the United States ruled in the matter of West Virginia *et al.* v. Environmental Protection Agency, and held that the manner by which the Clean

Power Plan regulated emissions violated the law;

Whereas in *West Virginia v EPA*, the Supreme Court noted that emitting sources can meet an “emissions cap any way it chooses; the key is that its pollution be no more than the amount achievable through the application of the best system of emission reduction ... adequately demonstrated,” or the [best system of emission reduction];”

Whereas on May 23, 2023, the EPA proposed a new rule, New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule;

Whereas Sections 111(b) and 111(d) require the EPA to establish a standard of performance for new and existing sources of emissions;

Whereas Section 111(a) of the Clean Air Act requires a best system of emission reduction be achievable, demonstrated, and cost effective;

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

Whereas for existing sources, 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;”

Whereas the states rely on EPA to issue procedures under Sections 111(b) and 111(d) that reflects the best system or systems of emission reductions that has been adequately demonstrated at affected facilities;

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;

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

Whereas states have different public policy objectives related to future source(s) of electric generation; *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 Board of Directors of the National Association of Regulatory Utility

Commissioners, convened at its 2024 Winter Policy Summit in Washington, D.C., urges the EPA, in developing any emissions guidelines for regulating carbon emissions from new or existing power plants, to recognize the primacy of States, and 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 under the relevant statutory factors, if the EPA issues rules, they should ensure the rules for standards of performance for new and existing sources are achievable, demonstrated, and cost effective; *and be it further*

Resolved that if the EPA issues rules, they should adequately consider the impact of those rules on reliability and affordability; *and be it further*

Resolved that if the EPA issues rules, they should permit states' maximum flexibility in meeting rules' requirements; *and be it further*

Resolved that any 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 and planned power generation in each state and region; *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.

Passed by the Committee on Electricity on February 26, 2024

Adopted by the NARUC Board of Directors on February 28, 2024.