



Letters

Winter 2015

States should reject Obama mandate for clean-power regulations

by Senate Majority Leader Mitch McConnell
Lexington Herald-Leader, March 4, 2015



The Obama administration's so-called "clean power" regulation seeks to shut down more of America's power generation under the guise of protecting the climate.

In reality, this proposed regulation would have a negligible effect on global climate but a profoundly negative impact on countless American families already struggling.

The regulation is unfair. It's probably illegal. And state officials can do something about it; in fact, many are already fighting back.

I'm calling for others to join. Here's why. Every state has the power, in theory at least, to design its own approach to meet the excessive and arbitrary mandates imposed by this regulation. But the purported flexibility is actually illusory.

States report that the regulation's mandates are not technologically achievable, cannot be implemented under rushed timelines and threaten both state economies and energy reliability for families. Moreover, the regulation actually

punishes states for billions they've already invested in environmental upgrades.

And yet, the Obama administration is still threatening to impose its own — presumably more draconian — plan on any state that doesn't do as it's told. It sounds like a scary outcome. But states shouldn't be frightened, nor should they allow themselves to be bullied.

For starters, the legal basis for this regulation is flimsy at best. As iconic left-leaning law professor Laurence Tribe put it, the administration's effort goes "far beyond its lawful authority." And even in the unlikely event that the regulation does pass legal muster, it's difficult to conceive how a plan imposed from Washington would be much different from what a state might develop on its own.

Since the Obama administration has already decreed that it will be the judge of whether a plan is acceptable or not, it's hard to see the White House agreeing to much that diverges from its ideological agenda.

Just consider how extreme this regulation is. According to a

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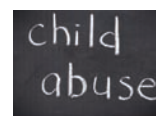
States Respond to EPA's 111(d) Proposal



Many of the 2 million comments submitted in response to EPA's 111(d) proposal were critical, and some were submitted by states who are fighting back against the unprecedented federal power grab.

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EPA exposed kids as young as 10 years old to dangerous levels of diesel exhaust in medical experiments.

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Grimes Joins as Senior Media Fellow



Katy Grimes, a nationally renowned media personality has joined E&E Legal as a Senior Media Fellow.

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The State of Affairs of Renewable Energy

by David W. Schnare, General Counsel



Eventually the will of the consumers will win out, regardless of the advertising to which they are subjected and even in the politically correct but economically

stupid renewable energy business. The political and bureaucratic dynamics of the renewables market have worked toward supporting uneconomic energy like wind and solar power. But the cost impacts have eroded the political enthusiasm and begun to cause voter and ratepayer backlash.

The cost impacts have been a hidden fact, buried in electricity bills under peculiar names, and almost never aggregated into an understandable number that actually informs the consumer. Until now. The Institute for Political Economy at Utah State University [has published a report](#) showing Kansas ratepayers will pay \$171 million more than they would in the absence of an RPS. The Kansas RPS has also resulted in 5,500 fewer Kansas jobs since the RPS started, a number that will continue to grow.

On a per household basis, families had \$4,367 less to spend in 2013 due to the RPS. Some 72,000 Kansas families have pre-tax annual incomes of less than \$10,000, averaging \$4,750. In other words, the Kansas Renewable Portfolio Standard (RPS) completely wipes out the income of nearly 35,000 Kansas families and significantly reduces the available income of many more.

This level of cost impact has direct consequences on health. The National Energy Assistance program examined the consequences of this kind of cost increase on low income families. Faced with these rate increases (and no actual improvement

in the electricity they receive), 32 percent of these families went without food, skipping some meals; 4 percent went without medical care, being unable to pay for co-pays; of those able to obtain medical care, 37 percent did not fill their prescriptions; and of this group, 25 percent became sick. Among the Kansas ultra-poor, this equates to about 50,000 people getting sick. Of those, according to the analytical methods developed by the U.S. Environmental Protection Agency, the \$4.85 billion in lost personal income in 2013 means the RPS caused the premature death of more than 400 people, an increase in premature death that will stalk Kansas every year the RPS remains in place.

And, this is just in Kansas. Similar studies are coming out soon for North Carolina, Colorado and Ohio, each with similar cost impacts.

Let's review the story line.

The "sustainability" movement arose out of the 1960's over-population scare and fears that we could not feed ourselves and would run out of basic mineral resources. Once Norman Borlaug developed high-yielding varieties and modern agricultural production came into play, Mexico became a net exporter of wheat (1963) and by the end of the 1960's, Pakistan and India doubled their wheat yields, allowing them to feed themselves. China eventually followed suit, and Africa came along too. Then the neo-Malthusians lost several bets with those who recognized that market forces would ensure a continuing supply of mineral wealth. So much for "sustainability" as a rallying cry.

Sustainability then morphed into concerns about "Smart Growth," a second effort to shift power from consumers to government, again using an argument that pitted "the environment" against the interests of consumers. Despite a swell of hope from city planners, they could not abridge "the American Dream" of a

home, a yard, a small-town feel to their communities. So, the hard-green activists looked for another horse to ride and found it in a nascent effort by Prime Minister Margaret Thatcher to beat up on coal miners, converting that into a war on coal.

Institutionally, this was labeled as concerns about the catastrophic potential for Global Warming. But despite continuing increases in carbon dioxide from coal-fired power plants, the planet didn't warm up. Indeed, although arguably eight of the past ten years have been the hottest for the last century, the last 2,000 years has been the coolest over the last 10,000 years (since the end of the last ice age), and the highest temperatures over the last century have been no greater than three previous warm spells over the past 2,000 years. No warming eventually cooled the ardor for additional political action against consumers, and hence the need to shift Global Warming into "Climate Change." But evidence that "climate" is dynamic and has not varied with carbon dioxide levels nor varied outside of normal highs and lows quickly forced still another change in terminology. Now we are supposed to worry about "Climate Disruption."

Although the Administrator of the U.S. Environmental Protection Agency refused to admit it, there has not been any climate disruption. There has been no increase in drought beyond normal variation, no increase in flooding beyond normal variation, no increase (and actually a decrease) in tropical storm frequency or intensity, and no net loss of polar (combined Arctic and Antarctic) ice coverage. While she is allowed her own opinions she is not allowed her own facts. Those speak for themselves, and they have been a big yawn.

All this has left consumers with a firm belief that whatever you call it, Global Warming, Climate Change, Climate Disruption or the

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Peeking behind the 'green' curtain: Uncovering the Kitzhaber connections

by Chris Horner, Senior Legal Fellow
Washington Times, Feb. 17, 2015



This week Oregon Gov. John Kitzhaber, a Democrat, leaves office, having resigned

under the cloud of a cronyism and corruption scandal. A U.S. attorney has subpoenaed "records that are a catalog of Kitzhaber's climate and economy-related initiatives," centering on money given to Mr. Kitzhaber's fiancée Cylvia Hayes. Ms. Hayes served a curious triple role of "first lady," adviser to the governor on energy policy and well-compensated consultant for the "clean energy" industry.

Any such investigation must not stop at Oregon's borders. This is not because the "clean energy" industry seems unique for its associated scandals in recent years, or the prevalence of wealthy Democratic donors getting even richer from it. Of course, some of those same supporters, such as Tom Steyer, provided Democrats a financial surge on a par with a long-time force, the teachers' unions, in 2014, expressly for the purpose of advancing the "climate" agenda, transferring taxpayer money to uneconomic "clean energy" schemes.

Instead, a broader look into the depth of this ingrained collusion reveals that Mr. Kitzhaber's office enlisted others to use their governors' offices to "spread climate coordination and collaboration to a larger group of governors across the U.S." underwritten by Mr. Steyer and others.

On behalf of the Energy and Environment Legal Institute, I obtained an 11-page email thread under Washington State's freedom of information law. In it, we see how Mr. Kitzhaber's office organized a campaign to promote the industry's agenda, beginning with the California and Washington governors' offices, a private environmentalist law firm and the White House.

The scheme was to recruit other governors to use their offices the same

way. Mr. Kitzhaber's aide originating the email discussion is Dan Carol, identified as central to the unfolding scandal by the *Portland Oregonian*: "How did Hayes end up with a fellowship funded by an organization with an interest in clean-energy policy in Oregon? A Kitzhaber campaign adviser, Dan Carol, helped arrange the funding following Kitzhaber's election in 2010 ... Carol subsequently landed a position within the Kitzhaber administration. That position, *Willamette Week* has reported, pays more than \$165,000, making Carol Kitzhaber's highest-paid aide."

According to the emails, the parties discuss "Dan's concept." Deploying the governors' offices in a coordinated push for the "climate" agenda would require paying outside parties as well, which would be funded by "major environmental donors" including Michael Bloomberg and Mr. Steyer. This would "serve as a standard setting left flank."

Specifically, the plan includes "a nationally-coordinated, multi-year 'states strategy' focused on driving outcomes contemplated by the president's climate action plan, [EPA's Clean Air Act section 111d], resilient infrastructure and international treaty objectives at scale."

Using green-group slang, the emails refer to President Obama's push for windmills and solar panels to supplant our existing network of electricity generation and distribution, and to the Kyoto II treaty expected to be reached in December.

The parties sought to arrange a private White House dinner "to create buy-in" among the same crowd, to "signal where funders should support filling holes in missing capacity we need to pull off the Multi-state strategy to keep outcomes and momentum moving on top of the public approach," wrote Mr. Carol.

According to the emails, Special Assistant to the President for Energy and Climate Change Dan Utech liked the idea. Sam Ricketts, director of Washington Gov. Jay

Inslee's Washington, D.C. office, also assured his colleagues that "[Council on Environmental Quality] staff were interested and felt [White House's David] Agnew, [then-Counselor to the President John] Podesta et al." would be interested as well.

About the planned White House meeting, they suggested "select Governors, senior White House officials, Tom Steyer, [Michael] Bloomberg, and a couple of other major environmental donors": "The Ask to Funders at that Meeting: Support right now the hiring of a 'grown-up' in each state, trusted and recommended by each engaged Governor who is capable and committed to developing and managing an integrated and multi-issue climate outcomes campaign through Paris 2015."

This would "be independent of any specific in-state or national [non-governmental organization], yet would work closely with [green] NGOs."

A major objective was creating "broad interstate [climate] agreement." Most intriguing about this was the plan to use electric utilities to flip Republican governors. "[B]ecause there are key utilities whose service territories cross red and blue states Governors in these states could quietly engineer a breakthrough strategy that compels utilities in key red states to lead the charge to win over a key Governor, rather than rely on a standard NGO-shaming strategy that might not deliver."

Taken together, the Kitzhaber scandal and these emails leave no doubt that credible investigation into the use of public offices to advance the "clean energy" industry, beyond the Oregon governor's office, is required. Any investigation must also extend to the White House, whose occupant serially invoked the objective of "finally" making renewable energy "the profitable kind of energy."

That is not a legitimate purpose of government. Yet it plainly was an objective of many government officials. We now see both how and why. It is time to investigate what is behind this "fundamental transformation" of government. □

How a State Might Respond to the 111(d) Proposal

by David W. Schnare, General Counsel



EPA received over two million comments on its proposal to shutter about half of all coal-fired power plants using authority it claims it has under Section 111(d) of the Clean Air

Act. EPA calls this its “Clean Power Plan” and through the rule would require States to establish a State Implementation Plan (SIP) to implement a four part rule. More than half the states in the union think the rule is fatally flawed. Most think it is illegal in the first place. Even states that fully buy into climate alarmism think the targets EPA set are unachievable.

EPA knows it is facing both legal and technical challenges and reports from inside the agency suggest they will try to soften the blow by easing the first set of targets, while keeping the equally unachievable final targets.

The initial reaction of many states has been to consider some form of “wait and see” approach. They are concerned that early efforts to comply with the rule, as would be necessary to meet EPA’s harsh deadlines, would cause utilities to make decisions on shutting plants and otherwise changing their engineering – changes that could not be undone but would also be unnecessary if the rule is found to be illegal.

On their part, utilities are neutral. They will get paid no matter what they do, as long as they can show they had to do it because of federal or state environmental rules. All utilities want is some certainty. Utilities calculate that if the state does not act, EPA will, replacing the SIP with a FIP, a Federal Implementation Plan. Indeed, early reports that states will not submit plans has caused EPA to prepare a generic FIP that they can impose on the day the states would otherwise have had to submit their SIPs.

States are also concerned about whether they will lose high-

way construction funds if they do not submit a plan. Because of the clear message the Supreme Court provided in *NFIB v. Sebelius*, EPA is no longer allowed to use the highway funds hammer. EPA, of course, rejects that premise and the matter will have to be litigated. In the meantime, states may be at risk.

In light of all this, E&E Legal has been asked for advice on how a state might deal with all these uncertainties and still protect its interests. We suggest an approach we call the “Plain Jane Plan.” It is a form of “wait and see,” but a form that limits EPA to well established practices that have the benefit of taking substantial time – enough time to ensure no plan is put into place until the legal issues are resolved.

Delaying Highway Fund Coercion

We have been asked to estimate the amount of funds states could lose if EPA uses this coercive hammer. The actual amount of funding that can be withheld is extremely state specific, so we cannot make an estimate of the number. The process EPA uses, however, is quite clear. [The Congressional Research Service explains the process in a report](#) that is somewhat dated but is informative and accurate. The key point of the report is that if a state files a SIP, EPA must use a “sanctions clock” that gives the state plenty of time to work the issue before any sanctions can be imposed. Here is how the sanctions clock works.

Sanctions cannot be imposed until 18 months after an EPA finding that a SIP is insufficient. Hence, the legal battle over the 111(d) rule will likely be decided by then and the state would not have to submit a plan until sometime in 2018 to avoid sanctions, but might submit a Plain Jane Plan to delay everything.

EPA does not begin with funding sanctions. Rather, it first imposes a 2 for 1 emissions limitation on new permits. Because the only part of the 111(d) rule that would be affected by

this would actually be 111(b) new sources, and since EPA seems to be waffling on what the NSPS (111(b)) requirements are going to be, this sanction is a bit difficult to predict. Probably it will mean no new coal plants, but might mean no new natural gas plants too since it is impossible to cut CO₂ emissions from gas plants by 50 percent from the 111b limits for any new plant. Stopping natural gas plants, however, would go against the grain for EPA, and they may not go beyond coal plants. In any case, the 2 for 1 element, alone, adds six months to the process.

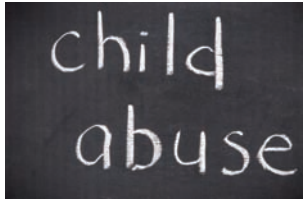
The highway funds problem thus begins only 24 months after EPA decides a state has not submitted an acceptable SIP. Even then, however, the funds restriction is narrowed by many exemptions. Here is the list the Clean Air Act allows to go forward despite a highway funds sanction:

- capital programs for public transit;
- construction of roads or lanes for the use of buses or high occupancy vehicles;
- planning for requirements for employers to reduce employee work-trip-related vehicle emissions;
- highway ramp metering, traffic signalization, and related programs to improve traffic flow and achieve a net emission reduction;
- fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations;
- programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restriction zones or periods, or vehicle registration programs;
- programs for breakdown and accident scene management, nonrecurring congestion, and vehicle information systems, to reduce congestion and emissions; and

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EPA Illegally Used Children as Guinea Pigs in Diesel Exhaust Experiments

by Craig Richardson, Executive Director



The U.S. Environmental Protection Agency (EPA) exposed children

as young as 10 years old to dangerous levels of diesel exhaust in medical experiments, show documents obtained through the Freedom of Information Act (FOIA). The documents are being jointly released by the Committee for a Constructive Tomorrow (CFACT) and the Energy and Environmental Legal Institute (E&E Legal).

“Not only has EPA been caught violating the letter and spirit of virtually every national and international code, law and regulation for the protection of human subjects in medical experiments developed since World War II,” said E&E Legal General Counsel David Schnare, “but they have done so in shocking style, abusing the most vulnerable people of all, children.”

“EPA and its researchers have perverted science and morality in using children as guinea pigs in

what amount to pseudoscientific experiments,” said CFACT Executive Director Craig Rucker.

The EPA-funded experiments were conducted at the University of Southern California (USC) and the University of California Los Angeles (UCLA) between 2003 and 2010. Despite that the EPA had concluded inhaling diesel exhaust can cause death within hours and that the California Air Resources Board (CARB) concluded there is no safe exposure to diesel exhaust, the USC/UCLA researchers sprayed diesel exhaust up the noses of 20 children aged 10 to 15 years of age. The purpose of the experiment was to see what happened to the children after the exposures.

“Compounding the basic villainy of the experimentation itself,” says Schnare, “is that the USC/UCLA researchers failed to warn the parents and children how dangerous EPA and CARB had determined diesel exhaust to be. So there was no informed consent as required by law.”

“It’s clear from the documents obtained that the experi-

ments violated the Nuremberg Code, as adopted by the state of California, and the federal regulations known as “The Common Rule,” which are intended to protect human subjects from rogue researchers,” Schnare stated.

Under California law, violations of the medical experimentation laws are punishable by fines and/or imprisonment.

“In addition, once evidence of these experiments had been uncovered, EPA attempted to destroy evidence and USC staff stonewalled inquiries,” noted Rucker.

“The only way EPA, USC and UCLA are not guilty of illegal experimentation is if EPA and CARB had wildly exaggerated the dangers of diesel exhaust.” said Rucker. “But in that case, the two regulators have then been grossly misleading the public and Congress in order to issue scientifically unsupported and costly regulations,” Rucker added.

Congress and appropriate law enforcement agencies should investigate the conduct of EPA, USC, UCLA and the individual researchers, recommended Schnare and Rucker. □

Sen. McConnell (Cont.)

compliance costs and cause electricity price hikes in nearly every state.

And who gets hit hardest when energy bills go up? Lower-income families. Seniors on Social Security and a fixed budget. Those who struggle just to get by. These are the people the administration has chosen to attack.

In Kentucky, the regulation would likely shrink our economy by almost \$2 billion and throw countless out of work. The commonwealth's coal industry alone has already shed thousands of coal jobs during this administration's tenure. And now, many more of the thousands of Ken-

tuckians whose jobs are tied to coal — including many proud miners who just want to give their children a better life — are likely to lose their jobs, too.

In short, this regulation threatens to hurt a lot of people without doing much for the global environment. In fact, it could even make things worse by chasing industrial activity overseas to high-polluting countries like China.

So what are governors and state officials who value the well-being of the middle class to do? Here's my advice:

Don't be complicit in the administration's attack on the middle class. Think twice before submitting a

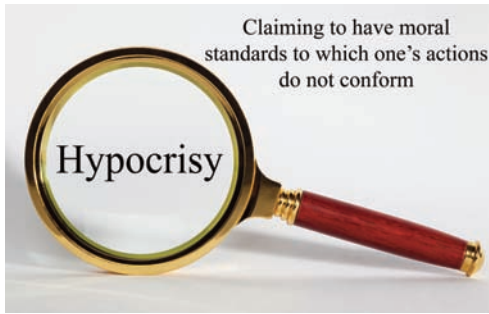
state plan — which could lock you in to federal enforcement and expose you to lawsuits — when the administration is standing on shaky legal ground and when, without your support, it won't be able to demonstrate the capacity to carry out such political extremism.

Refusing to go along at this time with such an extreme proposed regulation would give the courts time to figure out if it is even legal, and it would give Congress more time to fight back. We're devising strategies now to do just that.

So for now, hold back on the costly process of complying. A better outcome may yet be possible. □

Greenies Attempt to Circumvent Open Record Laws

by Matthew Hardin, FME Law Counsel



Why does E&E stay so busy? Because forces on the left are always scheming to keep records of their work safe from public scrutiny. The latest example is a new report issued by the Union of Concerned scientists: "[Freedom to Bully: How Laws Intended to Free Information Are Used to Harass Researchers](#)." The report, which discusses E&E Legal's recent fight for records relating to Michael Mann's work at the University of Virginia, is a how-to guide for academics on how to avoid open records laws, and a proposal for legislative and policy changes to further insulate the work conducted by publicly-funded scientists from the

public's view.

Among the report's proposals, which in reality gut the entire letter and spirit of open records laws, include:

- Rewriting laws to consider the "best interest" of an individual scientist rather than the best interest of the university, or of the taxpayer
- Exempting academics from state open records laws
- Making disclosure of university records voluntary
- Allowing academics themselves to determine which of their records should be released to the public and which ones should remain private.

These proposals turn traditional concepts of how open records laws should work on their heads. Gone would be the "presumption of openness" in all records created at taxpayer expense. Gone would be the independence of FOIA officers and records custodians at both the state and federal level. Under the last proposal, there would no longer be any

legal process at all for the public to gain access to these records.

Academics on the left once championed open records laws as a tool for the public to become informed about their government. A combination of federal and state laws has been in place for almost a century now ensuring public access to the records created with tax dollars. Once academics find their own work under fire, however, lofty theories about public access are discarded. The academy's new motto seems to be "Sunshine for thee, and privacy for me."

Thankfully, the Union of Concerned Scientists has been unsuccessful getting their proposals adopted by state legislatures, but it's not been from a lack of effort. E&E, however, will not rest. We've been in contact with legislative leaders at both the state and federal level to fight for the public's right to know what sort of work they are funding. And we will continue to fight in the courts to make sure academics on the left receive the same level of scrutiny they champion for others. □

Journalist Katy Grimes Joins as Senior Media Fellow



Katy Grimes, a nationally renowned media personality has joined E&E Legal as a Senior Media Fellow.

"We are delighted and honored to have someone of Katy's caliber join our impressive stable of Senior Fellows," said Craig Richardson, Executive Director of E&E Legal. "Her first-rate analytical skills coupled with her dogged determine to discover the truth makes her an outstanding journalist and a great addition to our team."

Grimes is a longtime political journalist, investigator, analyst and writer. She describes herself on her blog as a "Political Journalist. Saucy Cynic. Quintessential Analyst. Never a stenographer." As Senior Correspondent for the Flash Report, Katy covers the California Legislature and state agency politics from the State Capitol.

For the last ten years, Katy has worked as an investigative journalist, political columnist and news reporter for The Sacramento Union, the Pacific Research Institute's Cal-Watchdog Journalism Center, and The Flash Report.

Katy has been published in the Orange County Register, the Flash Report, Cal News, California Political News and Views, Fox and Hounds, Human Events, and Watchdog.org. She was a regular columnist for The Sacramento Union, and has written for the Washington Examiner, the San Francisco Examiner, the Sacramento Bee, Fox News, and the Business Journal.

Katy has also been an influen-

tial political blogger since 2004, and can be heard on many talk radio shows throughout California. Katy fills in as a talk radio host for Sacramento radio shows.

Ryan Rose, managing editor of the Sacramento Union, said about Grimes: "These days, it's easier for people to re-tweet slogans to describe how they feel – Katy is the type coming up with those slogans. She's an original in an increasingly postmodern, self-referential, un-original world. Whether or not you agree with her politically isn't the reason to read her blog; it's how she says what she says that makes you compelled to go back."

A California native, Katy lives in Sacramento with her husband Terry. Her son is a recent U.S. Naval Academy graduate, now a Lieutenant in the U.S. Navy. □

111(d) Proposal (Cont.)

- such other transportation-related programs as the Administrator, in consultation with the Secretary of Transportation, finds would improve air quality and would not encourage single occupancy vehicle capacity.

Because most highway funds are fungible at the state level, states may be able to shift their own funds to cover what had been done with federal funds, and use federal funds for purposes as listed above. Creative description of highway work to fit within these exemptions gives further latitude to the states. In other words, the sanctions regime has the benefit of giving states more time to deal with problems without causing significant loss of funds, even if found to be a legal sanction.

A Plain Jane Plan

A Plain Jane Plan has two purposes, one is to credibly address the final rule and the other is to maintain state authority to manage rule compliance. In other words, one is to force EPA to spend considerable time and effort determining whether the proposed plan is sufficiently responsive and the other is to prevent EPA from summarily imposing a FIP. Existing SIPs that address the normal Clean Air Act primary criteria pollutants provide examples of how a state can apply its own mix of approaches in a manner that will reasonably prevent EPA from imposing a SIP.

Applying these two purposes, a Plain Jane SIP might look something like the following, keeping in mind that every state is different, has different goals, and a different mix of electricity generation and CO2 reduction opportunities.

The proposed rule has four building blocks and a state need not use them all. But, some are significantly more cost-efficient than others and some are more open to interpretation than others. We take them in turn.

Coal-fired Power Plant Heat Rate Improvements

This is the only building block that is “inside the fence” and thus the

only building block that EPA itself could use in a FIP. EPA proposes a 6 percent increase in heat rate. This is impossible. At best, plant engineers tell us, there might be a possibility of obtaining a 2 percent increase in heat rate, but no more. So, the SIP would state that the highest achievable heat rate increase is whatever the utilities claim they can reasonably do, and make that their requirement. The utilities know that the Sierra Club will sue them if they don’t meet that rate, so there should be no over-estimation on this. A FIP cannot be enforced if it is impossible to meet, so a reasonable target in a state SIP would likely prevent a FIP and would not put any plant out of business.

This building block, alone, will not be sufficient to meet the state’s interim or final goals. Hence, creative means under the remaining blocks will have to fill the bill.

Fuel Switching to Natural Gas

Some states have recently chosen to force fuel switching, but most have not. This is a purely economic decision – one made by the utilities, with PUC approval. Let the utilities tell the state what they had planned in this regard and use that, but check for two things. First, only include in the plan those switches that are in fact cost-efficient. Second, ensure that there is sufficient capacity in natural gas transmission to support the switch. The ability to have natural gas delivered to the utilities in sufficient amount when the need is greatest is a limitation on this block. If there is a capacity limitation, use it as part of the plan.

This use of cost-efficient switching will still not be sufficient to meet the state’s interim or final goals.

Zero-Carbon Energy

Within this block a state may find some actual opportunity. Begin by rejecting use of any non-cost-efficient generation. If a utility wants to invest in wind or solar, and the PUC finds that an affordable and reliable approach, then include that generation. Otherwise, don’t. Keep in

mind, however, wind and solar have never been shown to be cost-efficient. Some wealthy people have, however, installed solar on their homes. If they do, then count that generation to the max, and count it as though it will remain in place forever. Same for any commercial, governmental or industrial solar installation. If they are dumb enough to do it, then count it. Do not require or encourage wind or solar.

Nuclear is generally cost efficient, although not compared to coal and natural gas. If any utility wants to go that direction, especially if they are considering new technologies that require no water, then put that into the plan. Assume a very timely installation. Then, when that does not happen, blame it on federal regulatory delays. These kinds of delays are routinely used as a means to acceptably delay implementation of SIPs, without the need to supplement pollution reduction in the meantime.

Then, get creative. There are many ways to reduce carbon emissions or to capture carbon. Take credit for every new tree, bush or grass planted within the state. Count all crops. If a satellite is launched from the state and generates its own power, take credit for that. The accounting is not in on this, but it has the potential to generate massive carbon capture, and may be sufficient, alone, to meet the state’s goal. This approach is akin to state’s taking credit for pollution reduction by building bike lanes that have never been used and never produce the use claimed in the state’s SIP.

Demand Side Management

This is another block that has value only if it is cost-efficient, and from time to time it is indeed cost efficient. In New York City, older buildings are being reengineered with energy savings providing cost-recovery within two years. This is normal for old homes, but where it works, it works. Count that but don’t demand or encourage non-cost effi-

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Renewable Energy (Cont.)

end of the world as we know it, it isn't the end of the world as we know it and it is not worth worrying about come election time, according to many surveys conducted by politically neutral organizations.

Further, consumers are getting tired of having to pay for climate change alarmism without getting anything back for their money. Which brings us back to the renewable energy mandates.

Governments responded to climate alarmism in a predictable way. They were told that renewable energy could (eventually) be produced at an affordable cost that would eventually be as low as fossil fuel energy. The federal government imposed a renewable mandate on fuels, requiring "renewable" substitutes for oil-based fuels. Didn't work. EPA has had to walk back its mandates every year. States took a different route. Some of them imposed renewable electricity mandates, attempting to shift power generation from coal to wind and solar, again based on the premise that the consumer could afford the price increase and it would prevent Global Warming, Climate Change, Climate

Disruption and the end of life as we know it. As shown for Kansas, we are learning quickly, the RPS narrative is no longer working either.

Because of impacts like those seen in Kansas, the politico's, having accepted the alarmism (and the campaign funds that go with it), are now beginning to feel the backlash. Wind power is expensive. Solar is even more expensive. The climate hasn't changed, and now we are learning that even if all coal was removed from our U.S. electric grid, it wouldn't measurably change the global temperature. So, the political push back has started. Consumers are paying a lot of money for no good reason.

Pennsylvania acted first to slow down their program, put it on ice for a couple of years. North Carolina is edging closer to dropping their program altogether. The Colorado Senate proposed cutting the requirements in half (basically taking what they now have and calling it quits). The Colorado House, by one vote, killed the Senate's proposal. The next state election cycle may well confirm the depth of the public unrest.

And, unrest is building as the economic impacts become real, and not just in the consumer's pocket. Solar rooftop installers are disappear-

ing as quickly as con-men. So are their larger brothers. RGS Energy has cut its staff by 30 percent. They abandoned the industrial market because industry is not stupid and does not invest in cost-inefficient products. The homeowner market has slowed, despite the army of salesmen and women the Sierra Club has put onto the streets (yes, illegal kick-back to the Sierra Club for every sale).

And, the legal challenge to state renewable energy mandates continues, including E&E Legal's challenge of the Colorado Statute. The 10th Circuit recently heard arguments on this case and their decision is expected out in May or June. That Court made clear that E&E Legal was on firm ground on one of the two tests it had to meet. If the Court takes E&E Legal's side on the second test, the Colorado RPS will be struck and State renewable mandates across the nation will be at risk, much to the joy of the emerging grass-roots opposition to these RPS mandates.

If you haven't told your state representatives that you don't want to pay for nothing under fear of global warming, drop them a line opposing renewable energy mandates. It's your money and your lives at stake. □

111(d) Proposal (Cont.)

cient refurbishments.

Take credit for every new appliance purchase within the state. Every new appliance is more energy efficient than the appliance it replaces. If anyone puts in energy management systems that turn the lights off or lower the heat/air conditioning when people are not present, then count that. Just don't require any of this.

Count every business closing as an energy savings, at least until the building is brought back into use. Same with empty apartments and houses. Count every bike sale as an energy savings (avoiding the need to use an electric car). Get creative in counting.

Conclusion

I have been asked repeatedly why, if there is no actual environmental benefit (think global warming) from this rule, and since the rule's cost will impose more premature death than it will avoid, why does EPA promulgate these kinds of rules. The answer is quite simple. Because they can. Understanding this fact may help states to recognize the rule is not about actual environmental protection but rather is about who controls the state's economy. It is a power game, one the states have a need to win. So, play the game, but play it on your own terms. Out bureaucracy EPA. States have that right under the Clean Air Act and

they have that duty under their own constitutions. □

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Energy and Environment Legal Institute
(E&E Legal)
722 12th St., NW, Fourth Floor
Washington, D.C. 20006
(202)-758-8301
Richardson@eelegal.org
www.eelegal.org