The Reliable, Affordable and Safe Power (RASP) Act

Whereas Statements

WHEREAS, a reliable and affordable electricity supply is vital to the nation’s and each state’s economic growth, jobs, and the overall well-being of its citizens; and

WHEREAS, under its sovereignty and the protections of the 10th Amendment, it is the sole authority of each state to regulate as necessary to ensure a reliable and affordable supply of electricity for its citizens; and

WHEREAS, environmental regulations should be based on sound science and a transparent and comprehensive program that addresses environmental issues, the nation’s broader economic prosperity, and the long-term energy affordability for citizens; and

WHEREAS, the regulation of retail electricity sales and local distribution of electricity is a sovereign State function that federal agencies have a legal obligation to respect and preserve; and

WHEREAS, on June 25, 2013, the President issued a memorandum to the Administrator of the U.S. Environmental Protection Agency (EPA) directing the EPA to develop guidelines to control greenhouse gas emissions from existing fossil fuel-fired power plants under Section 111(d) of the federal Clean Air Act and to seek input from states; and

WHEREAS, the EPA, under the Clean Air Act (CAA), claims authority to regulate greenhouse gases by utilizing Section 111(d) to regulate carbon dioxide performance standards for Existing Generating Units (EGUs) when those plants are already regulated under Section 112’s air toxics program; and

WHEREAS, the EPA has admitted this proposed rule will not measurably alter any impacts of climate change; and

WHEREAS, the EPA has admitted that its interpretation of the CAA conflicts with a literal reading of the law and acknowledged that this application of the CAA “would have been unrecognizable to the Congress that designed’ the governing statutory framework;” and

WHEREAS, the Clean Air Act does not authorize EPA to mandate implementation of “outside of the fence” elements of a state’s Clean Power Plan with respect to retirement or operation of coal fired electricity generating units, the reliance on generation of electricity from natural gas, the reliance on renewable energy sources, or the energy efficiency or demand management of end-users, each of these exclusively within the police powers of the state; and
WHEREAS, the proposed guidelines are based on the EPA’s assessment of each state’s ability to improve the efficiency of coal-fired electric generating units, retire or operate differently coal-fired electric generating units, substantially increase the generation of electricity from natural gas, significantly increase reliance on renewable energy sources, and substantially reduce the use of electricity by consumers, all in a plan and on a schedule that is not achievable and workable; and

WHEREAS, the Governor, Attorney General, Public Utility Commission, and state environmental agency of {state} have sent comments to the Environmental Protection Agency expressing concern with implementation of the rule; and

WHEREAS, the proposed rule would effectively amount to a federal takeover of the electricity system of the United States; and

WHEREAS, the proposed guidelines and plan, by the EPA’s own estimates have a major impact on the economy of each State and significant consequences for how electricity is generated, transmitted, distributed, and used within State.

Statutory Provisions

NOW THEREFORE BE IT RESOLVED, and as necessary in response to the EPA Clean Power Plan regulatory activity, the State Executive and Attorney General shall take appropriate steps to protect the State’s sovereignty and police powers authorities in light of the designed federalism under the Clean Air Act; prevent federal commandeering of State police powers resources; retain authority to develop and submit to the EPA any plan for meeting the goals of reducing carbon dioxide emissions held to be legally mandated; and in so doing, the Legislature, while pursuing all opportunities to challenge this regulatory overhaul, shall protect the state’s interests in the development of the state’s plan, in consultation with the {state agency} and other important stakeholders.

Limitations

BE IT FURTHER RESOLVED, given this legal uncertainty, {state agencies} may examine the implications of preparing and implementing this rule but shall not prepare, draft, submit or implement an implementation plan under this rule or otherwise expend funds to do so until completion of judicial review as to the legality of a Clean Air Act Section 111(d) regulation for existing power plants has been fully resolved at law;

BE IT FURTHER RESOLVED, {state} shall not expend funds to implement a Clean Power State Implementation Plan until:

the State House and Senate committees having jurisdiction over the Clean Air Act, or an advisory committee appointed by these committees have:

a. affirmatively approved the plan; and
b. submitted a report on the impact on the affordability and reliability of the plan on commercial and residential consumers.
BE IT FURTHER RESOLVED, The {public utility commission} shall not allow electric generating units to be retired prior to their engineering lifetime if the unit is necessary to maintain the grid reliability specified by the Federal Energy Regulatory Commission (FERC) in its reliability standards.

BE IT FURTHER RESOLVED, The {public utility commission} shall require that existing electric generating units be operated in accordance with their design parameters and in such a manner as to ensure operation consonant with the initial design life of the unit at time of its {public utility commission} approval.

BE IT FURTHER RESOLVED, The State shall not adopt a Clean Power State Implementation Plan absent {public utility commission} and FERC certification that the plan will meet or exceed FERC’s reliability standards.

Affordability

BE IT FURTHER RESOLVED, The {public utility commission} shall condition decisions related to electricity generation and distribution on least-cost proposals that comply with Clean Air Act regulations and the State Implementation Plan for which Air Quality Criteria have been published or for which regulations have been promulgated under Section 112 of the Clean Air Act.

BE IT FURTHER RESOLVED, The {public utility commission} shall cap non-fuel rate increases associated with greenhouse gas regulations at 1.5%.

BE IT FURTHER RESOLVED, The {public utility commission} shall not allow electric generating units to be retired prior to their engineering lifetime unless the owners have fully recouped the cost of construction and financing, the replacement generation results in lower costs to consumers and there is sufficient replacement capacity to meet dispatchable capacity of the unit to be retired.