

Material provided on behalf of the Kansas electric utilities To Senate Utilities Committee

January 28, 2016

Chairman Olson and committee members,

The Kansas electric utility industry is providing the attached information to further the discussion associated with the state response to the Clean Power Plan. Attachment 1 is the presentation made by Mr. Bill Bumpers last fall to the committee. Attachment 2 is a letter from the Kansas electric utilities' executives to KDHE Secretary Susan Mosier dated earlier this month.

We appreciate the opportunity to provide this information.

Westar Energy
Great Plains Energy
Empire District Electric
Sunflower Electric Power Corporation
Kansas Electric Power Cooperatives, Inc.
Midwest Energy, Inc.
Kansas City Board of Public Utilities
Kansas Municipal Utilities
Kansas Electric Cooperatives

January 4, 2016

Susan Mosier, M.D.
Secretary, Kansas Department of Health and Environment
1000 S.W. Jackson Street, Suite 540
Topeka, KS 66612

Dear Secretary Mosier:

After multiple meetings together, with your staff and KCC staff, we are firmly convinced that, should the Clean Power Plan survive legal challenges, the submittal of an initial state plan before September 6, 2016 offers a multitude of benefits over the alternative of being subject to a federal plan developed solely by EPA. The most important of these benefits is lower energy costs for Kansans. We appreciate the commitment of your staff in developing equitable solutions and look forward to working together for the best interests of Kansas customers.

House Bill 2233, as passed into law last session, allows the KDHE to move forward on EPA's prescribed pathway to submit our state plan. There is current discussion on the value of revising this law. We want to be clear that, because the law is adequate in its current form, opening it up for revision elevates the risk of delaying KDHE's progress in meeting these prescribed EPA deadlines. We encourage you to minimize the rate impacts from the CPP by avoiding revisions to this law.

Sincerely,

Mark Ruelle, President & CEO, Westar Energy
Terry Bassham, President & CEO, Great Plains Energy
Bradley Beecher, President and CEO, Empire District Electric Company
Stuart Lowry, President & Chief Executive Officer, Sunflower Electric Power Corporation
Marcus Harris, Executive Vice-President & CEO, Kansas Electric Power Cooperatives, Inc.
Earnie Lehman, President and General Manager, Midwest Energy Inc.
Don L. Gray, General Manager, Kansas City Board of Public Utilities
Colin Hansen, Executive Director, Kansas Municipal Utilities

cc: Gary Mason, KDHE
John Mitchell, KDHE
Rick Brunetti, KDHE
Tom Gross, KDHE
Jon Hummell, Office of Governor Sam Brownback

Attachment 1



The Clean Power Plan: National Perspectives

October 1, 2015

William Bumpers, Partner, Baker Botts



Overview

- **Statutory/legal background**
- **CPP legal vulnerabilities**
- **Timelines for legal challenge and CPP implementation**
- **Benefits of a parallel compliance path**
- **Interstate trading**

Statutory and Legal Background

- CAA Section 111(d) - authority is contingent on Section 111(b) standard
- EPA concurrently finalizing Section 111(b) standards for new electric generators
- *Massachusetts v. EPA* - S. Ct. decision authorizing EPA to regulate CO₂ as a "pollutant" under Clean Air Act

Major Legal Vulnerabilities

- Whether EPA can regulate EGUs under § 111(d) that already are subject to regulation under § 112
- EPA's definition of Best System of Emission Reduction sets no limits on EPA authority
- § 111(d) standards more stringent than § 111(b)
- Whether Section 111(d) permits EPA to require redispach to gas or mandate renewable energy
- **CPP-specific elements**
 - Remaining useful life
 - State obligations
 - Leakage

Key CPP Timelines

CPP Challenge

State Plan Decision

Rule Issued – Aug. 2015

Rule Published ~ Oct. 2015

Petitions for Review/Reconsideration

~ Dec. (60 days)

Briefing completed on substantive challenge

~ July/Aug. 2016 (approx. 8 months)

Oral argument likely ~ Nov./Dec. 2016

Ruling by D.C. Circuit ~ Mar. - June 2017

(approx. 4-6 months)

Initial state plan submittal

– 9/6/16

Progress report – 9/6/17

Final state plan submittal

– 9/6/18

Parallel Path Option

- **File Petition for Review Challenging CPP in D.C. Circuit**
- **Submit initial State Plan**
 - Defers implementation and obligations of plan until after D.C. Circuit rules on validity of CPP
- **Benefits of Filing State Plan**
 - Flexibility, tailored to state vs. one-size-fits-all
 - Choice of plan type (rate or mass-based)
 - Delayed obligations/glide path discretion
 - Multiple options to address leakage
 - Allowance management authority

Interstate Trading

- **Interstate Trading under the CPP**
 - Subcategory-based emission rate targets
 - Statewide averaging of emission rates
 - Mass-based trading
- **Interstate Trading Benefits**
 - Market efficiencies
 - Utilities have trading knowledge/experience

