



STATE OF ARKANSAS  
THE ATTORNEY GENERAL  
DUSTIN MCDANIEL

August 4, 2014

Avi S. Garbow  
General Counsel  
United States Environmental Protection Agency  
Office of General Counsel  
1200 Pennsylvania Avenue, N.W.  
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RE: Clean Air Act 111(d) Rule- The Clean Power Plan

Mr. Garbow,

Thank you for taking the time to meet with me and my staff regarding the impact of the proposed Clean Air Act ("CAA") 111(d) Rule on Arkansas. As Arkansas's Attorney General, I directly represent the interests of the utility ratepayers, as well as the broader concerns of all of the citizens of the state. The economic impact of the rule, as proposed, on my state would be devastating and I urge you to carefully reconsider the goals set for Arkansas.

As proposed, this rule will require Arkansas to meet an almost 45% reduction in carbon emissions from electric generating units (EGUs) by 2030. This is the 6<sup>th</sup> highest rate of reduction in the nation, imposed upon a state that currently ranks 46<sup>th</sup> in per capita income. There can be no question that the rule will have a huge impact on our state's utility rates, which will disproportionately impact low income Arkansans. The rule as proposed falls hardest on one of the poorest states in America. While I recognize the importance of reducing our carbon emissions, it is also important to balance necessary change with the economic and social costs imposed on our citizens.

There are several areas of the rule that concern us but we want to just focus on a few in this letter. Some of my specific concerns with the proposed 111(d) Rule are as follows:

## 1. Deadlines for comments and implementation

The proposed rule and its implications are extremely complex. However, the time the states have been given to fully evaluate all aspects of the rule and data and determine where the state should comment is very compressed.

The time permitted to develop and finalize a state plan is similarly too short. If the rule becomes final in June 2015, as expected, Arkansas would then have to develop a state plan, seek any required legislation from the General Assembly and only then can we submit the state plan to EPA for approval. A one-year time frame is not feasible for all of this to occur. In fact, after the rule is final, the General Assembly will not even meet in regular session again to consider any necessary legislation until January of 2017, when the state is scheduled to meet some of the renewable goals.

Finally, planning new infrastructure requires long time-horizons and many years to plan, permit, and construct. Lawsuits often prolong the process and cast uncertainty on what will really be required in the final project. Requiring plan implementation as early as 2017 to meet an interim goal in 2020 is far too soon and too abrupt to allow Arkansas utilities to meet the challenges of the proposed rule in a manner that is cost-effective for their ratepayers. In recognition of the long-term horizons for utilities, I believe the interim goal should be removed. Compliance will be much less burdensome if EPA allows the states a glide-path instead of a cliff.

Alternatively, if EPA does not remove the interim goal, then some allowance needs to be made if compliance with the rule would negatively affect reliability. I believe that EPA needs to allow for an assessment of reliability impacts and the possibility of some additional flexibility to prevent negative reliability impacts.

For these reasons, Arkansas requests: (1) an additional 60 days to comment on the proposed rule; (2) at least an additional year to submit a state implementation plan; (3) at least an additional year to develop a regional plan; and (4) removal of the interim goal timeframe or at least an extension to 2025 with the final goal to be met by 2035 or for a reliability assessment with the possibility of additional flexibility to prevent negative reliability impacts.

## 2. Barriers to Regional Planning

Arkansas is uniquely situated in that our electric utilities are members of two different Regional Transmission Organizations (RTOs). These RTOs coordinate planning and operations across a number of regulatory jurisdictions and allow many states and utilities to work together to make electricity more reliable and affordable.

Although EPA has allowed for regional planning, and regional planning has considerable potential to reduce the impacts of the rule on consumers, barriers to multi-state cooperation remain. Both RTOs are the culmination of years of study, experience, and negotiation by a broad group of stakeholders. Making changes in the agreements, tariffs, business practices, and regulatory orders governing the RTOs will not be quick or easy. Changes in the algorithms and cost allocation methodologies must be made with input of many stakeholders, requiring complex negotiations and approval of many regulators and stakeholders. Although this approach presents the best opportunity to efficiently reduce emissions, I am deeply concerned that two years is not enough time to achieve such a complex undertaking.

By one estimate, the cost to Arkansas of the proposed rule is the highest of any state. Although Arkansas has considerable incentive to try to partner with lower-goal states in a regional approach, lower-goal states will rationally be very concerned about partnering with Arkansas. Even if a regional approach lowers the overall cost of emissions reductions, it might not benefit lower-goal states. If the lower-goal states do not participate, it could create a domino effect that results in the collapse of the whole endeavor.

### 3. Impracticality of the fuel source switch from coal to natural gas within the given timeframe

Fuel switching from coal to natural gas will require the early retirement of coal plants, increase fuel costs, require additional infrastructure to deliver the increased volume of natural gas, and result in an increase in natural gas prices due to the increased demand. The current estimates are that Arkansas utility bills will likely increase 10-30%. It will also negatively impact reliability of service until infrastructure and supply can adjust.

Arkansas's coal plants were designed and built to provide baseload power, while the non-merchant Natural Gas Combined Cycle (NGCC) units were designed to provide electricity during

peak demand. To change the purpose and design of these units so drastically will have a large impact on utility rates and the reliability of service. Requiring coal plants to run at a lower capacity than they were designed to do will have the paradoxical effect of significantly reducing the efficiency of those plants, in addition to the wasted ratepayer costs of closing plants with many years of remaining useful life.

In addition, there are significant problems with the data used to calculate the Block 2 goal for Arkansas. First, a substantial portion of the calculated available natural gas capacity in Arkansas is due to existing merchant plants, which operated at a very low capacity factor in 2012 due in large part to transmission constraints. Two of these plants have since been acquired by Arkansas utilities in late 2012, making 2012 unrepresentative. Second, EPA's calculations look at the "nameplate" capacity of NGCC plants in each state. However, nameplate capacity overstates the real capacity of the units. Particularly during the heat of summer, these units cannot operate at these levels. I understand the difference is approximately 530 MW, which represents an entire coal plant of overstatement. Finally, the calculated rate assumes that sufficient gas is available for NGCC plants to use. However, Arkansas EGUs operate under interruptible supply contracts, not primary supply. The current contracts will not support the demands of base level electricity generation.

I request that: (1) NGCC generating capacity be recalculated to accurately account for available capacity; and (2) the timeframe for implementation and interim and final goals be extended as requested in Item #1, to allow for appropriate planning and softened economic impact on consumers.

#### 4. Heat rate improvements and need for more specific data

The goal calculations used by EPA assume a 6% heat rate reduction from coal fired EGUs. However, Arkansas has two coal plants that are less than three years old and one in the middle of costly upgrades and improvements to meet MATS requirements. The new plants in particular are unlikely to be able to achieve a 6% heat rate improvement because those units are already operating at a low heat rate. Also, operating the coal-fired plants at a lower generation capacity will increase the average heat rate of the plants. Finally, I note that between 2012 and 2020, at least one of Arkansas's coal plants will be retrofitted for MATS compliance. Doing so will increase the heat rate, making the 6% reduction even more unreasonable.

Finally, I am concerned about the use of 2012 as a baseline year. 2012 was a year with unusually low gas prices, an unusually warm summer, and only contains a few days of emissions from our newest coal plant. A multi-year average would be a more appropriate baseline, smoothing the unusual impacts unique to 2012.

#### 5. Renewables and Energy Efficiency

Arkansas has very limited wind potential and limited hydroelectric potential. Nearly all of the non-hydroelectric renewable energy Arkansas consumes originates in nearby states with more abundant wind resources. It makes sense for Arkansans to spend money on wind farms in places with more wind, and to transmit the electricity to Arkansas rather than to pay to develop wind farms here that will produce less energy for the same price. For this reason, every electric utility in the state either has, or is developing, contracts for purchase of wind energy from our neighbors. If credit for renewable generation is limited to state boundaries, it will create a systematic disincentive to invest in developing the best renewable resources in favor of developing renewables within the state boundaries, no matter how inefficient they might be. I ask that EPA allow us to count renewable electricity purchased from another state towards our reduction goal.

EPA's goals are based on very aggressive implementation of energy efficiency. Energy efficiency programs tend to drive up rates, even when weighed against avoided generation and fuel savings. Although program participants' bills may decrease, the fixed cost of paying for existing assets is spread over a smaller pool of purchases, and some customers may never have a meaningful opportunity to participate. This includes some of our poorest citizens who cannot afford energy efficiency investments, and industries and other consumers that may be doing all they can to save electricity.

I suggest that the impact of these problems can be lessened by eliminating renewable energy sources and energy efficiency from the emission reduction goal, but allowing them to be counted towards compliance with the overall goal. This will allow states to determine the appropriate level of energy efficiency and renewables based on the characteristics of each state and will eliminate the incentive to build renewable infrastructure in sub-optimal locations.

6. Incomplete administrative record

Arkansas has been working to review all available data and information on the proposed rule. In our review it appears that EPA has included only three of the model runs used to set the goals when information points to approximately 30 runs being completed and considered by EPA. This makes it hard for Arkansas to comment on all the data that was used by EPA and creates an incomplete administrative record. We request that EPA add all relevant model data to the administrative record.

Conclusion

In sum, the proposed rule will require Arkansas to make a very large reduction in emissions, but does not appear to consider the unique circumstances facing the state in doing so. The implications for my state will be far reaching and will have a great economic hardship on rate paying consumers.

We do plan to file official comments on the rule before October 16. However, if you have any questions about our concerns or if you would like to discuss any matter further we stand ready to talk with you again. We hope to work with EPA to address our concerns prior to this rule being made final.

Sincerely,



Dustin McDaniel  
Attorney General