

The Clean Power Plan: Opportunities and Challenges for School Districts

New EPA ruling may significantly affect school districts.

By Arthur Harrington and Jon Anderson



In October 2015, the U.S. Environmental Protection Agency (EPA) announced a final rule for emission guidelines. Commonly referred to as the Clean Power Plan (CPP), the guidelines will assist states in developing their state implementation plans to address greenhouse gas emissions from existing coal-fired electrical generation units (EGUs).

States were required to submit their implementation plans as early as June 2016, however in February, in a terse one-paragraph order, the U.S. Supreme Court voted 5 to 4 to stay the CPP while awaiting a decision on a challenge to the CPP pending in the U.S. Court of Appeals

for the D.C. Circuit and a future Supreme Court decision on whether to review the D.C. Circuit decision.

Because coal-fired EGUs provide a large percentage of the respective baseload electrical generation in many states, this rule will have an enormous effect on utilities and their customers. School districts, as major consumers of electricity, will be affected by the CPP.

Given the strategies for compliance proposed by EPA in this rule package, there will almost certainly be “winners” and “losers” when the rule is finalized and implemented by the states. School districts should begin planning now to maximize

their opportunities to mitigate their electricity costs associated with this far-reaching EPA rule package.

Key Elements of the CPP

Originally proposed in June 2014, and with feedback from approximately 4 million commenters, the CPP provides guidelines for states to develop mandatory plans to reduce CO₂ emissions by approximately 32% by the year 2030. The CO₂ reduction goal identified in the final CPP is actually 9% more aggressive than had been proposed in the June 2014 rule. The targeted reductions, called CO₂ emission performance rates, vary by states, but less so than in the proposed rule.

The CPP identifies “building blocks” that states should use to reduce CO₂ emissions, including:

- Directly reducing EGU CO₂ emissions.
- Increasing the power generation load at existing EGUs fueled by natural gas.
- Expanding clean renewable energy production.

Currently, approximately 26 states are participating in a lawsuit challenging the CPP. However, many of those states that have voiced their opposition have also started preparing for compliance. Moreover, for those states that “just say no” to preparing their own CPP implementation plans, the EPA has

“upped the ante” by direct EPA oversight, known as a federal implementation plan (FIP). The EPA is also issuing a proposed FIP to serve as a template for states to use in designing their respective plans.

The FIP will also be used by the

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EPA as a backstop enforcement hammer to impose implementation of the final CPP in the event a state fails to meet its implementation plan requirements under the final rule.

Certain additional elements of the final CPP deserve highlighting:

Clean Energy Incentive Program

- The final CPP includes a concept known as the Clean Energy Incentive Program, which provides unique incentives for states that are early adopters of their implementation plans.
- Credits for electricity generated from renewables in 2020 and 2021 will be awarded to projects that begin construction after participating states submit their final implementation plans.
- The program also prioritizes early investment in energy-efficiency projects in low-income communities, including school projects, by awarding those projects double the number of credits in 2020 and 2021.

Timing

- The final rule affords states more flexibility in implementation by developing “trading ready” plans to participate in an emissions credit trading market with other states taking parallel approaches without the need for interstate agreements.
- Although state implementation plans are still due in 2016, states that need more time can make

an initial submission and request extensions of up to two years for final plan submissions.

- The compliance averaging period begins in 2022 instead of 2020, as was the case in the proposed rule.
- Emission reductions are phased

in on a gradual “glide path” to 2030 (rather than the regulatory cliff that began in 2020 and 2030 under the original EPA proposal).

- The new flexible provisions are paired with the Clean Energy Incentive Program to drive early deployment of renewable energy and low-income energy efficiency before 2022.

A growing consensus is that the most efficient means of achieving state compliance with the CPP will be multistate market-based trading mechanisms. Under the CPP, states also have the ability to adopt market-based trading programs within their boundaries to meet the CO₂ reduction goals.

Opportunities and

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Challenges

States are largely in control of their own destinies by fashioning the appropriate state policies to meet the national goals, and school districts, as electricity consumers, must be engaged in the CPP policy formation and implementation process. Further, with proper input by interested parties such as school districts, states have an opportunity to design innovative regulatory programs

whereby utility investments can minimize impacts on local school districts and other customers to meet the CO₂ reduction targets, such as tax, environmental, reliability, and other policies.

However, to ensure that those goals are met, school districts need to organize and be “at the table” when the state implementing agencies, such as the state environmental agencies and public service commissions, design those programs to meet the goals of the CPP. (See sidebar on page 25.)

Observers agree that the CPP will undoubtedly create the potential for increased electrical generation costs. Yet school districts also have potentially significant financial opportunities that can account for energy-efficiency projects undertaken since 2013 that have resulted or will result in a reduction of CO₂ emissions or demand for CO₂-emitting energy. Districts that have implemented such projects should be able to receive the qualified CO₂ reductions credits and the significant monetary benefit associated with those credits.

States will be turning over every stone to find CO₂ emission reductions to accomplish their 32%

reduction goal. Forward-thinking districts that help lead the way in those energy efficiency efforts will brand themselves to the public as sustainable and part of the solution to meet the CPP goals.

The Decision to Stay the CPP

The death of Justice Antonin Scalia creates some interesting legal dynamics regarding the future of the CPP. Justice Scalia voted with the 5

The Wisconsin Association of School Business Officials (WASBO) has created a working committee to gain a better awareness of the CPP and its impact on school districts. WASBO has led the effort through education programs at state and regional meetings. The group is developing a strategy to engage state regulators at the table where the state plan will be crafted.

Woody Wiedenhoef, the executive director of WASBO, understands the importance of taking an active role: "Local school districts cannot afford to sit on the sidelines as the CPP is played out at the state level. School districts have an excellent opportunity here to be leaders in shaping the implementation of this law." For more information on the WASBO committee, contact Woody at woody.wiedenhoef@wasbo.com.

and increase revenue opportunities under the CPP:

- Document energy-efficiency gains and establish baseline calculations of energy usage and CO₂ emissions.
- Consider developing means for generating clean energy on-site, including solar, wind, and other qualified renewable energy projects, which are afforded investment tax credits and production tax credits under the 2016 Appropriations Act. Frequently, those benefits can be maximized by bringing private investors into such on-site school district energy projects.
- Clearly document ownership rights of environmental attributes and CO₂ reduction credits, even with contractors who are providing energy-efficiency services to school districts.

Crucial Planning

We live in uncertain times, and uncertain times create opportunities for some and challenges for others. The surprising decision to issue a stay by the Supreme Court and the sudden death of Justice Scalia will certainly add to the uncertainty regarding the implementation of and planning for the CPP. School boards must continue to monitor the CPP and consider the challenges and opportunities that the CPP presents.

The potential for EPA to supplant state programs through the proposed FIP is a powerful incentive for education leaders to prepare to come to the table and help craft the plan for their state's implementation as soon as possible.

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to 4 majority to issue the stay order. In the event the D.C. Circuit affirms the CPP and there is no replacement for Justice Scalia at the time the case reaches the U.S. Supreme Court (as early as late 2016), a 4 to 4 vote in the Supreme Court could result in an affirmance of the D.C. Circuit decision on the CPP.

Although the Supreme Court's ruling by no means kills the CPP, at a minimum, it will delay it and therefore multiply the uncertainties surrounding this EPA regulation. For example:

- Even if upheld eventually by the Supreme Court, the CPP will almost certainly not go into effect until after the presidential elections. Given this delay, the outcome of these elections could have an impact on the implementation of the CPP.
- Given the issuance of the stay, the Supreme Court obviously decided there was a likelihood that the opposition to the CPP will prevail on the rule challenge. The death of Justice Scalia creates more uncertainties about what the future holds for a Supreme Court decision on the CPP.
- This case has a potential significant impact on the United States commitment to the December 2015 Paris Accords. The CPP was an important element on the CO₂

reduction commitment made by the United States in Paris.

The implications of the Supreme Court's decision on the regulated utility sector must be tempered by what is happening in the electrical generation marketplace:

- Congress' recent extension of tax credits for solar, wind, and other qualified renewable energy projects will certainly continue to drive interest in clean renewable energy projects, regardless of the ultimate decision by the Supreme Court on the CPP.
- The unprecedented recent decline of the cost of natural gas will also be a market driver for switching away from coal to natural gas as fuel for combined cycle facilities for utilities as well as for combined heat and power projects for industry.
- EPA had projected that coal share of America's power mix would shrink to 27% in 2030 under the CPP. It is already down to 29% in November, based upon government data, as a result of cheap natural gas and renewables stealing market share from coal.

What the CPP Means for School Districts

School districts and their education leaders should take the following practical steps now to reduce costs