

# The Clean Power Plan (CPP)—A Status Report

CIBO ENVIRONMENT COMMITTEE  
MEETING

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# What's Going on with the CPP?

- ▶ Original CPP issued 10/23/15
- ▶ 150 litigants challenged the rule 60 days later
- ▶ The Supreme Court stayed the CPP 2/9/16
- ▶ President Trump issued Executive Order 13783 3/28/17
- ▶ The DC Circuit indefinitely stayed the companion 111 (b) rule 8/10/17
- ▶ An EPA proposal to repeal the CPP was issued 10/10/17
- ▶ An ANPRM on a potential future rulemaking was issued 12/18/17
- ▶ Path forward from here is unclear

# Diving Deeper on the Repeal Proposal

- ▶ EPA: original CPP inconsistent with the CAA's text, context, structure, purpose, and legislative history
- ▶ CPP exceeds statutory authority
- ▶ “Best system of emission reductions (BSER)” was applied to or at a single source in all previous 111(d) rules, not outside the source category
- ▶ The CPP is premised on 3 building blocks:
  - ▶ Heat rate improvements at coal-fired EGUs
  - ▶ Substantial shifts from coal to natural gas combined cycle units
  - ▶ Substituting use of zero-emitting renewables for above
- ▶ In other words, the focus of the original CPP was on management of the grid rather than individual sources or units
- ▶ Repeal could avoid \$33 billion in compliance costs by 2030

# Diving Deeper on ANPRM—EPA Seeking Public Input

- ▶ EPA's role: how best to define BSER and develop emission guidelines
  - ▶ Presumptively acceptable limits?
  - ▶ How much discretion do states have to depart from guidelines?
  - ▶ EPA's timeline for acting on state submittals, issuing FIPs for unapprovable plans
  - ▶ What are approvability criteria (e.g. can states use emission averaging)?
- ▶ State roles & responsibilities: how to respond to EPA emission guidelines
  - ▶ How long to respond?
  - ▶ How states should set unit-by-unit limits considering remaining useful life of the source, other site-specific factors
  - ▶ How limits/approaches already established by some states should interact with new 111(d) guidelines

# Seeking Comment on BSER

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- ▶ How should EPA assess heat rate improvements on a unit-specific, rather than fleet-wide average, basis?
- ▶ What equipment upgrades and technologies (e.g. improved coal pulverization, retube condensers) should EPA evaluate?
- ▶ What “best practices” (e.g. reduced excess air, replace valves & steam traps) should EPA evaluate?
- ▶ How should EPA evaluate uncertainty in monitoring heat rate improvements?
- ▶ Should EPA set BSER guidelines for heat rate improvements at natural gas combustion turbines?
- ▶ Should carbon capture and storage be considered as a compliance option?

# Interface with NSR

- ▶ EPA would like to limit the impact of 111(d) changes on NSR/PSD permitting. EPA took comments on the following issues:
  - ▶ Under what scenarios would EGU units become subject to NSR?
  - ▶ What policy changes or flexibilities could EPA provide to limit the applicability of NSR?
  - ▶ What actions can sources take (e.g. PALs) to meet grid reliability demands without excessive NSR permitting?
  - ▶ How could EPA craft 111(d) guidelines to minimize the number of units subject to NSR?
  - ▶ What other approaches would minimize the impact of NSR?

# Status of Section 111(b) NSPS Standards

- ▶ 111(d) standards are supposed to follow, and to an extent be predicated on, 111(b) standards for new, reconstructed, or modified units
- ▶ The 111(b) schedule is unclear, as the rule is not in the Unified Agenda
- ▶ Likely changes:
  - ▶ Standards based on ultra-super-critical coal-fired steam generation
  - ▶ No CCS required

# Reactions to the CPP Repeal & Replace Proposals

- ▶ States are split, from Indiana's position that CPP should be repealed and not replaced, to Arkansas which says that limits should apply inside the fenceline, to others arguing that the original CPP was fine
- ▶ ENGOs are united in opposition to the repeal and to the idea of limits applying only within the fenceline
- ▶ Utilities are split, with some supporting the inside the fenceline approach, others silent or supporting something akin to the original CPP
- ▶ NACAA opposes NSR fixes; industry, utilities, some unions support
- ▶ Manufacturers support repeal; some would stop there, others support a limited, inside the fenceline approach



# Why This Matters to CIBO Members

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- ▶ Precedent: original CPP represents a wholesale change to how EPA crafts NSPS 111(d) standards; next categories potentially subject to 111(d) standards for GHGs include refiners, chemicals, industrial boilers, pulp & paper
- ▶ Electricity costs: though there is no agreement on impact, virtually everyone concedes that electricity costs will rise over time
- ▶ Repeal vs. repeal and replace: some have argued that simply repealing the CPP vs replacing it in some form could result in a patchwork of state-only or regional limits, creating issues for multi-state manufacturers with regard to power costs, and could leave a void in the laws that plaintiffs' lawyers will fill with nuisance suits and other attempts to regulate GHGs