

Missouri's Implementation of EPA's CO₂ Rules

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Overarching Question Not Being Asked: Who Has Carbon IRP Authority?

- State 111(d) plans must include (1) enforceable, quantifiable and verifiable reductions of EGU CO₂ emissions equivalent to EPA's goals; and (2) implementation of corrective actions, if necessary. This means that:
- Traditional non-state jurisdictional utilities (munis, coops, REAs) will need to be made part of a unified "Carbon Integrated Resource Planning" (IRP) process;
- State Agency(ies) – Missouri PSC, DNR, Air Conservation Commission – will need to develop and administer the Carbon IRP, including enforcement of penalties

Institutional Perspective: Two White Papers

First White Paper, “[State Implementation of CO₂ Rules](#)”: States face significant institutional hurdles in implementing EPA’s CO₂ Emission Guidelines from electric generating units (EGUs):

- ***States will need to pass legislation*** to make it possible for state air and utility regulators to implement the rule;
- ***REAs and public power utilities will need to submit*** to a Carbon IRP process;
- ***States pursuing a multi-state plan will need to enter into an Interstate Compact*** to make the rule enforceable on an interstate basis, which will likely require congressional approval.

Institutional Perspective: Second White Paper

Second White Paper, “[EPA’s CO₂ Rule and 18 States’ Resolutions and Legislation](#),” concludes:

1. **18 state legislatures passed either legislation or resolutions that EPA has rejected in its CO₂ Emission Guidelines.** State primacy and flexibility based on states’ unique circumstances, consistent with the statute, was rejected in proposed rule
2. **The EPA CO₂ Emission Guidelines do not allow states to ultimately set their own carbon reduction standards based on what is actually achievable in the state.**
3. **EPA’s CO₂ Emission Guidelines sets firm carbon reduction standards that must be met by each state beginning in 2020 and accelerating through 2030, and excludes “case by case” exceptions notwithstanding the variance process in federal implementing regulations:**
 - (1) unreasonable costs of control resulting from plant age, location, or basic process design;
 - (2) the physical impossibility of installing necessary control equipment; or
 - (3) other factors specific to the facility (or class of facilities) that make application of a less stringent standard or final compliance time significantly more reasonable

Second White Paper (Cont'd)

["EPA's CO₂ Rule and 18 States' Resolutions and Legislation"](#) concludes:

4. ***The majority of states enacting resolutions or legislation regarding Section 111(d) would limit the carbon reduction standard to what is reasonably achievable inside the fence, i.e., at the EGU source.***
5. ***States have directed their environmental agencies to consider less stringent carbon reduction standards and compliance schedules based on cost; effect on electric rates, jobs, low-income populations, and the economy; effect on reliability of the system; engineering considerations; and other factors unique to the state.***
6. ***According to EPA Administrator McCarthy, unless a state can show that EPA's data related to its four building block approach is flawed, EPA will not entertain a less stringent carbon reduction target.*** However, the state-specific data provided in EPA's proposed rule relates to meeting the carbon reduction standard, not cost or reliability.
7. ***States that passed resolutions or legislation inconsistent with the EPA's CO₂ Emission Guidelines will not be able to comply with both legislatively-expressed declarations and EPA's mandate.***

Missouri House Bill 1631

- Section 643.640 applies to Missouri Air Conservation Commission (MACC):
- ¶ 5: “[T]he commission has legal authority to carry out any [SIP] with emission standards and compliance schedules that are developed and implemented consistent with this chapter.”
- ¶ 1: MACC “shall develop emission standards under [the Clean Air Act Section 111(d)] through a unit-by-unit analysis of each existing affected source of carbon dioxide within the state.”
- →MACC develops legally enforceable emission standards (not EPA and true to the statute) through an inside the fence analysis

Missouri House Bill 1631 (cont'd)

- ¶ 2: MACC “shall consider” in developing and implementing emission standards for each existing affected source, among other factors, the remaining useful life of the existing affected source;
- ¶ 3: MACC “shall consider” the overall economic impact from any and all emission standards and compliance schedules developed and implemented under CAA

Missouri House Bill 1631 (cont'd)

- ¶ 4: MACC may develop, on a unit-by-unit basis for individual existing affected sources and emissions of carbon dioxide at these existing affected sources, emission standards that are less stringent than applicable federal emission guidelines or longer compliance schedules than those required by federal regulations. This determination shall be based on:
 - (1) Unreasonable cost of control resulting from plant age, location, or basic process design;
 - (2) Physical impossibility of installing necessary control equipment or
 - (3) Other factors specific to the existing affected source or class of existing affected sources that make application of a less stringent standard or final compliance time significantly more reasonable, including:
 - absolute cost of applying the emission standard and compliance schedule to the existing affected source;
 - the economic impacts of closing the existing affected source, including expected job losses if the existing affected source is unable to comply with the performance standard; and
 - the customer impacts of applying the emission standard and compliance schedule to the existing affected source, including any disproportionate electric rate impacts on low income populations.

EPA Rule Rejects HB1631

1. No allowance for states to set carbon standard: SIPs must achieve “emission performance equivalent to the goals established by the EPA, on a timeline equivalent to that” in the rule
2. Rule does not allow deviation from carbon reduction mandate by analyzing what is achievable inside the fence, i.e., at the source
 - Three of EPA’s four building blocks outside the fence
 - Only one building block assumption – 6% heat rate improvement for coal EGUs -- is source-focused
 - If states cannot achieve carbon reduction from BB1 (and they can’t), EPA assumes will look outside fence or do “whatever it takes” to meet standard

EPA Rule Rejects HB1631 (cont'd)

3. EPA Rejects case by case exceptions of federal implementing guidelines, 40 C.F.R. § 60.24(f), at p. 520 of proposed rule:

The EPA therefore proposes that the remaining useful life of affected EGUs, and the other facility-specific factors identified in the existing implementing regulations, should not be considered as a basis for adjusting a state emission performance goal or for relieving a state of its obligation to develop and submit an approvable plan that achieves that goal on time.

- HB 1631 factors of unreasonable cost of control, physical impossibility, and economic and rate impacts cannot be asserted as bases for a less stringent standard or compliance timeline

EPA Allows Just One Reason for Exception

- Q & A at Dallas NARUC, 7/14, Chairman Kenney to EPA Administrator McCarthy:

Q. If a state does its own modeling and determines that it can't reach the target at a reasonable cost, will the EPA entertain a less stringent target that is proposed by a state?

A. ...There wouldn't be a second opportunity to look at costs unless you think we blew the first analysis....

- Problem: EPA did not conduct a state-by-state cost (or reliability) analysis.
- → Cost and reliability are not reasons for a change to carbon reduction standard in EPA's view – contrary to 40 C.F.R. § 60.24(f)

What Can Missouri Do?

- 1) Agencies such as PSC should receive input and make findings re EPA building blocks (heat rate, gas cc, renewable, and DSM assumptions), costs, reliability, and effect on ratepayers and jobs
- 2) File Comments to EPA by October 16, 2014
- 3) Demand that EPA allow state primacy in setting standard, allow less stringent standard and compliance timeline based on factors in federal implementing guidelines
- 4) Demand that EPA provide a reasonable amount of time to evaluate fleet and EPA assumptions, discuss with neighboring states, choose pathway to compliance, allow state agency to hold hearings, etc.
- 5) Defend House Bill 1631 as consistent with Section 111(d) regarding state primacy to set reasonable source-based carbon reduction standards based on an engineering analysis of what is achievable at each unit at reasonable cost

PSC Q: Agree with EPA's Methodology to Determine CO₂ Standard?

- No. EPA's proposed rule is Inconsistent with Section 111(d) because it takes away state primacy in setting standard.
- States set the "standard"; EPA sets "guidelines." An emission standard is a "legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, establishing an allowance system, or prescribing equipment specifications for control of air pollution emissions."
- The United States Supreme Court recognized extensive State authority: Section 111(d) allows "each State to take the first cut at determining how best to achieve EPA emissions standards within its domain." *Am. Elec. Power Co. v. Connecticut*, 131 S. Ct. 2527, 2539 (2011).

Does EPA's proposal give rise to concerns about reliability?

Yes. NY Times: [Coal to the Rescue, but Maybe Not Next Winter](#)

- To avoid power shortages during polar vortexes in January and February, American Electric Power was running 89 percent of the coal plants that it must retire next year
- “For utilities, another frigid winter like this one could lead to a squeeze in supply, making it harder — and much more expensive — to supply power to consumers during periods of peak demand.”
- “Coal is far less prone to price jumps or to shortages [than gas], and in a cold snap, it looks like a bargain. Without the coal plants, experts agree, prices in the peak periods of winter and summer will be higher, so future periods of cold weather may be even harder on electric bills.”
- “[W]hile gas production has kept up with consumption, pipeline capacity has not”; “[A] coal plant with a supply of fuel [can] last weeks in a pile nearby.”

EPA Effect On Missouri

Missouri Department of
Natural Resources

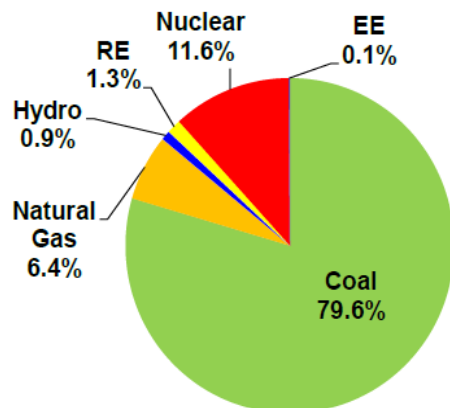
Celebrating 40 years of taking care of
Missouri's natural
resources.

40
years

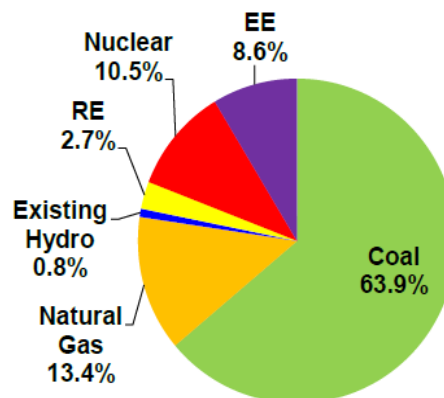
Missouri Department of Natural Resources

Missouri Fuel Mix Comparison

Actual 2012 Generation



2030 Scenario Based on Application of
EPA's Building Blocks as Proposed



Note: This is for illustrative purposes only. The 2030 pie chart depicts one possible scenario based on applying EPA's building blocks exactly as proposed. EPA is not prescribing this approach; Missouri's 111(d) plan can be based on any mix of measures provided the goals are met in the established timeframe.

Agriculture/Rural Communities

Agriculture

- Missouri has over 30 million acres of farmland, 108,000 farms, generate \$12 billion annually
- Energy costs represent approximately 13% of farm production costs
- “(Our) single greatest monthly cost is the wholesale power we purchase and distribute to you, our members...due to the uncertain economic, political and regulatory environment we are experiencing, long term promises regarding future electric rates simply cannot be made.”
– *Farmers’ Electric Cooperative Chillicothe, Missouri (2013)*

Rural Communities

- The EPA regulations target coal-fueled power stations, which account for 70% of the electricity used by electric cooperative members in Missouri
- “America’s rural communities depend on coal-fired generation for affordable electric power and would be disproportionately penalized....”
– *National Rural Electric Cooperative Association (2013) on President Obama’s proposal to use the Clean Air Act to reduce CO2*

MO. – Low Cost Manufacturing State



ENERGY COST INDEX 2012

Rank	State	Energy Cost Index
1	Arkansas	1.66
2	Louisiana	1.67
3	Oklahoma	1.68
4t	Iowa	1.69
4t	Kentucky	1.69
6	Missouri	1.70
7	Wyoming	1.71
8	Idaho	1.72
9	North Dakota	1.75
10	Nebraska	1.76
46	California	2.51
47	Vermont	2.52
48	New York	2.58
49	Connecticut	2.71
50	Alaska	2.91

2012 Avg. Retail Electricity Price (¢/kWh)

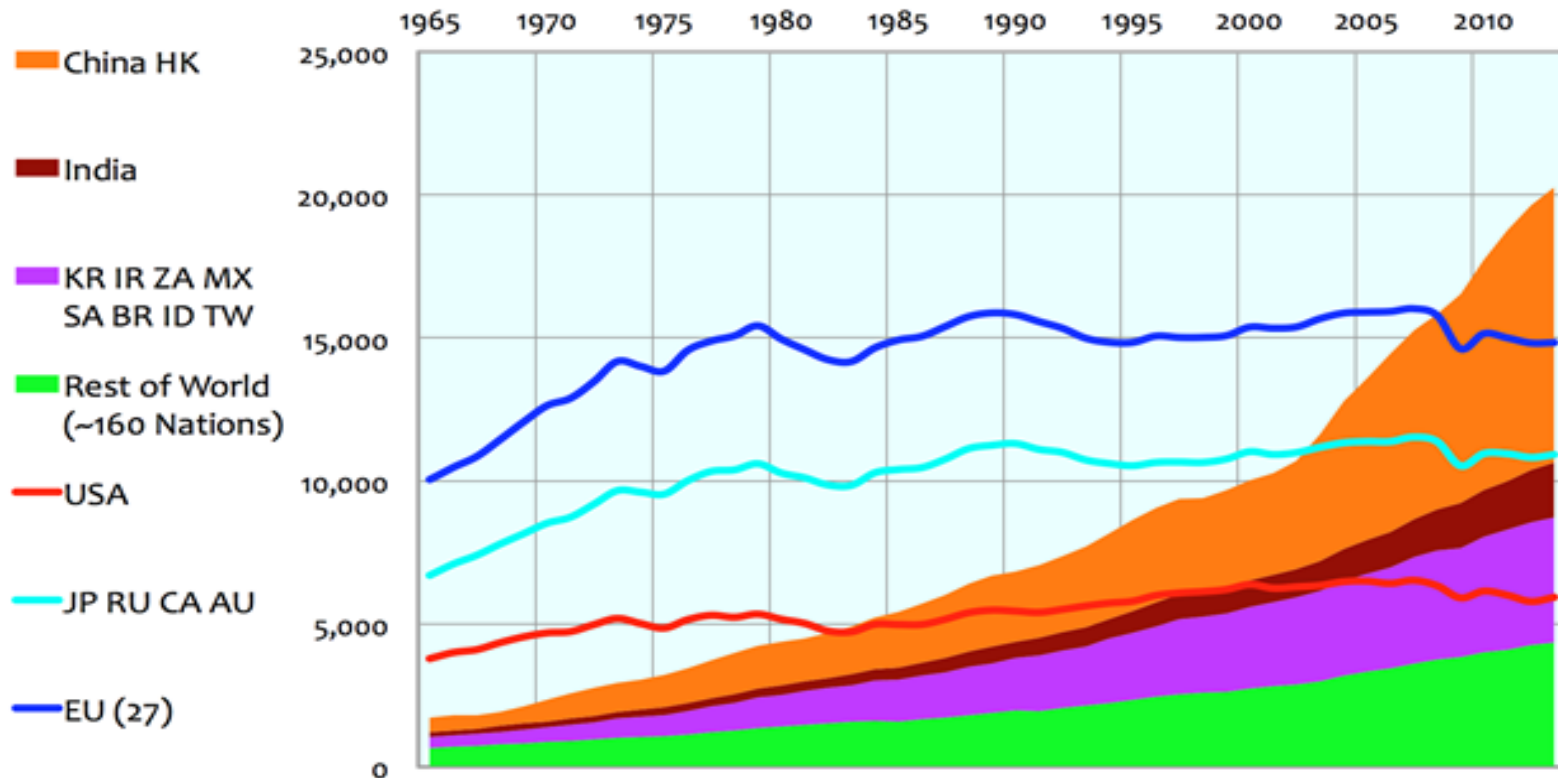
Missouri	8.5
New York	15.2
California	13.8
National Average	9.8

Missouri Manufacturers

- Manufacturing employs 250,000 Missourians and makes up almost 10% of the state's employment
- Industrial firms in Missouri pay 12% less per kWh for their electricity than the national average

The Big Picture

Developed / Developing Nations cumulative CO2 emissions: '000,000 tonnes



THANK YOU!

Our White Papers are Available at:

<http://www.wbklaw.com>

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