

## **CLIMATE:** Utilities mull responses to Obama on rules for existing power plants *(Tuesday, July 9, 2013)*

**Jean Chemnick, E&E reporter**

President Obama's call to action on climate change has electric utilities scrambling to craft a response to a key part of the president's plan, a rule for curbing greenhouse gas emissions from existing power plants.

In a June 25 speech at Georgetown University, Obama asked U.S. EPA to include utilities and other stakeholders in rulemaking for power plants, which is widely expected to begin formally after Labor Day. The plan calls for EPA to complete a proposal by June 2014 and finalize a rule by 2015.

EPA, the president said, should craft the rules in an "open and transparent way, to provide flexibility to different states with different needs, and build on the leadership that many states, and cities, and companies have already shown." The agency is being asked to consult with stakeholders ahead of the proposal's completion.

So what are utilities going to say? So far, few officials are expressing a willingness to preview any recommendations to EPA. Most said last week that they were still reviewing the president's plan.

Tom Williams, a spokesman for Duke Energy Corp., said his company would likely wait until after a rule was proposed before commenting. And Melissa McHenry of American Electric Power Co. Inc. said her company would "look for opportunities to share our views" but said no formal proposal for existing power plant rules is currently in the works.

Luke Popovich, a spokesman for the National Mining Association, said the trade group is mulling whether to offer EPA a substitute for the proposal released last year for new power plants.

"We see big benefits in improving efficiencies of existing plants," he said. "But in order to take advantage of those efficiencies, we will need changes to current policy, which all but prevent them." Advocates for coal-fired electricity say the Clean Air Act's New Source Review provisions are often an impediment to investing in efficiency upgrades. Popovich said NMA looks forward to sharing its views with the administration.

Frank Prager, vice president of environmental affairs for the Minneapolis-based Xcel Energy Inc., said his company has begun to consider some principles it wants EPA to consider in setting carbon rules, though he said it is still early in the process.

The president's speech, he said, was "the starting gun" for a long race.

Prager said that any rule EPA formulates should respect the role the Clean Air Act assigns to the states and the work companies like his own have done to limit their emissions, often to comply with state laws.

The Clean Air Act gives states substantial authority to decide how existing source rules will be implemented -- or, some say, whether they will be implemented. Prager said states are best positioned to decide how their utilities should curb emissions, in keeping with existing renewable energy and air quality policies.

"A more rigid program mandated from Washington, D.C., is not going to be able to achieve those goals," Prager said.

Xcel has already invested billions of dollars to comply with Minnesota and Colorado rules for nitrogen oxides, sulfur dioxide and other pollutants -- sharply reducing its carbon dioxide emissions in the process. Prager said the company is on track to slash its CO2 by about 27 percent compared with its 2005 levels by 2020 in Minnesota and by 35 percent in Colorado.

But these reductions have come at a price for Xcel ratepayers, he said. And EPA must consider those past efforts -- plant closures, investments in renewable energy and efficiency -- when it writes rules, rather than penalizing first movers with additional costs.

The president in his remarks hinted that EPA should reward early action, praising power companies that have "already begun modernizing their plants and creating new jobs in the process" or have "shifted to burning cleaner natural gas instead of dirtier fuel sources."

Prager said Xcel is aware of proposals by the Natural Resources Defense Council, the Clean Air Task Force, the Center for Clean Air Policy and others that map a way forward for EPA on existing source rules. He said he has also talked to some others within the utility sector, and Xcel has met with EPA staff to discuss the rule on more than one occasion.

"We've talked to virtually everybody in this space," he said.

### **'Treading on thin ice'?**

The environmental groups' proposals all assign states leading roles in implementing the standard. But Prager said it would be up to the states to choose a flexible-but-stringent rule such as one that NRDC proposes, which would allow utilities to achieve reductions across their fleet through efficiency and other measures, or to opt for a more traditional "smokestack-by-smokestack" approach.

"EPA would set broad targets and then give states the flexibility in terms of how they achieve those targets," Prager said.

But William Bumpers, who heads the climate practice at the law firm Baker Botts, said EPA lacks authority to set emission limits for state compliance.

"I think EPA will be treading on thin ice if they go too far and try to tell the states what they have to do," he said.

Instead, the section of the Clean Air Act that EPA will use to regulate existing power plants gives the agency the task of providing guidance to the states on ways they could rein in emissions and sets out a process for making that determination. The states must then decide whether or not to require reductions from power plants based on

several criteria -- including availability of technology, cost, air quality, other environmental and health impacts and the remaining life of power plants.

"If they give due consideration to all of those factors and then make their own judgment as to what they want to impose, I think EPA is going to be very hard-pressed to reject whatever they decide," Bumpers said.

Environmentalists, meanwhile, warned that if Obama's second term ends before his administration can process state implementation plans, the next president might have more opportunities to roll back new safeguards.

"We really want to see the decisions in this term," said Ned Helme, president of the Center for Clean Air Policy.

While the White House's timetable for the rule has been called ambitious, Helme said EPA can and should propose and finalize a rule months early. This would allow states to finish their plans earlier, allowing the Obama EPA time to vet those plans.

"Once you've finalized a state plan, the states go to work," he said. A new administration would be very unlikely to try to roll back rules then.

But Xcel's Prager said the Clean Air Act gives states so much authority that a change in the White House won't make much difference in how they choose to implement rules.

"If you have a program that you've put in place that isn't durable and can't survive a change in administration, than it's probably not a program you want to be implementing," he said.

### **'War on coal' message**

In the end, Prager said, the rule would probably wring fairly minor efficiency gains from the nation's power producers.

But environmentalists hope EPA can craft a rule that will significantly reduce the sector's share of greenhouse gas emissions, which today amounts to 40 percent of the U.S. total.

CCAP is floating a proposal that promises to ratchet down utility emissions by 25 percent by encouraging power producers to ramp up use of existing combined cycle gas units and to invest in combined heat and power (CHP), or cogeneration facilities.

Deference to the states means EPA is almost assured to approve carbon-trading programs in California and the Northeast as those states' plans for complying with the existing power plant rule.

This would leave the door open for carbon trading to be a component of other states' plans, as well. Utilities that invest in CHP, efficiency and other upgrades could offset the cost of those investments by earning credits, Helme said.

Gas and cogeneration have been a boon for the upper Midwest in particular, Helme said.

Shale gas has been an economic godsend in states like Ohio and Pennsylvania, while federal support for

projects like the ArcelorMittal steel manufacturing plant in East Chicago, Ind., has proved that CHP can be a boon to the steel industry.

Opponents of EPA regulation have painted it as a bane to U.S. manufacturing, but that message might gain less traction in the Midwest and Northeast if rules are seen to provide advantages for gas, Helme said.

The "war on coal" message used by the coal industry and its allies in Appalachian states has less resonance in the upper Midwest than some EPA foes believe, he said.

"It's one thing in West Virginia, where coal is king," Helme said. "It's another thing in Ohio, where there are only 2,000 coal miners, and Indiana, where there are 500."

***Want to read more stories like this?***

**Click here** to start a free trial to E&E -- the best way to track policy and markets.

**ABOUT GREENWIRE**

Greenwire is written and produced by the staff of E&E Publishing, LLC. The one-stop source for those who need to stay on top of all of today's major energy and environmental action with an average of more than 20 stories a day, Greenwire covers the complete spectrum, from electricity industry restructuring to Clean Air Act litigation to public lands management. Greenwire publishes daily at 1 p.m.

***Want to read more stories like this?***

**Click here** to start a free trial to E&E -- the best way to track policy and markets.

**ABOUT GREENWIRE**

Greenwire is written and produced by the staff of E&E Publishing, LLC. The one-stop source for those who need to stay on top of all of today's major energy and environmental action with an average of more than 20 stories a day, Greenwire covers the complete spectrum, from electricity industry restructuring to Clean Air Act litigation to public lands management. Greenwire publishes daily at 1 p.m.



E&E Publishing, LLC  
122 C St., Ste. 722, NW, Wash., D.C. 20001.  
Phone: 202-628-6500. Fax: 202-737-5299.  
[www.eenews.net](http://www.eenews.net)

All content is copyrighted and may not be reproduced or retransmitted without the express consent of E&E Publishing, LLC. [Click here](#) to view our privacy policy.