



FERC's Clean Power Plan Technical Conferences: Investigating Reliability, Market Structure, and Infrastructure Impacts of EPA's 111(d) Proposal

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As EPA works to finalize its [proposed limits on carbon dioxide \(CO₂\) emissions from existing power plants](#) (due out this summer), the Federal Energy Regulatory Commission (FERC) will be holding a [series of technical conferences](#) aimed at evaluating the electric reliability, wholesale market, and energy infrastructure implications of the Clean Power Plan. This includes a February 19 conference at FERC headquarters and additional regional conferences in Denver, Washington D.C., and St. Louis on February 25, March 11, and March 31 respectively.

The FERC technical conferences will serve as an opportunity to discuss the implications of the proposed structure of the Clean Power Plan and of various compliance approaches. Each conference will include panels that focus on issues relevant to FERC jurisdiction – reliability, wholesale electricity markets and operations, and energy infrastructure. Panelists will include representatives from federal, state, and local governments; system operators and reliability organizations; energy-sector trade associations; electric utilities; natural gas pipelines; and environmental advocates.

Background

Under section 111(d) of the Clean Air Act, EPA issues federal “emission guidelines” for stationary sources such as power plants, and these guidelines are implemented through “state plans.” In June 2014, EPA issued a proposed rule under section 111(d) to establish federal emission guidelines for CO₂ emissions from existing power plants. EPA’s proposal, called the “Clean Power Plan,” contemplates that states will impose a variety of at-the-unit and beyond-the-unit measures—including increased natural gas use, renewable energy, and energy efficiency—to reduce CO₂ emissions (for more information on EPA’s proposed rule, contact our [Climate Change](#) practitioners or [read this Alert](#)).

Under the EPA proposal, states have until summer 2016 to prepare and submit implementation plans that ensure state power plant emissions meet the federal guidelines, or to request an extension. EPA must approve state plans in order for those plans to go into effect. The extent to which other agencies such as FERC will participate in the state plan approval process is currently unknown.

Conference Topics and FERC’s Role

FERC has announced the agenda and panelists for its February 19 [National Overview Conference](#) and [Western Regional Conference](#) and the agenda for its [Eastern Regional Conference](#).

Stakeholders have expressed a desire for FERC to weigh in with EPA on the achievability of the proposed Clean Power Plan and to commit to work with EPA to finalize the Clean Power Plan in a way that addresses reliability and other concerns. At a January speech to the National Press Club, Chairman Cheryl LaFleur [indicated](#) that FERC’s role is not to act as an environmental regulator or to publically validate stakeholder concerns that EPA’s rule will undermine reliability or that it does not go far enough to address climate change. However, LaFleur made clear that FERC’s regulation of infrastructure and markets will impact and be impacted by the Clean Power Plan, and that FERC should carry out its responsibilities cognizant of EPA action. In addition, she stated that the Commission could act as an “honest broker” regarding the impacts of the Clean Power Plan.

In contrast, in [response](#) to questions posed by the Senate Energy and Natural Resources Committee and House Energy and Commerce Committee regarding the Clean Power Plan, Commissioners Clark and Moeller expressed dissatisfaction with FERC's opportunity for input to EPA's development of the Clean Power Plan to-date and raised concerns with regard to the reliability impacts of the proposed rule.

Key Issues to Watch

Below are several key issues and questions to look for as these conferences unfold:

- **What role will FERC take on with respect to the Clean Power Plan?** Chairman LaFleur has framed one possible FERC role as that of an "honest broker" in bringing together EPA, states, regional electric organizations, industry, and environmental organizations. LaFleur also committed to working with other agencies, including EPA, to share information, lend expertise, and develop constructive suggestions. Will the Commission or commissioners take on these or other roles? Will FERC take on or be asked by EPA to take on a role in the implementation of the Clean Power Plan, such as a role in reviewing state plans or helping states implement their plans?
- **Will FERC take a position on how the Clean Power Plan proposal would impact reliability?** FERC's pre-conference materials have focused more on FERC's role in the implementation of state compliance plans under the Clean Power Plan than on its role in evaluating the proposed rule, including with respect to reliability. Will the technical conferences drive FERC or individual commissioners to take positions on the nature of the reliability risk and appropriate adjustments to the proposed rule, either in public or in private discussions with EPA? The discussion of the reliability impacts of the proposed rule will no doubt continue over the coming months as NERC and others release further studies on this issue.
- **What impact will the public record developed by the FERC technical conferences have on the Clean Power Plan?** Will the testimony of panelists and submission of detailed comments raise issues for EPA to address or include proposals that EPA will adopt as it finalizes the Clean Power Plan? Will EPA take notice of the record of the technical conferences in its rulemaking?
- **Will FERC make changes to the way it handles energy infrastructure?** Chairman LaFleur has indicated that FERC regulation of natural gas pipeline and electric transmission development will be critical to the successful implementation of the Clean Power Plan. Will FERC make changes to its natural gas pipeline certification and electric transmission planning procedures to reflect the additional demand for timely development of such infrastructure?
- **What changes to organized electric markets are needed to accommodate Clean Power Plan implementation?** Chairman LaFleur has indicated that the changes to auction-based RTO electric markets required by the Clean Power Plan will be more than tinkering around the edges. What changes will be needed? On what timeframe will FERC expect those changes?

For more information

Van Ness Feldman has assisted numerous clients to analyze and prepare comments on EPA's Clean Power Plan proposal and related proposals for new and modified power plants, and our professionals are available to provide counsel to clients as they engage with EPA, FERC, the U.S. Congress, and state agencies to ensure that their interests are taken into account as the final rules are implemented. Van Ness Feldman also provides counsel to clients on a wide range of FERC issues, including reliability, infrastructure, and wholesale market matters. Please contact [Kyle Danish](#), [Stephen Fotis](#), [Doug Smith](#), or any other professional in Van Ness Feldman's [Electric](#) or [Climate Change](#) practices for additional information. Follow us on Twitter [@VanNessFeldman](#)