



Cleco Corporation
2030 Donahue Ferry Rd
P. O. Box 5000
Pineville, LA 71361-5000

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LDEQ Clean Power Plan Listening Session - Comments of Cleco Corporation

Comments

The Clean Power Plan (CPP) is the emission performance standards for control of CO₂ from existing utility sources required by CAA 111d. EPA released the final rule in August 2015.

The United States Supreme Court, on February 9, 2016, granted emergency stay applications filed by opponents of the Rule. The Supreme Court's orders prevent the EPA from implementing the Clean Power Plan pending disposition of the applicants' petitions for review in the United States Court of Appeals for the District of Columbia Circuit and disposition of the applicants' petitions for a writ of certiorari, if such writ is sought before the Supreme Court. Thus, the legal uncertainties surrounding the Rule are significant.

Due to the stay of the rule, the Louisiana Department of Environmental Quality (LDEQ) should consider the uncertainty surrounding the timing and deadlines of the Rule when determining what actions to take concerning additional study or stakeholder processes. A number of variables important to development of a final compliance plan, if any, could now be in doubt, even if the Rule survives litigation. So changes in Cleco's understanding of the CPP and associated rules, or its point of view regarding these issues may occur following additional analysis and/or court action. Therefore, these comments are preliminary and may be supplemented or revised at any time.

Cleco believes that the LDEQ should conduct, in conjunction with the Louisiana Public Service Commission ("LPSC"), a state implementation process and not defer to the implementation of the Federal Implementation Plan (FIP), defined in the CPP, in order to maintain maximum flexibility in the State's ultimate compliance plan.

The State may elect ultimately to adopt the FIP in whole or part, but such a decision should be made only after a thorough review and analysis of all potential compliance options at the state level, including development of a State Implementation Plan ("SIP") that preserves maximum

flexibility for the state, taking into account the LPSC's least-cost planning principles, and endeavoring to mitigate to the greatest degree possible, CPP-driven rate impacts upon retail customers.

While the State in crafting a SIP is allowed by the rule to choose between rate or mass-based plans, Cleco notes that the most appropriate compliance path for Louisiana may be in the allowed "state-measures" plan that starts with a clean slate and considers the unique characteristics of Louisiana first.

Cleco believes that all compliance options for Louisiana, including alternative plan designs, should be assessed through detailed compliance modeling that determines their full costs and implications for Louisiana. Identifying the optimal plan for Louisiana will require detailed analysis of the supply of emission reductions inside the State. It will also require quantification of the impacts of the Clean Power Plan in neighboring states where Louisiana trades electricity. Assessing a range of potential assumptions around in-state and out-of-state reduction options, whether consistent with those made by EPA in its Best System of Emission Reductions (BSER) development, or alternative views, will be critical in developing reasonable views of CPP implications, and an integrated modeling framework would be a useful tool in addressing those in a consistent way.

An environmental compliance program for the final Rule will be heavily dependent on the management of electricity generating resources within the state. Since the Rule is in many respects an energy policy and not simply a traditional environmental compliance rule, it is clear that LDEQ officials and their counterparts at the LPSC, along with affected industry, should work closely together in developing a SIP.

Finally, it was mentioned earlier that the stay of the rule would impact timing and deadlines. A proper interpretation of the Court's order is that the stay tolls all the rule's deadlines for at least the time the stay is in place. In the hypothetical scenario in which the courts might eventually uphold the rule, it should be required that all rule deadlines are moved into the future by at least the amount of time between the stay's issuance and its expiration.

Conclusion

Cleco is grateful for the opportunity to comment and urges LDEQ to closely consider what was mentioned. If there are any questions, feel free to contact me at 318 484-7718.

Respectfully submitted,

/s/ Bill Matthews

Bill Matthews
Director - Environmental Policy and Planning