



**Edison Electric Institute**

*Power by Association<sup>SM</sup>*

# **Existing Source NSPS Regulations Under Section 111(d)**

**Dan Chartier**

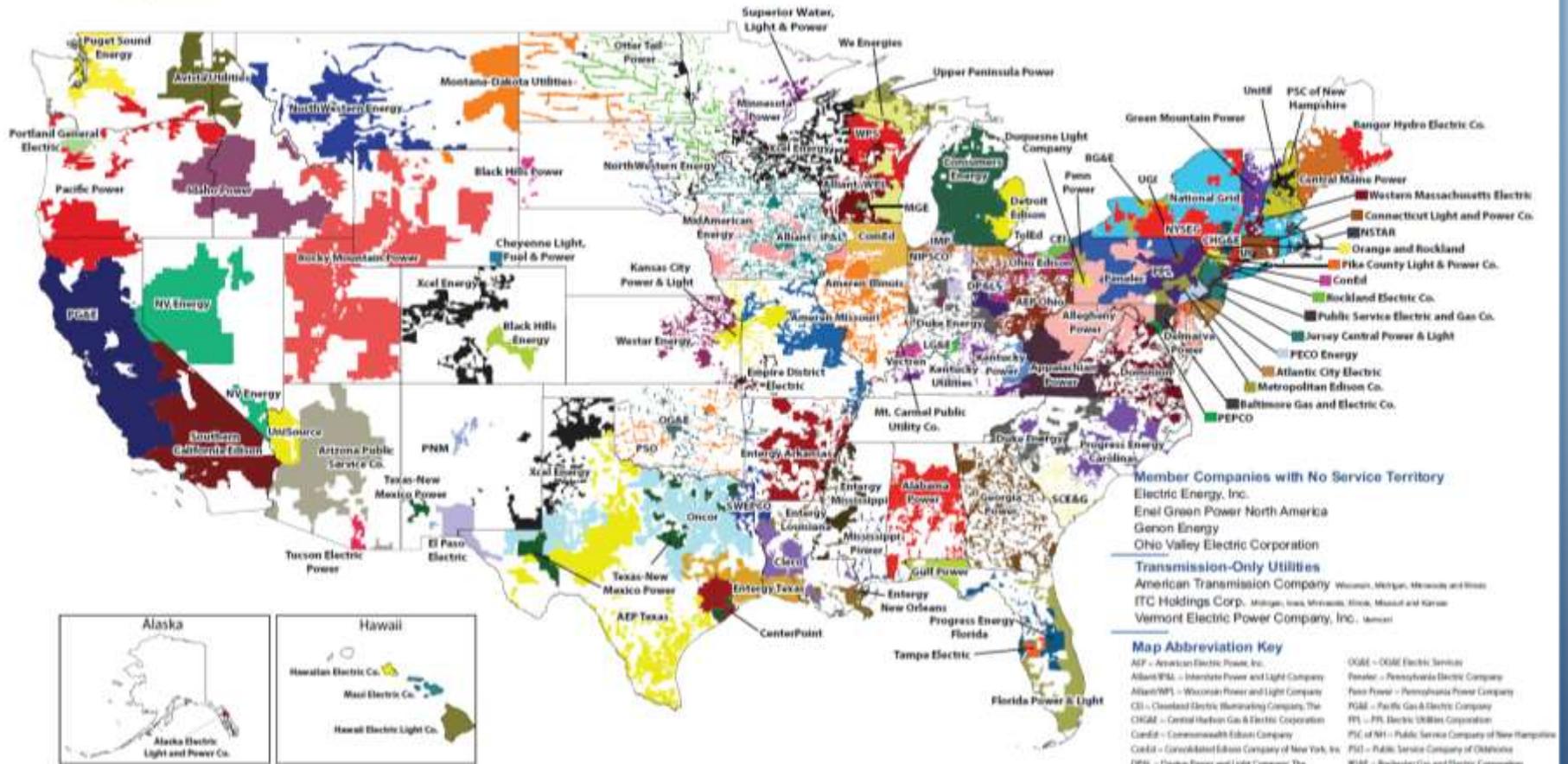
Director, Environmental Markets & Air Quality Programs

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# Edison Electric Institute

- **Trade Association of Investor-Owned Electric Companies**
  - Membership includes
    - All US investor-owned electric companies
    - 70 international affiliates
    - 250 associate members
  - US members
    - Directly employ over 500,000 workers
    - Provide electricity for 220 million electric utility customers
  - Our mission focuses on advocating public policy; expanding market opportunities; and providing strategic business information





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# Federal Environmental Regulatory Challenges: 2012 and Beyond

## Air

Utility MATS

Interstate Transport (CAIR/CSAPR)

Regional Haze/Visibility

Multiple NAAQS

New Source Review (NSR)

## Climate

NSPS- New & Modified Sources

NSPS- Existing Sources

BACT Permitting

International Negotiations

## Water

316(b)

Effluent Guidelines Limitations

Waters of the United States

NPDES Pesticide Permits

Waterbody-Specific Standards

## Land & Natural Resources

Transmission Siting and Permitting

Avian Protection

Endangered Species

Vegetation Management

## Waste & Chemical Management

Coal Ash

PCBs in Electrical Equipment

HazMat Transport

# National Climate Action Plan

- Presidential memo calls on EPA to:
  - Engage with states, the power sector and other stakeholders
  - Take into account other “environmental regulations and policies that affect the power sector, tailor regulations to reduce costs”
  - Ensure continued provision of reliable and affordable electricity
  - Allow use of market-based instruments and performance standards

# GHG NSPS Timeline

**September 20, 2013**  
New source proposal

**June 1, 2015**  
Final state  
emissions guidelines

**Compliance**

**June 1, 2014**  
Proposed state  
emissions  
guidelines

**June 30, 2016**  
State compliance  
plans due

# Existing Sources, 111(d)

- Part of original 1970 version of statute, but revised as part of 1990 Clean Air Act Amendments
  - Directs EPA to promulgate regulations establishing a procedure similar to sec. 110 (NAAQS)
  - Under which states submit plans that establish “standards of performance”
    - States must be able to take into account “remaining useful life,” among other factors
    - EPA reviews and approves plan if “satisfactory”
    - If unsatisfactory, EPA may impose FIP-like plan
- Standards enforced against *sources*, not *states*
- States assumed to have a lot of compliance flexibility

# Section 111(a)(1) Definition of “Standard of Performance”

- “A standard for emissions of air pollutants which reflects the degree of emission limitation achievable through application of the **best system of emission reduction** (taking into account the **cost** of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the [EPA] determines has been **adequately demonstrated.**”

# The “Generic” 111(d) Implementing Regulations

- EPA developed regulations implementing 111(d) in 1975 in response to 111(d) directive to establish a “procedure”
- Procedure gives EPA lead role, must first develop “emission guidelines” for state
  - These guidelines evaluate the “best system of emission reduction” (BSER) for states
  - In past, states developed plans that impose EPA’s BSER on regulated sources
  - Regulations allow states to included for variances for units, require EPA to subcategorize
- State plans must be at least as protective as the guideline: “equivalent”
  - For EPA, “satisfactory” = “equivalent”

# State Variances

- State plan may have less stringent standards or compliance deadlines
  - Case-by-case basis – for particular facilities or classes of facilities
- Must demonstrate
  - Unreasonable cost of control due to plant age, location or basic process design;
  - Physical impossibility of installing control equipment; or
  - Other factors making reduced stringency significantly more reasonable
  - Variances available “*unless otherwise specified in the applicable subpart*” for the category of facilities
- Remaining useful life: amortization period of new controls?

# Clean Air Act Section 111(d) Process



# Existing Sources: Two Key Questions

- **What is the basis of the standards (BSER)?**
  - How stringent will the standards be?
  - How far from the “source” can EPA go?
- **Which flexibilities can states include in plans?**
  - Will EPA provide guidance on state flexibility?
  - How are reductions from state programs quantified?

# Key Question 1: Basis of Standard?

- BSER determines stringency of standards
  - BSER determines amount of GHG reductions (not vice versa)
- Three commonly discussed “approaches” to BSER
  - Source-based (technology-based reductions from source)
  - Expanded source-based
  - Systems-based (behind the meter)
- Historically, EPA used a source-based approach
  - Standards based what could be achieved by technology applied to the regulated source
  - 1990 CAA amendments took “technology” out of definition

# Potential Approaches to BSER

- EPA white paper outlines activities that might be included in BSER evaluation:
  - Onsite actions at individual affected section 111(d) fossil-fuel sources
    - Supply-side energy efficiency improvements
    - Fuel switching or co-firing of lower-carbon fuels
  - Shifts in electricity generation among sources regulated under section 111(d) (e.g., shifts from higher- to lower-emitting unit)
  - Offsite actions that reduce or avoid emissions at affected section 111(d) sources
    - Shifts from fossil generation to non-emitting generation
    - Reduction in fossil generation due to increases in end-use energy efficiency and demand-side management.

# Key Question 2: State Flexibilities?

- States have compliance flexibility
  - Attorneys General letter – states have greater role
  - NRDC approach – state flexibilities impact BSER
  - Kentucky's proposal for a "mass-based" performance standard
- States submit compliance plan
  - EPA approval required
    - Reductions must be "equivalent"
  - EPA can impose Federal Implementation Plan (FIP)
- Will EPA provide guidance on equivalency?

# State Compliance Flexibility Options

- What compliance flexibilities could states use?
  - Variances
  - Averaging (across subcategories?)
  - Other utility programs (e.g., RES, Clean Air Clean Jobs)
  - Other non-utility programs (energy efficiency)
  - Trading (intra- and interstate) (e.g., CA, RGGI)
- What options do particular states have?
  - What options do you want your state to use?
- How do states quantify reductions?
  - How do they demonstrate equivalency?

# Some Key Issues for EEI Members

- **EPA's scope of authority** – How far can they go when setting BSER? Can EPA require outside the fence line activities not under a utilities control such as consumer efficiency?
- **Rule Integration** – NSPS requirements must fit seamlessly with the implementation of and investment in MATS and other rules to avoid stranded investments
- **Credit for Early Action** – Allow states to provide credit for actions taken before the finalization of the rule that have the effect of reducing GHG emissions
- **Baseline** – Compliance with existing source standards should be measured from a pre-recession period a

# Where is the GHG NSPS Going?

- Short answer
  - To the D.C. Circuit
  - New and existing rules
- Realistic answer
  - Litigation a given, lots of time between now and then
- Honest answer
  - Hard to call at this stage of the game?

# Climate Team Contacts

- Dan Chartier      [dchartier@eei.org](mailto:dchartier@eei.org)      (202-508-5710)
- Emily Fisher      [efisher@eei.org](mailto:efisher@eei.org)      (202-508-5616)
- Eric Holdsworth      [eholdsworth@eei.org](mailto:eholdsworth@eei.org)      (202-508-5203)
- John Kinsman      [jkinsman@eei.org](mailto:jkinsman@eei.org)      (202-508-5711)
- Karen Obenshain      [kobenshain@eei.org](mailto:kobenshain@eei.org)      (202-508-5223)
- Michael Rossler      [mrossler@eei.org](mailto:mrossler@eei.org)      (202-508-5516)