



Edison Electric Institute

Power by AssociationSM

Existing Source NSPS Regulations Under Section 111(d)

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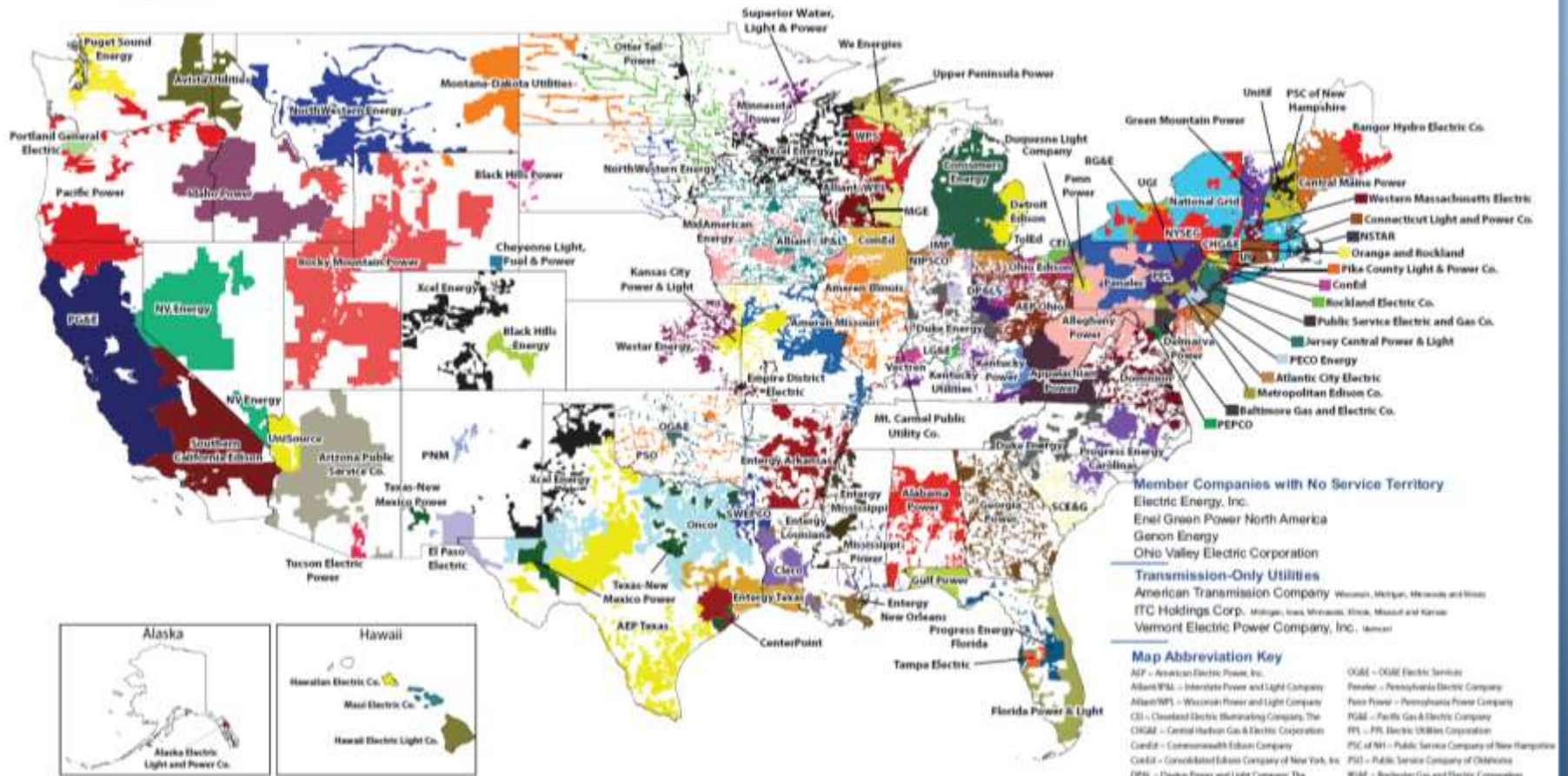
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Edison Electric Institute

- **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





Produced by Edison Electric Institute's Project Support Group. Data Source: Ventyx, The Velocity Suite 2012.

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 polices 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 (NAAAQS)
 - 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.**”

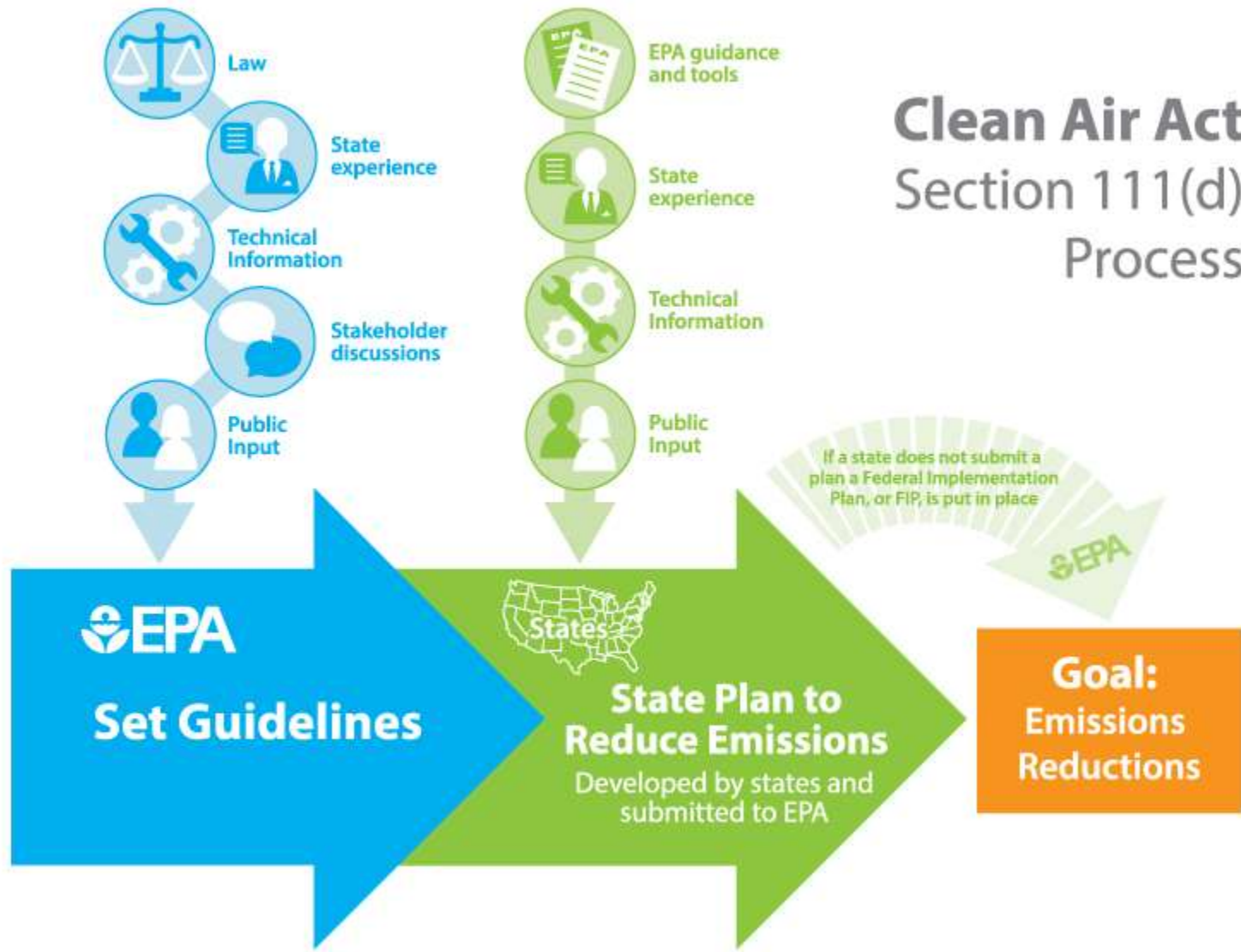
The “Generic” 111(d) Implementing Regulations

- 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?

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