

Testimony of ND State Senator Jessica Unruh (District 33)
regarding
Development of a North Dakota State Implementation Plan under EPA's Clean
Power Plan (40 CFR Part 60, Subpart UUUU)
before the
North Dakota Department of Health
November 12, 2015

My name is Jessica Unruh, State Senator representing District 33 and Environmental Specialist at the Coteau Properties Company Freedom Mine. My district is home to five coal-fired power plants, the Dakota Gasification Plant, and mine-to-mouth lignite mines that supply those facilities. EPA's recently finalized CO₂ regulation for existing power plants, otherwise known as the "Clean Power Plan", calls for a reduction in CO₂ emissions of 45% from these power plants. Without commercially-available technology to remove CO₂, this means that EPA expects more than a third of coal-fired generation would be shut down in our state, with an equivalent decline in mining. This will have a direct and devastating effect on my constituents, their families, their businesses and their futures.

Thank you to the North Dakota Department of Health for holding these four initial hearings, in Williston, Bismarck, Fargo, and of course here in Beulah, the heart of coal country and the region most impacted by the rule. These are important sessions. EPA's regulation requires that the state provide "opportunity for public comment" and "meaningful engagement with stakeholders, including vulnerable communities" while preparing the state implementation plan.¹

I appreciate these initial efforts to conduct outreach and solicit input into your proposed plan. It's essential that the Health Department, in coordination with other agencies such as the Public Service Commission (NDPSC), continue with this effort. EPA will judge your application for an extension on engagement efforts.² I request a schedule for regular meetings at least semi-annually to keep us aware of your progress and to continue to solicit input with those most impacted here in coal country and their representatives, through web notices, emails, and published newspaper notifications. As EPA wrote in their final rule:

"The EPA recommends that as part of their meaningful engagement with vulnerable communities, states work with communities to ensure that they have a clear understanding of the benefits and any potential adverse impacts that a state plan might have on their overburdened communities and that there is a clear process for states to respond to input from communities."³

I submit that under EPA's Clean Power Plan the towns and counties in my district, and the hard-working coal miners, power plant workers and business-owners that depend on them, and their families are considered "vulnerable communities."

The Health Department is soliciting comments on several issues related to state plan development. I'm not an expert on the detailed technical aspects of the rule, such as mass-based vs rate-based programs or carbon trading regimes, and I doubt more than a small handful of attendees at

¹ 40 CFR § 60.5765(a)(3), and further described in the preamble to the final rule at 80 Fed Reg 64848.

² 80 FR 64854. "The EPA is sensitive to the legal importance of adequate public participation in the state plan process, including public participation by affected communities."

³ 80 Fed Reg 64858

these public meetings are. Nonetheless, I do know and am well aware that the federal government expects North Dakota to prepare its own state plan to implement EPA's rule, and that if EPA is not satisfied with your plan, then they will impose their own federal plan on us.

In that regard I'm providing substantive recommendations, as well as criteria I feel are essential, that you must consider. These are described in direct response to the numbered questions on the public notice sheet provided by the Health Department.

First, for Item 1, the Health Department should develop its own state implementation plan, following certain criteria, as described below. It's essential, however, that this state plan consider the needs and requirements of North Dakotans first and foremost.

Second, with regard to Item 4, any state implementation plan must meet certain specific criteria. Based on an objective state-sponsored analysis of the plan, the Health Department, in conjunction with the NDPSC, cannot submit to EPA any proposed state implementation plan that is forecast to proximately result in:

1. Premature closure of existing power plants in the state that would not otherwise be closed if not for EPA's regulation (see Item 10);
2. Lost jobs in North Dakota, especially in District 33 and nearby coal mining and power generation areas of the state;
3. A decline in the quality of jobs in this region, meaning replacement of current high-wage jobs with lower wage jobs;
4. A decline in local and regional economic activity, meaning other direct and indirect job losses and a decline in commerce;
5. A decline in tax revenue to the state, and especially to local counties, cities and school districts currently dependent on coal severance taxes and coal conversion taxes;
6. Significantly higher electricity rates; and
7. Decreased reliability of electricity supplies, taking into consideration current and future load growth.

These are not negotiable items, suggestions or things we are asking for – these are seven mandatory criteria that a state implementation plan must meet before it can be submitted to EPA.

I understand this would be a most difficult task to accomplish. I also understand the fear many have that EPA will impose their own federal plan if they find our state plan is unacceptable. But there would be only one thing worse than having plant shutdowns, mine closures, job losses and an unreliable electric grid imposed from Washington, and that's to have it imposed by our own state government. For that reason it's absolutely essential that the state implementation plan meet the seven criteria outlined here.

Third, regarding Item 5 – while there may be a role legislation can play to aid in the implementation of the plan, such as incentivizing CO2 capture and sequestration, a demand side energy efficiency program, and/or a Renewable Portfolio Standard, we certainly don't want to do anything legislatively that could threaten our ability to address this rule appropriately. However, if necessary to protect my constituents and other North Dakotans that could be impacted by this rule, I will not hesitate to do everything in my power as a state senator to advance and pass legislation requiring that no state plan be submitted unless it meets the protective criteria described above.

Fourth, regarding Item 8, it's essential that the Health Department have a program to coordinate with the NDPSC. The NDPSC regulates electricity rates, siting of generation and transmission facilities, and assures a reliable and stable electricity supply for thousands of North Dakotans served by regulated utilities. The analysis of the proposed state implementation plan prior to finalization, must be a joint effort between the Health Department and the NDPSC, as well as other state entities that address employment and economic activity in the state, such as the Department of Commerce or an outside consultant that's experienced in environmental, energy and econometric modeling and forecasting. This coordinated effort to conduct such an analysis is strongly encouraged by EPA in their rule.

Fifth, regarding Item 10, it is critical that the remaining useful life of each of our North Dakota facilities is preserved. The \$2 billion of investments made by companies, and ultimately ratepayers, need to be fully reconciled. Because of these investments in technology, we are one of only seven states that meet all federal national ambient air quality standards. These coordinated efforts are a result of the industry working together, as are the many other accomplishments the industry has made to support my district. Looking to the future, it would be disastrous if our state plan was structured to pit one company against the other. Now is the time to unite. The state needs to encourage companies to work together for solutions and incentivize future investments and innovations to deploy CO2 capture, utilization and sequestration technologies and move our state forward. North Dakota has an abundant resource of lignite coal that can and should be fully utilized. Time and cooperation needs to be allowed and encouraged to help develop those technologies.

Sixth, regarding Item 11, the Health Department should take credit for renewable generation. Significant investments have been made in renewable energy in the past decade, increasing our renewable energy generation to approximately 20%, and that progress should be acknowledged. When it comes to meeting the goals set by the EPA, both investments in renewable and fossil fuel energy must be considered.

Finally, the timeline set out by the EPA is far too aggressive to simultaneously reasonably implement and fully evaluate the far-reaching impacts this rule will have on our state. I encourage the Health Department to consider that in the development of the plan and also to do all that is reasonable to obtain the two year extension to submit our final state implementation plan.

Affordable energy and innovation is the backbone of our nation, and that's what we do here in coal country and in North Dakota. Multiple companies work together to provide affordable, dependable and reliable energy to our region. I am confident that these same companies will continue to work together in coordination with the Health Department to provide innovative solutions to comply with this rule while preserving and protecting what we have and what we do, and continue to enhance our futures to make them even better.

Thank you for your consideration.