United States Senate Committee on Environment and Public Works

Subcommittee on Clean Air and Nuclear Safety

Testimony on "Legal Implications of the Clean Power Plan"

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Summary of Remarks:

- The Regional Greenhouse Gas Initiative (RGGI) states have demonstrated that it is possible to achieve cost-effective pollution reductions while maintaining grid reliability, and while having a positive impact on ratepayers and our overall economies.
- Carbon pollution in the RGGI region has decreased by over 40 percent, while the regional economy has grown by 8 percent.
- The basic structure of EPA's proposed rule is sound, although the RGGI states recommend that EPA adopt certain revisions to ensure that early action is recognized, and that the state targets are verifiable, transparent, equitable, and enforceable.
- Maryland's experience and recent independent grid operator analysis indicate that a regional path to compliance with the Clean Power Plan is the most efficient and cost-effective path forward.
- Independent analysis concluded that the impact of RGGI's first three years is $1.6 billion net economic gain to the region; changes in 2014 are projected to provide an additional $8 billion in gross regional product and add more than 130,000 job-years.
- Through 2013, Maryland invested $277 million in RGGI proceeds, directing 90 percent of the State auction proceeds toward energy efficiency initiatives, renewable energy projects, and direct bill assistance.
- Using a regional, mass-based construct, the regional emission cap is the only enforceable mechanism included in a compliance plan; states retain jurisdiction over their individual energy efficiency and renewable energy programs, and can continue to offer these initiatives as complementary measures that help mitigate the cost of compliance for their ratepayers.

Thank you Chairman Capito, Ranking Member Carper, and other members of the subcommittee for inviting me to testify this morning. As a Commissioner of the Maryland Public Service Commission, and as the Chair of the RGGI, Inc. Board of Directors, I am grateful for the opportunity to provide testimony on this crucial and timely subject. I particularly appreciate the opportunity to comment on the practicality of the EPA's proposed Clean Power Plan from the perspective of a state economic regulator.

Since the issuance of the proposed Clean Power Plan, proponents and opponents alike have been engaged in lengthy discussions regarding next steps. Reiterating a sentiment expressed by one of my fellow panelists, one of the most significant questions for states right now who are looking at the Clean Power Plan is: how do they comply? While I note that the panelist I am referencing expressed this sentiment as a reason to oppose the EPA's proposal, I respectfully submit to you, from the perspective of a state that already has boots on the ground on this issue: not only *can* states comply with the Clean Power Plan, but we can do so in a way that reduces harmful pollution, while also generating economic benefits and supporting grid reliability.

Furthermore, I take this opportunity to highlight a question I would ask in return of opponents to the EPA's proposal: can we as states afford *not* to comply with the Clean Power Plan? Rather than considering this question in the context of what a Federal Implementation Plan would look like, I encourage legal experts and legislators alike to view the situation from a state regulator's perspective. As noted in the recently-released Quadrennial Energy Review, severe weather is the leading cause of power disruptions, costing the U.S. economy from $18 billion to $33 billion a year. As a state commissioner, I have the statutory obligation to ensure reliable and affordable utility service, and especially acting as a regulator in a competitive and restructured market, I need more tools at my disposal than what is available to me within the fenceline of a power plant to meet my obligation. Modernizing the electricity grid is critical and requires multi-state collaboration and planning to efficiently and cost-effectively implement key infrastructure improvements. The proposed Clean Power Plan is an impetus for states to assess our interconnected electric grid and to approach the reality of an already shifting fuel mix through a shared lens adding carbon pollution reductions as a mandatory metric for states to consider.

As an economic regulator first and foremost, my primary objective is to ensure that the policy goals of my State that effect the electric sector are realized in the most cost-effective way possible while maintaining grid reliability. To this end, I am pleased that the EPA has allowed states to work within the current construct of our electric grid markets and by encouraging a regional approach to compliance. As one of the nine states participating in the Regional Greenhouse Gas Initiative (RGGI), the experience of my State, as well as recent analysis completed by several independent grid operators, indicates that a regional path to compliance is the most efficient and cost-effective path forward.

Maryland, along with Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont, continue for the seventh year to successfully implement the nation's first fully-operational carbon market. The RGGI program, initiated by a bipartisan group of governors and developed collaboratively by economic and environmental regulatory bodies, caps emissions by first determining a regional budget of CO_2 allowances, and then distributing a majority of the CO_2 allowances through regional auctions at market prices so that the states may capture the allowance value for reinvestment in strategic energy programs.

Collectively, the nine RGGI states represent 16 percent of the U.S. economy and generate a total gross domestic product of 2.4 trillion U.S. dollars. Inclusive of California's similar program, 28 percent of the U.S. economies are operating under the market-based carbon programs of RGGI or AB32. The states work together within the current electricity markets to create a unified system for auctioning and trading carbon allowances so that environmental goals are achieved through least-cost, market-based solutions. Although the nine states have collaborated effectively for the better part of a decade, the RGGI region remains diverse in many aspects. The RGGI states comprise three separate electricity regions, different political and economic landscapes, and dissimilar generation profiles.

For example, Maryland's in-State generation remains predominately coal [See Graph 1 in Appendix]. As a part of RGGI and coupled with other state energy initiatives, however, Maryland has diversified its fuel mix and reduced its carbon footprint. Since 2005, in-State generation from renewables, nuclear energy, and natural gas as a percentage of total generation mix has increased from 36 percent to 55 percent, while in-State generation from coal has decreased from 56 percent to 44 percent.

Over the entire RGGI region, power sector carbon pollution has decreased by over 40 percent, while the regional economy has grown by 8 percent (2005 to 2013) [See Graph 2 in Appendix]. Non-hydro renewable generation has increased by 47 percent, while regional dependency on coal and oil has decreased. The carbon intensity of the RGGI states' power sectors (in tons per MWh) has decreased at twice the rate of the rest of the country.

Market forces and complementary state policies and programs, such as RGGI, are driving these cost-effective pollution reductions while simultaneously supporting local economies. State energy efficiency, demand response, and renewable energy initiatives, as well as policies to encourage fuel-switching to less carbon-intensive fuels, all work in tandem to reduce pollution and to establish long-term solutions for a reliable energy infrastructure. Many of these complementary state strategic energy initiatives are funded using proceeds from the regional

RGGI allowance auctions – creating a virtuous cycle of benefits that also serves to minimize ratepayer impact.

Through 2013, across the region the RGGI states reinvested over $1 billion of auction proceeds in energy efficiency, clean and renewable energy, and other strategic energy programs. Maryland accounted for more than $277 million of this regional investment, with 90 percent of the State auction proceeds directed toward energy efficiency initiatives, renewable energy projects, and direct bill assistance. The reinvestment of auction proceeds in consumer benefit programs has helped more than 215,800 low-income Maryland families pay their energy bills, supported energy efficiency upgrades at 11,880 low- to moderate-income households, and helped 5,206 families and 201 businesses in Maryland install solar, wind, and geothermal systems.

An independent analysis by the Analysis Group on the economic impacts of RGGI conclude that RGGI's first three years alone are adding $1.6 billion net economic value to the region, and that benefits are likely to have increased further since then [See Note 1 in Appendix]. Changes to the RGGI program in 2014 (including a 45 percent reduction to the cap) are projected to provide an additional $8 billion in gross regional product and add more than 130,000 job-years for our citizens.

These benefits – both economic and environmental – informed the perspective of the RGGI states as we voiced support for the general framework of the Clean Power Plan. Through two sets of comments in which we expressed our support, we also recommended revisions to the Plan to ensure that early action to reduce carbon emissions from the power sector is recognized, and that the state targets are verifiable, transparent, equitable, and enforceable [See Notes 2 and 3 in Appendix].

The RGGI states commend the EPA for recognizing multi-state, mass-based programs like RGGI as an acceptable means by which to demonstrate compliance with the Clean Power

Plan. Regional mass-based programs are advantageous in part because they closely align with the regional nature of the electricity grid, and allow for a simple, transparent, and verifiable tracking and compliance system. Recent analysis from PJM calculated higher compliance costs for states that "go it alone," underscoring the cost-effectiveness of regional plans. Groups of states can implement a regional emission budget that reduces overall emissions across a region using the most cost-effective measures available to a larger geographical boundary, while allowing for potential emission increases in some specific locations where more efficient energy resources are available. This structure allows the market to determine the most cost-effective solutions, helping to maximize emission reductions at the lowest possible cost – a concept demonstrated by the RGGI states' own experience.

Furthermore, reliance on a regional, market-based construct to accomplish environmental goals prevents the superimposition of any additional function on our markets beyond the roles already required of our existing electricity market players. Reliable dispatch of the least-cost resources remains with our grid operators; the North American Electric Reliability Corporation retains its responsibility to assure the reliability of the bulk power system; the Federal Energy Regulatory Commission retains its responsibility to design and enforce wholesale market structures; and our utilities retain responsibility for distribution-level reliability. Maryland recognizes that reliability is of utmost importance to the success of any power sector initiative, including RGGI and the Clean Power Plan. In both cases, a properly designed plan allows grid reliability and pollution reduction programs are fully compatible.

In the RGGI states' experience, our power sector has been able to respond effectively to environmental regulations in less time than the EPA provides the rest of the country as part of the Clean Power Plan. In fact, measures supported by RGGI investments in peak demand reduction and energy efficiency programs have advanced reliability goals in the region.

Maryland has achieved a 14.6 percent reduction in peak electricity demand from a 2007 baseline, equivalent to avoiding the need for 1,743 MW from 2008-2014. In contrast, the interim compliance goal notwithstanding, states have 15 years to meet the final compliance goal. This allows adequate time for grid reliability to be fully upheld through ordinary planning and resource development.

Several independent studies of reliability under the proposed Clean Power Plan confirm the experience of the RGGI states. Researchers including the Analysis Group have noted that utilities' goals of ensuring reliability and reducing carbon pollution are fully compatible [See Note 4 in Appendix]. Others have noted that many of the grid changes encouraged by the Clean Power Plan are already underway due to existing economic forces and environmental regulations already in effect. Likewise, while the ISO/RTO comments suggest that more reliability assessments should be undertaken, the comments conclude that well-designed plans will ultimately be able to ensure reliability [See Note 5 in Appendix].While RGGI is one path forward, it is only one of many proposed regional compliance mechanisms being discussed among industry stakeholders. Through our participation in RGGI, Maryland has accumulated invaluable lessons that may be instructive to other states as they investigate their options for compliance with the Clean Power Plan. One such lesson stems from the formation of intra- and inter-state agency relationships as part of the regional cooperative effort; relationships and resources that spill over into other initiatives such as distributed generation, electric vehicles, and compliance with other EPA regulations. The pooling of staff resources and state budgets through participation in a regional mechanism allows states to achieve a lot more, for a lot less. These administrative efficiencies translate into funding and resources for the completion of necessary regional electric sector modeling in a timely fashion, with built-in peer review. It is also the experience of the RGGI states that a regional mechanism stimulates active and productive stakeholder engagement, as many potential compliance entities span multiple jurisdictions and appreciate the desire for regional consistency. Which leads into another lesson learned: regional consistency does not require states to implement identical programs. RGGI states do in fact deviate in program implementation and administration; for example, beyond a minimum commitment to re-invest 25% of auction proceeds in consumer benefit initiatives, RGGI states may distribute the remainder of auction proceeds as dictates by individual state policy and needs.

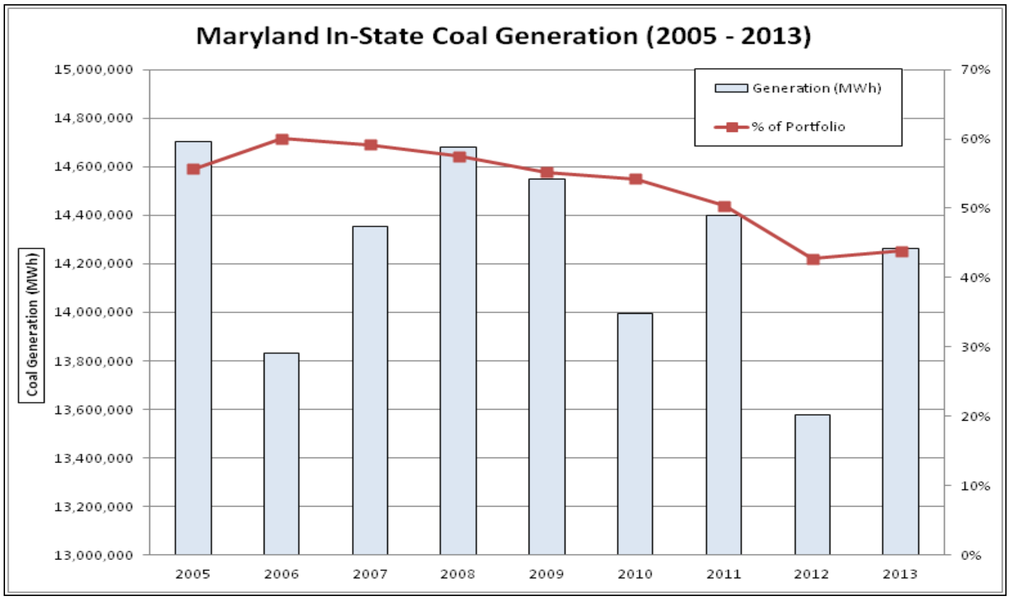
Lastly, I would like to greatly emphasize the most important lesson learned by the RGGI states to-date – a lesson that we intend to rely on as we move toward compliance with the proposed EPA rule. Participation in a regional compliance effort will likely provide your state the *most* flexibility moving forward. Initial hurdles surrounding the structure of the mechanism are not in fact insurmountable, as the real-world example of the RGGI states demonstrates. Using a regional, mass-based construct, the regional emission cap is the only enforceable mechanism included in a compliance plan; states retain jurisdiction over their individual energy efficiency and renewable energy programs, and can continue to offer these initiatives as complementary measures that help mitigate the cost of compliance for their ratepayers.

Maryland looks forward to working with FERC, EPA, and our fellow states to navigate compliance options as the implementation of the Clean Power Plan moves forward. Our experience has demonstrated that flexible carbon emission reduction programs, coupled with other state policies, can work within the construct of establish markets to reduce harmful pollution while also generating economic benefits and supporting grid reliability.

Appendix

1. *EPA's Clean Power Plan: States' Tools for Reducing Costs and Increasing Benefits to Consumers*. The Analysis Group, 2014.
2. *RGGI States' Comments on Proposed Carbon Pollution Guidelines for Existing Stationary Sources: Electricity Generating Units*. Nov. 5, 2014.
3. *RGGI States Supplemental Comments on Proposed Clean Power Plan*. Dec. 1, 2014.
4. *Electric System Reliability and EPA's Clean Power Plan: Tools and Practices*. The Analysis Group, Feb. 2015.
5. *Comments of the ISO/RTO Council on Carbon Pollution Guidelines for Existing Stationary Sources: Electricity Utility Generating Units*. Dec. 1, 2014.

Graph 1:



Graph 2: