

**PANEL PRESENTATION OUTLINE**  
**Electric Utility Regulation: Balancing Supply, Rate, and Environmental Impacts**  
**Environment Virginia, April 10, 2014**  
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1. Introduction – A higher degree of coordination among Virginia’s environmental, energy and electric utility regulators is desirable to assure a better balance among environmental, electricity supply and grid reliability concerns, especially as the state moves to regulate carbon emissions from fossil fuel power plants
2. Clean air requirements have been a key driver of electric utility regulation and policy since the 1990 Clean Air Act (CAA) Amendments
  - a. Initially
    - i. Acid rain program
    - ii. EPA’s New Source Review enforcement initiative (e.g., 2003 Dominion and AEP consent decrees)
  - b. More recent EPA rules focusing on power plants
    - i. Control of interstate transport of pollution; CAA §110a2d
      1. NO<sub>x</sub> SIP Call
      2. Clean Air Interstate Rule (CAIR)
      3. Cross State Air Pollution Rule (CSAPR)
      4. Transport Rule
    - ii. One hr. SO<sub>2</sub> National Ambient Air Quality Standard (NAAQS)
    - iii. One hr. NO<sub>2</sub> NAAQS
    - iv. Mercury Air Toxics Rule (MATS)
3. These rules have had/will have a tremendous impact on the electric utility industry, but with no input from traditional federal or state utility regulators
4. Clash of environmental and reliability concerns played out in the matter of Mirant’s Potomac River Generating Station (PRGS) in Alexandria Va 2005-2007
  - a. PRSG emissions caused modeled exceedances of SO<sub>2</sub> NAAQS
  - b. NAAQS exceedances could only be remedied in short term by operational measures at PRGS that unacceptably threatened reliability of the DC grid
  - c. DEQ, DOE, FERC and EPA orders issued
    - i. DOE and FERC recognized primacy of environmental regulation with possible exception of emergencies
    - ii. Mirant and PEPCO ordered by DOE to cure grid deficiencies as expeditiously as possible to assure PRSG could operate in a manner to comply with the NAAQS w/o threatening reliability
    - iii. EPA administrative order imposed complex interim operating requirements

5. EPA first publicly recognized the need to incorporate facets of traditional electric utility industry concerns into clean air regulations in the MATS Rule in 2012
  - a. State air pollution control agencies allowed to grant up to one yr. extension for MATS to EGUs that demonstrate extension needed to alleviate reliability and supply concerns
  - b. ISO/RTOs involved
  - c. DEQ has granted two such requests made by AEP
6. President's June 2013 Climate Action Plan (PCAP) will require sophisticated coordination among state air pollution regulators, traditional electric utility regulators such as the SCC, and state energy policy officials
7. Among other things, the PCAP directs EPA to propose CO<sub>2</sub> emission guidelines for existing fossil fuel power plants under CAA §111d by June 2014 and to finalize them by June 2015
  - a. Indications are EPA will allow states broad flexibility in developing state programs to comply with §111d
    - i. CAA §111d is complex and heretofore little used; little precedent or interpretive case law
    - ii. State programs may be allowed (but not required) to contain elements such as energy efficiency/renewable energy (EE/RE) requirements that are under the purview of the SCC, not SAPCB/DEQ, in addition to more traditional environmental controls such as CO<sub>2</sub> performance standards or emissions trading programs
  - b. States will have to work fast, because EPA will give state air pollution control agencies only one year to develop and finalize §111d plans
8. It may well be in the Commonwealth's interest to develop a broad based §111d plan that will require fast-paced involvement and coordination from several state agencies that up to this point have had little reason or opportunity to work together
  - a. Obstacles to coordination
    - i. Single mission agencies
    - ii. Silos
    - iii. Tradition
  - b. Methods for overcoming barriers
    - i. Direct communication
    - ii. Facilitated communication
      1. Academic institution
      2. EPA
      3. ISO
      4. Other knowledgeable third party
    - iii. Coercion (obviously, least preferred option)
  - c. Virginia is behind several other states in coordination of environmental, energy, and public utility regulatory agencies

9. Conclusion