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Subject: RE: State plans to stymie EPA rules running into unlikely resistance
From: Amy Farrell
To: Marty Durbin <[REDACTED]>; Sari Fink <[REDACTED]> Erica Bowman
CC: [REDACTED] <[REDACTED]>;

Redacted

From: Marty Durbin
Sent: Monday, February 08, 2016 5:51 PM
To: Amy Farrell; Sari Fink; Erica Bowman
Cc: [REDACTED]
Subject: FW: State plans to stymie EPA rules running into unlikely resistance

Redacted

From: POLITICO Pro Energy <[REDACTED]>
Reply-To: POLITICO subscriptions <reply-fe9011707d62077d7c-592168_HTML-637935421-1376319-0@politicoemail.com>
Date: Monday, February 8, 2016 at 3:56 PM
To: Marty Durbin <[REDACTED]>
Subject: State plans to stymie EPA rules running into unlikely resistance

State plans to stymie EPA rules running into unlikely resistance

By Alex Guillén

02/08/2016 03:53 PM EDT

State legislators around the country are working to undermine EPA's landmark plan to reduce power plants' carbon emissions, but they are running into resistance from an unlikely source: The utilities who would have to live by those rules and their allies in the business community.

In at least a dozen states, lawmakers or other officials are working to stymie cooperation with EPA, including by giving legislatures veto power over environmental regulators' climate plans, designing plans meant to be rejected or simply refusing to participate.

The mostly Republican-led efforts are aimed at complementing a lawsuit from officials in 27 states seeking to overturn the carbon rule in court. It remains to be seen how many are successful, but utilities and other industry groups say they could backfire if EPA eventually wins at the Supreme Court and states do not have plans ready to go.

For example, the Ohio Chamber of Commerce is worried about a proposed bill two Republican lawmakers are pushing that would let the state legislature veto compliance plans.

"A preemptive strike of legislative approval right now, I think, could potentially slow down or potentially be redundant," said Charles Willoughby, director of energy and environmental policy at the Ohio Chamber of Commerce, referring to the proposed Ohio legislation. "If Ohio EPA or if a state environmental agency is doing their due diligence and communicating with the industries about their concerns, legislative approval is almost a redundant step."

Environmentalists, too, would prefer state legislators let their environmental regulators work with little interference. Even in a Republican-governed state like Ohio where coal still dominates the energy mix, state regulators have "the flexibility to write the best plan," says Samantha Williams, an attorney and policy advocate in NRDC's Midwest program.

"It may end up just handing the keys over to U.S. EPA to put a federal plan on the state," Williams said of the bill to require legislative approval of a state climate plan. "And I think Ohio, just like lots of other places, has recognized that that's not the best path forward for their future."

Since EPA first proposed its Clean Power Plan two years ago, state lawmakers have enacted laws aimed to block it, mostly in chambers controlled by Republicans. Now that the rules are final, lawmakers want to make sure they weigh in before states have to file reports to EPA or formally request extensions in September.

"It's important that our agencies at the state level understand that we are not in favor of having the plan imposed on us," said Florida Rep. Manny Diaz Jr., who is pushing a bill that would block the state from submitting a plan until the rule survives court challenges.

But soon after Diaz introduced his bill, utility interests warned it could backfire. Frank Matthews, an attorney representing utilities organized as the Florida Reliability Coordinating Council, warned of "grave concerns" during a subcommittee hearing last month. Following that warning, legislators [agreed to amend the bill](#) to ensure that Florida regulators could request an extension in September. It remains to be seen whether the bill makes it to Gov. Rick Scott, who has said he opposes the EPA rule.

Several states - West Virginia, Arizona, Arkansas, Tennessee and Pennsylvania - have already enacted bills giving lawmakers veto power over any potential plan. In other states, such as Kentucky and Louisiana, legislatures have voted to limit how aggressive their environmental regulators can be.

Largely symbolic efforts also are being advanced in various states. In Virginia, New Hampshire and Pennsylvania, where Democratic governors support the Clean Power Plan, Republican lawmakers are pursuing legislation to block the plans that stands little chance of being implemented. And in Georgia, a Republican state senator is pursuing a long-shot effort to partner with at least one of its neighbors in an interstate compact to enforce the Clean Air Act, inspired by past failed efforts to let states take over health programs such as Medicare.

But in virtually all cases, states have made sure to stop short of full defiance. Even some of EPA's harshest critics say that approach is acceptable - as long as states don't commit themselves to shuttering coal plants or making other dramatic changes before the Supreme Court weighs in. The key is to avoid a repeat of the mercury rule, which was sent back to the agency after it had mostly gone into effect.

"What EPA would like is for states to make the commitments so that even if part of the rule is struck down in the future, maybe even the entire rule, they will have achieved much of their goals," Daniel Simmons, vice president of policy at the American Energy Alliance, a Koch brothers-linked group that opposes the Clean Power Plan.

States should ask for the extra two years, Simmons added.

"The key is not to make commitments so you start shutting down power plants before there's been legal resolution on the regulation itself," he said.

So far, the only state fully refusing to go along is Oklahoma, where Republican Gov. Mary Fallin in 2015 issued an executive order preventing the state Department of Environmental Quality from developing a plan or asking EPA for more time.

Regulators elsewhere generally can still ask for extensions and take other steps to prevent the agency from imposing its federal compliance plan, which utilities worry could be more costly than plans designed closer to home.

EPA has said it listened to states' concerns before updating the targets in its final rule and has promised to be generous in granting extension requests. That gives state regulators and lawmakers more time to "work through the issue" and has reduced pressure for legislatures to step in, said Doug Scott, vice president of strategic initiatives at the Great Plains Institute, a group working with Midwestern states on compliance plans.

"I get a sense that there's less pressure to do things like that than there was last year or the year before, before the final rule came out," he said.

In states that submit a weak plan or refuse to act, EPA has said it will step in to impose its federal plan, which has yet to be finalized but may allow trading credits or allowances with some other states.

North Carolina regulators are daring EPA to reject a state plan they are assembling - part of a legal strategy that would let it challenge the scope of EPA's rule in court. However, the state is also designing a fallback plan it says could be approved.

The strategy is running into resistance from North Carolina's largest utility, who encouraged it to take a less antagonistic approach, according to the Triangle Business Journal.

"Quite frankly, the approach our state is taking is one that is not collaborative," Duke Energy executive Mike McIntire said. "We are continuing to encourage the Department of Environmental Quality to think a little bit larger - let's bring all the stakeholders in the room."

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