Utility Engagement on U.S Power Plant Rules

An InfluenceMap Briefing

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Executive Summary

- InfluenceMap finds that nearly the exact same collective of electric utilities that fought the Clean Power Plan between 2014 and 2019 are lining up to oppose the Biden Administration’s power plant rules. Utility members of the now-disbanded Utility Air Regulatory Group that opposed the Clean Power Plan during the Obama Administration are engaging through other coalitions, namely the Power Generators Air Coalition and the Midwest Power Sector Collaborative, to push back on the Biden Administration’s first step toward addressing power plant GHG emissions. Key members of these groups include American Electric Power Company, CMS Energy subsidiary Consumers Energy, DTE Energy, and Southern Company.

- Power sector engagement on the pre-proposal for the Biden Administration’s upcoming draft power plant rules has centered on advocating for flexibility in compliance, exemptions for coal-fired retirements, and a long-term role for fossil gas in the energy transition. The Environmental Protection Agency (EPA) held a public comment period from September 2022 to March 2023 to gather input before proposing formal rules – expected in the spring of 2023 – to reduce greenhouse gas (GHG) emissions from power plants across all U.S. states. Several of the country’s largest utilities and utility groups have submitted unsupportive comments, including Southern Company, Edison Electric Institute (EEI), and the Class of ’85 Regulatory Response Group, a member-shifting group that has been engaging on Clean Air Act rules for over three decades.

- In pursuit of a continued agenda to prolong the combustion of fossil fuels for power, utilities have shifted their messaging over time from challenging the EPA’s legal authority to regulate GHG emissions from power plants to advocating for a "moderated" energy transition. Their comments on the pre-proposal illustrate a strong push for rules that facilitate a long-term role for fossil gas, deploying arguments that emphasize concerns for reliability and environmental justice in the rapid transition to a renewables-dominated power system. InfluenceMap previously analyzed patterns in utility climate policy engagement in its U.S. Utilities Report published in April 2022.

- The push for weaker rules to facilitate fossil fuel expansion in the U.S. is misaligned with the findings of the latest IPCC report from March 2023, which states with high confidence that "projected CO2 emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C.” With such strong negative engagement on the pre-proposal, it is critical for stakeholder groups – including investors, civil society groups, and demand-side companies seeking to decarbonize their power consumption – to address this negative lobbying and weigh in more forcefully on the development of these rules, and for utilities with a history of positive climate policy engagement to fully disclose their positions.
Utility Influence Over Power Plant Regulation

Engagement on the EPA Power Sector Pre-Proposal

In September 2022, the Environmental Protection Agency (EPA) opened a non-rulemaking docket to receive public input on reducing greenhouse gas (GHG) emissions from 1) new fossil gas plants – of which there are 145 currently proposed or under construction – and 2) existing fossil gas and coal plants. The pre-proposal marks a first step by the EPA toward regulating GHGs from electricity generation and will be followed by a formal proposal from the agency in the spring of 2023. The Biden administration’s first attempt at regulating carbon emissions from power plants carries tremendous significance for U.S. climate policy given the history of the Clean Power Plan (CPP), which was never enacted following legal attack from industry, and the subsequent Affordable Clean Energy (ACE) rule.

The pre-proposal docket was open for comment until March 27th and attracted opposition from some of the country’s largest utilities and utility groups. Thus far, the sector’s comments all appear to advocate for flexibilities in compliance, with a focus on promoting a long-term role for fossil gas and exemptions for coal-fired retirements:

- In November 2022 comments, Edison Electric Institute (EEI) defended the role of fossil gas in the energy mix, asking the EPA to “set standards that acknowledge that natural gas generation will continue to play an essential role.” It also supported an expanded role for ammonia without specifying the need to decarbonize its production.

- In December 2022 comments, Southern Company advocated against imposing more ambitious limits on existing coal and fossil gas plants and emphasized that the EPA should facilitate the construction of new fossil gas infrastructure.

- In December 2022 comments, the Power Generators Air Coalition (PGen), a 501(c)(6) registered organization as of January 2021, pushed for flexibility in compliance – including multiple exemptions for existing fossil fuel plants – and advocated for an expedited process to build new fossil gas cycle combustion turbines. Utility members of PGen include American Electric Power, CMS Energy, DTE Energy, PPL Corp subsidiaries LG&E and KU, Southern Company, and Vistra Corp.

- In January 2023 comments, the Midcontinent Power Sector Collaborative (MPSC), a group convened by the nonprofit Great Plains Institute as of 2012 that counts utilities (alongside other companies and stakeholders) among its members, advocated for flexibility and standards that support a long-term role

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1 In its submitted comments, PGen describes itself as an “incorporated nonprofit 501(c)(6) organization whose members are diverse electric generating companies – public power, rural electric cooperatives, and investor-owned utilities – with a mix of solar, wind, hydroelectric, nuclear, and fossil generation.” The comments include a link to the organization’s website, which lists its membership on the home page.

2 In its submitted comments, the MPSC states in the introduction that it is a group consisting of “state officials from environmental and energy regulatory agencies and state energy offices, investor-owned utilities, generation and transmission cooperatives, merchant

- In a second round of comments in February 2023, EEI advocated for compliance exemptions for coal plants that are already slated for retirement and pushed for an expanded role for hydrogen without clarifying its position on decarbonizing hydrogen production. As in its November 2022 comments, EEI appeared to advocate for standards that supported a long-term role for fossil gas plants.

- In February 2023 comments, the Class of ‘85 Regulatory Response Group (Class of ‘85), a utility group that has been engaging on U.S. energy regulations for over 30 years, advocated for the EPA to support flexible compliance pathways, including exemptions for coal plants scheduled to retire, as well as standards that facilitate a prominent role for fossil gas. Utilities that signed these comments include AES Corp, Alliant Energy, Ameren, Dominion Energy, Duke Energy, Entergy, Evergy, PPL Corp subsidiaries LG&E and KU, National Grid, NRG Energy, and Xcel Energy.

These comments showcase early opposition to anticipated limits on power plant GHG emissions and demonstrate a strong push by major players for the long-term role for fossil gas in the U.S. energy mix. The lack of positive engagement from other industry players is particularly notable given the presence of higher scoring U.S. utilities tracked in InfluenceMap’s database, which usually engage with positive positions at the federal level yet appear absent on this pre-proposal, such as Edison International subsidiary Southern California Edison, Exelon, Pacific Gas & Electric (PG&E), and Consolidated Edison.

From Clean Power Plan to Pre-Proposal

Over the past decade, sustained utility opposition to the EPA’s power sector proposals has contributed to a regulatory and legal landscape characterized by delays and limitations on agency action to address GHG emissions. Analysis by the Rhodium Group found that the Inflation Reduction Act (IRA) could reduce emissions by as much as 42% below 2005 levels in 2030. While the climate investments in the IRA are a significant achievement, ambitious regulations are critical to closing the emissions gap and meeting President Biden’s target of achieving 100% carbon pollution-free electricity by 2035. Despite publishing a timeline to propose carbon standards for new and existing power plants by June 2022 and July 2022, respectively, this pre-proposal is the first indication of action by the administration.

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1 In its submitted comments, the Class of ’85 Regulatory Response group describes itself as a “voluntary, ad hoc coalition of over 40 electric generating companies from across the country that has been actively involved in the development and implementation of Clean Air Act ("CAA") rules affecting the electric generating industry for over 30 years, including the regulation of GHG emissions from new and existing EGUs.”
The Clean Power Plan (CPP), announced in August 2015 by the Obama administration, introduced the first national standards on reducing carbon emissions from power plants. Many of the largest investor-owned utilities (IOUs) and trade associations in the U.S strongly opposed the CPP, both though public engagement and funding of other organizations. One of the most powerful of these organizations was the Utility Air Regulatory Group (UARG), an association whose funders, as reported by Politico and Energy and Policy Institute, included the utility trade group Edison Electric Institute and utilities American Electric Power Company (AEP), Duke Energy, and Southern Company. The UARG presented fierce pushback to the CPP in the form of multiple legal challenges and filed a motion to stay the rule. Following investigations by Congress into its ties and influence with the EPA, the coalition disbanded in May 2019.

Now, with the introduction of the EPA’s pre-proposal in 2023, InfluenceMap finds that nearly the exact same collective of utilities that fought the CPP are lining up to oppose the Biden Administration’s power plant rules. As illustrated in the graphic below, many of the same electric utilities that opposed the CPP as members of the UARG are engaging negatively on the power sector pre-proposal through other coalitions.

With the exception of FirstEnergy, all of the UARG utilities that do not appear in PGen and MPSC still negatively engaged on the pre-proposal, but through the Class of ’85 Regulatory Response Group instead. The Class of ’85 criticized both the Clean Power Plan and the EPA’s new pre-proposal, with significant overlap in companies during each time frame:
Members of the Class of '85 that endorsed the group's multiple negative engagements from 2014 to 2018 on the CPP and its replacement by the ACE rule include AES, Alliant, Entergy, National Grid, NRG, PPL Corp and subsidiaries LG&E/KU, Xcel, and NextEra.

Members of the Class of '85 that endorsed the group's February 2023 negative engagement on the pre-proposal include AES, Alliant, Entergy, National Grid, NRG, PPL Corp subsidiaries LG&E/KU, Xcel, Ameren, Dominion, Duke, and Evergy.

Clearly, the use of different trade associations and coalitions like UARG, PGEN, and MPSC is a common strategy for utilities to influence climate policy. More details on the Class of ’85 are available in the Appendix.

By contrast, utilities Edison International, Exelon, Consolidated Edison, National Grid - which negatively engaged on the pre-proposal through the Class of ‘85, as shown above - and PG&E took legal action, separately as well as jointly, between 2015 and 2019 to both support the Clean Power Plan and oppose its replacement by the ACE rule. Despite this positive engagement in the past, none of these utilities have offered comments on the pre-proposal.

Narrative Shift

Although utility messaging on power sector rules has changed since the Clean Power Plan, the objective of many of the largest U.S. utilities has continued to focus on delaying ambitious climate policy and prolonging the role of fossil fuels. InfluenceMap analysis finds that utilities have adapted their arguments over time from contesting the EPA’s legal authority to regulate carbon emissions to emphasizing reliability, affordability, and “just transition.” as part of a strategy to advocate for less ambitious climate policy action.

Utility opposition to the CPP often argued that the EPA was overstepping legal boundaries by intruding on state authority and proposing regulation that would demand a rapid shift in the power sector. Companies also commonly argued that the CPP would force early retirements of coal plants and result in stranded assets.

Engagement on the power sector pre-proposal illustrates how utilities are deploying new, obstructive narratives nearly a decade after the CPP. Critically, it appears that utilities have embraced the language of the energy transition to promote a prominent role for fossil fuels. Comments on the pre-proposal urge the EPA to exempt coal plants from proposed regulations since they are already expected to be retired. Many argue that the EPA will slow the energy transition if it imposes burdensome regulations that limit construction of new gas plants. They justify such statements by arguing that many long-term challenges remain with renewables-dominated power systems, a position at odds with the recommendations of the IPCC to rapidly transition to a renewables-dominated power mix by 2030.

Utilities are also emphasizing reliability and environmental justice concerns as a means of pushing for the longevity of fossil gas – including through the expansion of other fuels, such as hydrogen and ammonia, that
make use of fossil gas infrastructure. For example, PGen’s comments on the pre-proposal emphasized that "significant negative environmental justice ramifications" could result from regulation that "does not provide adequate compliance flexibility." This strategic use of language demonstrates an increasing trend of industry co-opting language around environmental justice and just transitions to advocate for a slower approach to emissions reductions. The *April 2022 IPCC Working Group III Report on Mitigation of Climate Change* defines just transitions as "a set of principles, processes and practices that aim to ensure that no people, workers, places, sectors, countries or regions are left behind in the transition from a high-carbon to a low-carbon economy." This includes the protection of "respect and dignity for vulnerable groups" and "fairness in energy access and use." As such, a just transition is one that focuses on mitigating the impacts of a transition to a low-carbon economy on vulnerable groups through policy and management, rather than slowing down the transition itself.

**Conclusion**

The power sector pre-proposal, which the EPA introduced to gather input before proposing rulemakings for power plant GHG emissions, was open for comment until March 27th. Almost all of the same utilities that formed coalitions to oppose the Clean Power Plan are advocating similarly negative positions on the pre-proposal, under the cover of other coalitions. While the companies have softened their outright opposition to EPA proposals on power plant emissions, they have pivoted to push for continued fossil fuel expansion and a slower energy transition. Notably, InfluenceMap analysis of corporate influence since 2015 has found a general shift from climate denial to tactics of delay; current utility messaging may be one example of a wider trend.

Meanwhile, utilities that have historically defended the EPA’s authority to regulate GHG emissions have not articulated their positions on the pre-proposal. The absence of a positively engaging utility coalition leaves the above groups free to delay critical climate action.

This pattern of negative engagement by the same utilities points to a risk of history repeating itself in regard to power plant rules, unless several behaviors occur to counter a similar outcome to the Clean Power Plan: 1) various stakeholders, including investors, address negative utility engagement; 2) positively engaging utilities disclose their positions and advocate for ambitious power plant rules; and 3) U.S. corporates, particularly large power consumers in the consumer and technology sectors with ambitious emissions reduction goals, demand IPCC-aligned engagement from the utilities that source their power.
Appendix

While utilities sometimes engage on an individual basis, as evidenced in section one of this briefing, it is also apparent that the U.S. power sector relies on various types of coalitions to influence climate policy. From sector associations like EEI, more opaque associations like UARG, and newer groups like PGen and MPSC, utilities use power in numbers to increase their clout and visibility.

The tactic of outsourcing climate policy influence to industry associations is not unique to the power sector. InfluenceMap has consistently analyzed how industry associations can hold immense influence over policymaking in their respective jurisdictions.

However, utility groups like the Class of ‘85 Regulatory Response Group seem to operate under a novel model. Unlike all of the other types of associations listed above, it does not appear to be registered under the Internal Revenue Service (IRS) as 501(c)6 organizations (i.e., industry or trade associations), which have dues-paying corporate members and which can lobby at any time on behalf of those members. It also does not appear to be registered as a 501(c)3 or 4 nonprofit.

Rather, groups like the Class of ‘85 appear under the same name but with slight differences in the composition of their members in each engagement. Participating companies are usually listed on each comment letter. (Another example is the Cross-Cutting Issues Group (CCIG)\footnote{In submitted comments, the CCIG describes itself as “a group of electric generating companies with a diverse portfolio of traditional and renewable generating assets located throughout the country.”}, which advocated for a narrow definition of “cumulative impacts” in comments\footnote{Utilities that signed this comment included AES, Alliant, Dominion, Duke, Entergy, Evergy, LG&E/KU (parent company PPL Corp), NextEra, Southern, and Vectren (parent company CenterPoint).} on the National Environmental Policy Act (NEPA) in November 2021, and argued for expedited approval times for carbon capture projects in comments\footnote{Utilities that signed this comment included AES, Alliant, Dominion, Duke, Entergy, LG&E/KU (parent company PPL Corp), Southern, Vectren (parent company CenterPoint), and Vistra.} on CCUS guidance in April 2022).

In effect, it seems that the member-shifting model of groups like the Class of ‘85 allows them to build power and clout by engaging under an established, recognized name while still allowing for flexibility in corporate participation. Additional recent evidence from this group’s regulatory engagement includes:

- In June 2022, the Class of ‘85 Regulatory Response Group’ highlighted feasibility concerns with CCS technology and advocated for the long-term role of fossil gas in comments on the EPA Draft White Paper request for input on how to institute GHG emissions reduction controls for new gas plants.

\footnote{In submitted comments, the CCIG describes itself as “a group of electric generating companies with a diverse portfolio of traditional and renewable generating assets located throughout the country.”}

\footnote{Utilities that signed this comment included AES, Alliant, Dominion, Duke, Entergy, Evergy, LG&E/KU (parent company PPL Corp), NextEra, Southern, and Vectren (parent company CenterPoint).}

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In January 2022, the Class of ’85 Regulatory Response Group appeared to oppose the EPA methane proposal by advocating to evaluate new source categories on an individual basis.

In July 2021, the Class of ’85 Regulatory Response Group strongly supported reinstating the California waiver toward vehicle emissions standards, however seemingly as a means to avoid more ambitious limits on electric generating units.

Utilities that signed this comment included AES, Alliant, Dominion, Duke, Entergy, Evergy, FPL (parent company NextEra), LG&E/KU (parent company PPL Corp), National Grid, NRG, and Xcel.

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