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## SENATE BILL NO. 1202

Offered January 14, 2015

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A *BILL to establish conditions on the authority of state agencies to prepare or submit a state implementation plan with respect to the Environmental Protection Agency's carbon pollution emission guidelines for existing electric utility generating units.*

Patrons—Wagner, Chafin and McWaters

Referred to Committee on Agriculture, Conservation and Natural Resources

**Be it enacted by the General Assembly of Virginia:**

1. § 1. No agency of the Commonwealth or employee thereof shall prepare or submit to the Environmental Protection Agency (EPA) a state implementation plan, standard of performance, or other document or material, with respect to the EPA's carbon pollution emission guidelines for existing electric utility generating units issued pursuant to § 111(d) of the Clean Air Act (Clean Power Plan), unless and until the State Corporation Commission finds, in a proceeding that it shall initiate upon the EPA's issuance of a final Clean Power Plan, that the final Clean Power Plan incorporates amendments or revisions to the proposed version thereof published on June 18, 2014, at 79 Fed. Reg. 34,830, that address the following criticisms of the proposed version to an extent that makes it unlikely that compliance with the Clean Power Plan will be the proximate cause of (i) increases in the rates for electricity charged to each customer class or (ii) reductions in the reliability of electric service in the Commonwealth:

1. The proposed Clean Power Plan sets stricter standards on Virginia and other states with low carbon-emitting electric generating systems than on states with high carbon-emitting generating systems, thereby placing states that already have a diverse, low-carbon-emitting generating portfolio, like the Commonwealth, at a disadvantage compared to states that do not. The proposed Clean Power Plan's guidelines would require the Commonwealth to reduce its emissions intensity by 38 percent, yielding a goal for Virginia that is significantly stricter than that of any of its neighboring states and at least twice as strict as those of two of its neighboring states and thereby creating an economic and competitive disadvantage for the Commonwealth. Amendments to the Clean Power Plan are needed in order to bring it into compliance with the provisions of § 111(d) of the Clean Air Act that require nationally consistent standards and prohibit the imposition of different requirements in individual states;

2. The proposed Clean Power Plan provides no credit for existing zero-emitting generation such as nuclear power, thereby ignoring states whose energy sectors have taken steps to reduce carbon intensity. States should be given credit for all zero-emitting electric generation;

3. The proposed Clean Power Plan requires Virginia to achieve goals that are stricter than the New Source Performance Standards (NSPS) that the EPA has proposed under § 111(b) of the Clean Air Act for new fossil fuel-fired electric generating units. Existing source emission guidelines under § 111(d) should not be set at a level more stringent than the NSPS;

4. State goals in the proposed Clean Power Plan should reflect state-specific renewable potential and state-specific energy efficiency potential, including the time required to complete the permitting and construction of renewable energy facilities;

5. The baseline for states should be based on an average of multiple years and allow compliance through multi-year averaging;

6. The final Clean Power Plan should clarify the definition of "emissions standard" in proposed 40 C.F.R. § 60.5820 to increase state flexibility by stating that it includes any requirement applicable to any affected unit that has the effect of reducing emissions or utilization of any one or more affected sources, including renewable energy and demand-side energy efficiency requirements;

7. The proposed Clean Power Plan fails to recognize the value of all existing nuclear generation in the Commonwealth. Nuclear plants whose licenses are extended beyond 60 years should be counted as new sources of carbon-free generation;

8. Emissions from natural gas combined cycle generating facilities now under construction should not be included in a state's reduction targets;

9. The interim reduction target should be eliminated and states should be allowed more flexibility in reaching the ultimate reduction goal by, among other things, incorporating a compliance mechanism that accommodates longer installation times for low-emitting and non-emitting generation;

10. Waste wood products should be treated under the Clean Power Plan as a carbon-neutral generation source;

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- 59       11. States should be allowed to seek adjustments in their targets based on changing circumstances,  
60 and states should be afforded a safety valve to address both unexpected scenarios and to address  
61 situations where implementation of the rule threatens service reliability or leads to rate shocks for  
62 customers;
- 63       12. The final Clean Power Plan should allow states to take into consideration factors such as the  
64 remaining useful life of an existing source when applying § 111(d) emission guidelines, in accordance  
65 with the plain language of the Clean Air Act;
- 66       13. The final Clean Power Plan should include a simple and straightforward presumptive method for  
67 performing the rate-to-mass conversion that utilizes existing data and tools, and the EPA should allow  
68 states to apply equivalent methods of rate-to-mass conversion upon an appropriate determination in  
69 their state plans;
- 70       14. The Clean Power Plan should not arbitrarily apply geographic renewable energy capabilities  
71 based on renewable portfolio standards enacted in selective states;
- 72       15. The Clean Power Plan should provide greater flexibility in the "glide path" that states must  
73 demonstrate to meet their interim and final goal;
- 74       16. The Clean Power Plan should not be based on an unprecedented and unsupportable legal  
75 interpretation that allows the "best system of emissions reduction" to include residential and retail  
76 customers who do not generate any power or produce any emissions;
- 77       17. The proposed Clean Power Plan fails to address important interstate implications, including the  
78 compliance obligations for electric power generated out of state that is currently used to maintain  
79 reliable electric service at just and reasonable rates for Virginia customers; and
- 80       18. The proposed Clean Power Plan will require the retirement of a significant level of base load  
81 generation that would need to be replaced at a cost that is unreasonable and in a timeframe that  
82 compromises reliability.