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SENATE BILL NO. 1343

Offered January 19, 2015

A BILL to authorize the Joint Rules Committee of the General Assembly to employ legal counsel to represent the Commonwealth in litigation challenging federal rules establishing carbon emission guidelines for existing electric utility generating units.

Patrons—Wagner and Chafin

Referred to Committee on Rules

Whereas, on June 18, 2014, the U.S. Environmental Protection Agency (EPA) issued proposed rules under section 111(d) of the federal Clean Air Act that establish carbon pollution emission guidelines for existing electric generating units; and

Whereas, the proposed regulations, referred to as the Clean Power Plan and published at 79 Fed. Reg. 34,830, have the goal of decreasing by 2030 the nationwide carbon emissions from electric generation units by 30 percent from 2005 levels; and

Whereas, the proposed Clean Power Plan assigns unique carbon emission reduction goals to each state based on that state's energy mix and ability to integrate four building blocks on which states may base their implementation plans, which are improving the efficiency of existing coal plants, relying more heavily on natural gas, increasing the use of renewable energy sources, and enhancing efficiency in the use of electricity by consumers; and

Whereas, on August 1, 2014, 12 states (Alabama, Indiana, Kansas, Kentucky, Louisiana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, West Virginia, and Wyoming) filed suit in the U.S. Court of Appeals in the District of Columbia asserting that the Clean Power Plan regulations are illegal; and

Whereas, in their challenge to the Clean Power Plan, styled *West Virginia v. EPA,* D.C. Cir. No. 14-1146, these states are petitioning for review of the EPA's position that it possesses authority to regulate existing coal-fired electric generating plants under Section 111(d) of the Clean Air Act; and

Whereas, these states have asked the court to enjoin the EPA from finalizing the Clean Power Plan because, among other reasons, coal-fired power plants currently are regulated under § 112 of the Clean Air Act and the law prohibits their regulation under both sections; and

Whereas, on September 9, 2014, the governors of 15 states wrote to advise the EPA's Administrator that even if the EPA had legal authority to regulate power plants under § 111(d) of the Clean Air Act, the agency overstepped this hypothetical authority when it acted to coerce states to adopt compliance measures that do not reduce emissions at the entities EPA has set out to regulate, because the EPA's authority to regulate emissions from specific sources does not extend outside the physical boundaries of such sources and that by attempting to regulate "outside the fence," the Clean Power Plan both exceeds the scope of federal law and directly conflicts with established state law; and

Whereas, the staff of the Virginia State Corporation Commission (SCC) has submitted comments on the Clean Power Plan to the EPA in which the SCC staff concludes that "[t]here is no rational basis to set Virginia's Mandatory Goals for existing units below the standards required for new units," that this "is arbitrary and capricious regulation at its plainest," and that "using conservative assumptions, the incremental cost of compliance for one utility alone (Dominion Virginia Power) would likely be between $5.5 billion and $6 billion on a net present value basis"; and

Whereas, on November 14, 2014, the Virginia Department of Environmental Quality submitted comments on the Clean Power Plan to the EPA in which it observed that the EPA's proposal could be made more equitable by correcting provisions that (i) set 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 at a disadvantage states that already have a diverse, low carbon-emitting generating portfolio and rewarding those that do not; (ii) provide no credit for existing zero-emitting generation such as nuclear power; and (iii) require Virginia and numerous other states to achieve goals that are stricter than the New Source Performance Standards EPA has proposed under § 111(b) of the Clean Air Act for new fossil fuel-fired electric generating units; and

Whereas, a spokesman for Dominion Virginia Power testified before the House and Senate Commerce and Labor Committees in December 2014 that the proposed rules would increase the typical residential customer's electric bill by 30 percent by 2025, which would amount to an annual increase in higher electricity bills of approximately $400 for a typical residential customer using 1,000 kilowatt-hours per month; and

Whereas, the EPA is expected to release the final Clean Power Plan rule in mid-2015; now,

therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That the Joint Rules Committee of the General Assembly (Committee) hereby be authorized to employ legal counsel to represent the Commonwealth in litigation challenging the validity of the Clean Power Plan, either by instituting an action on behalf of the Commonwealth or by joining as an intervening party such an action that has been filed by one or more other states. The Committee shall employ legal counsel for such purpose only if it finds that the Office of the Attorney General, by July 1, 2015, has not instituted and is not diligently pursuing legal action on behalf of the Commonwealth that challenges the validity of the Clean Power Plan.*

The compensation, fees, and expenses of legal counsel employed by the Committee pursuant to this act shall be paid by the State Treasurer on warrant of the Comptroller from general funds appropriated by the general appropriations act to the Attorney General and Department of Law for the provision of legal services to state agencies.