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New KBH Center Study Highlights the Need for Flexibility in Implementing the Clean Power Plan

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The U.S. Environmental Protection Agency (EPA) is one step closer to regulating power sector carbon dioxide emissions, with a federal appellate court this month [dismissing](#) a challenge from major coal-producing states and companies. The challenge sought to enjoin the EPA from finalizing regulations, known as the [Clean Power Plan](#), proposed in June 2014. Emphasizing that it cannot review the legality of proposed regulations, the U.S. Court of Appeals for the District of Columbia Circuit dismissed the challenge as premature, clearing the way for issuance of the final Clean Power Plan in [August 2015](#). Once that occurs, attention will then shift to implementing the plan. A new [report](#), published today by the Kay Bailey Hutchison Center for Energy, Law, and Business, provides useful insight into state and industry attitudes towards implementation.

Briefly, by way of background, the EPA's Clean Power Plan aims to reduce nationwide carbon dioxide emissions from existing fossil fuel power plants by [30 percent below 2005 levels by 2030](#). To that end, the Clean Power Plan sets [emission reduction targets](#) for each state. The Plan does not, however, prescribe how the states are to achieve those targets. Rather, each state is given discretion to choose the manner in which it will reduce emissions. The state must develop an emissions reduction plan which, upon approval by the EPA, will become federally enforceable. If a state fails to develop a plan, or does not receive approval for its plan, a federal plan will be imposed on it.

To better understand how states may exercise their discretion, from April to June 2015, the KBH Energy Center conducted a survey on key issues relating to implementation of the Clean Power Plan. The survey was completed by 66 respondents, including power company executives, industry consultants, state officials, and regional transmission organization staff. The respondents came from a broad geographic area. Responses were not, however, collected from every state.

Interestingly, while the survey respondents came from a range of organizations across various states, they often expressed very similar views on implementation of the Clean Power Plan. Key findings from the survey include:







- The majority of survey respondents favored development of state compliance plans, rather than federally-developed plans. Respondents noted the greater ease and flexibility in developing state plans, providing an opportunity to expand on state policies, while respecting multi-state strategies.
- There was broad agreement among survey respondents that state compliance plans should incorporate mass-based trading programs. Respondents were, however, divided on the use of other policies.
- Most survey respondents supported the use of market-based compliance options. When asked to choose between different market-based options, most respondents said they preferred mass-based trading. Some respondents listed rate-based trading as their preferred option. No respondent preferred a fee-based approach.
- Almost two-thirds of survey respondents favored adoption of mass-based emissions targets in place of the rate-based targets proposed by the EPA.
- The bulk of survey respondents supported interstate cooperation, calling for the development of multi-state plans or single-state plans that preserve the option to trade across state lines.

Overall, the survey results highlight the importance of allowing states flexibility in developing policies to reduce power sector emissions. Over 65 percent of respondents indicated that, in reducing emissions, states should rely on at least two policy options. 38 percent of respondents support the use of three or more policies.

Somewhat surprisingly, there was considerable support for the use of complementary policies, such as renewable portfolio standards and energy efficiency measures. This is despite the controversy surrounding use of those policies to establish state emissions targets. [As previously reported](#), the state targets reflect the degree of emissions reductions achievable through the application of four building blocks. These include efficiency improvements at coal-fired power plants and displacement of coal plants by natural gas generation, renewable energy, and demand-side energy efficiency. These last two building blocks have been highly contentious, with many disputing the EPA's authority to consider measures implemented "beyond the fence line" of fossil fuel power plants.

Given this, it is notable that many survey respondents favored the use of "beyond the fence line" measures. These measures were especially popular among state officials, with over 60 percent of those surveyed favoring use of renewable portfolio standards. Energy efficiency measures were supported by 54 percent of officials surveyed.

These results suggest that officials will likely push for the inclusion, in state compliance plans, of renewable portfolio standards and energy efficiency measures. This may, however, be opposed by power company executives. Most executives surveyed (75 percent) were of the view that renewable portfolio standards and energy efficiency measures should not be included in state compliance plans. Whether they will get their way remains to be seen.

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