



House Committee Hears CSAPR Testimony

The House Committee on State Affairs met on September 22 to hear testimony on how the Cross State Air Pollution Rule (CSAPR), which takes effect January 1, 2012, will affect Texas. Chairman Byron Cook opened the hearing by saying he was extremely disappointed that EPA representatives declined to appear and he said he considered it a missed opportunity for the federal officials to explain and defend CSAPR to Texans. He then took testimony from five panels of fourteen total witnesses.

A panel of regulators from the PUC, RRC, TCEQ, and ERCOT began the hearing by decrying the rule's threat to electric reliability and the flawed ERCOT market assumptions on which they say the rule was based. PUC Chair Donna Nelson testified that CSAPR is the administration's attempt to implement environmental changes by regulatory "fiat" instead of through the Congress. She told the committee that the rule will introduce a level of uncertainty that will increase the price of electricity and drive manufacturing out of the U.S. Nelson also testified that her recent meeting with EPA officials in Washington was not productive and said the EPA thinks there is enough capacity in ERCOT to make up for any plant reductions.

New Railroad Commission commissioner Barry Smitherman testified that he attended at the recent CSAPR hearing in Washington and told the legislators that "they don't really understand Texas or Texans. We are actually very polite and hospitable people." Smitherman said that CSAPR was adopted using a flawed procedural process that will jeopardize electric reliability and the delivery of natural gas, and will eliminate many high-paying jobs. Smitherman went on to say that a NERC and FERC report highlighted the interdependence of gas and electricity and the increased use of and reliance on gas by gas processors. He said the industry needs more time to comply with this rule.

Rep. Solomons asked how much time Texas needs. Smitherman responded that there are multiple steps to retrofitting plants that would take place over the next three to five years. He added that at another meeting he asked the EPA assistant administrator to learn more about how the ERCOT wholesale market works, because generators can simply choose to shutdown if retrofit requirements are uneconomic. This is not, he reminded, the old regulated market we once had.

TCEQ Executive Director Bryan Shaw complained of the lack of notice and due process in the adoption of the rule. He also criticized the lack of data in EPA's modeling and the linkage to air quality monitors around the nation, in particular one questionable monitor in Illinois. Rep. Oliveira commented that even if this is a flawed analysis, there is evidence that Texas has some serious air quality problems.

Oliveira also asked what this rule is going to cost and what will be passed through to consumers. He commented that he represents consumers who are served by the municipal utility in Brownsville and Magic Valley EC and that he was concerned about increased costs for those consumers. Nelson responded that a 5% to 30% increase in costs is likely depending on the area of the state and those costs will be passed through to end-use customers in time. She said the PUC will schedule an additional workshop to address the range of costs to consumers. Rep. Menendez noted that electric customers with special needs, such as badly burned veterans residing in San Antonio, need to be protected.

In response to the regulators' remarks, Rep. Gallego said he agreed that the EPA probably procedurally erred in the adoption of this rule, but cautioned the regulators against inflammatory language and rhetoric about the EPA and the administration. He said that there was no need for editorial comments when the facts are on our side and suggested that the Texas regulators stop adding fuel to the fire with antagonistic remarks about the EPA officials.

ERCOT CEO Trip Doggett testified that if CSAPR had been in place in August, Texas would have had multiple days of rolling blackouts. On the peak day of August 4, the grid was within 200 MW of running out of power and that was with all resources factored in. Compliance with CSAPR will require lower sulfur content coal from the Powder River Basin, use of technology, and decreased electric output during off-peak hours. Doggett concluded that a later implementation date is needed to expand options for compliance. Chairman Cook complimented Doggett and ERCOT staff for keeping the lights on during a tough summer and for keeping legislators informed daily on the status of the grid.

Numerous witnesses then testified for the industry. Luminant CEO David Campbell reiterated that his company will be "forced" to close its power plants and lignite mines in northeast Texas, resulting in the loss of 500 jobs. He told the members that the state's SO₂ and NO_x reductions are better than the national average, but that Luminant will have to achieve a 64% SO₂ reductions and 22% NO_x reductions under CSAPR. He also said that the northeast Texas power plants slated for closure do not have scrubbers.

Mike Kezar, General Manager of San Miguel Electric Cooperative, testified that San Miguel has been actively engaged in the EPA rulemaking since the rule was first proposed in 2010, including submitting detailed comments about the problems with the rule and meeting with EPA and other federal officials to explain the only available options the co-op has for making what are significant reductions in SO₂ and NO_x compared to its 2010 emissions. Kezar told the committee that despite being recognized by the Energy Information Administration as having the second-highest SO₂ removal efficiency in the state (94%), it will have to cut its emissions in half under CSAPR. This will require an immediate expenditure of at least \$8.2 million and the installation of upgrades within 6 months, he said.

But Kezar went on to point out that reducing San Miguel's NO_x emission will be much more difficult because even after completing several reduction projects costing around \$8.5 million, the co-op still will not be able to meet the mandate in the next six months. That result, he said, will require the co-op to purchase allowances or cut output to Brazos Electric Power Cooperative and STEC. Kezar concluded that the combined effect of depreciation and amortization associated with the required capital upgrades to the pollution control equipment, additional O&M expense to operate the equipment, and reduced load operation will increase San Miguel's power costs by an estimated 17%. Chairman Cook told Kezar that since several members of State Affairs have co-ops in their district, they will be very interested in the impact of this rule on co-ops.

Riley Hill of Southwestern Public Service Company also complained to the committee about the lack of due process in the EPA rulemaking. He testified that compliance with CSAPR will affect reliability and increase costs by 20% or \$200-\$250 million per year. He told Chairman Cook the average consumer will see a \$15 monthly increase. Gary Gibbs of AEP echoed the rule's procedural flaws and further testified that a "major impediment" will be the public hearings to modify its permits in which environmental groups will contest for years. He said Southwestern Public Service Company, an AEP subsidiary, will spend \$50 million over the next 2 years and \$80 million in power purchases in 2012 due to new EPA rules.

Representatives testifying for consumer interests then addressed the committee. Phillip Oldham testified for his client, the Texas Association of Manufacturers, about the "tremendous" cost its members will incur and the impact on the state's global competitiveness due to the EPA regulations. Steve Minick with the Texas Association of Business questioned the legal basis for the EPA's rule because, he said, the agency has not identified a single in-state air monitor that is not meeting an air quality standard. He claimed that CSAPR is just a negotiating tool to bring companies to the bargaining table. Sheri Givens, Executive Director of the Office of Public Counsel testified that she wrote to the EPA with concerns about CSAPR's impact on costs and reliability to residential consumers. She said costs to consumers will range from 10% - 20%.

Rene Lara of Texas AFL-CIO testified that the rule will result in unnecessary job losses among union members who will have few other job options with a commensurate wage. Tom "Smitty" Smith of Public Citizen told the committee that no one in the environmental community wants unreliable electricity, job losses, and short-term inadequate emission controls. But he told Chairman Cook that he did not think delaying the rule was a good idea, partly because \$1.9 billion in healthcare costs is attributable to air pollution.

The court challenge to the rule has begun. Attorney General Abbott has asked the federal appeals court in Washington, D.C., to grant a partial stay of the rule for Texas industry. Gina McCarthy, assistant EPA administrator for the Office of Air and Radiation, recently testified before the U.S. House Committee on Science, Space and Technology that the final rule's greater emissions cuts for Texas were based on comments submitted by Texas officials themselves.

During the State Affairs hearing, Chairman Cook noted several times that he did not hear anyone say they were not willing to comply with the rule. They simply need a more realistic timeline. It looks like the court will be the one to sort it all out. ■