Pending North Carolina Actions on Climate Change: What’s happening at the N.C. Department of Environmental Quality and N.C. Utilities Commission?

How can North Carolina reduce carbon dioxide pollution from power plants?

There are currently two efforts to reduce heat-trapping carbon dioxide emissions from the power sector in North Carolina following three years of state planning and studies after Governor Cooper’s executive order setting carbon pollution reduction goals.

First, there is rulemaking underway to set a declining limit on carbon dioxide pollution from power plants to achieve the goals established in Governor Cooper’s Executive Order No. 80 and participate in a regional effort with other states like Virginia called the Regional Greenhouse Gas Initiative (RGGI). A study by the University of North Carolina at Chapel Hill and Duke University, informed by a robust stakeholder process, found this RGGI option to be the most cost-effective policy to meet those goals. On January 11, 2021, on behalf of CleanAIRE NC and the North Carolina Coastal Federation, the Southern Environmental Law Center filed a petition for rulemaking with the Environmental Management Commission requesting that it adopt the rule in question to start actions needed to cut carbon pollution and meet reduction goals set by Governor Cooper in 2018. On July 13, the Environmental Management Commission granted our petition and directed the Department of Environmental Quality to begin the rulemaking process, which is now underway.

Second, there is a new state law that requires reductions of CO2 emissions from power plants in North Carolina. On October 13, 2021, Governor Cooper signed House Bill 951 into law. The law requires the North Carolina Utilities Commission to take all reasonable steps to reduce carbon dioxide emissions from power plants in the state to at least 70% below 2005 levels by 2030 and to net zero by 2050—the same goals established in Executive Order No. 80 on October 29, 2018. The law requires the Utilities Commission to develop a “Carbon Plan” by December 31, 2022, to map a path to achieving the goals.

Did House Bill 951 replace the carbon-reduction rule being developed by DEQ?

No. The RGGI rule is ready to turn those goals into cost-effective action and moving forward under the Environmental Management Commission’s authority under the state Air Pollution Control Act to regulate air pollution. House Bill 951 gave the Utilities Commission separate authority to reduce carbon dioxide emissions from the power sector, but it starts additional planning and does not affect the Environmental Management Commission’s authority or the rulemaking process that is underway.

Where is DEQ’s carbon-reduction rule now?

When the Environmental Management Commission voted to grant the petition for rulemaking in July, it began a formal rulemaking process. The next step in that process is for the Department of Environmental Quality to prepare a regulatory impact analysis for the rule. The sooner DEQ completes the analysis, the sooner North Carolina will reduce heat trapping carbon pollution to avoid the worst impacts of climate change.
Where is the Utilities Commission’s Carbon Plan process now?

The North Carolina Utilities Commission issued an order requiring Duke Energy to conduct a series of stakeholder meetings, and file a proposed carbon plan in mid-May. Other parties will then have an opportunity to file comments on Duke’s proposed plan, and/or their own alternative plans, in mid-July of 2022. The Utilities Commission has signaled that it will issue a further order on the process to finalize the Carbon Plan, which could include an evidentiary hearing which could take more time.

How will DEQ’s carbon-reduction rule and the Utilities Commission’s Carbon Plan work together?

This is to be determined. The carbon-reduction rule is proceeding through a well-established rulemaking process at the Department of Environmental Quality. The Carbon Plan will be developed through established processes before the North Carolina Utilities Commission, although it has never been charged with the same task in the past.

However, the two agencies have not historically addressed the same subject matter. Given the urgency of climate change, SELC and its clients hope and expect that the agencies will work together and the Utilities Commission will incorporate the ready-to-go rule into its Carbon Plan for well-studied, cost-effective action instead of delay with more planning and studying. We stand ready to help.

How could the carbon-reduction rule fit into the state Carbon Plan?

The carbon-reduction rule relies on RGGI, a proven policy pathway to decarbonizing North Carolina’s power sector, and one that is ready to implement.

First, the carbon-reduction rule is already well underway and the state should not abandon an ongoing carbon-reduction effort simply to restart separate planning. When time is of the essence to prevent further harm, the Utilities Commission should build on that momentum and the hard work of stakeholders and agency staff in vetting the RGGI option.

Second, RGGI has a proven track record of reducing emissions in participating states. In existing RGGI states, carbon dioxide emissions from the power sector dropped 47% over the last decade, all while customer bills have declined faster than in states outside the program. (More details are available at www.NCClimateAction.org)

Third, House Bill 951 requires the Carbon Plan to be “least-cost,” and RGGI is very cost-effective. The carbon-policy report prepared by Duke University and UNC as part of the state Clean Energy Plan showed that RGGI was the most cost-effective of the major carbon-reduction policies considered.

Fourth, the Utilities Commission should build efficiently on the years of work that went into the Clean Energy Plan and its subsidiary reports rather than starting anew, risking further damage and wasting state resources and funds. Indeed, the Utilities Commission has signaled its intent to do just that, stating in its procedural order that the stakeholder process undertaken by Duke Energy is to take into account and to reflect the collaborative work and the outputs of the stakeholder efforts associated with the Clean Energy Plan, and to build off of the consensus achieved and resources expended during those stakeholder efforts.