

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
COLUMBIA, SOUTH CAROLINA

PROCEEDING #15-11507      DECEMBER 2, 2015      10:35 A.M.

ALLOWABLE EX PARTE BRIEFING - ND-2015-24-E  
OFFICE OF REGULATORY STAFF - Request for Allowable Ex Parte  
Briefing Regarding the Clean Power Plan

TRANSCRIPT OF ALLOWABLE  
PROCEEDINGS

EX PARTE BRIEFING

COMMISSION MEMBERS PRESENT: Swain E. WHITFIELD, *Vice  
Chairman*; and COMMISSIONERS John E. 'Butch' HOWARD,  
Elliott F. ELAM, JR., Comer H. 'Randy' RANDALL,  
Elizabeth B. 'Lib' FLEMING, and G. O'Neal HAMILTON

ADVISOR TO COMMISSION:      Joseph Melchers, Esq.  
General Counsel

STAFF: F. David Butler, Senior Counsel; B. Randall Dong, Esq.,  
Josh Minges, Esq., and David W. Stark, III, Esq., Legal Staff;  
Doug Pratt, Tom Ellison, and Lynn Ballentine, Advisory Staff; Jo  
Elizabeth M. Wheat, CVR-CM/M-GNSC, Court Reporter; and Hope Adams  
and Calvin Woods, Hearing Room Assistants

APPEARANCES:

*JEFFREY M. NELSON, ESQUIRE*, along with  
ROBERT J. 'ROBBIE' BROWN, JR., [*Director, Bureau  
of Air Quality/South Carolina Department of Health  
& Environmental Control*,] presenter, representing the  
SOUTH CAROLINA OFFICE OF REGULATORY STAFF

*JOHN REAGLE, ESQUIRE*, NEUTRAL DESIGNEE/CERTIFICATOR

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**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

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- Presentation Slides (PDF)

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P R O C E E D I N G S

**VICE CHAIRMAN WHITFIELD:** Please be seated.

I'll call this allowable *ex parte* briefing to order, and ask our attorney, Mr. Melchers, to read the docket.

**MR. MELCHERS:** Thank you. Mr. Chairman and Commissioners, we are here pursuant to a Notice of Request for an Allowable Ex Parte Briefing. The party requesting the briefing is the Office of Regulatory Staff. It's scheduled for today, December 2nd, here in the Commission hearing room. The subject matter to be discussed today is: The Clean Power Plan. Thank you.

**VICE CHAIRMAN WHITFIELD:** Thank you, Mr. Melchers.

Now I'd like to recognize our Neutral, Mr. John Reagle. Thank you for being with us today.

**MR. REAGLE:** [Indicating.]

**VICE CHAIRMAN WHITFIELD:** And Mr. Nelson, I'll call on you to bring your presenters up.

**MR. NELSON:** Thank you, Mr. Vice Chairman. I'd like to thank you for this opportunity to be in front of you this morning for this presentation.

There's going to be one speaker this morning, Mr. Robbie Brown, from the Department of Health &

1 Environmental Control, with the Bureau of Air  
2 Quality. He's the director of the Bureau of Air  
3 Quality. And he's presenting regarding the EPA's  
4 final Clean Power Plan.

5 One thing I would like to say is, I'd please  
6 like to remind everybody to be aware of the fact  
7 that any documents that are referenced or mentioned  
8 in the proceeding this morning need to be provided  
9 a copy of that, which sometimes, obviously, causes  
10 extra work for the Neutral in this case. So we  
11 would ask the parties to please try to refrain from  
12 something that isn't specifically already mentioned  
13 in Mr. Brown's presentation.

14 With that, I'd like to present Mr. Robert  
15 Brown.

16 **VICE CHAIRMAN WHITFIELD:** Thank you, Mr.  
17 Nelson.

18 **MR. ROBERT J. BROWN [DHEC BAQ]:** Good morning,  
19 Commissioner Whitfield, Commissioners.

20 [Reference: Presentation Slide 1]

21 I'd like to go over, this morning, the EPA's  
22 final Clean Power Plan and how we are proceeding in  
23 South Carolina to address what has been brought  
24 forward.

25 [Reference: Presentation Slide 2]

1           The EPA's proposal was signed in June of 2014.  
2           The final rule was then signed in September of this  
3           year and published on October 23rd. On the same  
4           date, the EPA also issued final rules for new,  
5           modified, and reconstructed units, under 111(b).  
6           They also proposed a federal plan and model mass  
7           and rate rules for state consideration.

8           One of the comments that the EPA received as  
9           part of their preparation for issuing the final  
10          rule was that the states that were going to have to  
11          implement this would really like to have something  
12          as a model to move forward with, so the EPA did  
13          provide these model rules, and they were also  
14          stated to be the basis for a federal plan if a  
15          state did not submit a plan of its own.

16                   [Reference: Presentation Slide 3]

17          As part of our strategy moving forward, when  
18          the EPA first started consideration of this rule,  
19          we formed an Energy Coalition, and you can see the  
20          types of members that we invited to this coalition.  
21          It was the regulated community, the co-ops, Office  
22          of Regulatory Staff, community leaders, other state  
23          agencies, clean energy alliances. Just a broad  
24          spectrum that could bring information forward on  
25          the comments that we should make to EPA, in order

1 to come up with a proper final rule, but also to  
2 see where we would go after the final rule came  
3 out.

4 We were also hoping to see what type of  
5 consensus we could reach. Some things, we could  
6 reach consensus on, and some things didn't work out  
7 that way. But it was an opportunity to learn  
8 what's already being done in South Carolina, and  
9 really, the depth of talent that we have in South  
10 Carolina to work on this type of regulation.

11 [Reference: Presentation Slide 4]

12 All right. What happened in the final rule?  
13 The basic framework of the proposal remains the  
14 same, but there have been significant changes made,  
15 most of which are better for South Carolina in  
16 terms of an easier implementation. A lot of the  
17 bells and whistles that seemed to be in the  
18 proposal were simplified in the final rule, and one  
19 explanation was that they seemed to be on a firmer  
20 legal basis with a simplified final rule. And EPA,  
21 I guess, is thinking that this is going to be an  
22 easier rule to defend in court than what was  
23 proposed.

24 [Reference: Presentation Slide 5]

25 Some of the key takeaways and major changes

1 that were done to the final rule: The proposal  
2 indicated an interim period of compliance that  
3 would start in 2020. That was moved to 2022.

4 The building blocks have been changed. Those  
5 were the efforts to develop the goals. It went  
6 from four down to three.

7 New nuclear was taken out of consideration for  
8 setting calculations, which was a big win for South  
9 Carolina, Georgia, and Tennessee – the three states  
10 that have nuclear units under construction.

11 And the Best System of Emission Reduction was  
12 applied to interconnections, which created three  
13 categories in the US, and it more evenly developed  
14 goals for those three areas, rather than what was  
15 in the proposal. Based on that, mass and rate  
16 limits were changed. And EPA also provided  
17 alternative blended state rates, mass-based limits  
18 for affected EGUs and, also, a method for  
19 addressing new gas units that would skew the goals  
20 in the mass limit.

21 The proposed rules also included trading-ready  
22 wording, which would allow trading with a lot  
23 simpler process than what was in the proposal. The  
24 proposal was going to require RGGI type state  
25 groupings, and this simplified version that was in

1 the final rule is going to be a lot easier for  
2 states to have trading in their rules without a lot  
3 of developing wording for individual and specific  
4 state areas. If the sample wording that's in the  
5 final – in the proposed rules, the proposed model  
6 rules, are followed, the EPA will accept those, and  
7 if a state has excess credits, they can be traded  
8 with like states.

9 [Reference: Presentation Slide 6]

10 Again, our main concern with the proposal was  
11 the treatment of under-construction nuclear.  
12 Certainly, with the units that are under  
13 construction at V.C. Summer that aren't completed  
14 but were going to force us into the second- or  
15 third-highest reduction goals in the proposal, we  
16 were delighted to see that EPA had changed their  
17 position on this in the final rule.

18 [Reference: Presentation Slide 7]

19 The nuclear units are not being counted in the  
20 goal computations, so we don't have to worry about  
21 meeting that third-highest or second-highest goal,  
22 but the generation at the nuclear units can be  
23 counted towards offsetting reductions at the coal  
24 plants, under the final rule. So we will be able  
25 to use that as part of our compliance.

1           We're also given more time to submit a state  
2           plan. We're going to have three years, as a  
3           possibility, rather than 13 months. The final  
4           plans will be due by September 2018 under the new  
5           program. And, again, we have more time to comply.  
6           The compliance date starts in 2022. There's more  
7           flexibility, and there's less stringent state  
8           targets for South Carolina. We are now kind of in  
9           the middle of the pack, in terms of where our goals  
10          lie.

11                           [Reference: Presentation Slide 8]

12           So this is where the goals actually went to.  
13           In the proposal, under the rate goal, we went from  
14           772 to 1156. And in the mass, which they didn't  
15           really provide in the proposal but they calculated  
16           later, it went from 17 million, 17½ million, to  
17           almost 26 million. So this is going to be a lot  
18           easier for us to meet, as we move forward, with  
19           what's already being done and contemplated in South  
20           Carolina.

21                           [Reference: Presentation Slide 9]

22           Also, part of the final rule was the Clean  
23           Energy Incentive Program. In the two-year period  
24           that they are giving us to delay the initial  
25           compliance period, there's a program that is a

1 voluntary program that will allow you to collect  
2 credits for wind and solar that commences  
3 construction after our State plan is submitted, and  
4 also energy efficiency in low-income communities.  
5 So we think that might be a useful thing for South  
6 Carolina, and certainly some of the other states  
7 were seeing that, as well.

8 [Reference: Presentation Slide 10]

9 Another component of the final rule is the  
10 mandatory community engagement, which is a  
11 significant part of what changed in the new rules.  
12 The EPA got a lot of feedback that they hadn't  
13 looked at how local communities, especially EJ type  
14 communities, were going to be having some type of  
15 input into what's going on, and EPA said, "Well,  
16 the state plans are going to be where the action is  
17 actually taken, so we need to have that as a part  
18 of each state developing their plan. They need to  
19 look at all types of stakeholder groups, including  
20 low-income communities, and not just have one  
21 meeting at the end of the plan development and the  
22 30-day comment period, but to have the stakeholders  
23 involved from the very beginning." And the EPA  
24 expects us to document this as we carry forward  
25 with our various reports that come to them, and

1 also part of the final plan support documents for  
2 their approval.

3 [Reference: Presentation Slide 11]

4 This is a great slide. It's got a lot of  
5 information in it. It lays out how this goes  
6 forward. The plan has to be in by 2018, if you get  
7 the two-year extension. There's that two-year  
8 period where you can implement the Clean Energy  
9 Incentive Program and gather credits to launch into  
10 the interim compliance period.

11 The interim compliance period is now broken  
12 down into three steps, which hopefully will be a  
13 lot easier to comply with. It's not this – like,  
14 this long control period where states were really  
15 wondering how they could put all of this into place  
16 and be certain of compliance over a ten-year  
17 period; the interim steps keep getting more and  
18 more stringent until they finally meet the final  
19 rate that goes into place in 2030.

20 The Administrative Procedures Act is going to  
21 determine our process for putting these regulations  
22 into place with DHEC, and because of the  
23 flexibility that's offered to us in this plan, it's  
24 a given that Legislative review is going to be  
25 required before the plan can be final and submitted

1 to EPA.

2 [Reference: Presentation Slide 12]

3 The affected units in South Carolina are  
4 listed on this map. These are – there are four gas  
5 units. There's one biomass unit; it's a paper mill  
6 in Charleston. And then the rest of the facilities  
7 on the map are coal units, coal-fired utility  
8 plants. Looking at where we are now and where we  
9 will be before we get to 2018, we've already seen a  
10 significant reduction of coal-fired generation  
11 capacity in South Carolina

12 [Reference: Presentation Slide 13]

13 A lot of that is to meet new air quality  
14 standards. There's also water quality standards  
15 that EPA is implementing, and a lot of the older  
16 units just weren't worth putting all that money  
17 into, to meet all those new requirements. So we've  
18 seen all but 12 of the 26 coal units in South  
19 Carolina closed, already, and there are a couple  
20 that have been switched to natural gas, but we  
21 expect those to be closed once the V.C. Summer  
22 facility goes into operation.

23 The 12 units that remain all have a full suite  
24 of emission controls, and so there's a sizable  
25 financial commitment to the units that were made,

1 but they are clean units and they probably have a  
2 good bit of life left in them. But we also have  
3 2200 megawatts of additional generation coming on-  
4 line that's nuclear, and that's going to take the  
5 place of this older generation and it's also going  
6 to provide a lot of clean, zero-CO<sub>2</sub>-emitting  
7 generation for future use.

8 [Reference: Presentation Slide 14]

9 These are the coal units that were in place in  
10 2005.

11 [Reference: Presentation Slide 15]

12 And now we have just these five facilities  
13 left in South Carolina. The older units are the  
14 Williams Plant and the Wateree Plant. Cope, Cross,  
15 and Winyah are relatively new facilities; and,  
16 again, all of those units have a full suite of  
17 controls on them. And, again, I think I mentioned  
18 when I came before you before, that we've already  
19 seen a 31 percent reduction in CO<sub>2</sub> emissions from  
20 these facilities, from 2005 to 2013. So South  
21 Carolina has already done a good bit of reduction  
22 in CO<sub>2</sub> emissions, in addition to what we're going to  
23 see under this new rule.

24 [Reference: Presentation Slide 16]

25 And, again, now that the final rule is out,

1 the focus is shifting from EPA to the states, and  
2 how each state is going to approach this and what  
3 our State compliance plans are going to be. And  
4 we've already received a lot of attention due to  
5 our collaborative approach and our extensive  
6 stakeholder work that we've done so far, both  
7 looking at what's been done and our comments that  
8 we submitted to the EPA, and the various proposals  
9 and the preparation for the proposals and working  
10 towards the final.

11 [Reference: Presentation Slide 17]

12 And we've already started our community  
13 engagement kickoff. We set four initial  
14 stakeholder meetings. We did our third one last  
15 night. There were a good number of people in the  
16 Charleston area. They've gone well, so far, and we  
17 have the final one next Thursday, here in the  
18 midlands. But, again, these are kickoff meetings,  
19 and we expect to have repeat meetings with the  
20 stakeholders all through the next three years, to  
21 carry these forward.

22 [Reference: Presentation Slide 18]

23 Looking at the community concerns that were  
24 submitted at the EPA and how the state plans were  
25 going to be developed, the community stakeholders

1 wanted a seat at the table for developing these  
2 plans, wanted to see a focus in actual energy  
3 efficiency and clean energy opportunities while  
4 creating good jobs. And they were also concerned  
5 that, if trading was done, how would they address  
6 emissions at the existing plants near their  
7 families. And I hope one of the things that's  
8 going to be able to allay some of the fears in  
9 South Carolina here is, we have a limited number of  
10 coal facilities left, and all of them have good  
11 control programs in place.

12 [Reference: Presentation Slide 19]

13 So, where do we go from here, in terms of  
14 submitting what's needed to EPA? At this point,  
15 the first submittal date is September of next year,  
16 and the states must submit a final plan or seek a  
17 two-year extension, or, if they do neither, they'll  
18 receive a federal implementation plan that will put  
19 the Clean Power Plan in place in their states.

20 The extension consists of three things: What  
21 approaches are under consideration, including the  
22 description of what's been done, to date;  
23 explanations of why we would need more time; and a  
24 demonstration of what meaningful public involvement  
25 opportunities have been done, so far. And,

1 finally, if you want to take advantage of the Clean  
2 Energy Incentive Program, they ask that you make a  
3 nonbinding statement of intent, as part of that  
4 first step.

5 And, at this point, we see that this is the  
6 step that we would take. We would be asking for  
7 the two-year extension. We don't think there's any  
8 way to get a final rule in place before the end of  
9 September of next year, and so we would be asking  
10 for this extension.

11 [Reference: Presentation Slide 20]

12 And carrying that forward, if we were to get  
13 the extension – which the EPA said they are going  
14 to grant to those folks that ask for it – there  
15 would be a check-in step in September 2017, where  
16 we would have to commit to whichever final  
17 compliance approach we wanted to take, and we would  
18 have to declare whatever is left to complete, what  
19 would be the process to finish it, has it passed  
20 the DHEC Board approval, has it gone to the  
21 Legislature, when would we expect it to be passed.  
22 Those types of things would have to be in that  
23 interim check-in period.

24 [Reference: Presentation Slide 21]

25 And then, finally, in September 2018, we would

1 be making our final plan submittal. All the  
2 supporting documentation would have to be attached  
3 to the plan, as well, including our authority to  
4 implement the limits – those limits would almost  
5 certainly be in the permits of those affected  
6 facilities – that we would have the authority to  
7 take enforcement action on those facilities that  
8 missed their numbers, and also how we would correct  
9 that situation if a facility meets – or, misses  
10 their goal for that two-year averaging period after  
11 2030. There would have to be a way to make that  
12 up, and that would have to be part of the plan, as  
13 well.

14 If the plan is not approvable, then the EPA  
15 would develop a – would already have a federal  
16 plan, and it would implement that federal plan on  
17 South Carolina or on any other state that didn't  
18 submit an approvable plan by 2018.

19 [Reference: Presentation Slide 22]

20 Looking at possible changes in the time line  
21 from what I just mentioned: There's a lot of  
22 litigation going on. There are 24 states that have  
23 already filed for a Petition to Review. We are one  
24 of them.

25 There's almost certainly going to be more

1 things out there, as it moves forward: People that  
2 say it's not strict enough, people that say it's  
3 too strict. A new administration may have  
4 different goals, may have different priorities, may  
5 want to change how this is being carried forward.  
6 And then, finally, there may be Congressional  
7 challenges, where the Congress says that this is  
8 not the right type of path and that the EPA needs  
9 to find some other way of completing what it needs  
10 to do, or that it's not – it doesn't have the  
11 authority to do this, at all. So we'll have to see  
12 where that goes. And, certainly, as we carry it  
13 forward, we may see changes that we have to take  
14 through the process and, you know, zig and zag to  
15 meet whatever court decisions are that would change  
16 whatever is being required. We'll just carry that  
17 forward as we go.

18 [Reference: Presentation Slide 23]

19 All right. The next steps that we're carrying  
20 forward right now: In October and carrying on into  
21 January of next year, we're reviewing and  
22 submitting comments to EPA on the proposed model  
23 rules, the federal plan, and the Clean Energy  
24 Incentive Program that the EPA has put out there.  
25 We've also begun broader engagement with the public

1 and vulnerable communities. I already mentioned  
2 the four meetings that we've started. And then  
3 we're going to begin an in-depth review of future  
4 generation plans for business, as projected, what  
5 the utilities have projected as their generation  
6 needs and how they're going to carry forward,  
7 mostly through the IRP information, and see how  
8 that fits in with the model rules that have been  
9 proposed, and try to go from there to figure out  
10 which of the rules are going to be best for South  
11 Carolina.

12 [Reference: Presentation Slide 24]

13 These are the state plans that EPA has  
14 developed. You'll see two of those, the mass at  
15 the top and the rate at the bottom, sets the model  
16 rule. The presumption is, if you follow the final  
17 model rule, that you are going to be approved by  
18 the EPA, but there are also other pathways that you  
19 can go down. If you have something in your state  
20 that is an easier way or an alternative way of  
21 calculating how you meet the goals and how you want  
22 to do it, as long as you can demonstrate to EPA  
23 it's just as stringent as their model rules, then  
24 it will be approvable, but there's a lot of  
25 flexibility there. And that flexibility is one of

1 the reasons why we're going to have to have  
2 Legislative approval for our plans. We're not just  
3 accepting a federal program like some of the other  
4 EPA rules that have come before it. Even if we  
5 accept the straight model rule as it is written,  
6 the documentation that we would have to provide for  
7 all of these other enforcement aspects, that type  
8 of thing, would require Legislative approval. This  
9 will be part of the package, so this is just a real  
10 good slide to get a good overview of what some of  
11 the alternatives are, and these are the things that  
12 we're going to have to be reviewing and carrying  
13 forward in the selection process through next year.

14 [Reference: Presentation Slide 25]

15 And, again, why is a state plan better than a  
16 federal plan? And this is, as you look at the  
17 final rule and what the EPA has proposed for these  
18 model rules, the EPA has made it clear that they  
19 don't have the authority to do a lot of things that  
20 the states do. The states can take credit for  
21 energy efficiency programs, renewable energy  
22 projects, other CO<sub>2</sub>-reduction measures that we know  
23 are going to happen in South Carolina or that are  
24 expected to happen, like the solar bill generation  
25 that is coming down the road. EPA is not going to

1 be able to use a lot of that flexibility and,  
2 because it's less inclusive, the federal plan is  
3 going to have more of an impact on a state and it's  
4 going to be more expensive to implement.

5 [Reference: Presentation Slide 26]

6 And that is our contact information. We're  
7 trying to put a lot of this information on the DHEC  
8 webpage there. We've certainly got a link there to  
9 the EPA's Clean Power Plan website. They've got a  
10 lot of information on there, on what their proposed  
11 rules are, what the final rule contains. They've  
12 got a fact sheet for each state there, which has  
13 the goal numbers on it, and how they were  
14 developed; the interim goal levels, as well. So we  
15 have a good bit of information on that.

16 We're going to continue to put information on  
17 there, especially with the work with the  
18 stakeholders. So we hope you will take the  
19 opportunity to look at that as you go forward.

20 And with that, I'd be glad to answer any  
21 questions you may have.

22 **VICE CHAIRMAN WHITFIELD:** Thank you, Mr.  
23 Brown. Thank you for that presentation.

24 Mr. Nelson, did you have anything else before  
25 I turn it over to Commissioners?

1           **MR. NELSON:** No, Mr. Vice Chairman. Thank  
2 you.

3           **VICE CHAIRMAN WHITFIELD:** Okay.  
4 Commissioners. Commissioner Randall.

5           **COMMISSIONER RANDALL:** I just have one  
6 question, talking about your stakeholder meetings.  
7 Is that a targeted group that you go after, or is  
8 it an open invitation in each area?

9           **MR. ROBERT J. BROWN [DHEC BAQ]:** Well, we have  
10 met with environmental justice and local community  
11 members in that area, with the hope that they would  
12 bring people to those meetings. But it's open to  
13 everybody. We've certainly invited all of the  
14 energy stakeholder groups to those meetings, and we  
15 have advertised, sent out information through  
16 community groups. So we hope to have a lot broader  
17 representation there, in the initial group of  
18 meetings, and also the meetings that follow.

19           **COMMISSIONER RANDALL:** Thank you.

20           **VICE CHAIRMAN WHITFIELD:** Commissioner Elam.

21           **COMMISSIONER ELAM:** Good morning. Does the  
22 necessity of Legislative approval of regulations  
23 really put an earlier time deadline on you, to  
24 finish what you need to do?

25           **MR. ROBERT J. BROWN [DHEC BAQ]:** Well, yes,

1           sir. We're going to probably need Legislative  
2           approval in the early part of 2018, at the latest –

3           **COMMISSIONER ELAM:** Right.

4           **MR. ROBERT J. BROWN [DHEC BAQ]:** – so that we  
5           can wrap everything up and give it to the EPA.  
6           That's really the latest time that we can have  
7           Legislative approval and have it done in 2018. So,  
8           really, the bulk of the work has to be completed in  
9           2017, taken to the Board in the latter part of  
10          2017, and then sent on to the Legislature for the  
11          next session.

12          **COMMISSIONER ELAM:** Talk to me if you can, a  
13          little bit – what is South Carolina's stake, still,  
14          in the matter that's on appeal, the appeal of the  
15          rule? We dodged the bullet of not being able to  
16          count the nuclear, but what remains there that's  
17          the biggest problem for our compliance?

18          **MR. ROBERT J. BROWN [DHEC BAQ]:** Well, you  
19          mean –

20          **COMMISSIONER ELAM:** What's remaining in the  
21          final rule – I mean, I know the big thing, as I  
22          understood –

23          **MR. ROBERT J. BROWN [DHEC BAQ]:** You're  
24          talking about what's being appealed in the courts?

25          **COMMISSIONER ELAM:** Correct.

1           **MR. ROBERT J. BROWN [DHEC BAQ]:** Okay. Well,  
2           there's still a lot of discussion that EPA goes too  
3           far in this. The 111(d) part of the Clean Air Act  
4           has only been used for minor industry groups, like  
5           air curtain incinerators or sludge incinerators at  
6           waste treatment facilities. So it's been used to  
7           touch minor groups of industrial facilities that  
8           had a potential for significant harm if they were  
9           mis-operated, but they weren't very big and they  
10          didn't have a crucial part of the industrial  
11          workings of the country.

12                 This is taking that semi-obscure area of  
13          111(d) and placing it on the bulk of the power  
14          generation in the US. So that's a big concern that  
15          is being litigated. And, also, should they be  
16          looking outside the boundaries of the plant. You  
17          know, it's one thing to just say the generating  
18          facilities need to have energy efficiency measures  
19          put in place, but can you take advantage of all  
20          these things that are going on outside of the  
21          facility to reduce CO<sub>2</sub> emissions?

22                 So those are the two big areas that are being  
23          litigated, and I'm sure there are other minor  
24          points, but those are the two areas that are the  
25          biggest concerns.

1                   **COMMISSIONER ELAM:** Okay, thank you.

2                   **VICE CHAIRMAN WHITFIELD:** Commissioner

3                   Fleming.

4                   **COMMISSIONER FLEMING:** Thank you.

5                   Well, first of all, thank you very much for  
6                   coming to give us a report on this, and I think I'd  
7                   like to commend you for the process that you've  
8                   used, bringing so many different stakeholders to  
9                   the table; and the fact that it has served us well  
10                  and is being put in the final plan for other states  
11                  to use, I think, speaks very highly for the work  
12                  you've done, and also your successful advocating on  
13                  our behalf for the nuclear and to take advantage of  
14                  the hard work that we've done since 2005 in  
15                  bringing down CO<sub>2</sub> emission.

16                  As I understand the final plan, the onus is  
17                  more on the utility than on the states now. Could  
18                  you talk a little bit about that, what that  
19                  entails?

20                  **MR. ROBERT J. BROWN [DHEC BAQ]:** Well, part of  
21                  the options here, the state can shoulder some of  
22                  the responsibility of meeting those numbers. We're  
23                  not sure that that's going to be an opportunity  
24                  that's taken here in South Carolina. The  
25                  facilities are almost certainly the ones that are

1 going to be given the responsibility of "Here's the  
2 goal. Here's your method for looking at how to  
3 meet these goals. Here's how you're going to  
4 report it," and those types of steps. It's really  
5 - while the 111(d) area of the Clean Air Act is  
6 probably being stretched here a little bit in terms  
7 of how to put this into place, it's clearly in the  
8 past, and what is being done in the existing rules  
9 that are in play now, the facilities are  
10 responsible for their compliance. They're the ones  
11 putting out the CO<sub>2</sub> emissions or the other  
12 pollutants that are concerned; it's their job to  
13 meet those goals that are being put in place by the  
14 EPA and left to the states to implement.

15 So, as I see the path forward here, the  
16 facilities are going to be the ones that are  
17 responsible for meeting the goals that were put  
18 into place, and the process will be driven on how  
19 they will show compliance and how we will  
20 demonstrate that compliance and provide it to the  
21 people of South Carolina and the EPA that those  
22 numbers have been met properly and everyone is in  
23 compliance.

24 **COMMISSIONER FLEMING:** Okay. So, basically,  
25 the facility has to meet the goals, irregardless

1 of –

2 **MR. ROBERT J. BROWN [DHEC BAQ]:** As the model  
3 rule states, yes, ma'am, that's what would be done.  
4 And, certainly, under the federal rule, the  
5 facilities would be required to meet those numbers.

6 **COMMISSIONER FLEMING:** Okay. Can you explain  
7 the trading process? I'm not quite clear on how  
8 that works with rate basis, compared to mass.

9 **MR. ROBERT J. BROWN [DHEC BAQ]:** When the EPA  
10 made their proposal, they allowed that trading  
11 could be done, but it would have to be done through  
12 development of a multistate compact, kind of like  
13 RGGI in the middle Atlantic states. They heard a  
14 lot of comments after the proposal that that was  
15 too big a lift, that there should be an easier way  
16 to do that. If a state has met either its rate or  
17 mass goal, and there are allowances, if you will,  
18 left over, then there ought to be a way for another  
19 state to use those, and trade them, you know,  
20 through whatever mechanism, and have two states in  
21 compliance rather than just one. So the EPA  
22 clearly took a different stand in the final, and  
23 said that if you documented leftover allowances  
24 under rate or mass, and there is excess, and  
25 they've been properly documented, then another

1 state can use them. You know, they can do only  
2 mass for mass or rate for rate; you can't cross  
3 over. But if you've got allowance – ERCs – left  
4 over under a rate plan, and they're documented,  
5 then you can have a method, an easy method, for  
6 trading them with the next state or the state at  
7 the other end of the US.

8 So it's a lot easier. The model rule has  
9 language of that. If you choose to go down some of  
10 these other pathways, if you include that model  
11 language wording, then you'll be able to trade.  
12 It's a little bit different for mass versus rate,  
13 but it's still – if you have a leftover documented  
14 allowance, then you can use that to trade, if you  
15 put that language in your rule.

16 **COMMISSIONER FLEMING:** So, if you have excess  
17 amounts that you can trade, you can only trade with  
18 – if you're rate based, you can only trade with a  
19 rate based. What if you don't have enough – what  
20 if those other rate-based states don't need what  
21 you have to trade? Are you just left hanging? You  
22 can't trade with a mass state?

23 **MR. ROBERT J. BROWN [DHEC BAQ]:** Yes, you are  
24 left hanging there. But you also bank those  
25 things. So if you have an issue down the road

1 where maybe there's one or two nuclear units that  
2 go off-line in a two-year period and you have to  
3 run your coal units more, then you can use those  
4 earlier allowances to offset that. So, even if you  
5 don't trade them, they are still useful to you.

6 **COMMISSIONER FLEMING:** So you could make  
7 comments – as you make comments on the final rule,  
8 are you trying to – is this an area you may try to  
9 open that up so that you could trade across, from  
10 rate to mass, or vice versa?

11 **MR. ROBERT J. BROWN [DHEC BAQ]:** We think it's  
12 a useful thing and that even if we don't use it in  
13 South Carolina, it might be something that's useful  
14 to other states. So, yes, at this point, trading  
15 is something that we see we would support. We'd  
16 like to make it easier. We think there ought to be  
17 a way for a state to take a mass allowance that's  
18 over what you need and change it to something that  
19 is usable by a rate state, so we think they ought  
20 to look into that and not be maybe as prescriptive  
21 as they are already. The more flexibility we've  
22 got there, the more likely everybody is going to be  
23 able to meet their goals, and certainly, there's  
24 some of these other states where they're almost all  
25 coal, that would be glad to be able to trade some

1 of that. It might be cheaper to buy allowances  
2 than to put a control device or a new unit in, in  
3 place of an older coal unit. So, the more  
4 flexibility, the less this is going to cost  
5 everybody.

6 **COMMISSIONER FLEMING:** Because it seems that  
7 would be much more advantageous to South Carolina,  
8 with the –

9 **MR. ROBERT J. BROWN [DHEC BAQ]:** Yes, because  
10 we –

11 **COMMISSIONER FLEMING:** – nuclear units.

12 **MR. ROBERT J. BROWN [DHEC BAQ]:** – may very  
13 well have allowances left over. We will know more,  
14 as we get into reviewing where we are with our  
15 existing fleet, and where we're going. But we  
16 don't think we ought to shut the door on that, no.

17 **COMMISSIONER FLEMING:** Well, it sounds like  
18 you've got a lot of hard work ahead of you, and  
19 thank you very much for this presentation today,  
20 and I hope you'll keep coming forward to keep us up  
21 to date. Thank you.

22 **MR. ROBERT J. BROWN [DHEC BAQ]:** I appreciate  
23 your comments earlier. Probably most of the  
24 leadership has been shown by Myra Reese, and we  
25 appreciate her doing this. It seems to us to have

1 made this a lot easier, and the path forward a lot  
2 easier, with the way things have been done so far.

3 **COMMISSIONER FLEMING:** Well, it's nice to hear  
4 that South Carolina is setting kind of the ground  
5 rules for the rest of the country. I've heard lots  
6 of positive comments.

7 **MR. ROBERT J. BROWN [DHEC BAQ]:** Well, we  
8 think there's an easy way for South Carolina to  
9 meet this, without a lot of misery on the  
10 ratepayers, so we want to take advantage of as much  
11 of this flexibility as we can. Thank you.

12 **COMMISSIONER FLEMING:** Thank you.

13 **VICE CHAIRMAN WHITFIELD:** Thank you,  
14 Commission Fleming.

15 Commissioners? Commissioner Hamilton or  
16 Howard?

17 **COMMISSIONER HAMILTON:** Thank you, Mr.  
18 Chairman.

19 Mr. Brown, happy to have you here. Those last  
20 remarks that you just made to Commissioner Fleming,  
21 I think, were the most warming ones we've heard,  
22 that you're doing everything possible to keep this  
23 from being a burden on the ratepayer.

24 On your stakeholder meetings, I know  
25 Commissioner Randall discussed this with you, and I

1 represent the Seventh Congressional District, and  
2 part of which is Florence County, and I think you  
3 had a meeting there?

4 **MR. ROBERT J. BROWN [DHEC BAQ]:** Yes, sir.

5 **COMMISSIONER HAMILTON:** A stakeholder meeting?

6 **MR. ROBERT J. BROWN [DHEC BAQ]:** We did.

7 **COMMISSIONER HAMILTON:** I was a little bit  
8 surprised with the results of the polling at that  
9 meeting. I was just wondering, who was there and  
10 how was this meeting made known and open to the  
11 public?

12 **MR. ROBERT J. BROWN [DHEC BAQ]:** Well, we  
13 tried to reach out with community leaders, to get  
14 their folks involved or interested in attending.  
15 We had flyers developed. We sent out e-mails to  
16 folks we already knew were interested in the area.  
17 But this is just a kickoff meeting, and we hope  
18 we're going to have more people show up as we go  
19 forward. Certainly, we had a lot more last night  
20 in Charleston. Sometimes you just have it at the  
21 wrong time, you know.

22 **COMMISSIONER HAMILTON:** Yes, sir.

23 **MR. ROBERT J. BROWN [DHEC BAQ]:** We had one in  
24 Greenville; there were already a couple of things  
25 going on that night that we didn't know about, that

1 were kind of environmentally oriented, and so we  
2 probably would've had more people up there if we  
3 had had it on a different night.

4 So we're going to continue to have the  
5 meetings; we're going to continue to try to broaden  
6 our reach into local areas, local folks coming to  
7 these things. And, certainly, that may change the  
8 way people vote on those things. You know, we had  
9 a lot of environmental folks there, some of the  
10 State agencies. So maybe the numbers were a little  
11 bit different than they would've been if it was  
12 just a lot of community folks there. But we've got  
13 to start somewhere, so we're hoping to have a  
14 bigger showing as we move forward.

15 **COMMISSIONER HAMILTON:** And I guess you  
16 probably already answered the question, but do you  
17 feel that the polling that has been done so far, in  
18 those two that were made available to us, were  
19 really a true look at what the general public  
20 feels?

21 **MR. ROBERT J. BROWN [DHEC BAQ]:** Well, I think  
22 it's more of a who-was-there.

23 **COMMISSIONER HAMILTON:** Yeah, more of who was  
24 there. That answers the question.

25 **MR. ROBERT J. BROWN [DHEC BAQ]:** So we're

1 hoping to have those questions online, so anybody  
2 can come in and answer them. We'll keep all of the  
3 answers separated, so we'll have who's doing what,  
4 when. But, you know, it's a great way to get  
5 people involved at a meeting, to try to find out  
6 what they think is important, and we were trying to  
7 make sure that we – we think a state plan is the  
8 way to go, and we certainly wanted to hear that  
9 from the folks that were at the meetings, and we  
10 did, so – but we also want to ask questions that  
11 maybe give us answers that we have to work on.

12 **COMMISSIONER HAMILTON:** Right.

13 **MR. ROBERT J. BROWN [DHEC BAQ]:** And so we  
14 hope to carry that forward, as we start developing  
15 answers to what plan looks best or where would we  
16 need to go. We're hoping we're going to be getting  
17 feedback from the community folks on those types of  
18 issues when we get to those places in the planned  
19 development.

20 **COMMISSIONER HAMILTON:** I know, in generation,  
21 you mentioned the Charleston biomass, but you  
22 didn't mention the Marlboro County biomass. Was it  
23 insignificant?

24 **MR. ROBERT J. BROWN [DHEC BAQ]:** Well, there's  
25 a 25 megawatt cutoff point, and I think the unit in

1 Charleston was just over that, and the other one is  
2 a little bit smaller. I'm not sure this is one of  
3 those categories where you want to be a winner on,  
4 so –

5 [Laughter]

6 **COMMISSIONER HAMILTON:** Yes, I understand.

7 **MR. ROBERT J. BROWN [DHEC BAQ]:** – probably  
8 the folks in Marlboro are happy they're not going  
9 to be involved.

10 **COMMISSIONER HAMILTON:** We've got to make it  
11 up, though, don't we?

12 **MR. ROBERT J. BROWN [DHEC BAQ]:** Well, and it  
13 was – the goal is based on those units that met  
14 those requirements, so the Marlboro thing – it may  
15 be an opportunity for us to have biomass generation  
16 that will count towards less coal generation.

17 **COMMISSIONER HAMILTON:** Right.

18 **MR. ROBERT J. BROWN [DHEC BAQ]:** So the fact  
19 that it's not on that list doesn't mean they can't  
20 help us with meeting the goals by generating power  
21 with biomass.

22 **COMMISSIONER HAMILTON:** Okay. When shale gas  
23 became as inexpensive as it has been, and a number  
24 of our coal plants have already been closed, will  
25 that have any effect, any benefit, for those plants

1 that were closed early, before this thing came  
2 about?

3 **MR. ROBERT J. BROWN [DHEC BAQ]:** There's been  
4 a lot of discussion about that. 111(d) says that  
5 the Best System of Emission Reduction has to be  
6 when that rule went into place, so a lot of those  
7 units that went down before 2012 aren't really  
8 going to be counted in this, and won't go to  
9 benefit this. But the things that are going on in  
10 the future and have gone on since 2012 will benefit  
11 us. So maybe that impacted other states more than  
12 us, but we're still in pretty good shape, moving  
13 forward with meeting this, not counting those units  
14 that shut down early, if you will.

15 **COMMISSIONER HAMILTON:** All right. I think  
16 you've answered my questions. I appreciate it.

17 **MR. ROBERT J. BROWN [DHEC BAQ]:** And,  
18 certainly, if gas continues to be at its current  
19 rate, that probably will be an important fuel for  
20 us down the road.

21 **COMMISSIONER HAMILTON:** Thank you very much,  
22 Mr. Brown.

23 **VICE CHAIRMAN WHITFIELD:** Thank you,  
24 Commissioner Hamilton.

25 Commissioner Howard, any questions?

1                   **COMMISSIONER HOWARD:** [Shaking head.]

2                   **VICE CHAIRMAN WHITFIELD:** No questions from  
3 Commissioner Howard.

4                   I've got just one or two for you, Mr. Brown.  
5 In following up kind of on the tail end of one of  
6 the things Commissioner Hamilton asked you about,  
7 the retirement of these coal units, of course, the  
8 timeline of when we start this thing is crucial,  
9 because a lot of those units had been retired prior  
10 to the timeline starting in 2012, and I think you  
11 had a slide up there that you referenced going from  
12 26 plants, I think, down to 12.

13                  **MR. ROBERT J. BROWN [DHEC BAQ]:** Yes, sir.

14                  **VICE CHAIRMAN WHITFIELD:** And then you had  
15 another slide later on, where you only had five of  
16 the coal-fired plants on that slide.

17                  **MR. ROBERT J. BROWN [DHEC BAQ]:** [Indicating.]

18                                 [Reference: Presentation Slide 15]

19                  **VICE CHAIRMAN WHITFIELD:** And if I'm not  
20 mistaken, at least two of those were Santee Cooper,  
21 who we don't regulate them, of course, and we're  
22 not quite as familiar with them. You know, it  
23 looks like two of those are Santee facilities.

24                  **MR. ROBERT J. BROWN [DHEC BAQ]:** Yes, sir.

25                  **VICE CHAIRMAN WHITFIELD:** What about – all

1 right. You mentioned the 12, and then these – are  
2 these the five that just have the full suite of  
3 emission controls, the scrubbers, SCR, or what was  
4 your –

5 **MR. ROBERT J. BROWN [DHEC BAQ]:** There are 12  
6 coal units at these five facilities.

7 **VICE CHAIRMAN WHITFIELD:** Oh, okay. I gotcha.  
8 Gotcha. At those five sites.

9 **MR. ROBERT J. BROWN [DHEC BAQ]:** Yes, sir.  
10 Cross and Winyah have four units each, Cope and  
11 Williams only have one, and there are two at  
12 Wateree.

13 **VICE CHAIRMAN WHITFIELD:** I see. I see. And  
14 you referenced all of those sites as having, as you  
15 said, full emission control suites, meaning  
16 scrubbers, SCRs, the whole works.

17 **MR. ROBERT J. BROWN [DHEC BAQ]:** Yes, sir.  
18 All of those have a full level of controls on each  
19 one of those units at those facilities.

20 **VICE CHAIRMAN WHITFIELD:** And, of course, as  
21 you mentioned, a lot of these are the newer  
22 facilities that our utilities and Santee Cooper  
23 have made heavy capital investments in, to have  
24 these full suites, as you call them.

25 **MR. ROBERT J. BROWN [DHEC BAQ]:** Yes, sir.

1           And we know that we would all like to get our  
2           money's worth out of those units while meeting  
3           those goals, and hope that they'll be used up  
4           completely before they're shut down, and we hope  
5           that whatever plan we implement in South Carolina  
6           is going to allow that type of thing to be done,  
7           where these units can be used as they are needed  
8           and we still meet our goal.

9           **VICE CHAIRMAN WHITFIELD:** Yes, sir. Well,  
10          thank you. Thank you, Mr. Brown. And I would  
11          thank you, again, for coming and bringing this  
12          presentation before us. I believe Ms. Reese was  
13          here, and other DHEC folks, awhile back, and things  
14          have changed a lot since she was here about a year  
15          or so ago, or thereabouts. And we certainly  
16          appreciate it and welcome you back, and we  
17          appreciate you and DHEC keeping us informed as you  
18          move forward in this process of a State plan.

19          **MR. ROBERT J. BROWN [DHEC BAQ]:** Yes, sir, and  
20          we'll be glad to bring forward whatever  
21          information, as we go down this path, that y'all  
22          would like to hear. The more everybody knows, the  
23          happier everybody will be.

24          **VICE CHAIRMAN WHITFIELD:** Well, we certainly  
25          would like for you to come back when you feel it's

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necessary, and we look forward to hearing from you again.

Mr. Nelson, if there's nothing else from you –

**MR. NELSON:** Nothing further.

**VICE CHAIRMAN WHITFIELD:** – or from anybody, then we'll adjourn. Thank you.

**MR. ROBERT J. BROWN [DHEC BAQ]:** Thank you.

[WHEREUPON, at 11:28 a.m., the hearing in the above-entitled matter was adjourned.]

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C E R T I F I C A T E

I, Jo Elizabeth M. Wheat, CVR-CM-GNSC, do hereby certify that the foregoing is, to the best of my skill and ability, a true and correct transcript of all the proceedings had in an Allowable Ex Parte Proceeding held before THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA in Columbia, South Carolina, according to my verbatim record of same.

IN WITNESS WHEREOF, I have hereunto set my hand, on this the 3<sup>rd</sup> day of December, 2015.

  
Jo Elizabeth M. Wheat, CVR-CM/M-GNSC  
Hearings Reporter, PSC/SC  
My Commission Expires: January 27, 2021.