

1
2 **The Reliable, Affordable and Safe Power (RASP) Act**
3

4 **Whereas Statements**
5

6 WHEREAS, a reliable and affordable electricity supply is vital to the nation's and each state's
7 economic growth, jobs, and the overall well-being of its citizens; and
8

9 WHEREAS, under its sovereignty and the protections of the 10th Amendment, it is the sole
10 authority of each state to regulate as necessary to ensure a reliable and affordable supply of
11 electricity for its citizens; and
12

13 WHEREAS, environmental regulations should be based on sound science and a transparent and
14 comprehensive program that addresses environmental issues, the nation's broader economic
15 prosperity, and the long-term energy affordability for citizens; and
16

17 WHEREAS, the regulation of retail electricity sales and local distribution of electricity is a
18 sovereign State function that federal agencies have a legal obligation to respect and preserve; and
19

20 WHEREAS, on June 25, 2013, the President issued a memorandum to the Administrator of the
21 U.S. Environmental Protection Agency (EPA) directing the EPA to develop guidelines to control
22 greenhouse gas emissions from existing fossil fuel-fired power plants under Section 111(d) of
23 the federal Clean Air Act and to seek input from states; and
24

25 WHEREAS, on June 2, 2014, the EPA issued proposed guidelines limiting carbon dioxide(CO2)
26 emissions from existing fossil fuel-fired power plants under Section 111(d) of the federal Clean
27 Air Act and published them for comment in the Federal Register on June 16, 2014; and
28

29 WHEREAS, the EPA, under the Clean Air Act (CAA), claims authority to regulate greenhouse
30 gases by utilizing Section 111(d) to regulate carbon dioxide performance standards for Existing
31 Generating Units (EGUs) when those plants are already regulated under Section 112's air toxics
32 program; and
33

34 WHEREAS, the EPA has admitted this proposed rule will not measurably alter any impacts of
35 climate change; and
36

37 WHEREAS, the EPA has admitted that its interpretation of the CAA conflicts with a literal
38 reading of the law and acknowledged that this application of the CAA "would have been
39 unrecognizable to the Congress that designed' the governing statutory framework;" and
40

41 WHEREAS, the Clean Air Act does not authorize EPA to mandate implementation of "outside
42 of the fence" elements of a state's Clean Power Plan with respect to retirement or operation of
43 coal fired electricity generating units, the reliance on generation of electricity from natural gas,
44 the reliance on renewable energy sources, or the energy efficiency or demand management of
45 end-users, each of these exclusively within the police powers of the state; and
46

47 WHEREAS, the proposed guidelines are based on the EPA’s assessment of each state’s ability to
48 improve the efficiency of coal-fired electric generating units, retire or operate differently coal
49 fired electric generating units, substantially increase the generation of electricity from natural
50 gas, significantly increase reliance on renewable energy sources, and substantially reduce the use
51 of electricity by consumers, all in a plan and on a schedule that is not achievable and workable;
52 and

53
54 WHEREAS, the Governor, Attorney General, Public Utility Commission, and state
55 environmental agency of {state} have sent comments to the Environmental Protection Agency
56 expressing concern with implementation of the rule; and

57
58 WHEREAS, the proposed rule would effectively amount to a federal takeover of the electricity
59 system of the United States; and

60
61 WHEREAS, the proposed guidelines and plan, by the EPA’s own estimates have a major impact
62 on the economy of each State and significant consequences for how electricity is generated,
63 transmitted, distributed, and used within State.

64
65 **Statutory Provisions**

66
67 NOW THEREFORE BE IT RESOLVED, and as necessary in response to the EPA Clean Power
68 Plan regulatory activity, the State Executive and Attorney General shall take appropriate steps to
69 protect the State's sovereignty and police powers authorities in light of the designed federalism
70 under the Clean Air Act; prevent federal commandeering of State police powers resources; retain
71 authority to develop and submit to the EPA any plan for meeting the goals of reducing carbon
72 dioxide emissions held to be legally mandated; and in so doing, the Legislature, while pursuing
73 all opportunities to challenge this regulatory overhaul, shall protect the state’s interests in the
74 development of the state’s plan, in consultation with the {state agency} and other important
75 stakeholders.

76
77 Limitations

78
79 BE IT FURTHER RESOLVED, given this legal uncertainty, {state agencies} may examine the
80 implications of preparing and implementing this rule but shall not prepare, draft, submit or
81 implement an implementation plan under this rule or otherwise expend funds to do so until
82 completion of judicial review as to the legality of a Clean Air Act Section 111(d) regulation for
83 existing power plants has been fully resolved at law;

84
85 BE IT FURTHER RESOLVED, {state} shall not expend funds to implement a Clean Power
86 State Implementation Plan until:

87 the State House and Senate committees having jurisdiction over the Clean Air Act, or an
88 advisory committee appointed by these committees have:

- 89 a. affirmatively approved the plan; and
90 b. submitted a report on the impact on the affordability and reliability of the plan on
91 commercial and residential consumers.

92

93 BE IT FURTHER RESOLVED, The **{public utility commission}** shall not allow electric
94 generating units to be retired prior to their engineering lifetime if the unit is necessary to
95 maintain the grid reliability specified by the Federal Energy Regulatory Commission (FERC) in
96 its reliability standards.

97
98 BE IT FURTHER RESOLVED, The **{public utility commission}** shall require that existing
99 electric generating units be operated in accordance with their design parameters and in such a
100 manner as to ensure operation consonant with the initial design life of the unit at time of its
101 **{public utility commission}** approval.

102
103 BE IT FURTHER RESOLVED, The State shall not adopt a Clean Power State Implementation
104 Plan absent **{public utility commission}** and FERC certification that the plan will meet or
105 exceed FERC's reliability standards.

106
107 Affordability

108
109 BE IT FURTHER RESOLVED, The **{public utility commission}** shall condition decisions
110 related to electricity generation and distribution on least-cost proposals that comply with Clean
111 Air Act regulations and the State Implementation Plan for which Air Quality Criteria have been
112 published or for which regulations have been promulgated under Section 112 of the Clean Air
113 Act.

114
115 BE IT FURTHER RESOLVED, The **{public utility commission}** shall cap non-fuel rate
116 increases associated with greenhouse gas regulations at 1.5%.

117
118 BE IT FURTHER RESOLVED, The **{public utility commission}** shall not allow electric
119 generating units to be retired prior to their engineering lifetime unless the owners have fully
120 recouped the cost of construction and financing, the replacement generation results in lower costs
121 to consumers and there is sufficient replacement capacity to meet dispatchable capacity of the
122 unit to be retired.

123