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[S.J. Res. 23, A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Environmental Protection Agency relating to "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units"](#)

FLOOR SITUATION

On Tuesday, December 1, 2015, the House will consider [S. J. Res. 23](#), a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Environmental Protection Agency relating to "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units," under a [closed rule](#). S. J. Res. 23 was introduced on October 26, 2015 by Sen. Mitch McConnell (R-KY) and passed the Senate by a vote of [52 to 46](#) on November 17, 2015. The House Committee on Energy and Commerce ordered an identical joint resolution (H. J. Res. 71) reported by a vote of 28 to 21 on November 18, 2015.

SUMMARY

S. J. Res. 23 provides that Congress disapproves the rule submitted by the Environmental Protection Agency (EPA) relating to "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units." The recently published final [rule](#) establishes carbon dioxide (CO₂) emissions standards for new fossil fuel-fired power plants.

BACKGROUND

The Congressional Review Act (CRA) "is an oversight tool that Congress may use to overturn a rule issued by a federal agency."¹ Under the CRA, before a rule can take effect, an agency must submit a report to each house of Congress and the Comptroller General containing a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; and the proposed

¹ See CRS Report—["The Congressional Review Act: Frequently Asked Questions,"](#) April 17, 2015 at 1.

effective date of the rule. Congress then has specified time periods in which to take action on a joint resolution of disapproval. If both houses pass the resolution, it is sent to the President for signature or veto. If the President were to veto the resolution, Congress could vote to override the veto.²

The Environmental Protection Agency's final rule establishing CO2 emissions standards for new fossil fuel-fired power plants, referred to by the agency as New Source Performance Standards, together with its final rule for such existing power plants, referred to by the agency as its "[Clean Power Plan](#)," was issued pursuant to the President's "[Climate Action Plan](#)" and an accompanying Presidential Memorandum.³ The two rules "would put in place an unprecedented regulatory structure throughout the U.S. electricity sector, effectively imposing renewable energy and cap-and-trade mandates similar to those in the Waxman-Markey cap-and-trade legislation that failed in 2010."⁴

The final rule for new fossil fuel-fired power plants has generated significant controversy, both because of questions regarding its legality and its "potential impacts on the diversity, affordability and reliability of the nation's electricity supplies, as well as the precedential effect of the regulation on other types of facilities subject to regulation under section 111 of the Clean Air Act."⁵ According to the Committee on Energy and Commerce, the rule is "premised on the installation of carbon capture and storage (CCS) technologies that are not commercially viable for electric power generation" and effectively "imposes a de facto ban on construction in the United States of any new coal-fired power plants . . ."⁶ The Attorneys General or state agencies of 23 states⁷ have challenged this regulation. S. J. Res. 23 disapproves the regulation and provides that it has no force or effect.

According to the sponsor of the House companion disapproval resolution, "in my view, the discrepancy between what EPA is trying to do and what the Clean Air Act actually allows is so wide that these resolutions are necessary. These resolutions are necessary to protect ratepayers, the reliability of our electricity supplies, and our nation's global competitiveness."⁸

COST

The Congressional Budget Office (CBO) [estimates](#) that implementing the House version of the resolution (H. J. Res. 71) would not have a significant effect on EPA's workload or spending related to new, modified, or reconstructed power plants and would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

STAFF CONTACT

For questions or further information please contact [Jerry White](#) with the House Republican Policy Committee by email or at 5-0190.

² Id. at Summary.

³ [House Report 114-348](#) at 2.

⁴ Id.

⁵ Id. at 3.

⁶ Id. at 2.

⁷ Alabama, Arkansas, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, Wisconsin, and Wyoming.

⁸ See Press Release—"[Whitfield Advances Two Resolutions to Keep Electricity Affordable and Reliable](#)," November 18, 2015.