

How Does the IOGCC Model CCS Program Manage the Responsibility of States in Liability and Property Rights?

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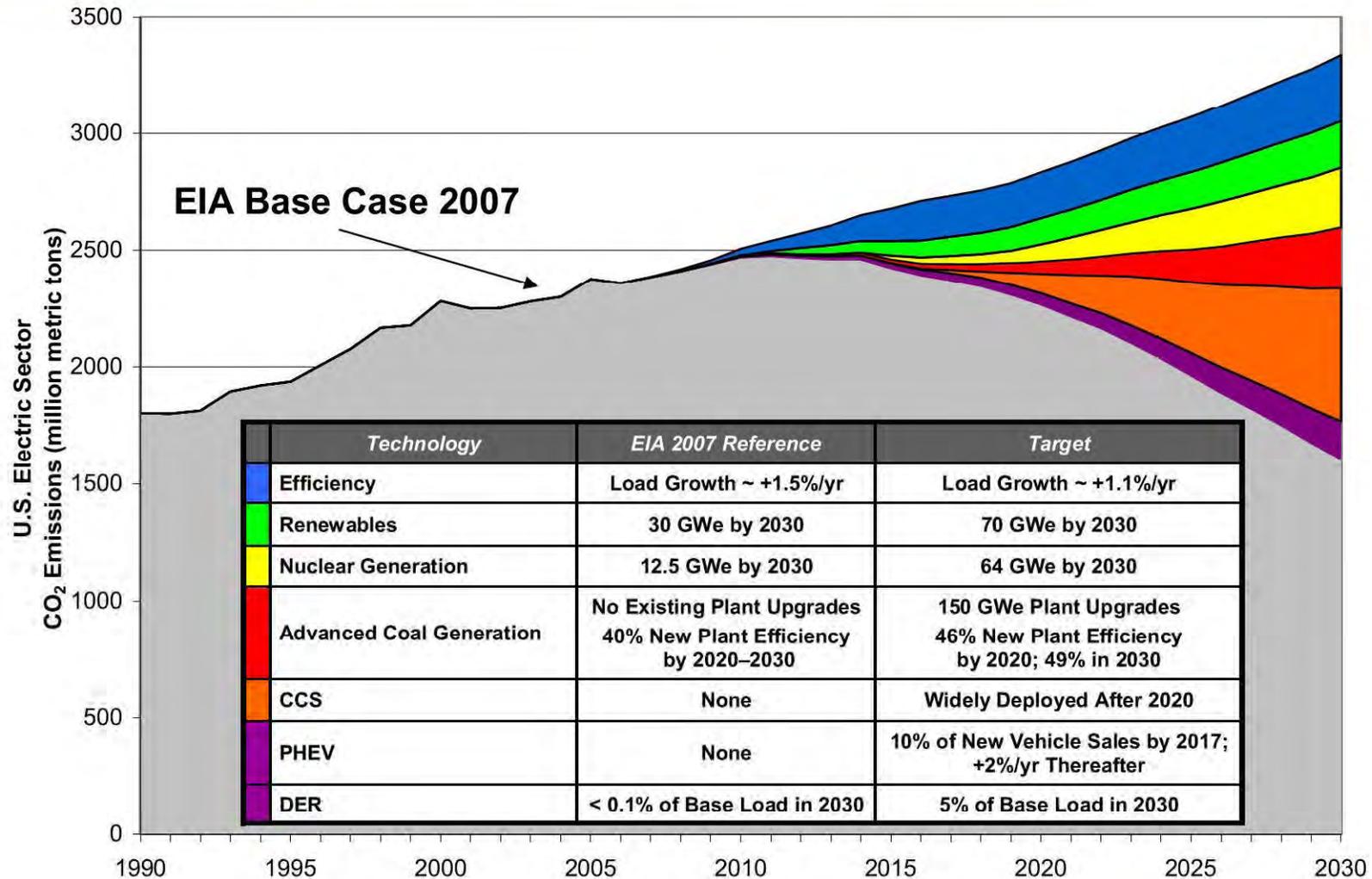
OVERVIEW

- **The changing landscape of electric power generation**
- **The role of coal in the nation's energy future**
- **The need for a CCS regulatory program**
- **IOGCC's model CCS program**

A Carbon Constrained Future

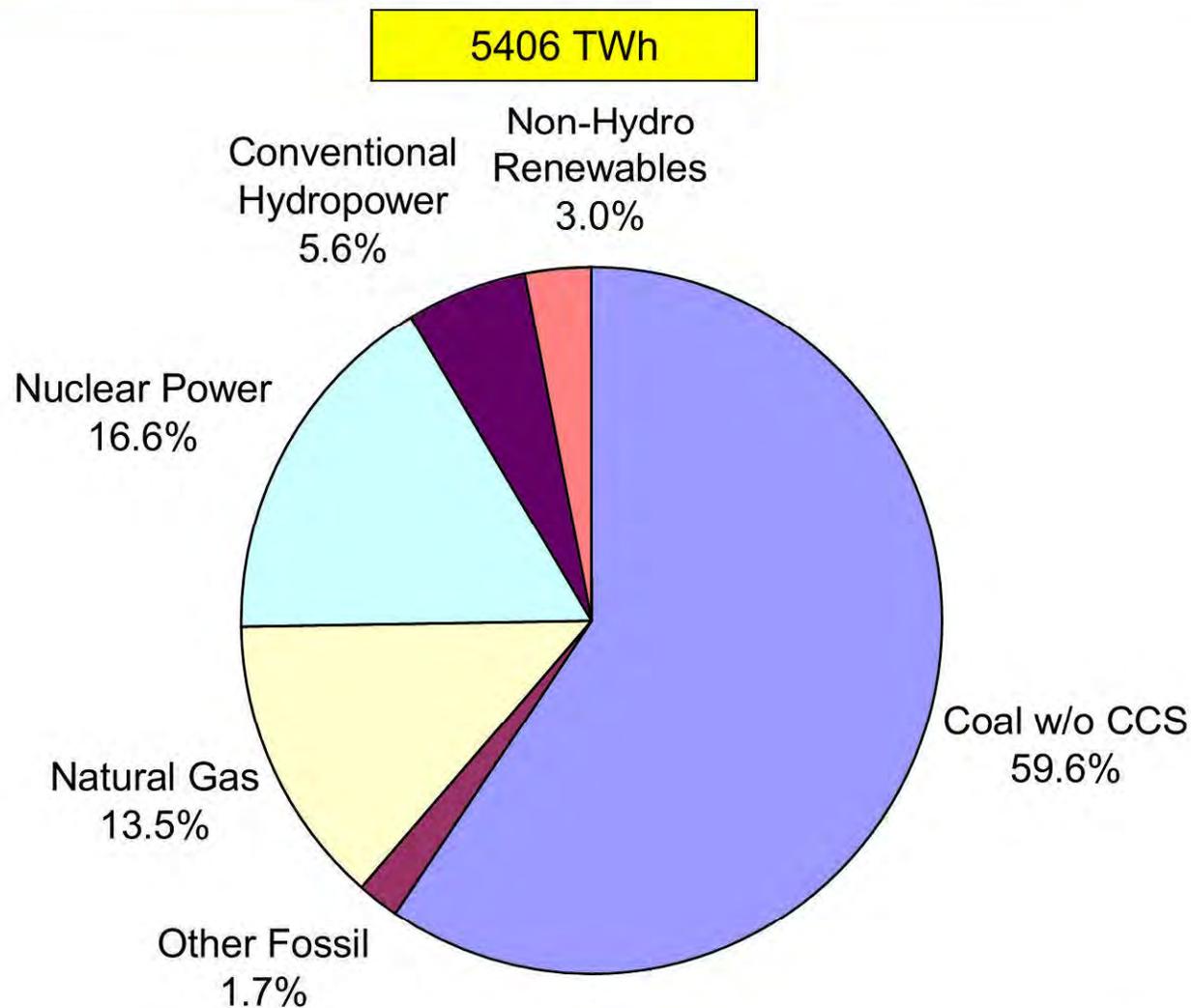
- Much climate change discussion is focused on coal
- However, many energy sources will be affected
- EPRI has assessed the potential for new technologies for power generation through 2030

CO₂ Reductions ... Technical Potential*

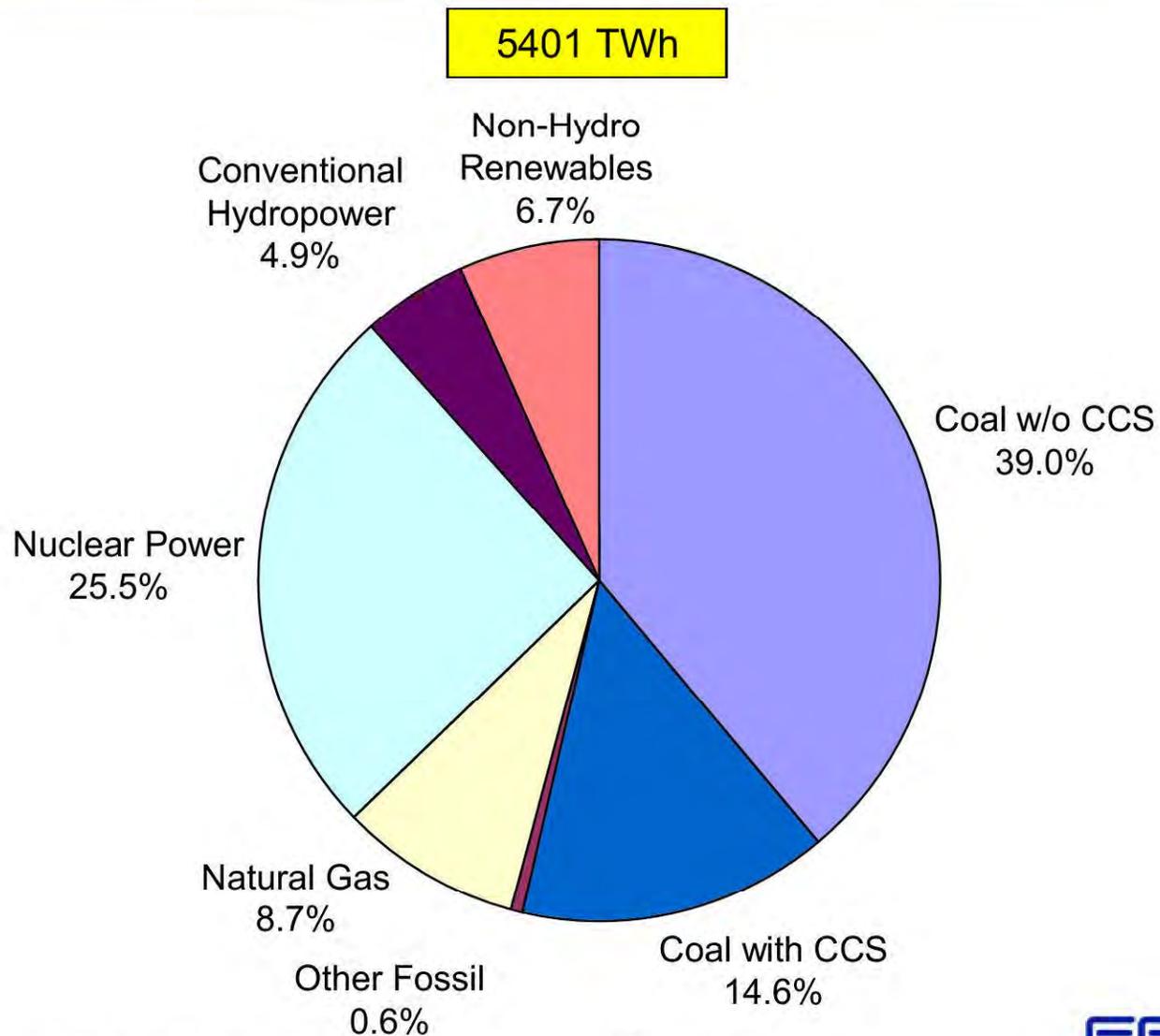


* Achieving all targets is very aggressive, but potentially feasible.

Total U.S. Electricity Generation: 2030 EIA Base Case



Total U.S. Electricity Generation: 2030 Advanced Technology Targets



MIT conclusions about CCS

- scientifically feasible to store CO₂ in saline aquifers
- an insurance system is needed to cover liability
- a regulatory framework must include criteria for site selection

(MIT)

IOGCC Model CCS Program

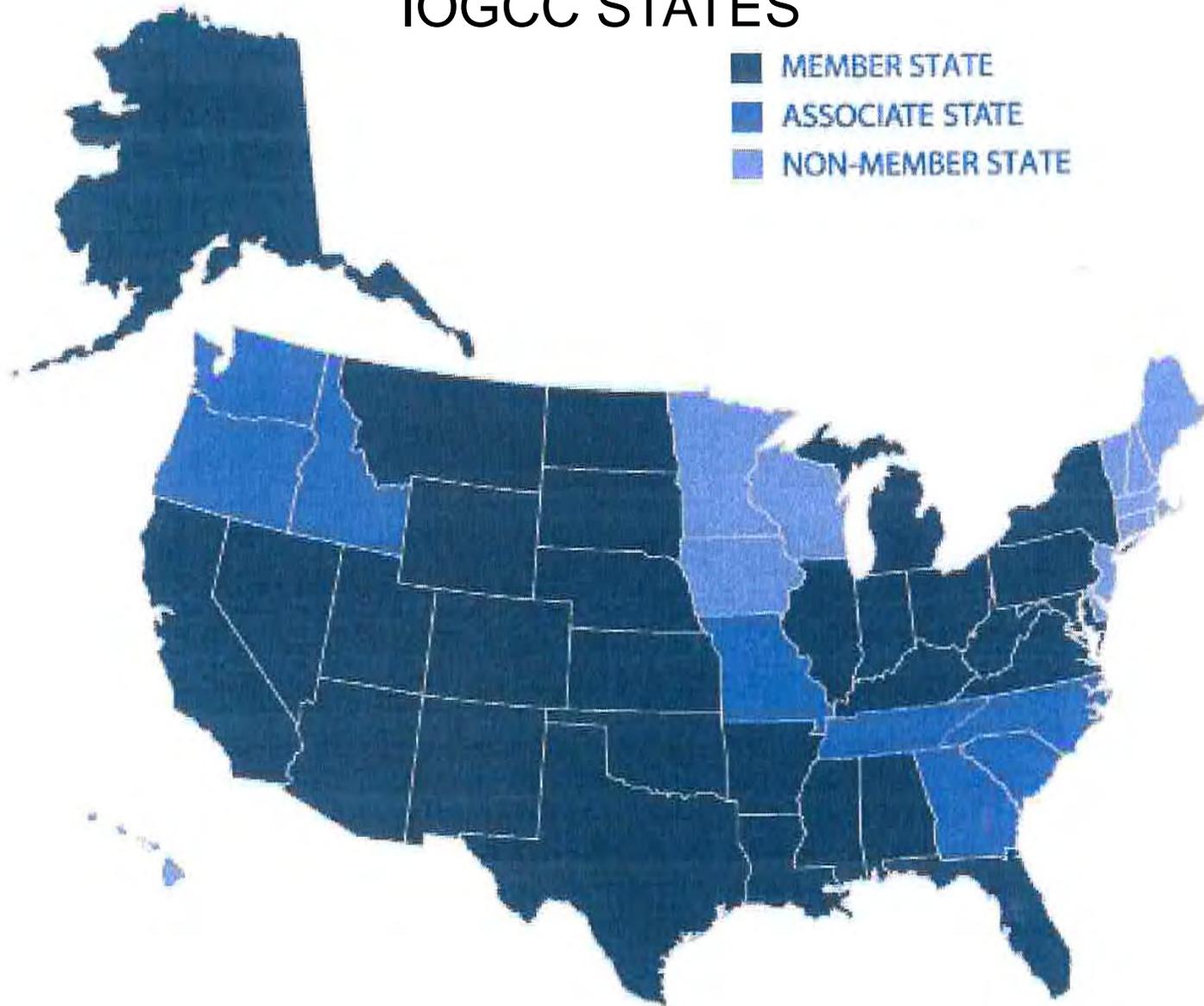
“Storage of Carbon Dioxide in Geologic Structures, A Legal and Regulatory Guide for States and Provinces”

Adopted: September 25, 2007

[IOGCC]

IOGCC STATES

- MEMBER STATE
- ASSOCIATE STATE
- NON-MEMBER STATE



Overview

- **Anticipates carbon emissions regulation.**
- **Regulated by the states.**
- **Views as CO₂ commodity not waste disposal.**
- **Focuses on regulatory framework, property rights acquisition and transfer of liability to the state.**
- **Establishes trust fund to fund administration of program once transferred to the state.**

Property Rights

- Must acquire rights to formation since this is storage (versus water protection)
- Ownership of formation may vary (surface owner, mineral owner, other)
- Agency must find
 - good faith efforts to obtain consent and
 - commitment to acquire remainder by eminent domain (or alternative)

Eminent Domain

- Approval of project allows right of CCS eminent domain, including early entry
- CCS eminent domain is in addition to other eminent domain authority that may be possessed by public utility
- Unitization might be used for oil and gas reservoirs
- CCS eminent domain would not be available to acquire interest in another CCS project (although agency could reopen a prior permit)
- Use of eminent domain must be included in public notice

Alternative mechanisms

- States may develop alternative mechanisms to acquire property
- Could involve unitization of subsurface and eminent domain of surface
- IOGCC is less concerned about mechanism used
- IOGCC is more concerned about acquiring property rights by valid, subsisting and applicable state law

Pipeline

- Not addressing in current program
- Deferred to next phase of program

Liability transfer

- Included to provide regulatory certainty and to promote development of CCS
- Certificate of Completion issued 10 years (or less) after cessation of operations
- Show reservoir is expected to retain mechanical integrity
- Upon issuance of certificate
 - Ownership transfers to state (including stored CO₂)
 - operator and generators released from regulatory liability
- Defer consideration of a release of tort liability

Trust fund

- Fee set based on risk assumed by state
- Used for monitoring, remediation, repair, plugging, etc.,
- Allow funds to be expended only for the CCS project
- Administered by state

Distinction from FutureGen

- FutureGen sought liability transfer from inception; IOGCC begins after closure
- FutureGen sought indemnity of the corporation; IOGCC does not
- FutureGen retains ownership of project; IOGCC calls for ownership to be transferred
- Under IOGCC state liability may be limited by:
 - sovereign immunity
 - potential insurance coverage with proceeds of trust fund
 - direct payments from trust fund

CONCLUSION

- CCS will be an important part of the future of coal
- IOGCC program is a good start
- Additional issues must be addressed by states
- Several states have already begun the process

REFERENCES

MIT – “The future of Coal, Options for A Carbon-Constrained World,” *Massachusetts Institute of Technology*, 2007 p. ix, <http://web.mit.edu/coal>.

EPRI – “Electricity Technology in a Carbon-Constrained Future,” *EPRI*, February 2007, http://mydocs.epri.com/docs/CorporateDocuments/Newsroom/EPRIUSElectSectorCO2Impacts_021507.pdf.

IOGCC – <http://www.iogcc.state.ok.us>