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The Most Influential, Unimplemented Federal Rule in History

The Clean Power Plan, as proposed by the Environmental Protection Agency last year, would limit carbon dioxide emissions from power plants for the first time in history.

The proposal, slated to go final this summer, is hugely controversial. Opponents have already gone to the courts to block its release. Dozens more lawsuits will certainly be filed when the rule is completed.

The arguments against the rule are many: Coal-dependent states are expected to argue that EPA has unlawfully regulated “outside the fenceline.” Utilities and trade associations have complained that EPA has made faulty assumptions about technology. And many opponents have argued that EPA does not have the authority to regulate greenhouse gas emissions under Section 111(d) of the Clean Air Act in the first place.

So litigation is guaranteed and will likely end up at the Supreme Court.

Furthermore, the time frames for states to propose implementation plans under the proposed rule are so ambitious that EPA is almost certain to have to adjust them. And that means that a future administration will be in office when the EPA decides whether to accept or reject the plans that states put forward. A future administration may have different views about how, when or even whether to require states to comply.

All of this leads to one inarguable conclusion: the path to implementation for this rule is long and tortured and very uncertain. There are many ways in which the regulation could be derailed, delayed, or deconstructed before it ever gets put into place.

And yet ...

This rule has already had a profound effect on the electric industry. Even if it is never fully implemented, the proposal has already fundamentally changed the way that decisions are made in C suites across the country. This has already been one of the most influential rules in history.

Utilities know that even if this rule gets struck down or targets get looser or time frames slip, carbon controls are coming. So behavior is changing.

Power plants have long life spans—30 years or more—and are very expensive. No one is making decisions about these investments without significant consideration of the environmental costs and benefits, and carbon dioxide emissions are a major part of that calculation.

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Clearly, timing matters. And a rule that is upheld by the court will have a substantial immediate impact in the energy sector. Change will come more quickly under the Clean Power Plan than it would under a more organic scenario. But the equation has already shifted.

The specter of some future regulation on greenhouse gas emissions or the possibility—however remote—of some future carbon tax has already impacted the utility sector and will for years to come. The Clean Power Plan is already one of the most impactful rules in history

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