

Update: Clean Power Plan

Energy Sector: Transformation or Regulatory Overreach?

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- I. Introduction: The New CPP & Industry Challenge
- II. Some Predicted Industry Impacts
- III. Legal Issues & Public Policy Implications

- Gelles, David. “We Have a Climate Pact. Now We Need Laws. The Paris Agreement set lofty goals, but the U.S. won’t reach them without a political fight.” The New York Times, December 20, 2015.

- “...The big breakthrough is supposed to be that for the first time developing and developed countries have committed to reducing carbon emissions. But the commitments by these nations are voluntary with no enforcement mechanism.” “Paris Climate of Conformity.” The Wall Street Journal, December 14, 2015, p. A16.

I. Introduction: The New CPP & Industry Challenge

- CPP is not voluntary & imposes severe enforcement penalties
- The final CPP; August 3, 2015, “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units;” originally proposed June 18, 2014
- Multiple legal challenges filed in D.C. Circuit Court of Appeals

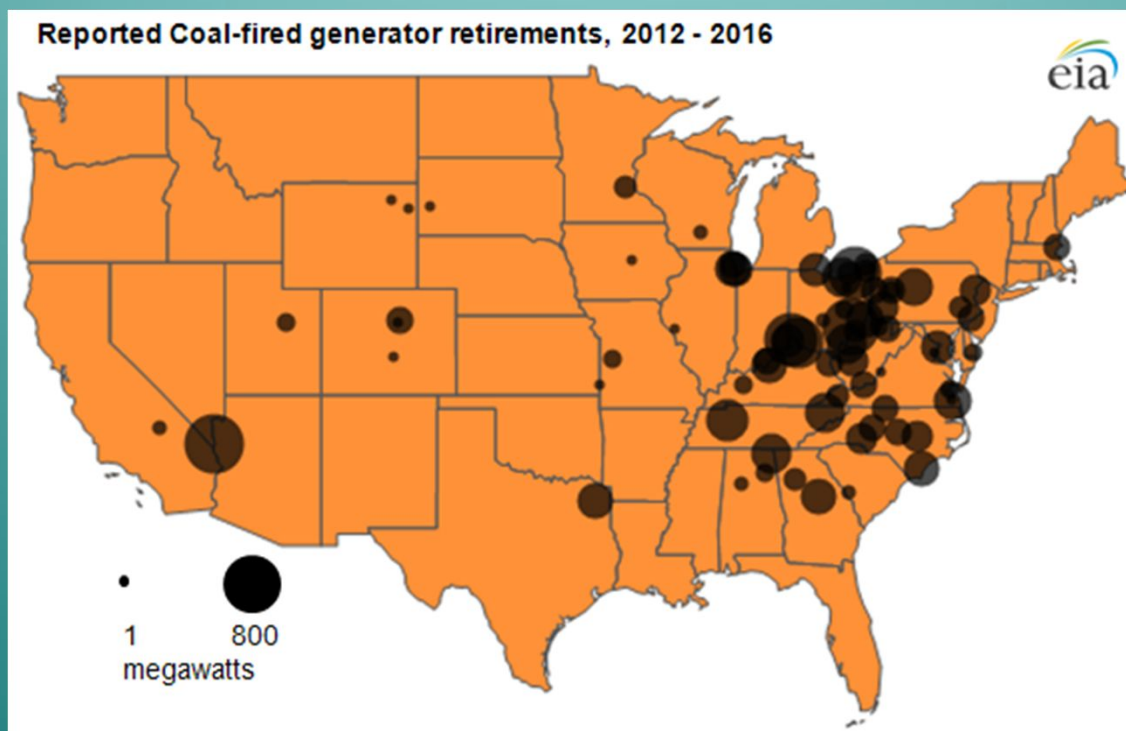
- 40 states (16 in support of U.S. EPA & 24 against); multiple industry groups – utility, mining, manufacturing, et al.
- 9 Motions to stay the rule filed by West Virginia et al., Murray Energy Corporation et al., International Brotherhood of Boilermakers et al., Chamber of Commerce of the United States, State of Oklahoma, State of North Dakota, Basin Electric Power Cooperative, Inc., Peabody Energy Corporation, and Mississippi Dept. of Environmental Quality
- Motion to expedite case filed by West Virginia et al.
- Motion for temporary restraining order filed by Mississippi Dept. of Environmental Quality

II. Some Predicted Industry Impacts

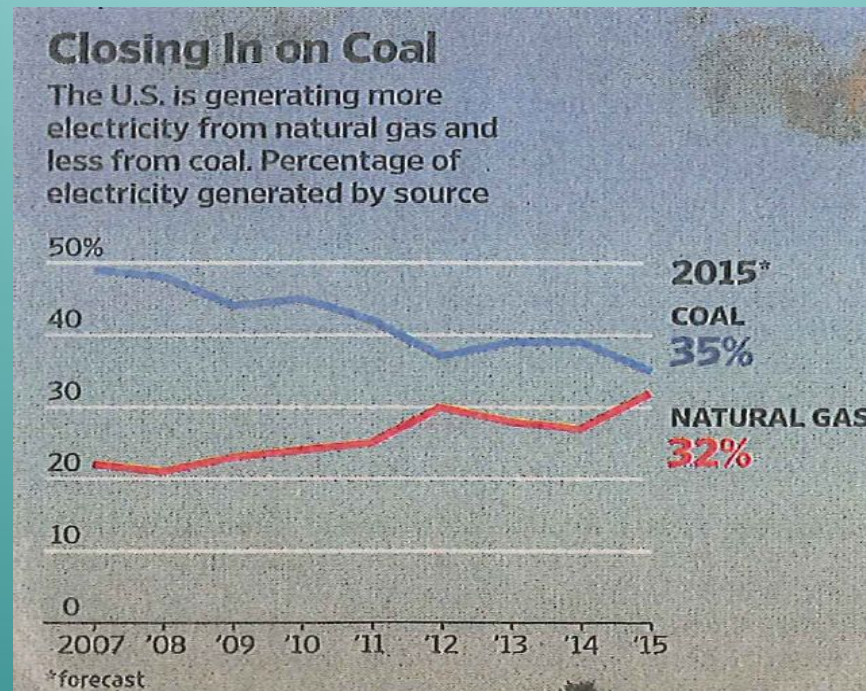
- More coal plant closures
 - EPA's prediction - 58 coal plant closures by 2018
 - Coal industry prediction - 238 by 2018
- Shift of mix electric generation to natural gas generation
- More efforts incentivize renewables

Other Non-CO2 Factors Already Impacting Reliability

- Mercury Air Toxics Standard Closures – 30 GW



- A switch to natural gas was and is occurring



The Wall Street Journal, November 17, 2015, p. B1 – Energy Department; Michael Williamson/The Washington Post/Getty Images (photo).

Other Projected Impacts

- Dispatch of Electricity:
 - Currently, dispatching electricity is based on price and availability of generating units, not fuel type or emission
 - Under CPP, operation of generating units will be constrained by CO₂ emissions
 - Terms for entering into and participating in sales will need revised to reflect new emission-related constraints on operation

Other Predicted Impacts (cont'd)

- Natural Gas Infrastructure:
 - Displacement of coal will require investment in infrastructure to support natural gas generation
 - Pipeline capacity limits and bottlenecks
 - Stand-by supplies and alternatives to avoid shortages in peak-use seasons
 - Generation at critical times will affect commercial and industrial users

Other Predicted Impacts (cont'd)

- Transmission and Distribution Infrastructure:
 - Current T&D: Based on finite number of EGUs supplying electricity to transmission lines that distribute to end users
 - Grid as designed cannot handle power coming from all over and flowing back into the system

III. Legal Issues & Public Policy Implications

- CPP effects a transformation of energy sectors via executive rulemaking; shifts generation to natural gas & renewables; no Congressional consensus; changes from market based to emission limit basis
- EPA or Federal Energy Commission – who decides the U.S. mix of electric generation?

Industry Legal Issues

- Legal basis for CPP: §111(d) of CAA
 - §111(d) allows imposition of “Best System of Emission Reduction” (BSER) on existing units
 - CPP defines “system” to apply to “owners,” not particular power plants; assures that owner will use assets to achieve “system-wide” emission goals

Industry Legal Issues(cont'd)

- “BSER,” like other technology based standards (e.g. “BACT,” “MACT,” “RACT,” and “LAER”), was derived historically by imposing “pollution control limits” at the stack.
- EPA concedes these CPP standards are not “achievable” at any coal plant
- Represents a “change” in EPA interpretation of §111 of CAA

Industry Legal Issues (cont'd)

- Fence-Line Argument: Plan relies on three building blocks
 - On-site efficiency improvements at EGUs
 - Increase use of natural gas
 - Zero carbon energy (renewable)
 - Only efficiency improvements fall within the fence-line of a power plant
- Power plants already regulated under §111(d)

Industry Legal Issues (cont'd)

- “Glitch” Issue: The House and Senate enacted two versions of §111(d), both of which were aimed at preventing duplicative regulation
- Federalism: U.S. EPA is forcing states to implement what amounts to a national energy policy
- Congress did not intend the CAA as statutory authority to grant U.S. EPA jurisdiction over national energy policy

Public Policy Considerations

- Who is best equipped to “transfer the energy economy” – EPA? FPC? Congress?
- EPA approach expands authority; what other industries might be subject to new “system of emission reduction?”
- CO₂ emissions in U.S. have been declining due to other regulatory programs; low cost of natural gas, renewable incentives, voluntary reductions, user efficiency.

Public Policy Considerations (cont'd)

- Regardless of litigation outcome, social and technological developments will reverse or limit CO₂ emissions: social attitudes, new energy efficiencies, consumer attitude, CAFE requirements, among others
- Should U.S. embark on a “command control” approach to CO₂ reduction, when rest of world commitment is “voluntary,” a la Paris?

Public Policy Considerations (cont'd)

- How “accurate” are underlying CPP assumptions about natural gas prices and renewables?
- Would market forces be better?