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Utilities and Energy

M-1 Affordable Clean Energy Rule

On August 21, 2018, the U.S. Environmental Protection Agency (EPA) proposed the Affordable Clean Energy (ACE) rule. If adopted, the ACE rule would replace the 2015 Clean Power Plan (CPP) in establishing guidelines for states to address greenhouse gas (GHG) emissions from existing coal-fired electric generation Units (EGU). The EPA accepted comments on the proposed rule through October 31, 2018. The public hearing for the proposed rule was held on October 1, 2018.

Overview

According to the National Conference of State Legislatures, ACE would provide states with the flexibility to determine how to reduce GHG emissions; however, ACE proposes that states only be allowed to require actions within the fence line of their existing EGU. The CPP allowed states to take actions outside the fence line, such as adding more renewable energy or establishing emission trading systems.

The ACE rule has four components. First, the rule would define the “best system of emission reduction” for GHG emissions from existing power plants as on-site heat rate efficiency improvements. (*Note:* Heat rate is the amount of energy input required to generate one kilowatt-hour of electricity. The lower the heat rate, the more efficient the production.) Second, the EPA would provide a list of “candidate technologies” for states to choose from when developing their plan to improve an EGU’s heat rate efficiency. Third, it would update the EPA’s New Source Review (NSR) permitting program to incentivize efficiency improvements to existing power plants. Finally, the rule would make changes to the EPA’s implementation regulations to give states additional time and flexibility to develop state plans.

According to the EPA, the current NSR program requires industrial facilities to install modern pollution control equipment when constructed or when making a change that would increase emissions significantly. The proposed rule would give states the option to only require a NSR permit when a physical or operational change made to an existing EGU increases its hourly rate of pollutant emissions. According to the EPA, this change would mean “fewer sources will trigger major NSR under an hourly emissions increase.”

States would have three years from publication of the final ACE rule to submit a state action plan. The EPA would have up to one year to act on a state plan. If a plan is not approved or not submitted, the EPA would be allowed two years to issue a federal plan for the state.

Unlike the CPP, the ACE rule would not impose a total allowable GHG limit for states. In its regulatory analysis provided in Vol 83, No. 170 of *Federal Register*, the EPA acknowledges that when compared to the CPP, implementing the proposed rule is expected to increase emissions of carbon dioxide and increase the level of emissions of certain pollutants in the atmosphere that adversely affect human health. The EPA estimates 600 coal-fired EGU's at 300 facilities could be covered by the proposed rule.

History

On August 3, 2015, President Obama and the EPA announced the CPP, a federal rule to regulate reductions in carbon pollution from power plants. The ultimate goal of the CPP was to reduce U.S. carbon dioxide emissions by 32.0 percent from 2005 levels by 2030. On March 28, 2017, President Trump signed an Executive Order on Promoting Energy Independence and

Economic Growth, which called for the review of the CPP. On October 10, 2017, in response to the Executive Order, the EPA issued a notice of Proposed Rulemaking, proposing to repeal the CPP upon publication in the *Federal Register*.

Clean Power Plan—Litigation

Several petitions, some challenging the legality of the CPP and others supporting the rule, have been filed. The D.C. Circuit Court has consolidated all of the various filings for challenges under Section 111(d), dealing with new emissions limits for existing power plants into one proceeding, *West Virginia v. EPA*, D.C. Cir., No. 15-1363. On June 26, 2018, the Court on its own motion, ordered that the case remain in abeyance for 60 days and directed the EPA to continue to file status reports at 30-day intervals.

Additionally, the D.C. Circuit Court has consolidated all the various filings for challenges under Section 111(b), the “new source rule,” into one proceeding, *North Dakota v. EPA*, D.C. Cir., No 15-1381. On August 10, 2017, the D.C. Circuit Court ordered the proceedings be held until further order is issued and directed the EPA to file status reports at 90-day intervals. No further order has been issued.

Regional Greenhouse Gas Initiative

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative effort among nine northeastern and mid-Atlantic states to reduce carbon dioxide emissions through a coordinated cap-and-trade program. RGGI is administered and implemented by a non-profit corporation, RGGI, Inc. The nine states currently participating are Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. RGGI officially organized in 2003, but the first compliance period did not begin until January 1, 2009. RGGI participants adopted a Model Rule to guide their actions, namely, to set limits on in-state emissions, issue carbon allowances, and establish state participation for regional carbon allowance auctions. The program uses three-year compliance periods and establishes overall emissions budgets for each period. The fourth compliance period began January 1, 2018, and extends through December 31, 2020. RGGI distributes state allowances through quarterly auctions where bidders may submit multiple confidential bids for a specific quantity of allowances at a specific price. Proceeds from the auctions are then distributed among the states by RGGI, Inc. As of September 2018, cumulative auction proceeds reached \$3 billion. While 25 percent of proceeds must be reinvested into consumer benefit programs such as energy efficiency, renewable energy, and direct bill assistance, in practice, states reinvest virtually all of their proceeds. Power sector carbon emissions in participating states have declined 50.0 percent since 2005. Emissions were capped at 82.2 million short tons in 2018. The cap will decline 2.5 percent annually until 2020. On August 23, 2017, RGGI announced a program change implementing a 30.0 percent emissions cap reduction from 2020 levels. This goal is projected to be achieved by 2030.

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