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CLIENT ALERT:

EPA Finalizes the Clean Power Plan Next Steps on CO₂ Regulations for Power Plants

On August 3, 2015, EPA released the final Clean Power Plan to reduce CO₂ emissions from existing power plants.¹ EPA also released a proposed federal implementation plan and model trading rules for existing power plants,² and final new source performance standards for new power plants.³

THE CLEAN POWER PLAN

Overview

The Clean Power Plan (“CPP”), issued under Section 111(d) of the Clean Air Act, sets CO₂ emission guidelines for existing fossil fuel-fired power plants and assigns each state an emissions reduction goal that must be achieved by 2030.⁴ The best system of emission reductions (“BSER”) used to set the state goals is comprised of three building blocks: Building Block 1 is heat rate improvements at coal-fired power plants, Building Block 2 is substituting generation from existing natural gas units for coal generation, and Building Block 3 is substituting renewable generation for coal-fired generation. (The proposed Building Block 4, energy efficiency, was not finalized.)

In a change from the proposal, EPA applied the building blocks on a regional, rather than a national, level (Eastern Interconnection, Western Interconnection, and ERCOT) to determine regional emission performance rates. EPA then looked at the regional rates, chose the most readily achievable rate for each category, and calculated final subcategory-specific emission performance rates of 1,305 lbs CO₂/MWh for fossil fuel-fired electric steam generating units and 771 lbs CO₂/MWh for stationary combustion turbines. Using these rates, EPA calculated goals for each state based on the state’s 2012 generation mix.

¹ EPA’s prepublication version of this rule is available at <http://www.epa.gov/airquality/cpp/cpp-final-rule.pdf>.

² EPA’s prepublication version of this rule is available at <http://www.epa.gov/airquality/cpp/cps-final-rule.pdf>.

³ EPA’s prepublication version of this rule is available at <http://www.epa.gov/airquality/cpp/cpp-proposed-federal-plan.pdf>.

⁴ State-specific fact sheets are available at <http://www2.epa.gov/cleanpowerplanttoolbox/clean-power-plan-state-specific-fact-sheets>.

Compliance

Now that EPA has set the goals, the CPP is with the states. By September 6, 2016, each state must submit a final plan or an initial submittal with a request for an extension. (Extensions may be granted until September 6, 2018.) If a state does not submit an approvable plan, then EPA will implement a federal plan for that state. There are several options for states to pursue collaborations across state lines. The compliance period begins January 1, 2022 (not 2020, as EPA had proposed) with possible credits for certain early actions through the Clean Energy Incentive Program. There are interim goals over the period 2022–2029, and compliance with the final goal must be achieved by 2030.

Next Steps

Once the rule is published in the *Federal Register*, the clock for judicial review will start. This rule is guaranteed to lead to legal challenges⁵ and potentially congressional action. Without commenting on the likelihood of success of these activities, it is likely that many states will be working on their own plans or on the mechanics of implementing a federally-imposed plan. Stakeholders should monitor any such processes and consider opportunities for input to shape their state's approach.

PROPOSED FEDERAL PLAN AND MODEL TRADING RULE

EPA has proposed the elements of the federal plan that it will implement in states that do not submit an approvable plan under the CPP. The proposal also describes model trading rules that EPA will finalize in summer 2016. States can adopt the model trading rule—in whole or in part—in their individual plans. Accordingly, the approaches that EPA has proposed have the potential to affect many states. The proposal also includes some revisions to EPA's Section 111(d) process.

Overview

There are four discrete actions in the proposal: (1) a rate-based federal plan for each state with affected Electric Generating Units ("EGUs"), (2) a mass-based federal plan for each state with affected EGUs, (3) a rate-based model trading rule for potential use by any state, and (4) a mass-based model trading rule for potential use by any state. However, EPA has indicated that it intends to finalize only one federal plan (rate-based or mass-based). EPA has invited comments on which methodology should be finalized.

EPA's model trading rule proposal has many details of how the trading mechanisms would work that may be of interest. For example, EPA asks for comment on allocating a portion of allowances in a mass-based plan to load-serving entities, rather than to affected EGUs.

Next Steps

Comments will be due 90 days after the proposal is published in the *Federal Register*, which has not yet occurred. EPA will promulgate a federal plan for a state within 12 months of a finding that the

⁵ Fifteen states already filed an emergency motion for stay on August 13 in the D.C. Circuit.

state failed to make a complete, approvable initial submittal. There will be an opportunity to comment on any state plan submitted for approval.

STANDARDS FOR NEW POWER PLANTS

These final standards limit CO₂ from new, modified, and reconstructed power plants under Section 111(b) of the Clean Air Act (proposed in September 2013). This rule applies to fossil fuel-fired power plants that begin construction on or after January 8, 2014, or that undergo modifications or reconstructions (as defined in EPA regulations) on or after June 18, 2014.

Overview

EPA established different standards for stationary combustion turbines and electric utility steam generating units. EPA determined that the BSEER for new and reconstructed stationary combustion turbines is natural gas combined cycle technology. (EPA did not set a standard for modified stationary combustion turbines.) The standard for new and reconstructed baseload combustion turbines is 1,000 lbs CO₂/MWh-gross. (Non-baseload units meet an input-based standard.)

EPA determined that the BSEER for new steam units is highly efficient supercritical pulverized coal with partial carbon capture and storage, giving an emission limit of 1,400 lbs CO₂/MWh-gross (less stringent than the proposal). EPA determined that the BSEER for modified units is based on the unit's own best potential performance, and the emission limit for units making larger modifications (modifications that result in an increase in hourly CO₂ emissions greater than 10%) is no more stringent than 1,800 lbs CO₂/MWh-gross for units with heat input greater than 2,000 MMBtu/h, and 2,000 lbs CO₂/MWh-gross for sources with a heat input less than or equal to 2,000 MMBtu/h. For reconstructed coal-fired units, the BSEER is the performance of the most efficient generating technology for that type of unit, and the emission standard is 1,800 lbs CO₂/MWh-gross for units with heat input greater than 2,000 MMBtu/h, and 2,000 lbs CO₂/MWh-gross for sources with a heat input less than or equal to 2,000 MMBtu/h.

Next Steps

As with the CPP, legal challenges to this rule are likely. The deadline to seek judicial review will begin to run upon publication of the rule in the *Federal Register*.

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