



The U.S. EPA has delayed the date for publication of the final rule applying to carbon emissions from existing generating sources under Section 111(d) of the Clean Air Act until mid-summer of 2015.

The initial date for the final rule was originally scheduled for June of 2015. However, during the proposed rule comment period, the EPA received more than 2 million comments to the rule. According to the EPA's January 7, 2015, announcement, EPA decided more time was needed to draft the final rule. The revised date extends the rule publication timeline by approximately one month. In addition, based on the new date, the proposed rule for new sources under CAA Rule 111(b) will be delayed at least six months. The EPA viewed the significant interplay of the carbon rules as justification for addressing the rules "in a coordinated fashion," said Janet McCabe, acting Assistant Administrator for the Office of Air and Radiation.

The announcement was made just one day after high ranking officials at EPA pushed back against opponents of the proposed Clean Power Plan. The EPA's general counsel wrote a letter to *The Wall Street Journal* published on January 4 defending the rule, its legality, and the process to create it. Janet McCabe also published a lengthy defense on the EPA's blog highlighting the flexibility EPA believes the rules provide and the length of the compliance period, making achievement very practical. More specifically – and seemingly in response to widespread concerns, as the industry is not as persuaded the rules are as robust as EPA believes – McCabe stated that in "EPA's 40-year history ... there has never been an instance in which Clear Air Act standards have caused the lights to go out."

This announcement also comes after Commissioner Tony Clark of the Federal Energy Regulatory Commission said that EPA should give FERC a form advisory role in the implementation of the Clean Power Plan. As reported in the SNL News on December 5, 2014, Commissioner Clark's concern is that state compliance plans, when taken together, may threaten grid reliability. Clark further stated the he did not believe EPA was "equipped to review whether state proposals would be feasible from a reliability perspective." The Commissioner is asking that EPA build a provision into the final rule that EPA would receive FERC input or defer to FERC on state plans that result in reliability issues. Under the Federal Power Act, FERC has jurisdiction over interstate power lines and wholesale electric markets, and the North American Electric Reliability Corp., the body which has the authority to create and enforce reliability standards, approved by FERC, of owners and operators of the bulk power grid.

On January 6, 2015, FERC announced the dates for three technical conferences aimed at addressing reliability concerns with the EPA's Clean Power Plan. Also, FERC will be hosting an additional technical conference to review the "national overview" of the plan's impact on the electrical grid on February 19, 2015. The announcement from FERC states that the national technical conference says the discussion will focus on "the commission's role in this area." There appears to be some space between the FERC commissioners, with Commissioner Clark calling for FERC involvement in the EPA rule and Chairman LeFleur stating that the "technical conference is not to influence the shape of the final rule," according the a report by Marcy Crane of SNL News.

Against this regulatory backdrop, American Electric Power is reported to have retained Goldman Sachs to assist in evaluating the sale of its coal-heavy (i.e. carbon emitting) generation assets in Ohio. In Illinois, Exelon is reported to be seeking legislative support for its nuclear fleet (i.e. zero carbon emissions), which is under pricing pressures due to low price natural gas and other factors. Finally, the price of oil, and by implication natural gas, is falling and global markets are directly impacting the costs of fuel. The only certainty is that things will continue to change. The real question is how soon, how much, and what are the systemic impacts?

What is clear is that the rules around carbon are significant, substantial, and will profoundly impact all sources of power generation. The brief delay in issuing a final rule in existing plants and the final issuance of all three of the carbon rules remains a critical issue with regulatory and economic implications nationwide. Companies and nations are making high value decisions based on the "total future cost" of generation. In the coming months, utilities industry and consumers of all varieties will have to determine how to comply with, and pay for, the proposed changes.