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EPA's Final Power Plant Greenhouse Gas Rule Shifts Emissions Regulation to States

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The EPA announced its final rule for power plant greenhouse gas (GHG) emissions, culminating often rancorous discussion and litigation over the EPA's authority to regulate GHG emissions from existing coal-fired electricity generating sources. Under the new Affordable Clean Energy (ACE) rule, the states, not the federal government, are now responsible for driving down GHG emissions from power plants. Specifically, the EPA now requires unit-specific standards of performance to be developed by the states using its new emission guideline that details the "best system of emission reduction."

The ACE rule requires each state to develop a plan to evaluate specified heat rate improvement (HRI) technologies at each coal-fired generating unit within the state and develop a standard from this analysis. The EPA does not specify how each state should perform the analysis, but requires that the standard be expressed in lbs CO₂/MWhr. The EPA finalized the list of "candidate technologies" included in the proposal and included new findings on the amount of emission reductions achievable through these measures.

States may consider unit-specific factors like remaining useful life and the degree to which the HRIs have already been implemented by the facility. The states must submit their plans to the EPA for approval within three years. The EPA clarifies the substantive and procedural process for developing state plans. Section 111(d) says that state plans are "similar to" Section 110 implementation plans, but the EPA clarifies the necessary elements of a state plan as well as the timing and process for approval.

As further background, the EPA promulgated the Clean Power Plan (CPP) in 2015, using a unique system of "building blocks" to encourage shifting generation from traditional coal-fired power plants to low and zero-CO₂-emitting sources of energy. The U.S. Supreme Court stayed the CPP pending the outcome of litigation. This new rule repeals the CPP and replaces it with the Affordable Clean Energy rule, or ACE rule.

The EPA's basis for repealing the CPP is the language of Section 111(d) of the Clean Air Act and the agency's long past practice of "applying" standards "to" sources. The CPP focused on maximizing emission reductions, not on developing a standard that could be implemented at each existing coal-fired source. The EPA now reasons that, while seeking higher reductions is laudable, its congressional mandate allows it to regulate only the specific existing source of pollution. In fact, while the ACE proposal allowed emissions averaging among affected electric utility generating units (EGUs) at a single facility, the final rule precludes averaging among units at the same facility: each individual EGU is a "designated facility."

Another significant change from the proposal is the EPA's decision not to finalize proposed revisions to New Source Review rules in this rulemaking. The ACE rule will continue to be controversial as the impact of the rule on CO₂ emissions across the country is uncertain.

However, the rule will also continue to force unit owners to evaluate the cost-effectiveness of making HRIs against the cost-effectiveness of other forms of energy generation. The ACE rule will become effective 60 days after publication in the Federal Register, which is expected within the next 2-3 weeks.

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