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Clean Power Plan Means Opportunities for Power Plants

The U.S. Environmental Protection Agency (EPA) published the final version of the Obama administration's Clean Power Plan (CPP) on Oct. 23, 2015, and within hours more than two dozen challenges were filed, asking the D.C. Circuit Court of Appeals to invalidate the rule. While the clock ticks on the window for challenges, and during the coming litigation, power plants may want to take the opportunity to shape their respective State Implementation Plan (SIP) and any regional plans.

Under the CPP, the administration seeks to reduce greenhouse gas (GHG) emissions from existing sources by 32% below 2005 levels by 2030. The EPA determined that the best system for emission reduction (BSER) would result from some combination of these building blocks: (1) improving efficiency on site, (2) switching to lower-emitting power sources, and (3) using more zero-emitting power sources. The EPA set individual state-specific goals, which it has stated in two different ways: rate-based (a statewide average of pounds of CO₂/MWh) and mass-based (total statewide emissions of CO₂). However, the EPA also gave each state flexibility in determining how to achieve those goals.

In setting these statewide goals, the EPA took the unusual step of regulating the regional power delivery "system" as a whole, unlike its typical approach of setting individualized requirements for particular "sources." Here, the EPA is treating the regional grids as the systems and seeking to reduce GHG emissions on a regional or statewide basis, depending on each state's mix of generation assets. By taking a big picture approach, and allowing states flexibility in creating their plans, the EPA has created an opportunity for plants to provide input to environmental agencies on inside-the-fence improvements and outside-the-budget non-starters.

SIPs and FIPs

The next step involves the states. The rule, issued under Clean Air Act section 111(d), directs states to create SIPs to administer statewide or regional programs to reduce emissions from existing power plants. SIPs establish "standards of performance" that reflect EPA-set goals. In creating a SIP, a state can choose whether to aim for the rate-based or mass-based goal. Further, the state can choose any combination of the three building blocks to achieve that goal.

Alternatively, provided the state is targeting the mass-based goal, it can choose an entirely different approach of "state measures" to reduce emissions from a broader range of sources—not just power plants—such as residential or industrial energy efficiency. In this way, the Federal Implementation Plan (FIP) is not a "floor" or minimum requirement; it is an example. If a state does not create a SIP, the federal government will impose a FIP. SIPs are due September 2016, but a state may ask for an extension until September 2018.

With the publication of the final rule, EPA also published a draft FIP that will be finalized in Summer 2016. Understanding the draft FIP is important to understanding whether (and if so, how) to structure a SIP. The draft FIP, however, comes in two flavors—rate-based

and mass-based. The rate-based plan requires that each affected plant meet an individualized emission standard (in CO₂ lbs/MWh) derived from the statewide target average rate. If a plant emits at a higher rate, it must purchase emissions credits either from other plants that reduce their emissions more than required or from approved zero- or low-emitting producers supplying the grid.

The mass-based plan requires that affected plants in the state produce total emissions within a statewide budget. Each plant is allocated its own budget, based on historical generation, but plants can modify that budget by trading with other plants, participating in a Clean Energy Incentive Program, or investing in renewable energy. The EPA has also provided model trading rules to facilitate the exchange of emissions reduction credits and allowances in both the rate- and mass-based plans.

The EPA has stated that ultimately there will be only one FIP, and it has hinted it prefers a mass-based approach for ease of implementation. As noted, that approach would also allow states to shift some of the burden of emissions reductions away from power plants and onto customers through efficiency-based measures. However, a state with growing demand for power from existing plants may prefer a rate-based goal, which unlike a mass-based goal would give a state credit for existing plants squeezing more megawatt-hours out of a given amount of coal or natural gas.

Power Plant Input

The flexibility of the CPP means states have many choices to make, creating several opportunities for stakeholder input: (1) FIP or SIP; (2) if SIP, single or multistate; (3) if SIP, rate-based or mass-based; and (4) if mass-based, just BSER building blocks or also state measures? Plants having a strong view about whether a rate-based or mass-based plan is best should advocate for the adoption of a SIP, rather than expecting that the EPA will select a similar FIP. Plants may also have helpful input about the contents of the SIP, namely, how the state should mix tools to meet its environmental and other policy objectives.

Plants may consider providing input to their environmental protection agencies to establish realistic expectations for changes to their physical plants, but the real opportunity to help shape the SIP may be found in the accounting department. States must consider costs when determining a standard of performance achievable for the system. Thus, if a certain technology exists but is prohibitively expensive, a plant or industry group can work with the state to employ alternatives such as emissions-trading programs, participation in a regional market or plan, or customer-side efficiency measures. Practical economic information, which the regulated plants themselves are best positioned to provide, will be crucial in shaping the SIP. ■

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