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GHG Standards for the Power Sector: Is Third Time the Charm or Is It Déjà Vu?

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In the third attempt in less than 10 years, the Environmental Protection Agency issued a proposed rule package ("Proposal") that would apply strict greenhouse gas emissions standards to the fossil fuel-fired power sector. The Proposal—while not as expansive as the 2015 Clean Power Plan ("CPP")—would require power plants to eliminate nearly all their carbon dioxide emissions in just a little over a decade.

This rulemaking comes after the 2022 Supreme Court decision in West Virginia v. EPA, which overturned the Obama-era CPP, and attempts to walk the line between compelling significant emissions reductions while respecting the Court's decision reigning in EPA's previous expansive approach to its authority under the Clean Air Act.

The Proposal is promulgated under Section 111 of the Clean Air Act, which establishes New Source Performance Standards and existing source standards based on a determination of what constitutes the Best System for Emission Reduction ("BSER"). The high-level requirements of the Proposal are as follows:

- Carbon capture and storage ("CCS"), low-GHG co-firing, and natural gas co-cofiring will broadly apply as BSER across the sector;
- New intermediate load natural gas units will have until 2032 to comply with a NSPS based on a BSER of 30% low-GHG co-firing;
- New base load natural gas units can choose to comply with NSPS based on either:
    1. a BSER of CCS that captures 90% of CO2 emissions by 2032; or
    2. BSERs of 30% low-GHG hydrogen co-firing by 2032 and 96% low-GHG hydrogen co-firing by 2038.
- Large existing natural gas power plants will be subject to the same choice of NSPS based on either CCS or low-GHG co-firing on the same compliance deadlines;
- Existing coal-fired power plants that will operate beyond December 31, 2039 will be subject to a 88.4% CO2 emission reduction based on a BSER of CCS that captures 90% of emissions; and
- Existing coal-fired power plants can only avoid these emission limitations by committing to permanently cease operations by

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certain deadlines before 2040.

The draft rules set emissions limitations depending on the type of power plant as well as other factors such as whether they are fueled by coal or natural gas, how frequently they operate, and whether they are scheduled to retire in the immediate future. These proposals are based on EPA's determination of BSER, which EPA has determined includes carbon capture and sequestration/storage (CCS) and co-firing with lower-GHG fuels, or some combination of both.

Specifically, EPA is proposing to establish more protective NSPS for greenhouse gas emissions from new fossil fuel-fired stationary combustion turbine EGUs. Additionally, EPA is proposing to establish new emission guidelines for existing fossil fuel-fired steam generating EGUs and large and frequently used existing stationary combustion turbines. EPA is also proposing to repeal the Trump-era Affordable Clean Energy (ACE) rule.

For existing coal plants that intend to continue operating through at least 2040, the Proposal requires the use of CCS or other technology to capture or eliminate 90% of carbon dioxide emissions by 2030. Coal plants scheduled to retire before 2040 have relaxed requirements, depending on the retirement date and utilization level.

EPA has split new gas plants into three categories based on how heavily they are used. Low load plants operating below a 20% capacity would be required to use lower emitting fuels such as natural gas and distillate oil. Plants in intermediate and base load categories would be required to implement efficient generation technology as well as CCS or low-GHG hydrogen co-firing. These performance standards would apply in phases beginning when the rule is finalized and extending to 2038.

For existing large and frequently used combustion turbines, the Proposal would require the use of CCS or other technology to capture or eliminate 90% of CO2 emissions by 2035. Alternatively, such turbines could opt to phase-in low-GHG hydrogen co-firing at 30% hydrogen by volume by 2032 and 96% by volume by 2038.

Once EPA finalizes the rule, states will have just two years to draft implementation plans to implement the new guidelines and standards. Two years is unlikely to be enough time for states to implement the plan.

Consistent with EPA's focus on environmental justice, the Proposal additionally requires states to offer opportunities for meaningful engagement. EPA explains that “[m]eaningful engagement requirements are intended to ensure that the perspectives, priorities and concerns of affected communities are included in the process of establishing and implementing standards of performance for existing EGUs, including decisions about compliance strategies and compliance flexibilities that may be included in a state plan.”[1]

Public comment on the Proposal will be open for 60 days after publication in the Federal Register. Comments are likely to raise concerns about the implementation deadlines and whether CCS and low-GHG hydrogen co-firing are “adequately demonstrated technologies.” Also, the requirement

for sourcing “low-GHG hydrogen” in order to demonstrate compliance will likely also be a focus. As environmental justice is now a fundamental component of federal agency decision making, commenters should also address the environmental justice impact of the Proposal. Thorough comments can have a significant impact on a final rule. Accordingly, interested parties should begin gathering information and preparing comments as soon as possible.

[1] Fact Sheet: Greenhouse Gas Standards and Guidelines for Fossil Fuel-Fired Power Plants Proposed Rule, EPA.gov, https://www.epa.gov/system/files/documents/2023-05/FS-OVERVIEW-GHG-for%20Power%20Plants%20FINAL%20CLEAN.pdf.

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