

Climate ruling sparks expensive game of red light, green light

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U.S. EPA needed thousands of pages to lay out its ambitious, highly complex strategy to force blue states and red states to figure out how to curb greenhouse gas emissions from their power plants. The Supreme Court has plunged the entire endeavor into uncertainty with a single page.

Although more than half of states are challenging EPA's Clean Power Plan rule in court, the vast majority nonetheless were forging ahead with plans to make the required carbon emissions cuts in case those lawsuits failed. Many are now putting on the brakes, goaded by political leaders who revived calls for states to "just say no" to the climate change regulations.

Still more are reassessing whether they should pour resources into a regulation that may change or never go into effect.

"The Supreme Court has sent a message to all of the states: Put down your pencils because the EPA has no authority to issue and force this illegal rule down your throats," West Virginia Attorney General Patrick Morrisey (R) said during a call with reporters yesterday.

The court's 5-4 decision puts the rule on hold at least until the U.S. Court of Appeals for the District of Columbia Circuit decides whether it is legal and possibly until the Supreme Court weighs in on the case.

EPA yesterday confirmed that states will not be required to submit initial plans by September sketching out how they might meet emissions reduction targets. At least four states -- Montana, Nebraska, North Dakota and South Dakota -- have canceled public meetings on the Clean Power Plan. A handful of others, including Michigan, Arizona, Ohio and Utah, have said they will take time to rethink whether planning for the rule will continue.

As a result of the Supreme Court's stay, the momentum that slowly built behind the Clean Power Plan in even reticent states is already showing signs of flagging, raising concerns about whether the United States will be able to make meaningful reductions in greenhouse gases and encourage other nations to follow suit.

EPA won't let the regulation die without a fight, however. Spokeswoman Melissa Harrison said the agency "firmly believes the Clean Power Plan will be upheld."

A number of Democratic-led states proclaimed they will stand by EPA and forge ahead with compliance plans.

"The citizens of Pennsylvania are demanding a Pennsylvania-centric plan that reduces our emissions, so we have to respond to that," said Pennsylvania Department of Environmental Protection Secretary John Quigley. "We are not going to take our foot off the gas pedal."

Notably, a few Republican-led states also said they will continue to plan for ways to cut carbon.

Wyoming Gov. Matt Mead (R) told *ClimateWire* yesterday that although he considers the Supreme Court's decision "a great bit of good news," his state will continue to plan for the rule, although likely on a more relaxed timeline.

"We don't want to just put all our eggs in a single basket, and that is the court system," Mead said. "So I think we will continue -- maybe not at the same pace -- but I think we will continue to have our [Public Service Commission] and [Department of Environmental Quality] and others at the state see what this would mean."

Harrison noted that EPA will continue to provide tools and support to states that keep working on plans and said the agency will "make additional information available in a timely manner."

Arizonans torn over whether to proceed

In Arizona, where state leaders have been strong critics of the rule, dozens of industry, government and environmental interests poured into an already-scheduled Clean Power Plan meeting yesterday to voice their concerns about the stay.

It was the first public, state-level meeting on the rule held after the Supreme Court's decision and likely provides a preview of the tug-of-war many local agencies will face.

The Arizona Corporation Commission -- the electric regulatory board -- is challenging the rule in court, and a lawyer for the commission yesterday argued to halt planning. But the state's Department of Environmental Quality has been preparing for the Clean Power Plan since shortly after the draft rule came out in the summer of 2014.

Attendees split into three factions: those who feared wasting time and money and wanted to halt Clean Power Plan work, others who said the legal news called for a reassessment, and some who didn't want to lose momentum on sketching out carbon cuts, which they said will be required by necessity or other regulation in the future.

Eric Massey, DEQ's Air Quality Division director, said his agency hadn't yet made a decision about what to do in the long term.

DEQ will still hold a separate technical working group meeting among utilities and consumer interests today and will continue community outreach. But Massey noted that the legal news makes it harder to explain to Arizona residents why they should be engaged about the Clean Power Plan.

DEQ is keeping a key March 1 public meeting on the calendar and plans to present a report on the state's baseline emissions and what it might need to achieve to meet EPA's goals.

"We've not made any long-term decisions as an organization, but for the short term, there is continued value in proceeding down the path of finishing at least some of the technical work we had started," Massey said in an interview after the meeting.

"At the end of the day, regardless of what happens and how long delayed, we are understanding a baseline will always have some level of value to us, so I don't see that as lost effort or lost time or lost work," he said.

Months of analysis, all for naught?

Tom Dorn, a lobbyist for the American Coalition for Clean Coal Electricity, said the coal industry will be pushing to freeze planning because continuing would be "a waste of state resources."

"The group's done a tremendous amount of work and good work, but with this legal question hanging over us, we would be urging the governor and the Legislature and the Corporation Commission and the attorney general to bring this to a stop for now," Dorn said.

Andy Berger, manager of environmental policy at Tri-State Generation and Transmission Association Inc., said DEQ at least shouldn't continue at the same quick pace.

"What is the usefulness of analyses and work that might be done?" he asked, adding, "[We] might end up without a Clean Power Plan or with a substantially different program under 111(d)."

Mark Lewis, a member of the board of the Central Arizona Project, which uses a large amount of energy to move water from the Colorado River throughout Arizona, wanted the group to keep planning because it will have to hash out agreements for other regulations, including for regional haze improvements.

"That's going to happen regardless of what happens with the Clean Power Plan, and I need some certainty of where we're going," he said.

Still, a representative of a cogeneration plant in Yuma, Ariz., said the work should proceed, but DEQ should not finalize a plan.

Massey noted later that DEQ probably can't submit a plan without "clear and express authorization" from state lawmakers, but the agency could likely continue to convene meetings and do technical work.

Some states in limbo; others calling it quits

Many other states yesterday expressed similar uncertainty. Michigan -- among the first Republican-led states to announce it would prepare a compliance plan -- announced that a legal review is under way to determine how it will proceed with its compliance planning process.

Utah held its first public information session this month. But Glade Sowards, Utah's Clean Power Plan coordinator in the state's Division of Air Quality, said the state now will likely shift gears.

"We are going to need to think about what the implications of that are, and then we'll adjust our process accordingly," Sowards said. "We've got to meet with our team first and see how that's impacted by this -- whether we mothball it or we adjust the timeline or what."

Iowa officials also said the state will reach out to utilities and other parties to decide whether and how to proceed.

"This is a very complex rule; it has been since the beginning," said Ben Hammes, a spokesman for Iowa Gov. Terry Branstad (R). "The decision yesterday only makes it more complex."

And although Ohio EPA Director Craig Butler said in an emailed statement that "the Supreme Court got it right," he added, "We will evaluate the decision and determine how it will impact our plans moving forward."

But a number of states called a halt to planning efforts in the 24 hours following the Supreme Court's ruling.

These include Montana, where Gov. Steve Bullock (D) canceled the first meeting of the state's Interim Clean Power Plan Advisory Council, originally scheduled for later this month.

And the official heading North Dakota's compliance effort said that although his agency remains open to developing "a common-sense carbon reduction strategy," the state won't be thinking of that strategy in the context of the federal Clean Power Plan.

"As it looks today, I think we're going to step back," said Dave Glatt, chief of the environmental health section at the North Dakota Department of Health.

Kyrik Rombough, an engineering manager in the air quality program at South Dakota's Department of Environment and Natural Resources, said the state would suspend a series of five public meetings scheduled to begin later this month in Milbank, S.D.

Climate-friendly states say no delays

States where the leadership has prided itself on forward-looking climate policies are forging ahead.

Mary Nichols, chairwoman of the California Air Resources Board, called the Supreme Court decision a "narrowly procedural" ruling that "may create some temporary confusion." She proclaimed that the state will keep working on compliance.

"California will not slow down our drive for clean air, renewable energy, and the good jobs that come from investing in green technologies," Nichols said in a statement.

In Colorado -- where Gov. John Hickenlooper (D) supports the Clean Power Plan and Attorney General Cynthia Coffman (R) is challenging it in court -- state officials also said they would continue with their planning process.

"Because the Supreme Court did not say whether the stay would change the rule's compliance deadlines, Colorado could lose valuable time if it delays its work on the state plan and the rule is ultimately upheld," said a statement from the Colorado Department of Public Health and Environment.

Virginia's Department of Environmental Quality announced it would go forward with a Clean Power Plan meeting tomorrow.

The group of business interests and consumer advocates appointed by the governor to sketch out a potential plan had been planning to hash out whether to cap carbon from power plants or fulfill the hopes of the state's biggest utility, Dominion Resources Inc., and stick to an average rate of emissions.

But the stay decision will likely figure prominently in the discussion. Air Division Director Michael Dowd said the talks "should be interesting."

Meanwhile, groups leading regional efforts to plan for the climate rule say halting efforts altogether is a bad idea.

"The Clean Power Plan obligations are still there, and so states may find that it's prudent to continue to plan, especially since the planning is reflective of changes already taking in the electricity systems," said Gabriel Pacyniak, climate change mitigation program manager at the Georgetown Climate Center.

Reporters Ellen M. Gilmer, Peter Behr, Rod Kuckro, Daniel Cusick, Debra Kahn and Jeffrey Tomich contributed.