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Greenhouse Gas Rules Choke Texas

In one of 15 lawsuits filed to challenge new federal greenhouse gas rules, the State of Texas filed suit against the U.S. Environmental Protection Agency (EPA) just hours after the agency published the Clean Power Plan regulation in the [*Federal Register*](#). The [petition for review](#) was filed on October 23, 2015 in the U.S. Court of Appeals for the District of Columbia (DC Circuit). Texas is part of a coalition of 26 states that have filed suit against the EPA. The Plan, which regulates greenhouse gas emissions from new and existing electric generating units, falls under Section 111(d) of the Clean Air Act.

The States allege that the Clean Power Plan violated the Clean Air Act because the agency is exercising regulatory authority over electricity generation impermissibly under the Clean Air Act. The States also argue that the Plan is unconstitutional and arbitrary and capricious.

Texas joined the lawsuit in part because of a recent finding by the Electric Reliability Council of Texas (ERCOT). Based on recent studies, ERCOT believes that at least 4,000 megawatts of coal-fired generation capacity will be retired and need to be replaced as soon as 2022. ERCOT is primarily concerned about reliability risks associated with multiple unit retirements within a short timeframe. ERCOT also believes that the resulting forced changes to the power grid could increase retail power prices by up to 16 percent by 2030.

The Clean Power Plan requires states to cut carbon emissions by shifting from coal power to natural gas and renewables over the next 15 years. The goal of the Plan is cut carbon dioxide emissions from power plants by 32 percent by 2030. The EPA claims that that the Plan will yield \$26 billion to \$45 billion in net health and climate benefits from the reduction of emissions from fossil-fuel power plants. Texas challenges these claimed benefits as overstated in the face of the significant adverse economic impact of the new rules.

In the petition, Texas requested a stay of the new rules, which become effective on December 22, 2015. Based on the briefing schedule established by the DC Circuit, a ruling on the stay request is not expected until January.

This is one in a series of occasional pieces discussing environmental issues of current interest to clients and friends of the firm. This material is not intended as legal advice. Readers should not act upon information discussed in this material without consulting an attorney.

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