

Insight



New Climate Rule from Trump Administration Changes Little for Energy Policy

PHILIP ROSSETTI | AUGUST 22, 2018

Executive Summary

- The EPA has introduced the Affordable Clean Energy (ACE) rule, which is a replacement of the previous administration's Clean Power Plan (CPP)—a regulation on the greenhouse gas emissions of existing power plants.
- Whereas the CPP had federally determined standards, ACE cedes authority for determining appropriate standards on existing power plants to states. This shift in authority will likely raise a question of whether the rule is sufficiently stringent to satisfy the obligations of the endangerment finding, which requires EPA to regulate greenhouse gas emissions under the Clean Air Act.
- While many critics of ACE are comparing it to the CPP, such critiques represent unrealistic counterfactuals, as the Supreme Court barred the CPP from implementation in 2016, and it has had little chance of implementation for over two years now. Overall, ACE's lax nature means that it represents little difference in expected behavioral changes from the status quo for energy policy.

Introduction

There has been a swirl of controversy regarding the Environmental Protection Agency's (EPA) replacement of the Obama Administration's Clean Power Plan (CPP) with the new Affordable Clean Energy (ACE) rule. Many have said that ACE effectively kills off the old CPP, but such characterizations are inaccurate since the CPP was never fully implemented and had little chance of being implemented. Rather, a better lens for viewing ACE is whether the new rule complies with the EPA's statutory requirements under the endangerment finding and the Clean Air Act (CAA), as well as what—in practical terms—changes for Americans. It is unclear whether this new rule complies with the EPA's mandates, as little changes for consumers or electricity producers.

The CPP Had a Great Reputation, Despite Big Problems

The CPP is often characterized as President Obama's signature climate rule, and the EPA under his administration boasted that the rule would cut power sector emissions by 32 percent, reduce premature fatalities by 3,600, and result in \$26-45 billion savings annually. A more nuanced reading of the rule's regulatory impacts, however, shows that the rule would not be nearly as effective as promised. Emissions would be cut by

32 percent from the base *year*, not the *baseline*, meaning the EPA was boasting of emissions reductions that would occur even without the rule. In the actual regulatory impact analysis (as opposed to the single-page fact sheet), the rule would only reduce power-sector emissions .

Furthermore, most of the health and air-quality benefits were not from climate benefits at all. In fact, of the EPA's claimed maximum of \$45 billion in benefits from the CPP, only \$20 billion would have been climate benefits. Most of the benefits came from what are called "co-benefits," which effectively assume that since power plants will go out of business under the regulation, non-climate pollution will fall. The problem with such an approach is that there are already regulations aimed at reducing air pollution — which have been [quite effective](#). The inclusion of these benefits created concerns that a climate rule can claim benefits that may already be used to justify an air quality rule, or could be used to justify an air quality rule in the future, leading to benefits being double counted.

Ultimately, though, the Supreme Court [stayed implementation of the CPP](#) in February of 2016, barring its implementation. To date, this has been the only time that the Supreme Court has stayed a rule before a case reached the highest court. That unprecedented action made it dubious that the CPP would survive legal scrutiny, and critics of the rule pointed out that if it was upheld it would effectively give the EPA the authority to usurp prior market and regulatory decisions on the deployment of electricity sources in the United States, or indeed any source of greenhouse gas emissions. Since the CAA's Section 111(d) dates to 1970, it seems unlikely that it was Congress' intent to provide such authority to a federal regulator.

The important takeaway, though, is that the CPP never fully went into effect, and was unlikely to ever go into effect after President Trump's electoral victory. Despite this reality, many utilities were still positioning to comply with the CPP. They were doing so for two major reasons: First, even without the CPP, utilities that manage power plants (that typically have lifespans of at least 20 years) know it is safer to assume that a future rule on greenhouse gas emissions from existing power plants is possible and represents a risk they need to be prepared to absorb. Second, the economics of renewable energy and natural gas (which would be compliant with the CPP) have made these sources favorable even without regulation. A past AAF analysis showed that approximately [two-thirds of coal retirements](#) were on account of low-cost natural gas.

The Affordable Clean Energy Rule

The replacement rule, ACE, does very little to increase regulations over what is currently in place apart from the CPP. Effectively the rule will defer to states to determine the appropriate standards to adopt. ACE will mandate that states conduct reviews for determining appropriate regulation, but those states will have significant leeway to determine what the benefits of regulation are, as well as the expected burdens, meaning some states may determine that barely any new regulatory action is worth pursuing. The rule, so far, does not set a minimum standard that states must meet. Because the decision will be left to states, it is difficult to know for sure how effective ACE will be at reducing emissions. The EPA estimates that by 2025 ACE will reduce annual emissions by 13-30 million short tons, or about 1-2 percent of power sector emissions.

The more salient question regarding ACE, aside from its effectiveness, is its legality. It is not unreasonable to see ACE as seeking to be the minimum amount of rulemaking that satisfies the EPA's statutory requirement to regulate greenhouse gases, per the [endangerment finding](#) of 2009 (which followed the Supreme Court's determination in *Massachusetts v EPA* that the EPA is required to regulate greenhouse gases). Whether the rule

satisfies the requirement of the endangerment finding will be a decision for the courts, but it is certainly conceivable that the rule might not satisfy the EPA's obligations. The endangerment finding itself sprung from a court case that determined EPA was not doing enough to regulate greenhouse gas emissions. Since ACE changes very little, and effectively cedes authority to states, it is possible that courts could rule that ACE is not enough to satisfy the requirements of the endangerment finding and require EPA to do more.

What has Changed with ACE?

ACE changes the status quo very little. The endangerment finding is still present. New power plants are still subject to greenhouse gas regulations (the CPP and ACE are for existing power plants). Because the CPP was stayed and was not going to be implemented, a comparison of ACE to CPP holds little meaning. And, despite the weakness of ACE, the improving economic competitiveness of natural gas and renewables relative to coal power mean that coal's market share of electricity will continue to slide. Air pollution will also continue to fall, as other regulations on non-GHG pollutants remain in effect, and cleaner sources continue to replace coal power.

If one thinks of how ACE can be expected to change incentives in the energy industry, currently that may be expected to be quite small. Many states and cities are already promulgating their own regulatory requirements, and ACE would not seem to disrupt those actions or that authority. If the status quo is one where, absent the CPP most of the climate-related rulemaking was occurring at the state and city level, ACE barely changes that.