While President Trump’s executive order (EO) on Promoting Energy Independence and Economic Growth merely calls for the “review” of the Clean Power Plan (CPP), it has been widely viewed as the President’s first step to dismantle President Obama’s signature climate change measure. The EO goes on to say after review the Environmental Protection Agency (EPA) “if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules.”

Per the CPP by 2030 carbon pollution from the power sector is supposed to be 32 percent below 2005 levels. State-by-state targets are to be accomplished by increased production of renewable energy.

A number of states sued the Obama administration claiming the CPP regulations exceeded EPA’s authority under the Clean Air Act. In February 2016 the Supreme Court preventing the CPP regulations from going into effect until the D.C. Circuit Court of Appeals (and the Supreme Court if it chooses to) rules on the regulations.

In September 2016 the entire D.C. Circuit heard oral argument in West Virginia v. EPA; they have yet to issue an opinion in this case.

The Trump administration has asked the D.C. Circuit to hold the case in abeyance while EPA engages in rulemaking. The motion argues abeyance “avoid[s] unnecessary adjudication, support[s] the integrity of the administrative process, and ensure[s] due respect for the prerogative of the executive branch to reconsider the policy decisions of a prior Administration.”

The D.C. Circuit is more likely to agree to the motion if all parties involved agree with it. Almost all interveners supporting the CPP, which include numerous states and local governments, want the litigation over the current CPP regulations to continue and will oppose the motion.

If the D.C. Circuit grants the Trump Administration’s motion the practical effect is the current CPP would no longer be valid. If it does not, the litigation over will continue. No matter who wins West Virginia v. EPA, assuming the abeyance motion is denied, the case will be appealed to the Supreme Court, who may or may not agree to hear it. Meanwhile, a new version of the Clean Power Plan will be working its way through the Administrative Procedure Act lengthy notice and comment process. It too will likely be ultimately litigated regardless of the fate of the current CPP.
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