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### **EPA's Clean Power Plan Represent Unwise Regulatory Overreach**

*by Allison D. Wood*



On June 2, the U.S. Environmental Protection Agency released its much anticipated program to regulate carbon dioxide emissions from existing power plants to address climate change. Called the Clean Power Plan, EPA's proposal sets aggressive targets that each state with fossil fuel-fired electric generation (only Vermont and the District of Columbia are without such generation) must meet by 2030, along with interim targets that the states must meet on average during the years 2020 to 2029. The EPA projects that the Clean Power Plan will result in a 30 percent reduction in power plant carbon dioxide emissions as compared to 2005 emissions.

The problem is that the plan makes the EPA the primary energy regulator in the United States—usurping the authority of the expert state and federal agencies assigned that task. This plainly exceeds the scope of the EPA's authority under the Clean Air Act. That act establishes the EPA as the primary regulator of air emissions within the United States, and the EPA has filled that role for more than 40 years, dramatically cutting emissions of pollutants such as sulfur dioxide, nitrogen oxides and particulate matter from power plants. The difference in this case is that the EPA would accomplish emission reductions primarily through changes in the way energy is produced, distributed and used—and not through the application of emission-control technology on affected power plants. Imposing an energy management regulatory scheme is beyond the EPA's authority.

Unlike other pollutants, no technology exists to reduce carbon dioxide emissions from an existing power plant. The only way to reduce carbon dioxide emissions is to burn fewer fossil fuels. That means burning less coal, because coal combustion results in about twice as many carbon dioxide emissions as natural gas combustion does. To meet the rates established by the EPA, many states are going to have to rely far more heavily on natural gas generation than coal, and the EPA's Clean Power Plan contemplates that natural gas generation will be dispatched before coal generation.

Under the existing system, the Federal Energy Regulatory Commission, state public utility commissions and regional transmission organizations determine the priority for which power plants will operate (and how hard they will operate) to serve the demand for electricity. This is a complex undertaking that involves the balancing of factors, including electric reliability (ensuring the lights stay on) and economics (ensuring electricity remains affordable).

Under the EPA's Clean Power Plan, the agencies with expertise in these critical matters will no longer be in charge. The EPA will become the de facto energy regulator in the United States, usurping the authority given by Congress and the states to those agencies with the relevant expertise. Without considering economics, national security, reliability or other considerations that drive how we generate electricity, natural gas and other low-emitting generation (such as nuclear, renewable energy and hydropower) will have to take priority over coal-fired generation.

This aggrandizement of the EPA's authority has already occurred in the context of motor vehicles. Congress gave the National Highway Traffic Safety Administration (NHTSA) the authority to establish fuel-economy standards for motor vehicles. The EPA's regulation of greenhouse-gas emissions from motor vehicles, however, has rendered the NHTSA practically irrelevant in this area. As with power plants, there is no technology that can be added to a vehicle to reduce its carbon dioxide emissions. The only way to accomplish this is for the vehicle to burn less gasoline. In the furtherance of its goals of reducing carbon dioxide emissions, since 2011, the EPA has established three sets of rigorous fuel-economy standards under the Clean Air Act for passenger cars and trucks. This flies in the face of Congress' intention that the NHTSA—the agency with the relevant expertise—be responsible for these standards.

If the EPA's Clean Power Plan goes forward, the same will be true with regard to the nation's electricity supply. The EPA's aggressive targets for reducing carbon dioxide emissions from power plants will result in the EPA—and not the expert agencies—making the important policy judgments needed to ensure a reliable and affordable supply of electricity. Moreover, minimizing the use of coal, an abundant fuel source in the United States, raises issues of national security. The EPA's cost calculations regarding the regulation of carbon dioxide emissions from power plants have been based in part on an assumption that natural gas will remain abundant and inexpensive. There is no guarantee natural gas prices will remain low. And, given the concerns that have been raised with regard to “fracking” (the primary reason why natural gas supplies in the United States are abundant), there is no guarantee that supply will remain high.

The EPA's Clean Power Plan is a bridge too far. Although the U.S. Supreme Court made clear in *Massachusetts v. EPA* that the agency has the authority to regulate greenhouse-gas emissions under the Clean Air Act, nothing within that act authorizes the EPA to become the principal energy regulator in the United States, regardless of how laudable its goals. For the EPA to have the authority to implement a program like the Clean Power Plan, Congress would need to enact new legislation providing such authority and giving the EPA the appropriate guidance to cabin such authority.

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