

EPA Under Pressure to Revise GHG NSPS As Transitional Coal Units Cancel Projects

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Several of the 15 transitional coal units under EPA's proposed GHG NSPS for new EGUs have been cancelled in light of the uncertainty created by the intersection of the new source MATS emission limits and the pressure to commence construction by April 13, 2013 to avoid becoming subject to the GHG NSPS. The two rules created a regulatory dilemma under which the transitional units cannot commence construction because the new source MATS are too stringent to be met, but the units face an effective construction ban as a result of the proposed GHG NSPS if they do not commence construction prior the deadline. EPA is expected to finalize revisions to the new source MATS standards by March 29, 2013, which gives transitional units a scant two weeks to enter into binding contracts, secure financing, and officially commence construction. This time crunch has led to the cancellation of most of the transitional units, including the Las Brisas Energy Center and the White Stallion Energy Center, although the Plant Washington project reportedly remains on track.

In light of the negative economic impacts of the proposed GHG NSPS, four Democratic Senators – Joe Manchin (WV), Mary Landrieu (LA), Joe Donnelly (IN), and Heidi Heitkamp (ND) – sent a letter to President Obama on March 14, 2013 urging him to ask EPA to amend the proposed rule. EPA has proposed a stringent 1,000 lb/MWh CO₂ emission limit for new fossil-fuel fired EGUs based on natural gas combined cycle technology. The proposal has been subject to criticism because it would subject new coal-fired units to the same CO₂ emission limit as new natural gas-fired units, despite EPA's admission that coal-fired units would not be able to meet the limit without the aid of carbon capture and sequestration technology, which is unproven, cost-prohibitive, and infeasible due to geologic conditions in certain areas. The Senators stated in their letter that the proposal "is unprecedented under the Clean Air Act and will have the unfortunate effect of preventing the construction of new coal plants or the upgrading of existing plants." The letter sets forth an alternative approach of "differentiating standards based on fuel type and to establish supercritical coal generation technology as the performance standard for new coal-based electricity." The Senators' recommendation is similar to that of the National Mining Association, which stated in a March 12, 2013 letter to Representative Henry Waxman (D-CA) and Senator Sheldon Whitehouse (D-RI) that EPA should establish a separate GHG limit for new coal-fired EGUs based on supercritical pulverized coal and integrated gasification combined cycle technologies taking into account different types of coal.

EPA has not announced any planned revisions to the proposed GHG NSPS, nor has the Agency announced a timetable for finalizing the rule. Under Clean Air Act § 111(b)(1)(B), EPA is required to finalize an NSPS within one year after the proposed rule is published in the Federal Register. EPA is unlikely to meet this deadline, as the Agency

has not yet sent the final rule to OMB for review, which is typically a lengthy process. Such a delay will likely prompt environmental groups to sue EPA to take action to finalize the rule.

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