



## **Supreme Court Halts Clean Power Plan Implementation Pending Judicial Review**

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Pursuant to the Court's order, the requirements of the CPP will remain stayed pending the outcome of several petitions for review of the rule currently pending before the D.C. Circuit, and the outcome of any petitions for Supreme Court review of a D.C. Circuit decision upholding the rule, should that occur. Under the expedited briefing schedule established by the D.C. Circuit in its order declining to grant a stay, oral argument will be conducted on June 2, 2016, and a decision is expected by September.

The implications of the Court's stay of the CPP could be enormous. Most immediately, the stay all but erases the September 6, 2016 deadline for states to submit a final compliance plan or an initial compliance plan with a request for extension. As a result, states will now face less pressure to engage with stakeholders and develop initial plans over the coming months, and those states that are opposed to the rule can be expected to at least slow down the pace of their previous planning efforts.

The fate of the other deadlines of the CPP – including the September 6, 2018 deadline for all states to submit final compliance plans and the 2022 deadline to come into compliance with the interim emissions reduction requirements – is unclear. Depending on how long the litigation before the D.C. Circuit and Supreme Court lasts, if the rule survives, EPA may be forced to consider extending those deadlines to give states time to develop their plans.

Longer term, the Court's decision to grant the stay creates significant legal uncertainty, since it likely signals the doubts of a majority of the current justices as to the CPP's legal sufficiency under the Clean Air Act and the Constitution. In addition, the stay almost certainly delays compliance efforts into the next presidential administration, which may not be inclined to defend the rule or rewrite it if the D.C. Circuit or Supreme Court remands back to the EPA.

This legal and political uncertainty will create significant challenges for electric system planners. Regional Transmission Organizations, Independent System Operators, the North American Electric Reliability Corporation, regional reliability organizations, and utilities have all engaged in significant efforts to analyze the impact of the CPP on grid reliability to support state and utility planning efforts. With the future of the CPP and the timing of compliance, should it be upheld by the courts, now in significant doubt, it will be difficult for system planners to confidently model its impacts and for utilities and other stakeholders to justify investments in infrastructure and new-generation resources that would aid in compliance. This uncertainty may also have significant impacts on wholesale power markets, which have been expecting a wave of retirements of coal-fired power plants in response to the CPP.

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