



The Clean Power Plan: Litigation Status, Technical Aspects, and Business Opportunities

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How did we get here?

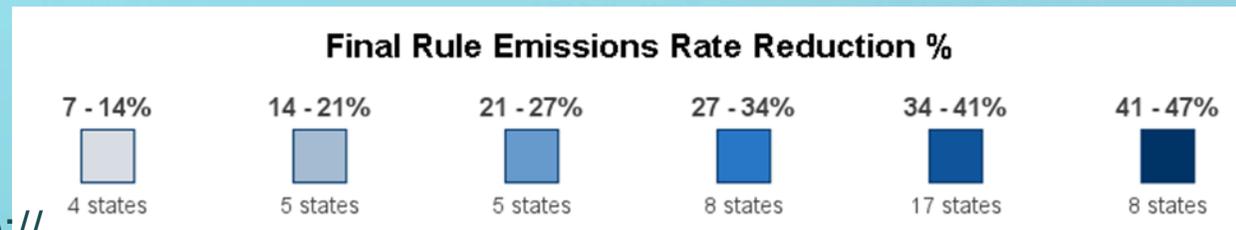
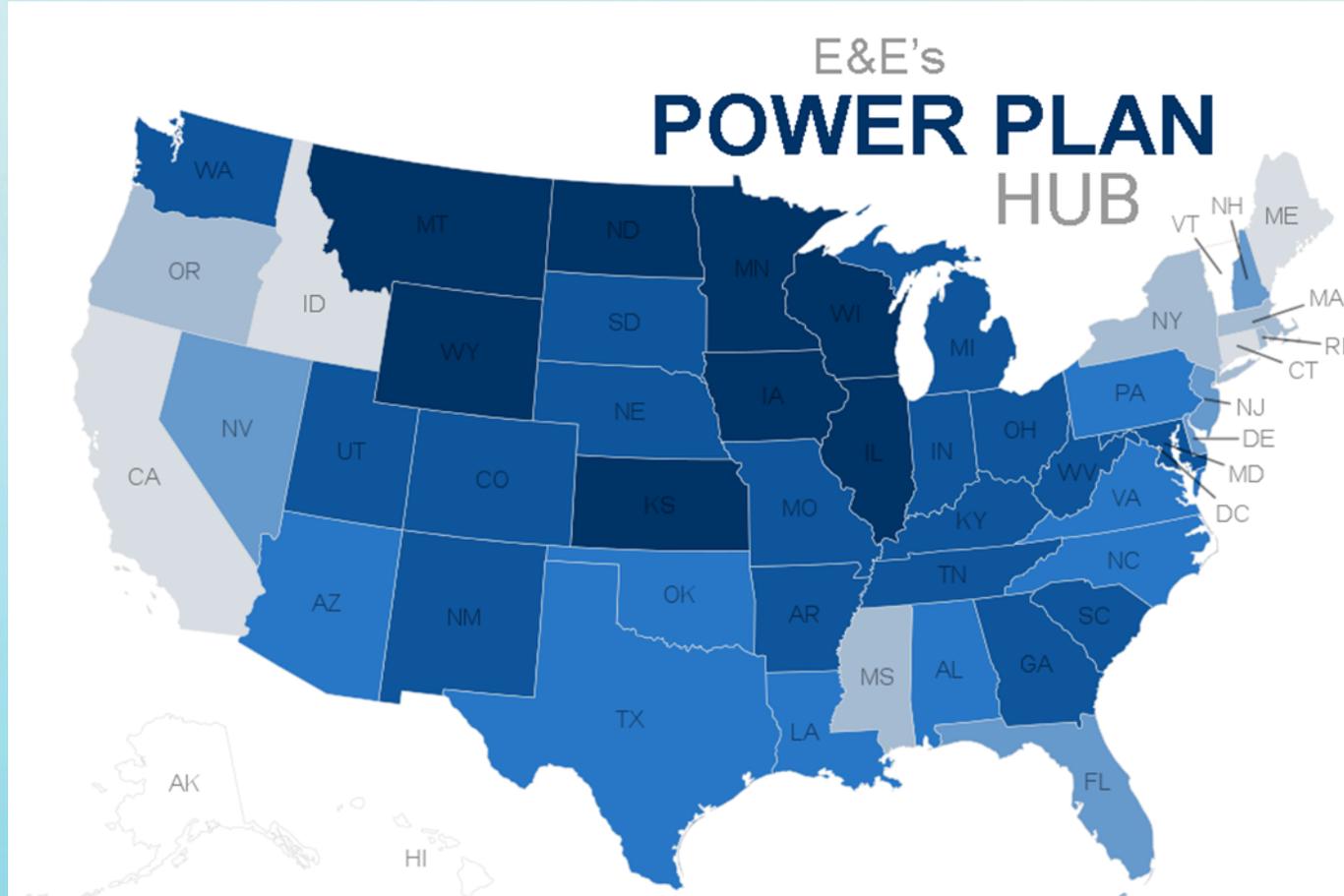
- In 2007, the Supreme Court ruled in *Massachusetts v. EPA* that the Environmental Protection Agency had the authority and the responsibility to regulate carbon dioxide emissions under the Clean Air Act.
- Six years later, on June 5, 2013, President Obama announced his Climate Action Plan that included a Presidential Memorandum directing the EPA to work “expeditiously to complete carbon pollution standards for both new and existing power plants.”
- Almost one year later, on June 2, 2014, the EPA proposed the draft Clean Power Plan, which provided individualized 2030 emissions reduction targets for 50 states, cumulatively resulting in a projected 30 percent decrease in power sector emissions from 2005 levels by 2030.
- During June through August of 2014, industry and 12 states filed suit in the D.C. Circuit to block the rule. The D.C. Circuit rejected early challenges to the draft rule as premature in June of 2015.

What happened?

- On August 3, 2015, President Obama announced the release of the EPA's finalized Clean Power Plan citing the authority of the Clean Air Act's Section 111(d), to regulate carbon dioxide (CO₂) pollution from existing power plants.
- The final Clean Power Plan calls for a 32 percent reduction in power sector emissions from 2005 levels by 2030, equivalent to 870 million short tons of CO₂ or the annual emissions resulting from the powering of 95 percent of U.S. homes.
- The targeted cuts in CO₂ emissions also result in emissions reductions of co-pollutants; by 2030, emissions of sulfur dioxide will be 90 percent lower and emissions of nitrous oxides will be 72 percent lower, compared to 2005 levels.
- To demonstrate how a state plans to comply with its goal, applicable states were expected to submit a final compliance plan, or an initial plan with a two-year extension request, by September 6, 2016.

Who is suppose to do what?

CPP Final Rule Emissions Reductions Percentages



Source : Energy & Environmental News, http://www.eenews.net/interactive/clean_power_plan

How did the EPA decide the goals?

- Under the final rule, the EPA assigned states a unique emission reduction target that must be met based on a specific formula, resulting in an overall goal of reducing CO₂ emissions by 32 percent nationwide by 2030. Also, the agency assigned a set of interim goals to each state allowing a gradual reduction in CO₂ emissions from 2022-2030.
- A state can choose to reduce its emissions however it sees fit and has the option to comply individually or as part of a multi-state plan.
- To determine a state's goal, EPA divided the country into three regions, based on interconnected regional electricity grids. Next, the agency considered three “building blocks” of reducing carbon emissions to determine the ranges of feasible reductions for each region.
- The building blocks consist of:
 - Improving the heat-rate efficiency of fossil-fuel fired plants.
 - Switching to natural gas powered plants from coal powered plants.
 - Increasing renewable power.

How did the EPA decide the goals?

- The EPA applied each building block to regions for all of the coal and natural gas power plants to produce regional emission performance rates. Next, the EPA applied CO₂ emission performance rates for all affected electricity generating sources in each state to produce state specific goals.
- State goals are variable and unique, but by 2030, state targets all fall in a range of 771 lbs./MWh (pounds of carbon dioxide per megawatt-hour of electricity generated) to 1,305 lbs./MWh.
- Vermont and Washington, D.C., are not subject to the rules, because they do not have any large fossil-fuel powered plants.
- Two other states are not subject to the Clean Power Plan requirements, Alaska and Hawaii, because of their unique grid situations. According to the EPA, more information is needed on the states' best system of emission reductions. State specific goals for Alaska and Hawaii are expected in the future.

Federal Implementation Plan

- If a state fails to submit a plan or if the EPA determines the state plan is insufficient, it will be subject to a Federal Implementation Plan (FIP) imposed by the EPA within two years of noncompliance.
- Though a final FIP has not been issued, the EPA proposed two different plans on August 3, 2015. One plan assigns a cap on emissions and allows for the trading of emission credits. The other plan requires a state to meet an average emissions rate across its power generation units.
- Within each proposed federal implementation plan, a state could approach it through rate-based measures or mass-based measures. Initially, the EPA planned to hold a period of public comments and public outreach meetings to determine which option was the most feasible by the Summer of 2016.

Clean Energy Incentive Program

- As part of the final rule, the EPA introduced the Clean Energy Incentive Program (CEIP), a voluntary program providing participating states with emission rate credits (up to the equivalent of 300 million short tons of CO₂ emissions) for reductions made in 2020-21 due to investments in renewable energy or energy efficiency measures.
- On June 16, 2016, the EPA proposed certain design details for the optional CEIP.
- These credits can be used to offset targets during the 2022-30 steps.
 - Wind or solar projects receive 1 credit per 1 megawatt hour (MWh) of generation.
 - Energy efficiency projects implemented in low-income communities receive 2 credits for 1 MWh.

What are the goals for Georgia?

Georgia's Interim (2022-2029) and Final Goals (2030)

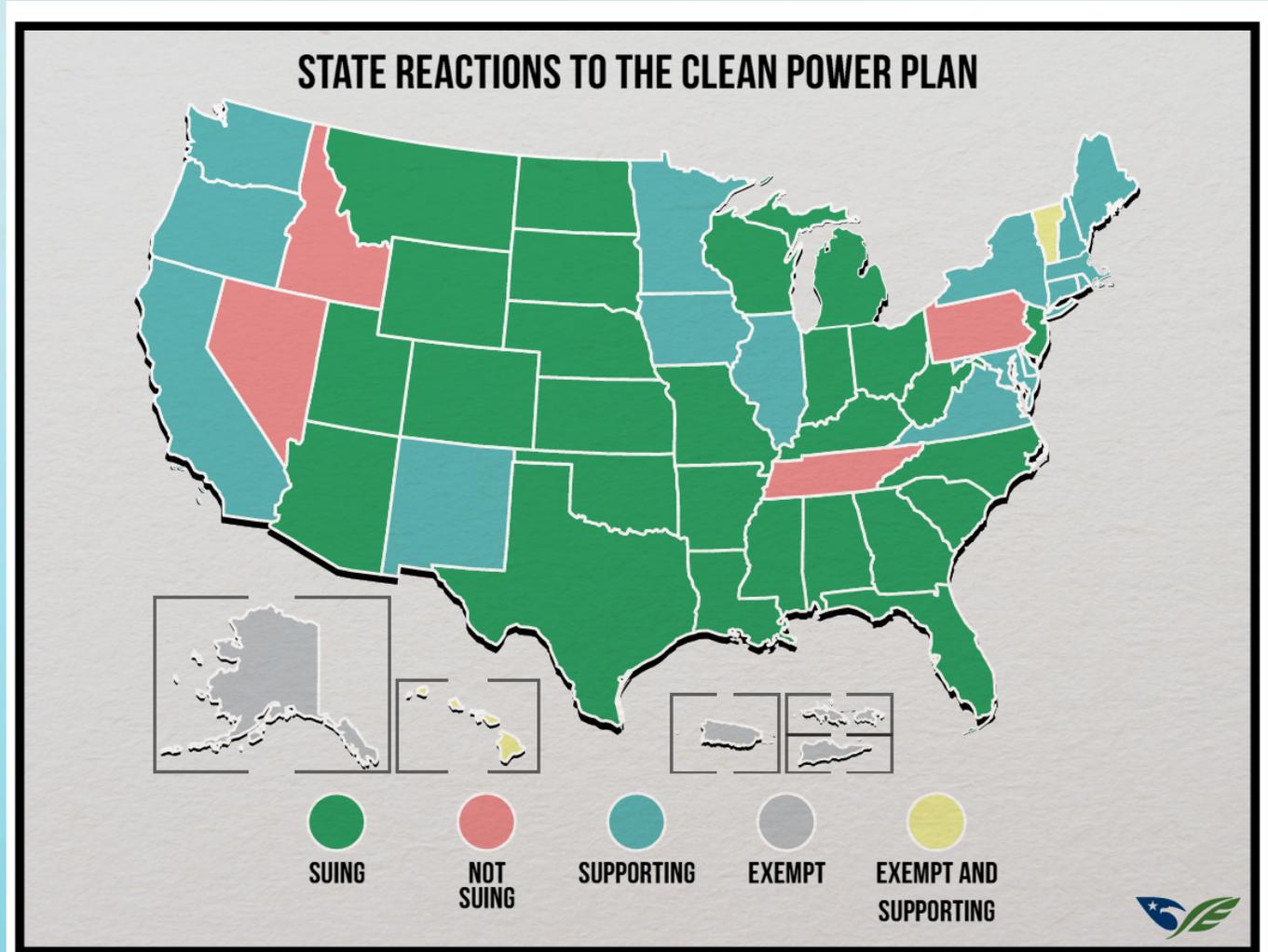
GEORGIA			
	CO ₂ Rate (lbs/Net MWh)	CO ₂ Emissions (short tons)	
2012 Historic ¹	1,600	62,851,752	
2020 Projections (without CPP)	1,135	61,305,697	
	Rate-based Goal	Mass-based Goal (annual average CO ₂ emissions in short tons)	Mass Goal (Existing) & New Source Complement
Interim Period 2022-2029	1,198	50,926,084	51,603,368
Interim Step 1 Period 2022-2024 ²	1,290	54,257,931	54,535,858
Interim Step 2 Period 2025-2027 ³	1,173	49,855,082	50,792,677
Interim Step 3 Period 2028-2029 ⁴	1,094	47,534,817	48,420,669
Final Goal 2030 and Beyond	1,049	46,346,846	46,944,404

Source : Clean Power Plan State-Specific Fact Sheets,
<https://www3.epa.gov/airquality/cpptoolbox/georgia.pdf>



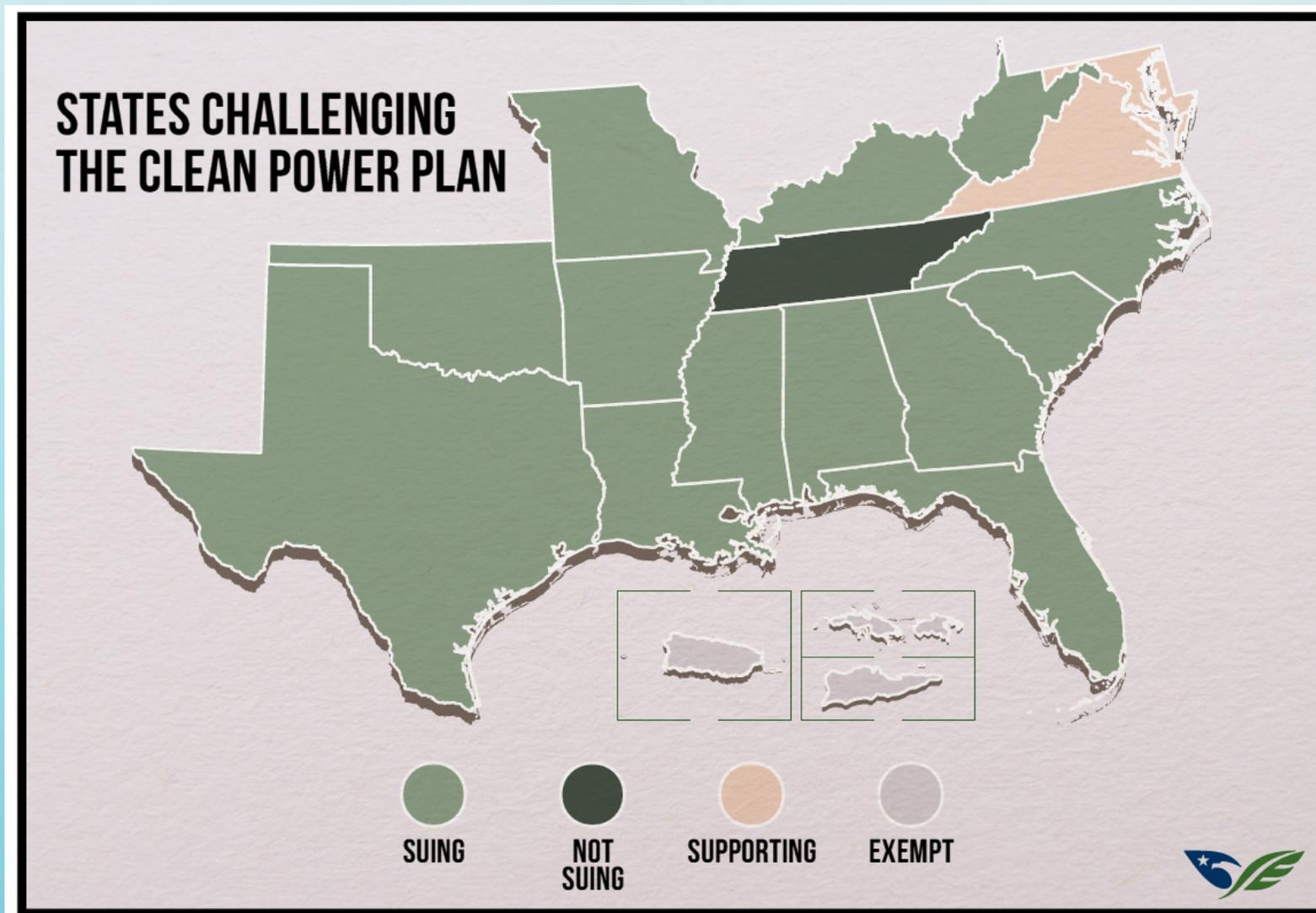
Different Opinions on the Merits and Legality of the Clean Power Plan

How are states responding to the CPP through litigation?



Source: Southern States Energy Board

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What is the current posture of CPP litigation?

- In September of 2015, early legal challenges to the finalized CPP were dismissed pending *Federal Register* publication.
- Upon the publication of the CPP in *Federal Register* in October of 2015, states and industry groups sued and requested a stay.
- On January 21, 2016, the D.C. Circuit declined the granting of a stay of the CCP.
- On February 9, 2016, the Supreme Court in a 5-4 ruling unexpectedly issued a stay blocking of the CPP until the conclusion of litigation.
- On February 13, 2016, conservative Supreme Court Justice Antonin Scalia passed away elevating the lower court's importance.
- The D.C. Circuit Court was scheduled to hear oral arguments on the merits of the rule on June 2, 2016.

What is the current posture of CPP litigation?

- On May 16, 2016, the D.C. Circuit Court announced that oral arguments scheduled for June 2 in front of a three-judge panel would instead occur on September 27, 2016, with an en banc review. An en banc review means that the arguments will be heard by all of the judges on the court.
- In late 2016 or early 2017, the D.C. Circuit is expected to issue decision.
- The losing side will appeal to the U.S. Supreme Court.
- In 2017 or 2018, the U.S. Supreme Court expected to issue a decision either upholding or vacating the rule entirely, or remanding portions to EPA.

Supreme Court Stay Responses

Continuing Planning	Assessing Planning	Suspending Planning	Exempt
<i>Arizona</i>	<i>Florida</i>	<i>Alabama</i>	Alaska
California	Iowa	<i>Arkansas</i>	District of Columbia
<i>Colorado</i>	<i>Missouri</i>	<i>Georgia</i>	Hawaii
Connecticut	Nevada	<i>Indiana</i>	Vermont
Delaware	New Mexico	<i>Kansas</i>	
Idaho	<i>Ohio</i>	<i>Kentucky</i>	
Illinois	<i>South Carolina</i>	<i>Michigan</i>	
<i>Louisiana</i>	Tennessee	<i>Mississippi</i>	
Maine	<i>Wyoming</i>	<i>Montana</i>	
Maryland		<i>Nebraska</i>	
Massachusetts		<i>New Jersey</i>	
Minnesota		<i>North Carolina</i>	
New Hampshire		<i>North Dakota</i>	
New York		<i>Oklahoma</i>	
Oregon		<i>South Dakota</i>	
Pennsylvania		<i>Texas</i>	
Rhode Island		<i>Utah</i>	
Virginia		<i>West Virginia</i>	
		<i>Wisconsin</i>	

Resources

American Coalition for Clean Coal Electricity
<http://www.americaspower.org/nera>

E&E Publishing, Clean Power Plan Hub
http://www.eenews.net/interactive/clean_power_plan

Energy Policy Network
<http://www.energypolicynetwork.org/>

National Conference of State Legislatures, States' Reactions to EPA Greenhouse Gas Emissions Standards
<http://www.ncsl.org/research/energy/states-reactions-to-proposed-epa-greenhouse-gas-emissions-standards635333237.aspx>

Southern States Energy Board
<http://www.sseb.org/reference/>

U.S. Chamber of Commerce Institute for 21st Century Energy
<https://www.uschamber.com/institute-21st-century-energy>

U.S. Environmental Protection Agency
<https://www.epa.gov/cleanpowerplan>