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Obama Administration's Clean Power Plan Stayed

By a vote of 5 to 4 late Tuesday, the United States Supreme Court issued a stay of implementation of the Clean Power Plan (CPP) until pending legal challenges to the CPP are resolved. The Court's order effectively puts on hold federal regulations designed to significantly reduce carbon dioxide emissions from existing power plants by 2030 until all appeals presently before the United States Court of Appeals for the District of Columbia (DC Circuit) as well as any subsequent appeals to the Supreme Court are decided.

Supreme Court Chief Justice John Roberts and Justices Antonin Scalia, Anthony Kennedy, Clarence Thomas and Samuel Alito supported the stay. Dissenting from this decision were Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan.

Until the Supreme Court ultimately decides on the merits or refuses to become involved after the United States Court of Appeals for the District of Columbia rules, the EPA won't be able to enforce a September 6, 2016 deadline for states to submit proposed plans to the EPA for review. Per the CPP, these plans must demonstrate how the states will achieve emissions reduction targets under the CPP. Additional deadlines that the stay potentially places in jeopardy include the submission of final plans to the EPA in 2018, as well as the 2022 start date for implementation.

The Supreme Court's brief order was succinct. It did not elaborate on the Court's reasoning behind the granting of the stay. Factors considered by the Court included the likelihood that states and utilities opposing the CPP would ultimately succeed on the merits of their claims and whether denying the request for a stay would cause irreparable harm to states and utilities appealing the CPP while all legal challenges play out. According to the U.S. Solicitor General's brief on behalf of the EPA in opposition to the stay, the Supreme Court has never before granted a request to stay a regulation of general applicability without prior review by a federal appeals court.

With the stay in place, attention now shifts back to the DC Circuit, where there is an expedited schedule for briefing and oral argument on the CPP. Initial briefs are due April 15, 2016, and oral argument is set for June 2, 2016.

Please feel free to contact any of the attorneys listed here should you have any questions.

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