

Court Keeps EPA Clean Air Rule On Temporary Basis

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WASHINGTON (Dow Jones)--A federal appeals court ruled Tuesday that new regulations to cut harmful pollutants from power plants will remain in place on a temporary basis, as the new administration fixes flaws in the Bush environmental initiative.

The U.S. Court of Appeals for the District of Columbia struck down the emission regulations known as Clean Air Interstate Rule, or CAIR, in July, siding with North Carolina, Duke Energy Corp. (DUK) and other utility companies. But in its latest ruling, the court concluded the regulations, although having "fatal flaws," should be kept in place on a temporary basis to preserve the environmental benefits.

The CAIR program seeks to bring about major reductions in smog-forming and soot-producing emissions that contribute to respiratory illnesses by cutting unhealthy pollutants and particulate matter in 28 states. The new regulations tighten the cap on sulfur-dioxide emissions and establish a new cap on emissions of nitrogen oxides, both under an existing cap-and-trade system.

"Knocking down the Clean Air Interstate Rule completely would have left our lungs in a lurch," said Rep. Ed Markey, D-Mass., chairman of a House environmental committee. "Today's decision is significant because it gives the new Obama Administration some breathing room - and gives the American people some clean air to breathe," he said.

The court's July ruling threw into disarray emission-allowance markets and created financial havoc for many utilities' environmental plans. Utilities across the country had spent hundreds of millions of dollars investing in either new technology or buying emission credits on the market to meet their pollution cap.

Tuesday's decision could therefore provide a boost to environmental markets, while delivering some certainty to power companies deciding on pollution reduction projects. But the longer-term prospects for the regulations remain unclear as the Environmental Protection Agency under a new president takes on the task of revising the rules.

"We are left wondering what changes will come," said Peter Zaborowsky, a managing director at Evolution Markets, an environmental brokerage firm.

Jeff Holmstead, a lawyer at Bracewell & Giuliani and an author of the CAIR rule in his former role as EPA Air Administrator, said because the court did not set a deadline for EPA to rewrite the rule, there is still "some uncertainty regarding exactly what the EPA will do in response." Holmstead, whose firm represents utilities affected by the decision, now heads Bracewell & Giuliani's Environmental Strategies Group in Washington.

Dan Riedinger, a spokesman for utility trade group the Edison Electric Institute, said the industry welcomes the decision since it provides near-term certainty, with the new NOx program under CAIR going into effect next year and tighter rules for SOx emission starting in 2010. But uncertainty remains after that, since it will likely take the EPA two to three years to revise the CAIR rules, and in the meantime, Congress could take its own steps.

"This puts these emissions cuts back on track, at least in the near term," Riedinger said.

Zaborowsky said prices for SOx and NOx allowances should increase as utilities and generators do some buying to ensure they have enough to comply with CAIR in the short term. Allowances for SOx were trading as high as \$240 a ton following Tuesday's ruling, more than 60% higher than Monday's closing price, said Zaborowsky, who sees power prices climbing as well because of the court ruling.

Following the initial July ruling, SO_x and NO_x prices plummeted to a third of their levels prior to the CAIR rule being vacated, and utilities particularly exposed to the rule subsequently saw their stock prices drop.

Environmental groups applauded the decision. Although the program rules remain unclear, they said the decision not to scrap the EPA regulation shows support from the court for the EPA's goal to cut emissions.

The court highlighted a variety of flaws in its July ruling, including how CAIR treats emissions on a state-by-state level and the integration of the new allowances into the longstanding acid rain trading program.

"Today's court decision is a welcome gift for the millions of Americans that face serious health threats from power plant pollution," said Vickie Patton, deputy general counsel at Environmental Defense Fund.

Patton expects the decision will send a signal to power plant operators to make improvements at coal and natural gas-fired plants to cut pollutants since the required reductions under CAIR aren't going away.

The industry, environmental groups, lawmakers and the EPA itself, had pushed to keep the court from ending CAIR, saying although flawed the existing rules should not be completely thrown out. The court, however, declined to set a deadline for EPA to make the changes.

Holstead said if fully implemented, CAIR will reduce SO_x emissions in the 28 states by over 70% and NO_x emissions by over 60% from 2003 levels.

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