



Harvard Kennedy School Energy Policy Seminar Series, Spring 2016 Clean Power Plan Model Rules: Pathways for Implementation

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Not many speakers begin by asking the question, “Why am I still doing this presentation?” But in the case of Kate Konschnik’s recent talk in the Energy Policy Seminar, dramatic developments in the past few weeks have increased uncertainty about the future of the EPA’s new carbon emissions regulations, developed under the terms of the Clean Air Act, and known as the “Clean Power Plan.” Konschnik, who is a Lecturer on Law and Director of the Environmental Policy Initiative at the Harvard Law School, began by explaining the background.

First, the Supreme Court surprised most observers by deciding, in a 5-4 vote, to issue a “stay” on implementation of the CPP until state complaints against the plan could be fully reviewed and decided on by the Court—an action that led many to speculate that the Court would reject the CPP itself by the same vote of 5-4 when the actual case was heard. However, with the subsequent death of Justice Scalia, the likely final decision of the Court – and even when there might be nine justices to reach a decision—is once again extremely difficult to predict. The only known factor is that resolving the issue will take time—two to four years, Konschnik predicted, before a final decision is reached on whether the Clean Power Plan can be implemented.



In light of this uncertainty, Konschnik suggested, it is reasonable to ask whether a discussion of state implementation strategies may be premature. However, Konschnik argued, the current legal limbo of the Clean Power Plan is not unusual for Clean Air Act regulations, which have often proceeded in “fits and starts.” Furthermore, the states themselves have not necessarily put their planning efforts on hold—Konschnik identified twenty states which have declared their intentions to continue planning, and nine other which are still assessing their options.

As Konschnik explained, there are many variables and alternatives for states to consider in making their CPP compliance plans. For example, states can comply by limiting the rate of carbon emissions from the power sector (a “rate-based approach”) or by limiting total carbon emissions from this sector (a “mass-based approach”). They can adopt plans tailored for trading with other states, or plans for compliance without trading. For states that choose to use carbon allowances, these can be allocated free of charge or auctioned.

Further complicating state decisions, Konschnik explained, is a kind of “game theory” dimension to the problem—the best approach for any individual state may depend on what all the other states are doing—but since everyone is planning more or less at the same time, it’s impossible to know with certainty what moves other states will make before committing to a compliance pathway. Konschnik has already noticed certain patterns, however, which could point to potential problems for states. For example, Konschnik notes, she has heard many states express interest in selling emissions reduction credits (ERCs) to other states—but no states which express much interest in buying ERCs.

Other considerations that may impact choices made by states could have to do with political calculations. Where new legislation aimed at CPP compliance will be hard to pass, states may opt for approaches that do not require legislative action—simplifying the compliance process, but potentially making certain compliance strategies, such as auctioning of emission reduction credits, harder to adopt.

Konschnik spoke as part of the Kennedy School’s Energy Policy Seminar Series, which is jointly sponsored by the Energy Technology Innovation Policy research group of the Belfer Center and by the Consortium for Energy Policy Research of the Mossavar-Rahmani Center on Business and Government.