

You've already heard a lot about Trump's pro-coal ACE rule. You're likely to keep hearing about it, off and on, throughout the next couple of years, and maybe longer. I've set out a rough timetable below, and at the end I discuss some implications.

## **Step 1: The Rulemaking**

**Aug. 2018 *Notice of proposed rule*** issued (clock for comments starts with publication in the Federal Register)

**Oct.-Nov. 2018 *Comment period closes*** Oct.-Nov. (60 days after clock starts, unless there are extensions)

**Feb.-March 2019 *EPA issues final rule*** (based on time between the advance notice of proposed rule and the actual proposal; could be longer)

## **Step 2: Judicial Review**

**Aug.-Sept. 2019 *Oral argument in D.C. Cir.*** (based on scheduling in Clean Power Plan case for 3-judge panel argument) The big issue in the case will be whether EPA is limited, as the Trump Administration says, to efficiency upgrades at coal plants, or whether it can also require more use of renewables and natural gas to replace coal, as the Obama Administration insisted.

**Nov. -Dec. 2019 *DC Cir. decision*** (almost surely an underestimate—This is based on average time for civil cases.)

**NOTE:** Based on a quick check, it seems not uncommon for 1-3 years to go by between a major EPA decision and the opinion in the D.C. Circuit. So the D.C. Circuit decision could be as late as March 2022, but I'll continue on the assumption that the Nov. to Dec. 2019 dates hold.

**March 2020? *Cert. or en banc petitions resolved.*** Add 6-12 months if the Court decides to hear the case. Depending on how quickly the D.C. Circuit moves, this could be as late as 2021 or even 2022. The court could throw out the entire rule, or it could uphold the basics but send many more detailed questions back to EPA when it remands the case.

**Dec. 2020? *If no cert., EPA resolves issues sent back to it by the D.C. Circuit;*** cases then return to D.C. Circuit.

### **Step 3: Implementation**

**March 2022 *State plans due*** to EPA

**March 2023 *EPA responses*** to state plans due

**March 2025 *Federal plan*** due if needed.

**NOTE:** additional time may be needed because of litigation over state plans, which are likely to be challenged by environmental groups.

### **Implications.**

**Politics.** First there's a reasonably good chance that the litigation over the rule will extend into 2021, meaning that the White House might have changed hands. If so, we might well see a repeat, with the new Administration asking for proceedings to be suspended until it can reconsider the Trump rule.

**Coal plant closings.** Second, it's unlikely until at least mid-to-late 2019 that the fate of the rule will be sufficiently clear to form a basis for making investments. And until sometime in 2023, even if the rule is upheld, its application to individual plants won't be certain. So it's unlikely to impact decisions about closing coal plants until three or more years from now.

**Investments in other energy sources.** A final question is whether investors will hold off on new renewable or natural gas facilities because of the rule. At this point, it's hard to see why there would be any effect. The most important impact of the rule is to repeal the Clean Power Plan and eliminate whatever role it was playing in investment decisions. But that was probably small anyway at this point, since it's been clear since Nov. 2016 that the Obama rule was going to be on the chopping block. There may be a small impact on a coal few plants that are worth keeping open only if they can get efficiency upgrades without triggering what's called "new source review," but it's hard to see how that can be a factor for renewables investors in very many places.

**Bottom line.** The big effect of the Trump rule is simply that, if successful, it will eliminate Obama's rule. There are small, mostly nefarious effects, but they're second-tier. So the main thing to watch is whether the Obama repeal becomes final prior to the next presidency (and if so, who is president at that point).

