

Politico ran a little noticed [article](#) last week suggesting that the nation's utilities are exploring whether they can cut a deal with the Obama Administration to regulate their greenhouse gas emissions. The idea is to model a deal after the plan the car companies [entered into](#) with the Obama Administration to extend California's car carbon standards nationwide. If Obama could strike such a deal with the utilities he could credibly claim to have crafted far reaching climate policy without relying on Congress to pass a climate bill. But is such a deal either likely or possible? I'm skeptical. Here's why.

The only reason the utilities would seek a deal to regulate their greenhouse gas emissions is because the Environmental Protection Agency is beginning to regulate such emissions under the Clean Air Act. The EPA is doing so not because it's engaged in a regulatory [power grab](#), as conservative commentators like to suggest, but because the agency is required to do so following the U.S. Supreme Court's decision in [Massachusetts v. EPA](#). In that decision, the Court told the EPA that the Clean Air Act covers greenhouse gas emissions and that the EPA had to regulate the emissions unless the agency found that the gases did not endanger public health and welfare. Unless the EPA was willing to buck scientific consensus (and be sued again), it had little choice but to regulate.

The utilities are rightly concerned that the EPA regulations of greenhouse gas emissions under the Clean Air Act might be quite onerous. The Clean Air Act is fairly directive in telling the EPA how to go about regulating different types of sources, so it isn't clear whether the agency can allow utilities the kind of regulatory flexibility the utilities would like. In order to get out from under potentially onerous EPA regulations, the utilities are looking for a deal. But the EPA and the utilities face a number of obstacles that the car companies did not.

Most importantly, the deal the Obama Administration agreed to for the car companies is consistent with the statutory requirements for auto emissions under the Clean Air Act. California [issued](#) its greenhouse gas emissions under the provisions of the Clean Air Act and then the Obama Administration essentially agreed to extend those requirements nationwide. The administration had significant negotiating leverage with the auto companies because the EPA could impose even stronger greenhouse gas emissions limitations by regulation. Moreover, many of the car companies were seeking federal bailouts at the same time and thus needed to show the Administration they were cooperative. By contrast, it isn't at all clear whether the EPA can provide utilities with the regulatory flexibility they would like and remain consistent with the Clean Air Act itself. Its negotiating options, in other words, may be more limited than what is necessary to strike a deal. If the EPA enters into a deal with the utilities that is inconsistent with the Clean Air Act, then the agency can (and likely will) be sued by at least some environmental group.

It is also unclear whether utilities can strike a united front. The Politico article itself [notes](#) that non-coal based utilities are already criticizing their coal-based counterparts for overclaiming about the difficulties in cutting greenhouse gas emissions.

And the Obama Administration has now [lost](#) Carol Browner, whose office led the negotiations with the automakers and who is largely credited with making the auto deal happen. It's unclear whether, with Browner leaving, anyone has the clout and savvy to make such a deal happen.

With all that said, the EPA and the utilities both have incentives to make a deal happen. I've already explained why the utilities want a deal. The EPA faces endless pressure from the Republicans in Congress about its role in regulating carbon emissions and its administrators are likely to spend way too much of their time in front of angry Congressional committees defending themselves now that the Republicans control the house. A deal could well be in the agency's interests. But it's hard to see how such a deal comes together given the political and legal realities the agency faces.