

Coal Utilities' Closure Plans Signal Push To Extend EPA Rule Compliance

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American Electric Power's (AEP) plan to meet pending EPA utility sector rules by shuttering coal-fired power plants is seen by industry sources as the first of similar shutdown plans from other coal-heavy utilities intended to serve as leverage in a push for the White House and EPA to extend the rules' compliance deadlines until 2020.

The Edison Electric Institute (EEI), representing investor-owned power companies, is already close to presenting the Obama administration with a plan to delay the compliance deadline for the agency's proposed air toxics rule for power plants, from 2015 out to 2017. An EEI source declined to share details of the plan, calling it "an internal process" and "a work in progress," but notes the proposed rule's deadline is "a key issue for us."

Other power companies with large coal portfolios -- including Southern Company and Detroit Edison -- are also expected to soon release plans about the facilities they will shutter to comply with EPA's rules, sources say. The goal is to use the plans to put pressure on the administration to use its maximum flexibility under the Clean Air Act to extend deadlines, though environmentalists and public health advocates would fight such a move.

By warning about job losses and adverse impacts on electricity grid reliability resulting from the project coal plant shutdowns, industry hopes to make the case for winning more time to adjust and meet the regulations.

One industry source notes that power company CEOs -- including AEP's Michael Morris and Southern Company's Thomas Fanning -- are broadly pushing their message that with a few extra years, they can meet the requirements of EPA's various pending air, water and waste rules for the power sector with "a whole lot less dislocation and job loss. . . This is not about their ability to meet [the limits] but about time" to curb negative impacts such as job losses.

Industry, Republicans and other EPA critics have warned of adverse economic and grid impacts from the agency's pending air rules for the utility sector that include a maximum achievable control technology (MACT) standard to cut toxic air emissions, and a cap-and-trade rule to cut sulfur dioxide and nitrogen oxide emissions.

The agency has also proposed a first-time coal combustion waste disposal rule and a strict Clean Water Act rule for cooling water intake structures, prompting claims that sector faces a regulatory "train wreck."

Big coal utilities are pushing for a broad 2020 deadline and are leaving the door open to negotiate individual settlements for such extensions, to be negotiated after the suite of rules are final, the industry source notes.

AEP June 9 released its plan for complying with the four rules, saying it would have to close five coal plants, retire units at five others, re-power with natural gas and build new natural gas-fired generation at an estimated cost of \$6 billion to \$8 billion, a company spokeswoman says. AEP's Morris in a June 9 statement said the rules had "unrealistic deadlines" that will hamper electric reliability, boost rates and cost jobs.

AEP says its plan would lead to the shuttering of 6 gigawatts (GW) of coal generation. The spokeswoman adds that AEP released its plan to suggest that EPA's estimate that the various rules will close 10 GW of coal power nationwide is understated, as AEP alone would represent 60 percent of that amount.

AEP also realizes that EPA under existing Clean Air Act authority lacks the flexibility the industry would like to see in delaying the various rules' deadlines to 2020, which is "why we've been talking with lawmakers about the potential for a legislative approach that would have the flexibility to get to the same environmental goals but still take into account the impact on jobs," the company spokeswoman says. But draft legislation floated by AEP last month to delay deadlines and exempt retiring plants drew wide criticism and is seen as dead on arrival if ever introduced.

Seeking Compliance Deadline Extensions

As a result, industry is now seeking a strong signal from the White House that it is willing to extend compliance deadlines for the MACT and other utility sector rules to minimize impacts on reliability and the economy. A second industry source says the AEP announcement, while directed to investors and the public, is really meant for the Obama administration.

The push "is not limited to AEP. I would expect to start seeing several utilities beginning to quantify the jobs impacts, shutdowns over the next few months. . . . They've decided if they are going to face this then they are going to tell the jobs story and put it in perspective and make it real. . . . This is going to be a trend," the first source says.

Because EPA is constrained by the Clean Air Act in the amount of extra time it can grant for compliance with the MACT -- which has a three-year compliance window beginning in 2012 -- companies are pushing for "the White House to signal some certainty about" using the statutory authority EPA does have "to delay compliance by one year, and by two if possible," the source says.

The source adds, "They need to signal that now. . . . And the reason to do that is, if you are living in the real world of making decisions on closures and investments in control technology, you need to know you have that time to think about 2017 instead of 2015 today."

However, the source adds that most companies believe 2017 is "not enough time" and that legal settlements are also an option. "If companies cannot accomplish what they need to on controls by 2017, then I would expect them to go to EPA to seek some sort of an enforcement schedule for completing that work, and I think there is some historical precedent for that . . . putting them on a schedule to install [emissions controls] by say, Dec. 31, 2019."

The source adds any such deal is likely to be inked only after EPA finalizes the MACT rule, for which the agency faces a November, court-ordered deadline. EPA is unlikely to want to negotiate anything now because of pressure it faces to finalize a strict rule from environmentalists and public health officials.

Critics See AEP 'Business Decision'

Activists and other proponents of strict utility sector rules call AEP's announcement a "business decision," noting that the EPA rules do not require closure of any plant, and that companies could install pollution controls at plants rather than close them. They also argue the vast public health benefits from the rules will far outweigh costs.

Their criticism that AEP is blaming EPA for a business decision is backed by another industry source who suggests the power company decided "it might have been time for a clean sweep" of its older, uncontrolled plants, noting some units are more than 50 years old. "It might be . . . a fortuitous time to modernize and upgrade."

This source also expects similar announcements by other companies but perhaps not on the scale of AEP's, and sees negotiations over the deadline as one that might be "sellable" to administration officials.

Southern Company says it plans to spend \$0.7 billion and \$2.9 billion between 2011 and 2013 "for potential environmental controls, replacement generation capacity and/or transmission upgrades," according to a [May 11 presentation](#) Fanning gave to Deutsche Bank's Alternative Energy, Utilities & Power Conference in New York. "Compliance strategy will be determined based on the nature of any final rules, compliance timeframes and costs."

Fanning also told investors on an April 27 first-quarter earnings call that the EPA's "accelerated three-year timeline for compliance [with the MACT] could put the reliability of the nation's electric generating system at risk. . . . [W]e are already transitioning our generating fleet. We don't need an overly complex and unworkable set of new regulations to hurt our customers by decreasing reliability, increasing costs, reducing job growth and burdening an already challenged economy," he said according to a [transcript](#). -- Dawn Reeves