



CLEAN POWER PLAN States seize on another angle to challenge rule

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States this week opened a new front in the legal battle over the Obama administration's signature climate change rule.

Led by West Virginia, 19 states on Monday filed a [petition](#) asking a federal court to review U.S. EPA's recent decision to deny several requests to administratively reconsider the Clean Power Plan. All of the states are already challenging the underlying rule.

Oklahoma, which has been a key opponent of EPA in the Clean Power Plan litigation, is notably absent from the new lawsuit. President Trump has nominated the state's Republican attorney general, Scott Pruitt, to lead EPA; the Senate Environment and Public Works Committee likely will soon vote on his confirmation.



The Clean Power Plan required states to develop and put in place plans to reduce carbon dioxide emissions from existing power plants. In an unexpected move, the Supreme Court in February stayed the rule until litigation is resolved.

Earlier this month, EPA denied most of the 60 requests it received to reconsider the rule. Twenty-two of the petitions from states, electric utilities and interest groups asked EPA to pause the program, while the rest of the petitions raised a variety of complaints about the rule. The petitions brought up many of the same issues that foes have raised in other court challenges, including that the Clean Power Plan was not a "best system of emission reduction" that complied with the Clean Air Act.

EPA denied all the requests except a handful of reconsideration petitions focused on waste-to-energy and biomass issues. The agency deferred those issues, noting that a separate agency scientific and technical investigation on biomass may clarify the treatment of that fuel ([Energywire](#), Jan. 13).

The new lawsuit over the petition denials comes as the U.S. Court of Appeals for the District of Columbia Circuit may soon issue a ruling on the legality of the Clean Power Plan.

In September, 10 judges of the court heard nearly seven hours of oral arguments, mostly centering on whether the Clean Air Act gave EPA the authority to issue the rule.

Challengers also argued that EPA issued a final rule that was too different from its proposal, but judges then seemed skeptical of that argument since EPA had not yet responded to the petitions for reconsideration that raised the same concern.

President Trump's Justice Department has yet to formally weigh in on the Clean Power Plan in court, but the new administration has pledged to get rid of the rule.

Petition: http://www.eenews.net/assets/2017/01/26/document_gw_05.pdf