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## Panelists: Clean Power Plan's future uncertain, but states should still comply

By [Andrew Coffman Smith](#)

A six-person panel of regulators and stakeholders at the 2015 annual meeting of the Organization of PJM States Inc. in Baltimore on Oct. 12 debated the future of the EPA's mandate for states to reduce carbon dioxide emissions by 32% from 2005 levels by 2030.

"The big issue is that none of us will know for sure — for a while — and perhaps not until the end of 2017," said Jeff Holmstead, an energy lobbyist attorney at Bracewell & Giuliani on when a judicial decision will be reached on the agency's Clean Power Plan. Holmstead, who is "confident" that five of the Supreme Court justices will vote against the Clean Power Plan, said the plan's fate could also be sealed as early as the first quarter of 2016 when the U.S. Court of Appeals for the D.C. Circuit reaches a decision on a request to stay the Clean Power Plan, or in November 2016 with the U.S. presidential election.

Frank Rambo, a senior attorney at the Southern Environmental Law Center, disagreed and said states and stakeholders should start planning for the implementation of the Clean Power Plan until something else changes. "I don't trust anyone who says that is definitely going to stand up or this is highly unlikely to go down. It's very much up in the air and this is the rule. It's on the books," Rambo said. "But the usual thing to do, which you should adhere to, is well plan for it."

"Certainty is the thing that we are not getting while we all are talking about what time of the week the Supreme Court is going to hear this case," said Kathleen Barron, [Exelon Corp.](#)'s senior vice president for federal regulatory affairs and wholesale market policy. What the market needs is for states that are already seeking to control their emissions to continue on that path, she said. "If they choose to go ahead and implement a strategy to do so, there is a lot of learning that will come out of all this stakeholder outreach that can be used," she said.

Barron said everyone knows that states and the federal government have been steadily seeking to reduce emissions with the goal of measuring and containing CO2. "We know that it is coming. We don't know what form. We don't know if it is going to be this rule or another one, but we have to plan for that because we ... need to decide what to build," she said.

Setting aside whether states should actually start implementing compliance plans anytime soon, a consensus was reached among the panelists that states should at least draw up initial compliance plans to submit to the EPA by September 2016 to avoid having a federal plan imposed on them.

Michael Kormos, executive vice president and COO for the [PJM Interconnection LLC](#), said the initial submission plans for September 2016 should be seen as an act of "good faith" to demonstrate to the EPA that a state has started down the path of compliance. All that is needed from a state is to show approaches that they are considering with the likelihood that the EPA will accept it as a de facto "two-year extension," said Kormos. The September 2016 initial plan is to be followed by an interim progress report in September 2017 and a final plan in September 2018.

Holmstead said the expected extension on submitting compliance plans is one place where he and Kormos agreed upon. The whole purpose of the 2016 initial submittal was to "smoke out" states completely opposed to the Clean Power Plan before the end of the Obama administration, he said. Most states will submit a plan to avoid the punishment of a federally imposed plan, Holmstead said.

"We think that it makes sense for the states to at least to control that process themselves so you can address your interests and not let the federal agency determine your electric system future," said John McManus, [American Electric Power Co. Inc.](#)'s vice president for environmental affairs. "So going down a path of starting developing a plan makes sense to us. How far you go? We'll see."

As for what the federal implementation plan will look like, several of the speakers said it will most likely be a mass-based cap-and-trade-plan. Holmstead said the EPA makes it "pretty clear" in the Clean Power Plan that it has a "strong preference" for mass-based cap-and-trade over a rate-based alternative. "The EPA will ultimately come down with a mass-based cap-and-trade program because that is the simplest thing for them and everybody else to implement."

Barron agreed but said that under a mass-based cap-and-trade federal plan, states will still have some control over allocation of allowances.