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Southern Co. utilities, others file challenges to Clean Power Plan

By [Annalee Grant](#)

[Southern Co.](#), through its four power subsidiaries, and several other major utilities have asked a federal appeals court to review the U.S. EPA's Clean Power Plan.

Legal challenges to the rule trickled in to the U.S. Court of Appeals for the District of Columbia on Oct. 26, just one business day after the Clean Power Plan was officially [published](#) in the Federal Register on Oct. 23, which started the clock for the rule's opponents to file their intent to challenge it.

The petitions reflected a broad range of industry groups, utilities and [states](#) seeking to halt the rule. Both power and coal interests were reflected in the filings, few of which were filed with just a single entity attached. Southern Co.'s [Alabama Power Co.](#), [Georgia Power Co.](#), [Gulf Power Co.](#) and [Mississippi Power Co.](#) were among the first utilities to file a [petition for review](#).

In a press [release](#), Georgia Power pledged to protect its generation assets and investments in Georgia. The company said it would need to retire 4,800 MW of fossil fuel-fired generation by 2030, or more than 20% of its total capacity, to comply with the rule. Specifically, Georgia Power said "EPA's compliance solution" would mean the premature closure of coal units at [Bowen](#), [Hammond](#), [McIntosh](#), [Scherer](#) and [E.C. Gaston](#) plants. Southern has a 23% stake in the Scherer plant.

Southern Co. spokesman Jack Bonnikson called the EPA's Clean Power Plan "overreaching and unworkable" in an Oct. 26 statement. "These flawed EPA mandates underscore the fact that national energy policy should be set by Congress and the states, which have the ability to balance the responsibility to provide customers clean, safe, reliable and affordable power," he said.

Southern Co. is the fourth-largest coal-burning generator, taking shipment of 18.78 million tons of coal through first seven months of 2015, according to SNL Energy data. Approximately 35.94% of its owned operating capacity runs on coal.

The [Clean Power Plan](#) establishes statewide carbon dioxide emissions standards for existing fossil fuel-fired electric generating units with the goal of cutting CO2 emissions by 32% — instead of 30% as initially proposed — as measured from a 2005 baseline by 2030. The rule is expected to trigger some coal retirements across the country although it does not mandate the retirement of any power plants. Instead, states have flexibility to choose a variety of compliance measures under a rate- or mass-based compliance approach in order to meet their state-specific goals.

Georgia Power noted that any steps taken to comply with the Clean Power Plan would take many years to complete and therefore it would have to begin taking those steps in 2016 and 2017, even though states can request an extension up to September 2018 to submit their implementation plans.

Challenges filed from all corners of energy industry

Southern Co. was not the only challenger to the rule in the first days of open season. The American Public Power Association and Utility Air Regulatory Group filed a joint [petition](#). [MDU Resources Group Inc.](#) subsidiary [Montana-Dakota Utilities Co.](#) did the [same](#).

[Tri-State Generation and Transmission Association Inc.](#) also launched an attack as did the National Rural Electric Cooperative Association ([joined](#) by many of its co-op members). One such cooperative, the [Seminole Electric Cooperative Inc.](#), [complained](#) that retiring coal generation will cost its customers.

"Seminole's primary generating facility, the Seminole generating station, is currently financed through 2042. Should the EPA ultimately require us to close this plant, our members will continue to make payments on it, while also needing to pay for new sources of electricity," said Lisa Johnson, Seminole's CEO and general manager.

Other groups filing against the Clean Power Plan include the U.S. Chamber of Commerce, National Association of Manufacturers, National Mining Association, American Fuel and Petrochemical Manufacturers and the American Council for Clean Coal Electricity.

Parties looking to file against the EPA's Clean Power Plan need only file a notice of intent to do so in the 60 days following its publication in the Federal Register. The actual legal arguments that will be before the courts may not be known for some time, although legal experts have [speculated](#) since the release of the rule on the many possible angles vulnerable to legal challenges.

Arsalan Gul contributed to this article.