Insight

The Surprise Impact of the ACE Rule on the Regulatory Budget Outlook

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Environmental Protection Agency (EPA) Administrator Andrew Wheeler signed the final Affordable Clean Energy (ACE) rule on June 19. The ACE rule is the replacement for the Obama Administration's Clean Power Plan (CPP), a rule aimed at reducing greenhouse gas emissions from power plants.

The text of the rule is pretty much as expected. The same cannot be said for the impact of the rule on the Trump Administration's regulatory budget. A surprising change in the accounting of the rule took one of the largest expected deregulatory actions and made it net *regulatory*. This change has major implications on the outlook for the fiscal year (FY) 2019 regulatory budget.

ACE RULE OVERVIEW

On the substance, the ACE rule works as the American Action Forum (AAF) described in our analysis of the proposed rule. Rather than setting industry-wide limits on power generated by coal (as the CPP did), the ACE rule identifies efficiency improvements that states would then implement on a per plant basis. The biggest change from the proposed rule is that the final ACE rule includes language to repeal the CPP, which previously was its own rulemaking.

ACCOUNTING CHANGES

The proposed ACE rule and the proposed CPP repeal rule each had large savings estimates ($6.4 billion and $51.6 billion, respectively). These estimates were calculated against a baseline in which the Obama CPP was fully implemented. For the final ACE rule, the EPA changed its approach entirely, estimating the impact of the rule against a world where there was never a CPP. The EPA justifies this decision based on A) its belief that the CPP was unlawful, and B) the fact that the electricity sector is on pace to achieve the CPP's targets even without the CPP, as new information indicates.

The key ramification of this change is that rather than generating $58 billion in regulatory savings, the ACE rule instead *imposes* $970 million in costs.

REGULATORY BUDGET IMPLICATIONS

As one would expect, this swing of nearly $59 billion has significant implications for the Trump Administration's regulatory budget. The FY 2019 regulatory budget set an administration-wide goal of nearly $18 billion in regulatory savings. For covered rules published through June 14, the administration had published $10.8 billion in net regulatory *costs*.

In AAF’s mid-fiscal year review of the administration’s progress toward its regulatory budget goal, the final ACE rule and the final rule repealing the CPP were expected to alter this landscape entirely, securing the administration a projected total of $33 billion in net savings. The evaporation of the ACE rule’s savings now increases the likelihood the administration will end FY 2019 with net regulatory costs.

With the ACE rule’s effect on the regulatory budget, it will be fascinating to see how the administration decides to handle it at the end of the fiscal year. Technically, because the new estimate adds costs, the rule is regulatory and is marked as such by the administration. But in practical terms, the ACE rule is deregulatory. Clearly, the EPA views it as such. If the rule is what keeps the administration from achieving its goal, perhaps it will take measures to account for the deregulatory nature of the ACE rule in some other way.

Such a move would not be unprecedented. There have already been a handful of rules that have added compliance costs but are counted as deregulatory because of unquantifiable deregulatory effects. The differences in this case, however, are that the ACE rule is officially marked as regulatory instead of deregulatory and has such a significant impact on the regulatory landscape.