

# ADVISORY

**SULLIVAN & WORCESTER ENVIRONMENT, ENERGY & NATURAL RESOURCES GROUP ADVISORY**

## U.S. EPA Issues Proposed New Source Performance Standard to Limit Carbon Dioxide Emissions from New Fossil Fuel Electricity Generating Power Plants

Elias Hinckley, head of Sullivan & Worcester's Energy Finance group, and Jeffrey Karp, leader of the firm's Environment, Energy and Natural Resources practice group, participated recently in a teleconference with UBS energy sector analyst Julien Demoulin-Smith, to discuss the United States Environmental Protection Agency's (EPA) revised proposal to limit the emissions of carbon dioxide (CO<sub>2</sub>) from new fossil fuel electricity generating power plants. UBS Teleconference: [U.S. Electric Utilities & IPPs. Understanding EPA's New Source Carbon Regulations](#) (January 17, 2014).

Below are some key take-aways regarding the proposed "New Source Rule."

- The proposed rule, issued by EPA for comment on January 8, 2014, establishes separate performance standards for new coal and gas-fired power plants: 1,100 lbs of CO<sub>2</sub>/MWh of electricity produced for new coal plants (on a 12 operating month rolling basis); 1,000 lbs CO<sub>2</sub>/MWh for new gas-fired facilities with a heat input exceeding 850 MMBtu/h (250 MW); and 1,100 lbs CO<sub>2</sub>/MWh for new gas-fired facilities with a heat input between 250 MMBtu/h (73 MW) and 850 MMBtu/h (250 MW).
- The "New Source Rule" will effectively require the addition of partial carbon capture and storage ("CCS") technologies for new coal-fired generating facilities; the proposed CO<sub>2</sub> emission threshold for such plants is 40% lower than current "best-in-class" coal turbine technologies. EPA has calculated that a new coal plant without CCS would emit approximately 1700 lbs of CO<sub>2</sub>/MWh of electricity produced (the national average is 2,200 lbs CO<sub>2</sub>/MWh).
- What constitutes a "new source" that is subject to the proposed rule? EPA's explanation accompanying the proposed rule states that existing sources undertaking modifications or reconstructions, and certain projects currently under development, will not be treated as "new sources." Therefore, power plants that were constructed prior to the publication of the proposed rule, but that are later modified or reconstructed, will not be treated as "new sources." However, power

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plants that begin construction after the publication of the proposed rule will be treated as “new sources,” subject to the rule’s requirements. According to EPA’s accompanying discussion of the rule, the only exception is one proposed new coal-fired plant—the Wolverine project in Rogers City, Michigan. EPA states that this plant will not be subject to the proposed rule.

- Which plants are exempted? The proposed rule effectively exempts new gas power plants, which emit approximately 700 lbs CO<sub>2</sub>/MWh, compared to the regulatory threshold in the proposed rule of 1,000 lbs/MWh. Also, the proposed rule generally exempts: (i) peaker plants – those facilities with less than 33% capacity factors; (ii) oil plants; (iii) Combined Heat and Power (CHP) facilities; and (iv) smaller generating facilities, under 25 MW in capacity.
- There may be a fairly long lag time before the proposed rule is finalized. Optimistically, the rule likely will not be finalized until late in 2014 due to the 60-day comment period followed by the time needed for EPA to consider the comments and draft the final version of the New Source Rule. In response to a previous iteration of this proposed rule, EPA received 2.5 million comments, which foreshadows the expected substantial effort required to review all of the likely comments on the revised proposal. Moreover, further delay is expected due to the inevitable legal challenges to the final rule in federal court, likely focusing on the commercial viability of CCS technology.
- Also, EPA is preparing “Existing Source Guidelines,” under which each state must develop standards of performance to limit CO<sub>2</sub> emissions from existing generating facilities. EPA must propose such guidelines concurrently upon or after its publication of the proposed New Source Rule. In a June 25, 2013 memorandum to the EPA Administrator, President Obama directed EPA to, among other things, propose CO<sub>2</sub> emission guidelines for existing stationary sources by June 1, 2014. Given that EPA published the proposed New Source Rule in January of 2014, the agency is expected to adhere to the President’s timeline and publish a draft Existing Source Guideline in the first half of 2014.

- EPA will accept written comments on the New Source Rule until March 10, 2014. A public hearing will be held on February 6, 2014 in Washington, D.C., at which time interested parties may present comments orally on the proposed rule to agency decision-makers.

If you would like to discuss the implementation of the proposed performance standards limiting carbon dioxide emissions, the submission of comments on the New Source Rule, or strategic business options in light of changes in the energy sector, please contact any of the lawyers listed on this advisory.

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