NSR Changes in the Affordable Clean Energy Plan

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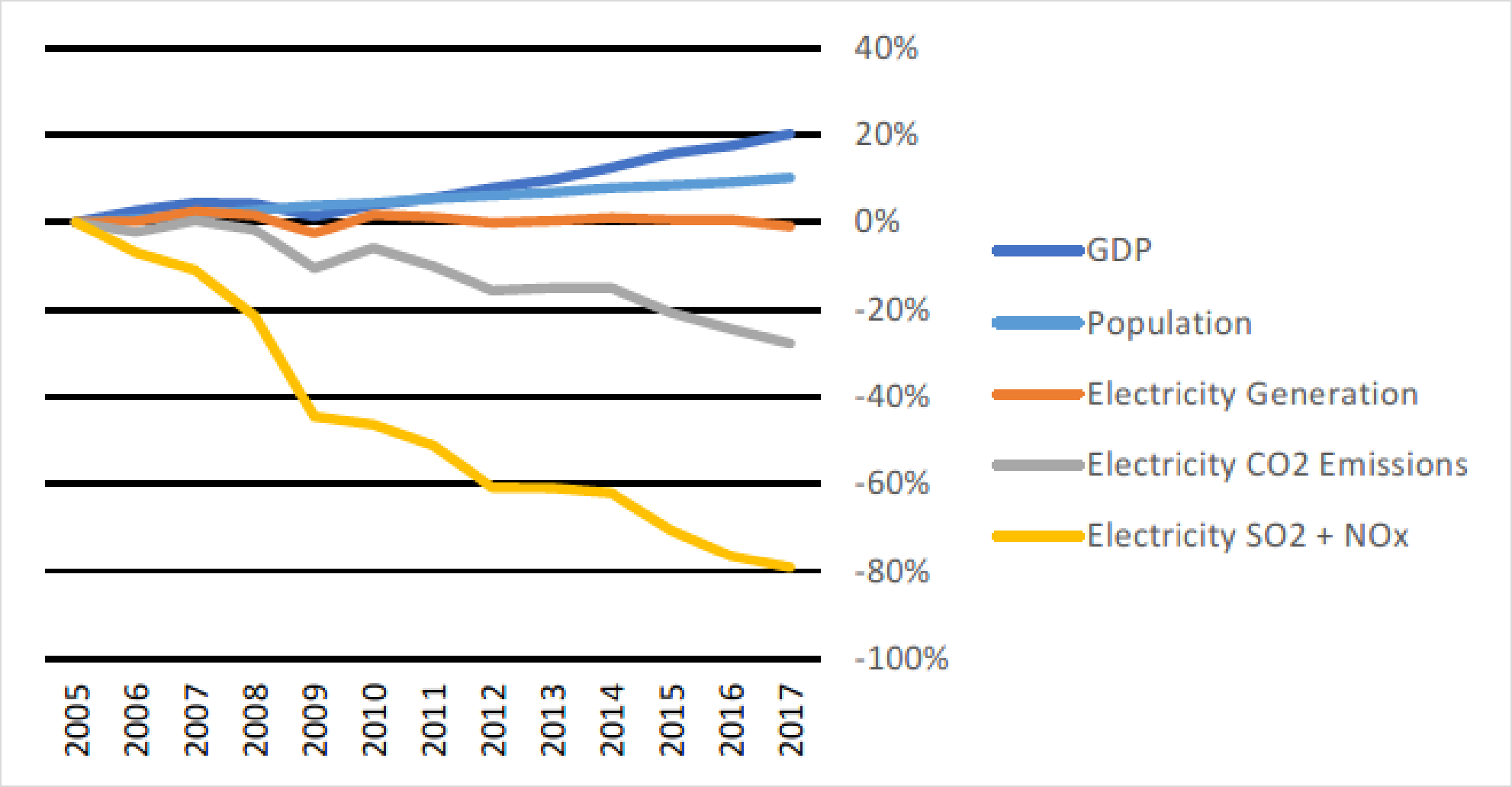
How Did We Get Here?

- Part of the Trump Administration's goal of reducing regulatory burdens on business.
- The Advanced Notice of Proposed Rulemaking for ACE generated over 270,000 public comments
- On August 21, 2018, the EPA released the proposed ACE Plan, which was published on August 31, 2018 at 83 Fed. Reg. 44746.

How Did We Get Here?

- Belief in states providing guidance, but not strict rules.
- The Clean Power Plan was a regulatory overreach, according to EPA now.
- CO2 emissions, particularly those from electricity generation, are on a long-term downward trend.

CO_2 Emission Trends



Top Takeaways from ACE

- Reduction in CAA sec. 111(d) authority
  - Sec. 111(d) only allows for performance standards to be based on inside the fenceline measures.
  - Cannot use “generation-shifting,” redefining a source or reduction in the use of a source for performance standards for existing sources.
  - EPA provides “information” to states. States establish real, lb./MWh performance standards.

Top Takeaways from ACE

- Best System of Emission Reduction (BSER)
  - Goes hand-in-hand with EPA's current/historic reading of sec. 111(d).
  - Focuses almost exclusively on improvement in heat rate/efficiency of power plants (seven specific measures that can be taken).
  - Specifically rejects carbon capture/sequestration and co-firing with biomass or natural gas as either unproven or too costly.

Top Takeaways from ACE

- Only applies to coal-fired electric generators. Gas plants are exempt, since EPA doesn't have enough information to suggest efficiency upgrades for gas plants.
- No standard emission reduction targets, nor any specific methodology for states to follow in developing performance standards
- States must consider the seven efficiency measures proposed by EPA when developing standards, but how states incorporate those standards will be unclear.

Top Takeaways from ACE

- Is RGGI in peril????
  - Trading of emission reductions between facilities will not be allowed.
  - Can average emission reductions between units within a facility, however.
  - So, is a trading market a permitted way for states to hew to EPA's new performance standards?

Top Takeaways from ACE

- Cost-effectiveness may be considered by the states
  - States can dismiss various performance standards as being too costly.
  - Determinations must be made on a case-by-case basis.
- States have a nice, long time to develop their plans.
  - States now have three years to submit plans
  - EPA has more time to evaluate plans submitted by states.

ACE NSR Reform

- Maybe some reform in the NSR realm is in order, and the ACE Plan gives us NSR reform in limited doses.
- Boiler tube replacement is "routine" repair and replacement – Nat'l Parks Conservation Ass'n, Inc. v. TVA (E.D. Tenn. – March 31, 2010)
- Boiler tube replacement is NOT "routine" repair and replacement – U.S. v. Ohio Edison Co., (S.D. Ohio 2003).
- The 6th Circuit holds the record – five different opinions of whether NSR applies in two different cases.

ACE NSR Reform

- We've seen this type of NSR reform before.
  - The Bush Administration started NSR reform in 2002. Those rules were upheld in part and vacated in part by NY v. EPA, 413 F.3d 3 (DC Cir. 2005). The portion of the rule that was vacated was done, in part, because the EPA defined "modifications" to generators too narrowly, allowing many to escape review.

ACE NSR Reform

- The next year, the same D.C. Circuit Court was less kind.
  - EPA's NSR reform attempted to reinterpret the language in the CAA that requires new source review for "any" change at a generator that increases emissions.
  - "Only in a Humpty Dumpty world would Congress be required to use superfluous words while an agency could ignore an expansive word that Congress did use." NY v. EPA, 443 F.3d 880 (D.C. Cir. 2006)

ACE NSR Reform

- Other times, the courts have been open to NSR reform, but have been wary when evaluating the execution.
  - On p. 27 of NY v. EPA, the court said that "Congress did not specify how to calculate 'increases' in emissions," which means that EPA can "fill in that gap."
  - The Supreme Court noted that the NSR regs did not define "major modification" in the same way that "modification" was defined under NSPS, however, the two programs could exist as "set and subset." Envt'l Defense v. Duke Energy Corp., 549 US 561 (2007)

ACE NSR Reform

- So, what is old is new again – Bush-era NSR reform makes a comeback.
- ACE adds a preliminary hourly emissions check to see if NSR permitting applies to an ACE source.
- If hourly emissions rates are not expected to increase as a result of a particular improvement, NSR does not apply.
- EPA tried to do hourly, rather than annual emissions increases when it did NSR reform in 2007. It never took those rule final, so they were never challenged.

ACE'S NSR Reform

- Important to remember that it only applies to coal fired electricity generation.
- It does have the benefit of having NSR determinations match up more neatly with one hour NAAQS.
- It also has the benefit of simplicity – No increase in hourly rates of emissions, no NSR applicability.
- This does away with the need for permitting if emissions will increase over the course of a year. Only need to demonstrate no hourly increases.

ACE'S NSR Reform

- These changes are going to be some of the most controversial changes in the ACE Plan – but also the backbone of the ACE Plan as Bill Wherum acknowledged:

"The NSR program and this ACE proposal are somewhat in conflict because on the one hand we would be mandating efficiency improvements at power plants under the ACE rule and on the other hand we have a New Source Review program that might require permits to be a pain for those very efficiency projects that need to be reconciled."

"That's what we proposed to do here."

ACE NSR Reform

Table ES-1 Present Value and Equivalent Annualized Value of Compliance Costs, Climate Benefits, and Net Benefits Associated with Targeted Pollutant (CO_2), Relative to Base Case (CPP), 3 and 7 Percent Discount Rates, 2023-2037 (billions of 2016$)

	Costs		Domestic Climate Benefits		Net Benefits associated with the Targeted Pollutant (CO_2)	
	3%	7%	3%	7%	3%	7%
Present Value						
No CPP	(5.2)	(3.1)	(3.9)	(0.4)	1.2	2.7
2% HRI at $50/kW	(0.4)	(0.3)	(3.2)	(0.3)	(2.8)	(0.1)
4.5% HRI at $50/kW	(6.4)	(3.7)	(3.2)	(0.3)	3.2	3.4
4.5% HRI at $100/kW	3.0	1.7	(2.4)	(0.2)	(5.4)	(2.0)

Will it Really Matter?

State	CO_2 Emission 2006 MM tons	CO_2 Emission 2006 MM tons	% Coal	% Gas	% Nuclear	% Renewable	% Other
CT	11.9	8.7	0	48	47	3	2
ME	3.4	2.1	1	33	0	63	3
MA	25.1	13.2	6	66	17	7	4
NH	7.6	2.7	2	24	56	17	0
RI	2.6	2.8	0	96	0	4	0
VT	0	0	0	0	0	100	0

Will it Really Matter?

- “The forward curve for natural gas looks exceedingly attractive. So the dynamic of adding cost to coal while gas remains exceedingly cheap I think weighs in the interest of moving . . . from coal to gas and renewables.” Tom Fanning, CEO of Southern Co.
- Fanning went on to say that the ACE Plan will not change his utility’s long term plan – retiring the coal fleet that makes up 30% of its generation. The goal is to be “low-to-no-carbon by 2050.”

Questions?

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