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MARKET NEWS | Tue Sep 27, 2016 | 6:00am EDT

# Obama power plant rules face key test in U.S. court

By **Valerie Volcovici** | WASHINGTON, SEPT 27

The centerpiece of President Barack Obama's climate change strategy, federal rules curbing greenhouse gas emissions mainly from coal-fired power plants, faces a key test on Tuesday when opponents try to convince a U.S. appeals court to throw out the regulations.

Twenty-seven states led by coal-producer West Virginia and industry groups are challenging the Environmental Protection Agency's Clean Power Plan rules before 10 judges of the U.S. Court of Appeals for the District of Columbia Circuit.

They argue that the EPA overstepped its regulatory authority under the federal Clean Air Act when the agency issued the rules, which the U.S. Supreme Court has put on hold while the case is litigated.

During Tuesday's arguments, these opponents will face off in court against the EPA, 18 states, corporations including Apple Inc and Alphabet Inc's Google, and a number of cities that support the regulations.

The Clean Power Plan was designed to lower carbon emissions from U.S. power plants by 2030 to 32 percent below 2005 levels, with each state assigned its own emission reduction target and tasked with designing its own plan to achieve that goal.

Power plants are the largest source of U.S. carbon emissions. Nearly 1,500 coal- and gas-fired power plants together emit nearly two billion tons per year of carbon dioxide.

The Clean Power Plan is the main tool for the United States to meet the emissions reduction target it pledged to reach at U.N. climate talks in Paris last December.

"It's an invasion, in our estimation, of the state regulatory domain," Scott Pruitt, the Republican attorney general of Oklahoma, one of the states suing the EPA, said at a Washington event this month.

Richard Revesz, director of the Institute for Policy Integrity at New York University's law school, said the suing states were exaggerating the regulatory reach of the EPA.

"The Clean Power Plan, while certainly a very important rule, is not the boundary-breaking behemoth that the petitioners make it out to be," Revesz said.

The Clean Power Plan, if it survives the legal challenge, could prompt a faster shift to renewable energy sources and accelerate the closure of the country's oldest coal plants.

The fate of the Clean Power Plan was thrown into question on Feb. 9 when the Supreme Court made a surprise 5-4 decision to grant a request by the challengers to put the rule

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Court made a surprise 5-4 decision to grant a request by the challengers to put the rule on hold while the appeals court considered the matter.

The eventual appeals court ruling could decide the case, even if it goes to the Supreme Court. The Feb. 13 death of conservative Justice Antonin Scalia left the court ideologically split with four conservatives and four liberals. A 4-4 ruling by the high court would leave in place the appeals court ruling.

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The arguments will be heard by 10 judges rather than 11 because the court's chief judge, Merrick Garland, has recused himself from the case. Garland is Obama's nominee to replace Scalia. Of the 10 judges who will hear the case, six were appointed by Democratic presidents.

A 5-5 ruling would leave the regulations in place.

A ruling is unlikely before the end of the year and possibly not until after Obama leaves office on Jan.

20.

The outcome of the Nov. 8 presidential election could be pivotal for the regulations. If Republican Donald Trump wins, the government could reverse the rules or decline to appeal to the Supreme Court should the appeals court strike them down. If Democrat Hillary Clinton is elected, the losing side in the appeals court ruling could be expected to take the case to the Supreme Court.

If the case does reach the high court, it may not make it in time for the justices to hear it during the court term that begins next Monday and ends in June.

(Reporting by Valerie Volcovici; Additional reporting by Lawrence Hurley; Editing by Will Dunham)

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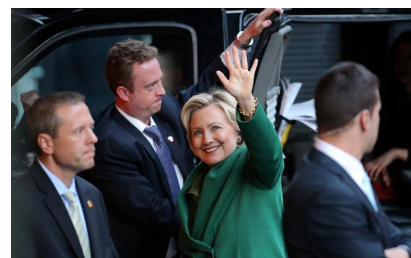
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