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## States ask EPA to halt Clean Power Plan to allow courts to affirm legality

By [Annalee Grant](#)

On the heels of the U.S. EPA's Aug. 3 [release](#) of a final Clean Power Plan for reducing carbon emissions from existing power plants, 16 states [asked](#) EPA Administrator Gina McCarthy to stay the implementation of the new rule until its legality is affirmed in court.

The states charge that if the rule goes into place as planned, states will be forced to expend enormous public resources and delay other priorities to develop a state implementation plan "of unprecedented scope and complexity." Additionally, the states worry that the plan will jack up electricity prices for their residents to make up for power plant closures they believe will be required to meet their assigned emissions goals.

"At the very minimum, the states and their citizens should not be forced to suffer these serious harms until the courts have had an opportunity to review the rule's legality," reads the application for stay signed by the states' attorneys general. The states also challenge the EPA's authority to regulate power plants under Section 111(d) of the Clean Air Act, when those plants are already regulated under Section 112 — a familiar [argument](#) from legal challenges to the Clean Power Plan brought before the rule was even released.

The states requesting the stay are West Virginia, Alabama, Arizona, Arkansas, Indiana, Kansas, Louisiana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Utah, Wisconsin, Wyoming and Kentucky. The states asked that the EPA respond to their request by the end of the day Aug. 7 so they can seek emergency relief in court in a timely manner.

West Virginia Attorney General Patrick Morrisey admitted in a statement posted Aug. 5 that the requested stay will probably not be granted, but called the move, "a necessary first step and prerequisite to confronting this illegal power grab by the Obama administration and EPA."

Elizabeth Gore, policy director at Washington, D.C., law and lobbying firm Brownstein Hyatt Farber Schreck, is more straightforward in her assessment of the stay's chances: "There is no chance that EPA will grant this stay to the states. Zero."

Gore said the legal reasons laid out by the states in their request are the same arguments that have been circulating in the courts prior to the rule's release, as well as in comments submitted to the EPA. "There is no reason to think that EPA would be swayed by these arguments at this point," Gore said.

She further explained that the threshold for imposing a stay is extremely high and would be an "uphill battle" for the states in their claim. "The states clearly believe they gave strong arguments; the EPA disagrees," she said. "I will note that EPA extended the interim compliance deadline in the final rule which makes it less likely for a stay because the impact is less imminent." The final Clean Power Plan [allows](#) states to seek a two-year extension to a Sept. 6, 2016, deadline to submit their state implementation plans.