

Editorial: Carbon-cutback debate heating up

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The U.S. Environmental Protection Agency is attempting to reshape America's economy by mandating the energy industry reduce its carbon emissions. Despite Congress' refusing to go along, the agency is getting plenty of help from many statehouses.

The EPA contends that rising greenhouse gas emissions threaten to dangerously increase global temperatures, which the Obama administration says justifies Draconian controls to drive coal-fired energy plants out of business, and greatly reduce operation of other fossil-fuel electricity generators. Congress, meanwhile, has flatly rejected adopting a cap-and-trade law that would effectively tax the emission of such greenhouse gases.

Last week, there were two developments in this attempted top-down transformation of the private sector.

First, a panel of the federal appellate court based in the District of Columbia heard two days of testimony in a substantial legal challenge to the EPA's "endangerment" finding. That finding by the EPA holds that greenhouse gases endanger public health and welfare, therefore justifying the imposition of regulatory burdens on industries that produce them.

Patrick Day of the Coalition for Responsible Regulation argued that the finding "erroneously decided to completely divorce" risk assessment from regulatory decisions. The EPA endangerment finding, he said, authorized "ineffective and perhaps even fruitless regulations."

Critics have charged that Congress never intended the Clean Air Act to be used to regulate carbon dioxide, a ubiquitous gas necessary for life. Indeed, as the act is written, millions of sources would exceed the agency's threshold for emissions, triggering their regulation. In response to that unworkable reality, the EPA would arbitrarily scale down the threshold level for carbon emissions, effectively rewriting the statute, which is beyond the agency's authority, critics claim.

Some legal observers believe this aspect holds the best prospect for overturning the EPA mandates. On the other hand, some speculate that if the EPA is upheld in court it would create

such chaotic, arbitrary enforcement atmosphere that Congress would be prompted to rein in the agency with new law. A decision in the case is expected within about two months.

While the federal government has been stymied in large part in legislatively advancing President Barack Obama's desire for a national renewable-energy mandate despite the harm it causes, the administration has been aggressive in adopting regulatory mandates by fiat through the EPA. But the anti-carbon cause also is being advanced in many states.

The second significant development last week was publication of "The High Cost of Renewable-Electricity Mandates" by the Manhattan Institute, a market-oriented think tank. Those mandates force "rates higher at the worst possible time," the study said.

To date, 29 states – including California – require utility companies to deliver specified minimum amounts of electricity from "renewable" sources. Manhattan Institute author Robert Bryce found that in 2010 states with such renewable portfolio standards (RPS) had electricity rates 31.9 percent, 27.4 percent and 30.7 percent higher for residential, commercial and industrial customers, respectively.

Of 10 states with the highest electricity rates, eight have RPS mandates, including California. Of 10 states with the lowest rates, only two have RPS mandates, Washington and Oregon.

The study found that seven "coal-dependent" states with RPS mandates have seen electricity rates soar an average of 54.2 percent from 2001-10, more than twice the average increase in coal-dependent states without RPS mandates.

The Manhattan Institute study concluded that the mandates amount to a circuitous route to taxing carbon: "These states have imposed a carbon tax, but they haven't explained that to voters."

Similar to the EPA's diktats, these states effectively seek to price – or tax – carbon-based fuels out of use, oblivious to the economic consequences.