



CLIMATE DAILY NEWS

Group Presses Moniz To Shift Role On CCS Ahead Of EPA's NSPS Review

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The Center for Regulatory Effectiveness (CRE), a group that opposes EPA's proposed rule requiring carbon capture and sequestration (CCS) to control greenhouse gas (GHG) emissions at new coal-fired power plants, is urging Energy Secretary Ernest Moniz to take a tougher oversight role scrutinizing the agency's draft final rule in an upcoming interagency review.

A CRE source says Moniz has been a champion of CCS research, and warns that the secretary's role in reviewing EPA's new source performance standard (NSPS), which mandates CCS, is different than promoting research.

The group wants to make sure Moniz is "in the proper role when he conducts the interagency review. The criteria is different. He needs to change hats" and determine "whether it is in the public interest to mandate CCS. It's a different role" than his job of bolstering CCS research and demonstration, the source says.

The group sent an [April 16 letter](#) to Moniz that warns the "precedent-setting work" the Department of Energy (DOE) is conducting on CCS research "will be undermined if CCS is mandated as a regulatory requirement" in the final NSPS.

DOE spends billions on the development of emission control technologies such as CCS. It is important that the department participate actively in the formulation of EPA's NSPS, the group adds in an email.

The group is reiterating its earlier call for EPA to promulgate an interim final rule that requires "CCS-ready" facilities, which the group says will give the agency time to conduct a scientific review of the technology. The group is also suggesting a [possible litigation strategy](#) for the coal industry to challenge any CCS requirement under the Mandamus Act, a statute that gives parties the right to ask federal district courts to block government actions, though CRE acknowledges that such an effort faces a high legal bar and considerable risk for any plaintiff.

CRE also sent an [April 20 letter](#) to the White House Office of Management & Budget (OMB), noting that OMB will be reviewing EPA's draft final NSPS in the "near future" and that "[i]n doing so, we believe it is essential that the Secretary of Energy continue to be included in such a review."

EPA's proposed NSPS -- expected to be finalized this summer along with the agency's existing source performance standards (ESPS) -- concludes that partial CCS is the best system of emission reduction (BSER) for new coal plants, and meets key statutory criteria including that it is "adequately demonstrated" and commercially available. The rule seeks to require new coal plants to install CCS to capture about 30 percent of their GHGs.

The rule is a legal predicate for the ESPS, as it defines the source category that the agency will regulate under the Clean Air Act.

However, EPA is said to be considering [dropping the CCS requirement](#), due to legal concerns that the technology does not yet meet the statutory criteria, especially given that many of the CCS projects EPA cited to support its proposed BSER have since been canceled or significantly delayed.

But one CCS project that has gotten under way, Boundary Dam in Saskatchewan, is "[working better than expected](#)," according to an official with SaskPower earlier this month.

Proven Technology

DOE could not be reached for comment on the letter, and EPA has not responded to questions about whether the agency has analyzed scenarios for finalizing the rule without CCS, only responding earlier this year that it is “working to finalize this rule by this summer.”

However, Moniz and EPA Administrator Gina McCarthy have strongly defended the legality of EPA's proposed mandate to House lawmakers. McCarthy, for example, said she is “very confident” the technology can be used at the levels the agency is proposing.

And Moniz, in testimony to the House science committee earlier this year, minimized the regulatory burden from EPA's NSPS, noting that it only requires partial carbon capture. He added in a Feb. 11 exchange with Rep. Ed Whitfield (R-KY), chair of an energy committee panel, that despite problems with some of the demonstration projects, the CCS technology is proven.

Given such statements, CRE appears to be urging Moniz to take on a different role when reviewing EPA's NSPS, given that the rule will be challenged in court and that could “discourage adoption of the CCS technology.”

The letter to Moniz also warns that a court loss “would not only set back the U.S. program to control GHG emissions but would also jeopardize comparable programs around the world.”

Further, the letter cites a recent CCS report by the National Coal Council, a federal advisory committee to DOE, that concludes “CCS does not yet meet this [BSER] standard, because it has not yet been adequately demonstrated.”

The Jan. 22 report urged DOE to speed development of CCS technology while arguing [EPA was wrong to use it as the basis for its NSPS](#). The report said DOE's CCS research program “has not yet reached critical mass” and that there must be a substantial increase in demonstration projects before the technology “even approaches commercialization.”

The letter concludes by asking Moniz to keep McCarthy “advised” of his “views on the availability of CCS.”

CRE has fought EPA's plan to require CCS, arguing that the agency's determination that the technology is “adequately demonstrated” was a violation of the Data Quality Act. CRE has already asked EPA to proceed with an [interim NSPS rule that drops CCS](#), while conducting a peer review of the state of CCS, which it argues is necessary to comply with the data law.

CRE said its interim rule approach would instead mandate “CCS-ready” facilities, rather than CCS, and explained that EPA could allow other advanced technology, such as ultra-supercritical pulverized coal, to suffice as BSER in the interim rule. This, it argued, would make the NSPS much less legally vulnerable and allow EPA to continue with its GHG regulatory effort in the ESPS.

'CCS-Ready' Facilities

The letter to Moniz reiterates its call for EPA to instead require “CCS-ready” facilities and warned that failure to adopt such an approach “could result in litigation” under the DQA, referencing its draft petition for a writ of mandamus that would seek a court order to halt EPA's CCS mandate.

CRE calls such an approach “an excellent way” for the coal industry to confront EPA, though it also cautions that such a writ is considered a “drastic” remedy that courts do not often grant.

“Given this high standard, it is not unthinkable that the courts may deny the motion and leave the petitioner subject to standard penalties,” CRE says in its background paper. “The D.C. Court's acceptance or refusal of the writ of mandamus could give the court an opportunity to narrow its responsibilities for oversight, limit the scope of future appeals, or create a new standard unfavorable to public and private interests. While a lesser concern, the court's order could be inadequate, unhelpful, or give rise to ongoing delays by the EPA in complying with its duties under the Data Quality Act.”

CRE agrees with many others that the technology is not yet ready, “We feel the potential downside is huge, because if you mandate a technology before it is ready it may never recover,” the source says, noting the letter hopes to ensure that Moniz is “in the proper role” when he participates in the interagency review.

The source adds that while the draft final rule has not yet been sent over to OMB, it is likely that informal communications between agencies are already occurring.

And the source says CRE has not received a formal response to its earlier suggestion on an interim rule to EPA, and has “no information” on whether the administration is considering that approach. -- Dawn Reeves (dreeves@iwppnews.com)