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GOP defections stall attempt to thwart Obama EPA agenda

By [Josiah Neeley](#) 12:07 PM 11/11/2011



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On Thursday the Senate failed to pass a resolution that would have invalidated a major new environmental regulation governing interstate emissions. Passage of the resolution would have been a major setback for the Obama administration, and at least a symbolic victory for those who argue EPA has run amok.

Sen. Rand Paul (R-KY) had spearheaded efforts to block the Environmental Protection Agency's Cross-State Air Pollution Rule, which is currently set to go into effect January 1, 2012. "I think we can have a clean environment and jobs, but not if we let this administration continue to pass job-killing regulations," Paul said prior to Thursday's vote. "If this president is serious about job creation, he needs to cease and desist from adding new job-killing regulations."

The Cross-State Rule is only the latest installment in an unprecedented series of costly new EPA rules with speculative environmental benefits and a dubious legal basis. Under the new regulation, utilities in 27 states and the District of Columbia will be required to slash emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) by more than half by 2014. EPA defends the regulation based on computer models suggesting that emissions from these states may drift downwind into other states, preventing them from meeting their pollution control targets under the Clean Air Act. But according to the Electric Reliability Council of Texas, enforcing the new rules could imperil basic electricity reliability, causing rolling blackouts during hot summer months. And industry groups warn that plant closures resulting from the new emissions controls could cost 183,000 jobs per year until 2020.

Sen. Paul forced a vote on the issue using a little-known provision of the Congressional Review Act, which was originally passed by congressional Republicans as part of the Contract with America. Under the act, Congress may overrule new federal regulations issued by the executive branch by passing a joint resolution of disapproval. The process is immune to filibuster and requires only a bare majority to pass.

Had Paul's resolution succeeded in the Senate, it would have likely passed in the House as well. This threat was significant enough that on Tuesday the White House issued a statement threatening to veto the resolution should it reach the president's desk.

Ultimately, however, Senate Republicans were not able to muster the 51 votes necessary for passage, with the resolution failing 41-56. While Democratic Senators Ben Nelson of Nebraska and Joe Manchin of West Virginia voted for the resolution, moderate Republicans Mark Kirk (R-IL), Olympia Snowe (R-ME), Susan Collins (R-ME), Scott Brown (R-MA), Lamar Alexander (R-TN) and Kelly Ayotte (R-NH) sided with the Obama administration.

The Cross-State Rule is one of several EPA rules set to go into effect over the next few years that take aim at emissions from power plants, particularly coal plants. During the 2008 campaign, Obama stated that under his proposals "if somebody wants to build a coal plant, they can — it's just that it will bankrupt them." Coal provides approximately half of baseload electric power in the United States, and as much as 80 percent in some states affected by the Cross-State Rule.

The rule has proven controversial, both for the adverse effect it may have on jobs, as well as for claimed procedural shortcomings in the way the regulation was adopted. Under the Administrative Procedures Act, EPA is required to give notice to states about the possible implications a proposed regulation may have for their state, and provide adequate time for comment. In its final rule, however, EPA added several new states to its non-attainment list that were not included in the original regulation.

In September, Texas coal power producer Luminant brought suit in federal court seeking to block the rule based on these defects. Challenges to the

Cross-State Rule have also been filed by several state governments, including Florida, Nebraska and Texas. Luminant is already idling two Texas power plants in anticipation of the Cross-State Rule, and as many as 53 power plants, largely concentrated in Midwestern states from West Virginia to Illinois, are expected to be closed if the rule goes into effect. While EPA has scaled back the rule slightly in response to public outcry, it continues to promise higher electricity prices and hundreds of thousands of lost jobs if it goes into effect.

EPA's aggressive new push for more regulation comes at the worst possible time. With unemployment at 9%, and many analysts raising the possibility of a double-dip recession, the last thing America needs is to deal a crippling blow to the sector of the economy that keeps the lights from going out.

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