

BRIEF

Chatterjee blasts Clean Power Plan, praises EPA replacement in filed comments

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Dive Brief:

- Federal Energy Regulatory Commission Chairman Neil Chatterjee filed comments last week criticizing the Obama administration's proposed carbon regulations for the power sector and praising the White House's plan to replace them with a less stringent rule.
- The Obama Clean Power Plan (CPP) could have threatened electricity reliability as originally proposed, Chatterjee wrote, and overstepped EPA's authority to regulate greenhouse gas emissions. The EPA's proposed replacement, Affordable Clean Energy (ACE) rule, "cure[s] some of the potential deficiencies," he wrote.
- Chatterjee's comments are unusual for a regulator at FERC, whose officials contributed to major changes in the CPP before it was scrapped by the Trump administration. The comments came the same week that Chatterjee told reporters he would be a nonpolitical leader at FERC after his first stint as chairman raised concerns of White House influence last year.

Dive Insight:

Chatterjee's comments on the ACE plan harken back to his days

as a staffer for Sen. Majority Leader Mitch McConnell, R-Ky, where he worked before being nominated to FERC last year.

In that role, Chatterjee helped coordinate resistance to the Obama administration's Clean Power Plan, which would have pushed coal plant owners to shift to natural gas and renewables.

The rule never went into effect. Put on hold by the Supreme Court in 2016, the Trump EPA proposed to repeal it last year and in August unveiled the ACE rule as a replacement.

The first version of the CPP, proposed in 2014, raised concerns among some utilities that it could force them to retire coal plants too quickly, resulting in reliability issues. Chatterjee zeroed in on those worries in his comments to EPA, noting that it is his agency's responsibility to "keep the lights on."

"Specifically, my comments are geared toward offering the [EPA] the benefit of the information the Commission has gleaned over the past several years when it investigated the Clean Power Plan's potential effects on the reliability of the bulk power system," he wrote.

That information is the product of four technical conferences FERC held with industry and agency staff on the proposed CPP. In his comments, Chatterjee highlighted conference input that was critical of the proposed carbon regulations, such as reports from the North American Electric Reliability Corporation and the National Rural Electric Cooperative Association.

"A preponderance of the participants representing a wide range of interests noted that, depending upon how the Clean Power Plan was implemented, it could have significant consequences for reliability and offered suggestions as to how to address those concerns," Chatterjee wrote.

After feedback from the FERC conferences and its own public comment collections, EPA significantly changed the structure of the CPP, assuaging many reliability concerns. Even if EPA

abandoned its push to replace the CPP with ACE, it would fall back to the finalized Clean Power Plan, not the original proposal.

Chatterjee briefly noted those changes in his comments, but said EPA could still benefit from warnings about the original plan.

"In addition, I am concerned that significant changes in the power sector have occurred since 2015 that would make the reliability of the nation's bulk-power system even more susceptible to unintended consequences should the Clean Power Plan ultimately be implemented," he wrote, citing low natural gas prices, continuing coal plant retirements and low power demand growth.

Additionally, Chatterjee raised legal concerns with the CPP's aim to shift power generation from coal plants to less-emitting sources. Power generators and the coal sector said the generation shifting violates EPA's authority under the Clean Air Act, and the issue was at the center of legal challenges that led to the Supreme Court's stay on the rule.

"[T]he Clean Power Plan would have allowed the Agency to impose sweeping changes in the composition of the nation's bulk-power system through administrative action without a clear statutory directive or limiting principle," Chatterjee wrote.

The ACE rule, by contrast, would direct coal plant owners to make efficiency upgrades at existing plants, a more modest requirement that would beget less intense emissions reductions. Chatterjee said that approach is preferable, but did not file extensive comments on the plan because FERC staff is still reviewing it.

"The Commission has recently explained that 'Congress has not granted the Commission the responsibility to affirmatively establish federal climate policy,'" Chatterjee wrote, quoting FERC's split decision this May to limit climate considerations in pipeline approvals. "The [EPA] should act with similar self-restraint here."

Chatterjee's comments are likely to reignite concerns of political influence at FERC. It is unusual for a FERC chairman to file comments on another agency's proposed regulations — particularly a version not under consideration — though commission regulators did testify on the proposed Clean Power Plan at the Senate in July 2014.

Chatterjee's comments are dated Oct. 31, the same day he held a press conference with reporters at FERC headquarters pledging to keep the commission independent of political concerns. During that interview he noted his affinity for the coal industry, but said it would not have an impact on his decisions as a regulator.

"As I evolve into the role I recognize that is not part of our record," he said. "That does not factor into the statutes that govern us."