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Neeley: Rule could mean lights out in Texas

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Two years ago, Texas' electrical grid faced a crisis. In August of 2011, the U.S. Environmental Protection Agency issued a new regulation, the Cross-State Air Pollution Rule, which required Texas to cut sulfur dioxide emissions by 47 percent by 2012.

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Generator in Texas, announced it would idle 1,200 MW of generating capacity, closing three Texas lignite coal mines and laying off 500 employees. A study by the Electrical Reliability Council of Texas, which operates Texas' electrical grid, concluded that had the Cross-State Rule been in effect during the hot summer of 2011, Texas would have faced rolling blackouts. Only a stay of the Cross-State Rule, granted just two days before the rule was scheduled to go into



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effect, prevented Texas from facing this government-induced catastrophe.

That threat may be returning. On Dec. 10, the U.S. Supreme Court will hear oral arguments in American Lung Association v. EME Homer City Generation, the legal challenge to the Cross-State Rule. Should the Supreme Court uphold the Cross-State Rule, the implications both for Texas and for the nation could be profound.

Officially, the Cross-State Rule represents the EPA's latest attempt to deal with the thorny problem of interstate pollution. Because some states lie downwind of others, it is possible that [emissions](#) from an upwind state could hurt the ability of downwind states to meet air quality standards.

Unfortunately, the Cross-State Rule bears little relation to this purpose. The Environmental [Protection Agency](#) included Texas in a portion of the rule involving particulate matter based on computer models showing emissions from Texas contributing to nonattainment at a single monitor in Madison County, Ill. Yet, despite just barely qualifying for inclusion in the rule for particulate matter, Texas ended up facing reduction targets similar to states with interstate emissions problems more than twice as large. Texas alone accounts for a quarter of all reductions in SO2 emissions required by the rule, despite the fact that the state has already reduced emissions by 33 percent since 2000.

The Cross-State Rule also imperils Texas' long tradition of state autonomy. When it comes to regulating air quality, the law has long recognized a clear division of responsibility between the federal government and the states. Only when a state refuses to develop an implementation plan (or where the plan it develops is legally deficient) is the EPA allowed to step in and temporarily put in place its own plan.

When the agency issued the Cross-State Rule, however, it immediately issued a federal implementation plan, without giving states the required time to develop their own plan. When challenged in court, the EPA argued that states were required to anticipate the substance of the Cross-State Rule, and because they hadn't done so, the agency was free to do as it wished. Texas last year won an impressive victory in the federal court of appeals, which completely invalidated the Cross-State Rule. Now, however, the federal agency is hoping that the Supreme Court will be more receptive to its broad claims of authority.

The EPA's actions represent an unprecedented usurpation of state authority to decide how best to comply with federal air quality standards. If the Cross-State Rule is upheld, the consequences could be devastating for Texas and for the nation. Not only would basic electrical reliability be endangered, but the federal environmental agency would be given carte blanche to use its regulatory authority to effectively control the course of the U.S. economy. That's not something that either Texas or the courts can allow.

Josiah Neeley is a policy analyst for the Armstrong Center for Energy & the Environment at the Texas Public Policy Foundation.


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