

CLEAN POWER PLAN:

Did EPA go 'overboard'? Obama alumni duke it out

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Two former Obama administration officials went toe to toe last night, debating whether U.S. EPA has "gone overboard" with the president's signature climate rule.

Arguing for the Clean Power Plan, former White House climate adviser Jody Freeman won the three-round match.

"EPA has taken a flexible law which Congress passed in 1970 and has amended subsequently, giving it broad discretion to set standards using the best system," Freeman told the crowd of students, academics and policy wonks gathered in an auditorium on George Washington University's campus for the free debate.

Freeman teamed up with veteran environmental leader and former Sierra Club chief Carl Pope against Charles McConnell, who was responsible for the Department of Energy's fossil fuels program from 2011 to 2013, and a lawyer who is helping coal companies trying to overturn the rule in court.

McConnell said that he believes the United States has a responsibility to mitigate carbon emissions — "I'm no denier," he asserted — but that the Clean Power Plan is the wrong tool. The plan "forces wind into our [power] system" without considering reliability, he said, and treads on the turf of the Federal Energy Regulatory Commission.

At the outset of the 90-minute debate, 18 percent of the audience agreed that EPA did go "overboard" when it issued the rule; 59 percent disagreed, and 23 percent said they were undecided.

By the end of the night, 25 percent agreed that EPA went overboard, while 71 percent disagreed.

DOE 'out of the loop'

One of the most interesting clashes of the night centered on interagency coordination.

McConnell said EPA should have been working with the Office of Fossil Energy at DOE and other parts of the department to interact and collaborate as the rule was being developed.

"And that collaboration didn't occur. It was very much singularly driven out of the EPA, and it was disappointing. It was also very frustrating," he said.

Pressed to be more specific, McConnell said, "I believe [EPA officials] were fundamentally given a mandate by the administration and everyone else was told to stand down."

McConnell said he was asked to field questions about "resource adequacy," an EPA-defined term for reliability based on theoretical capacity, "And I said, 'Look, we've got reliability numbers. Go out to the [public utility companies] and ask.' But they didn't," he said.

Freeman said EPA did coordinate closely — with fellow regulators at FERC.

"DOE does not have regulatory authority. That is, it doesn't issue regulations. It's primarily a funder of energy much more than a regulator of energy. ... FERC and EPA cooperated quite a bit on this rule, you might be surprised to learn," Freeman said.

All three agencies agreed to monitor the reliability of the energy system jointly as the plan is implemented, "so I'm a little curious about the idea that DOE was totally out of the loop," Freeman said.

'They always say the same thing'

The Supreme Court's February decision to stay the rule was also a major sticking point.

Michael Nasi, a counsel for rural electric cooperatives, coal companies and other electric generation interests in the ongoing proceedings and appeals pending before the U.S. Court of Appeals for the District of Columbia Circuit and the Supreme Court, said EPA's assessment of benefits of the rule is fundamentally "dishonest" and unprecedented.

But Freeman, who has come to EPA's defense in court, contended that EPA should be afforded deference under the seminal 1984 Supreme Court case *Chevron v. Natural Resources Defense Council*, which held courts should defer to agencies when laws are ambiguous.

Freeman objected to her opponent "invoking the Supreme Court on his team," while acknowledging the case posed a challenging legal question.

She closed with a quote from the CEO of Southern Co. during the acid rain debates of the 1980s.

"The same arguments you heard tonight — 'This will lead to rate pair costs skyrocketing,' 'It's too hard,' 'It's too costly,' 'It's going to stultify technology that ought to be developed otherwise' — is the playbook that the coal industry has been playing from for decades and decades," Freeman said.

"They always say the same thing," Freeman concluded.

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