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From: POLITICO Pro Energy Whiteboard
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Subject: Judges prod Trump administration over slow pace of Clean Power Plan review

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Until it puts in place a replacement for the Clean Power Plan, EPA is avoiding its "statutory duty" to regulate greenhouse gas emissions, two federal court judges wrote today in an unusual warning shot at the Trump administration.

The D.C. Circuit agreed to keep a case challenging the Obama-era climate rule on hold for at least two more months, but a pair of judges appointed by Democratic presidents said that delay cannot continue forever. The Supreme Court in 2016 stayed the Clean Power Plan until the conclusion of the legal challenge, which has been suspended since the Trump administration began reviewing the rule.

"That in and of itself might not be a problem but for the fact that, in 2009, EPA promulgated an endangerment finding, which we have sustained," wrote judges David S. Tatel, a Clinton appointee, and Patricia A. Millett, an Obama appointee. The finding, which originally applied to vehicles but was expanded to power plants, requires EPA to take action on carbon dioxide emissions from power plants so long as it is in place.

"Combined with this court's abeyance, the stay has the effect of relieving EPA of its obligation to comply with that statutory duty for the indefinite future," they continued in an addendum to today's order keeping the case on hold.

Last week, environmentalists asked the court to issue its ruling on the Clean Power Plan because EPA has not provided an estimated date for proposing a repeal of the rule.

WHAT'S NEXT: The new 60-day hold on the litigation will place the court's next action shortly after the one-year anniversary of the Sept. 27, 2016, oral arguments over the Clean Power Plan, which took place before a panel of 10 of the D.C. Circuit's judges.

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