

Eighth Circuit Pauses SEC Climate Disclosure Rules Litigation

Posted in: Litigation, SEC Climate Disclosure Rules

Posted on: April 24, 2025

Following the SEC's decision last month to withdraw its defense of the agency's landmark climate disclosure rules adopted in March 2024 — the explanation for which did not make clear what the SEC plans to do next — the Eighth Circuit today issued an order (i) pausing the pending legal proceedings, which challenge the rules on a variety of statutory and constitutional grounds, “until further order of the court” and (ii) directing the SEC to file a status report within 90 days advising on its course of action with respect to the rules. Specifically, the SEC is instructed to inform the court whether it “intends to review or reconsider the rules at issue in this case. If the Commission has determined to take no action, then the status report should address whether the Commission will adhere to the rules if the petitions for review are denied and, if not, why the Commission will not review or reconsider the rules at this time.”

In its order, the court granted the motion filed earlier this month by a coalition of Democratic attorneys general (AGs) representing 18 states and the District of Columbia who have intervened in the litigation in defense of the rules to hold the consolidated challenges in abeyance until the SEC determines and discloses what action it intends to take regarding the rules, including whether it will seek to amend or rescind the rules (through notice-and-comment rulemaking, as required under the Administrative Procedure Act (APA)) should the court ultimately uphold them. The AGs had argued that an abeyance would conserve judicial resources while the SEC evaluates its course of action so that the court does not devote the time and energy to hearing oral argument and writing a potentially unnecessary opinion on the legality of the rules, only to have the SEC turn around and try to amend or rescind them if (partially or completely) upheld.

In their motion, the state intervenors emphasized they are prepared to defend the rules with or without the SEC in order to protect their unique interests and facilitate investor protection, market efficiency and economic stability — provided that doing so is not “a useless exercise.”

The energy companies, business groups and Republican state AGs challenging the rules had opposed the requested abeyance, urging the court instead to either (i) hold oral argument on the fully briefed case or (ii) submit the case without argument, issue a decision holding the rules unlawful on the merits and vacate them.

The climate disclosure rules have been subject to a **stay** unilaterally imposed by the SEC in April 2024 pending the outcome of the litigation, which will remain in effect during the abeyance.

While the Atkins-led SEC almost certainly would not actively enforce the rules, they technically remain on the books (albeit temporarily stayed) until a final court judgment or a formal rescission under the APA, which requires compliance with (lengthy and SEC staff-intensive) public notice-and-comment rulemaking procedures and agency justification for its change in position.

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